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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 412 /2004

3083/09
16/8/09
A. Sahu
Filed on
by Shri
Advocate
26/8/09 to B.R. (J)
APPLICANT
IN-JAIL

Ghyanshyam Sahu, S/o. Jugadhi,
Aged about 39 years, R/o. Mopka,
P.S. Sarkanda, District Bilaspur
(C.G.)

VERSUS

RESPONDENT

State of Chhattisgarh,

CRIMINAL REVISION UNDER SECTION 397, 401
CRIMINAL PROCEDURE CODE

HIGH COURT OF CHHATTISGARH : BILASPUR

Criminal Revision No.412 of 2004

Applicant
(In Jail)

Ghanshyam Sahu

Versus

RESPONDENT

State of Chhattisgarh

(Criminal Revision under Section 397/401 of Cr.P.C.)

[Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava]

Present: - Smt. Nirupama Bajpai, counsel for the applicant.
Smt. Shobha Kashyap, Deputy Government Advocate for the State.

ORAL ORDER

(Passed on 04-03-2015)

Heard.

(2) This revision is directed against order dated 13-08-2004 passed in Criminal Appeal No.182/2004 by the VIIIth Additional Sessions Judge, F.T.C., Bilaspur, whereby the applicant's conviction under Section 304-A of IPC has been affirmed and he has been sentenced to undergo R.I. for one year with fine of Rs.10,000/-, in default of payment of fine, additional R.I. for 2 months.

(3) An accident happened on 29-05-1999, in which, a child, aged 6 years died. FIR in Ex.P-4 was lodged by Shamlu, PW-3, father of the child, in which, it was stated that the motorcycle bearing Registration No.M.P.26-7736 was being driven by the applicant rashly and negligently, due to which, accident occurred and the child died. Offence was registered against the applicant for commission of offence under Section 304-A of IPC and after investigation, charge sheet was filed, applicant was tried and he

was convicted by the trial Court vide impugned judgment of conviction and order of sentence dated 30-07-2004 passed by the Additional Chief Judicial Magistrate, Bilaspur in Criminal Case No.1804/2002. On appeal being preferred, the appeal was also dismissed giving rise to this Revision petition.

(4) Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the applicant argued that the involvement of the applicant is highly doubtful because though, the appellant has been named as the person riding the motor cycle, the police did not seize the offending vehicle bearing Registration No.M.P.-26-7736 but seized a Motor cycle bearing Registration No.M.P.-26-KB-0899 (Hero Honda Bike). It is next submitted that in the FIR, make of the vehicle is stated to be "Razdoot" Bike but the vehicle which is seized is make of another company named "Hero Honda". Shamlu, PW-3, Father of the deceased, who lodged the FIR, has not seen the incident but he states that he was informed by his neighbour. There is no clear evidence as to who informed him and whether that person, who informed him, also disclosed name of the rider and number of the vehicle. The applicant has been involved only on suspicion without there being any clinching evidence to bring home his guilt.

(5) On the other hand, learned State counsel submits that though there are certain discrepancies with regard to number of the vehicle, in the FIR lodged promptly, few hours after the incident and in the testimony of Rajesh, PW-5 & Bhau Das, PW-9, the applicant has been clearly named as the person, who was driving

the vehicle. Therefore, it is apparent that the accident was caused by the applicant and no other person. It is next submitted that the seizure of another motor cycle does not cause any dent to the story of the prosecution with regard to involvement of the applicant in the incident.

(6) In the FIR, Ex.P-4, lodged by Shamlu, PW-3, it has been stated that he was informed regarding the incident by one of his neighbour that a Motor cycle bearing Registration No.M.P.-26-7736 was rashly and negligently driven by the applicant-Ghanshyam Sahu, resident of Mopka, resulting in accident of his son, who sustained injury. Thus, the FIR shows that Shamlu himself has not seen the incident but he lodged the FIR on information being given to him by one of his neighbour. However, in the FIR, who gave this information, has not been stated. In his evidence also, Shamlu, PW-3 has not clearly stated as to who gave him information that it was the applicant, who was driving the motorcycle and caused accident. All that he states is that his neighbour informed him regarding the incident. In the cross-examination, he states that number of vehicle and name of rider, which was written on a piece of paper and given to him by his neighbour, has not been handed over to the police and he himself kept it. However, this written slip has not been produced by the prosecution. This witness has also admitted that at the time of lodging report, he has not stated that the matter was informed to him by Bhau Das, a neighbour. Thus, entire evidence of this witness is based on information given by someone, who claims to be neighbour yet he is unable to disclose

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his name. Moreover, this neighbour claims to be in possession of written piece of paper containing the name of rider of the vehicle and the number of vehicle, yet he has not produced the same.

(7) There are two witnesses of the prosecution namely Rajesh, PW-5 and Bhau Das, PW-9, who claim to be the eye-witness of the incident.

Rajesh, PW-5 states that while he was sitting in the shop, he saw the applicant driving the Hero Honda vehicle with high speed and Suresh was standing by the side of the road and Suresh was hit by motor cycle. In his cross-examination, he admits that he had given, in a piece of paper, in writing, the number of the vehicle as also the name of rider. He then states that he had informed about make of the vehicle as Hero Honda and number written was 7736. He has denied suggestion that he has not seen the incident.

(8) The person, who claims to be an eye-witness of the incident- Bhau Das, PW-9 has stated that the accident was caused by black coloured-Hero Honda motor cycle, which was being driven by the applicant with high speed and the accident happened due to high speed.

(9) While Rajesh, PW-5 states that he had given the number of the vehicle, name of the rider as that of the applicant and the number being 7736, the other witness-Bhau Das, PW-9 states that the number of the vehicle MP-26-0899. Siya Dulare, PW-6, Head Constable, has stated that he had seized the motorcycle Hero Honda-MP-26-KB-0899 from the possession of the applicant. In his



cross-examination, he states that number of the vehicle has been written as MP-26-7736. He also admits that the number of the vehicle as stated in diary statement, Ex.D-2 of Shamlu, is "M.P.-26-7736" and he also admits that he recorded diary statement on two occasions, but no date has been recorded and then he has recorded the number of the vehicle as MP-26-D-0899.

(10) The prosecution, however, has not come out with any evidence with regard to whereabouts of Motor cycle bearing Registration No.M.P.-26-7736 nor that vehicle has been seized. There is no material on record to show that any of the two vehicles was owned by the applicant. There is no evidence to show that the vehicle bearing Registration No.M.P.-26-7736 is owned by the applicant and the applicant is the registered owner. There is no evidence of the registered owner of Motor cycle bearing Registration No.M.P.-26-7736 that he had handed over this vehicle to the applicant.

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(11) Therefore, in view of above consideration, the involvement of the applicant in the incident becomes doubtful and the applicant is entitled to be given benefit of doubt.

(12) Accordingly, this revision is allowed. Conviction of the applicant under Section 304-A of IPC is set aside and he shall be set at liberty forthwith. Bail bonds stand discharged.

Sd/-
Manindra Mohan Shrivastava
Judge