

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 906 of 2014

1. Santosh Sethiya S/o Dayaram Sethiya, aged about 42 years, R/o Kumharpara, Near Kosa Centre, Jagdalpur, P.S. Jagdalpur Civil & Revenue Distt. Bastar C.G.

---- Applicant

Versus

1. State Of Chhattisgarh through the Station House Officer, P.S. Kotwali, Jagdalpur, Distt. Bastar C.G.

---- Respondent

For Applicant – Shri Subhash Yadav, Advocate.

For Respondent – Shri Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

08/04/2015

1. The applicant filed this criminal revision under Section 397 and 401 of the Code of Criminal Procedure, 1973 (in short 'the Code') and challenged the legality and propriety of the judgment dated 20-11-2014 passed in Criminal Appeal No.06/2013 whereby and whereunder learned Second Additional Sessions Judge, Bastar at Jagdalpur while deciding the criminal appeal arises out of the judgment dated 27-12-2012 passed in Criminal Case No.57/10 by Judicial Magistrate First Class, Jagdalpur whereby and whereunder the learned Judicial Magistrate First Class convicted the applicant under Section 304 A of the IPC and sentenced him to undergo rigorous imprisonment for 1 year and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo simple imprisonment for 1 month, dismissed the appeal filed by the applicant and affirmed the judgment of the trial Court passed against the applicant.

2. The applicant by filing this criminal revision against the order passed by the appellate Court as aforementioned has taken the ground that looking to the statement of the witnesses, it is nowhere proved that the applicant was rash and negligent which is an essential ingredient for proving offence under Section 304 A of the IPC. The judgment passed by the appellate Court is not based on the proper appreciation of the facts. The other two children eye-witnesses present at the time of incident were not adduced by their examination before the trial Court. The statements of the witnesses who allegedly saw the incident does not inspire confidence. Looking to the facts and evidence, the appellate Court erred in holding that the applicant was guilty for the offence under Section 304 A of the IPC. Hence, by filing this revision, it is prayed that the impugned judgment passed by the appellate Court on 20-11-2014 be set aside and the applicant be acquitted from the charge.

3. I have heard both the parties and perused the record of the Court below.

4. Learned counsel appearing on behalf of the applicant submits that only one alleged eye-witness Ahmed Alam (PW-2), uncle of the deceased Sameer Khan aged about 4 years, was examined by the prosecution. As per this witness, at para 4, the applicant was driving the truck with great speed. Except this, no other description regarding the incident stated by this witness. In the present case, death of Sameer Khan in the road accident met by truck being driven by the applicant is not proved. The applicant may not be held guilty for the same. Hence, the revision be allowed and the applicant be acquitted from the charge.

5. Per contra, learned counsel appearing for the non-applicant/State opposed the revision and submitted that the judgment of conviction and order of sentence passed by the Court below which was affirmed in the appeal requires no interference, hence, the revision may be dismissed.

6. While deciding this criminal revision, this Court has to examine correctness, legality and propriety of the judgment passed by the Court below.

7. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution before the trial Court.

8. On close scrutiny, it appears that only one alleged eye-witness adduced by the prosecution before the trial Court, Ahmed Alam (PW-2), uncle of deceased Sameer Khan, who stated in his statement that he saw the incident, the applicant was driving the vehicle with great speed. After committing the incident, the applicant stepped down from the truck and thereafter run away along with the truck from the place of incident. This witness has not specifically mentioned as to how the incident occurred. As per this witness, the applicant was driving the truck with great speed. Besides this, no further description as to how the child came into contact of the truck is not given by this witness. This witness is not the maker of the FIR. His statement given under Section 161 of the Code was recorded by police during investigation after 2 days, though it was not contradicted with the witness during his examination before the trial Court. After perusal of his statement made under Section 161 of the Code, it appears that while this witness was heading towards his house, near Akansha Hotel, he saw his nephew Sameer Alam in injured condition, he along with other had taken him to Maharani Hospital, Jagdalpur where the doctor reported him brought dead. As per this 161 statement, Ahmed Alam (PW-2) is not the eye-witness. Regarding this, no other witness was examined on behalf of the prosecution during the trial.

9. On due consideration, it emerges that alleged eye-witness Ahmed Alam (PW-2) had not seen the incident and also in his Court statement except this fact that the applicant was driving the vehicle with great speed, no specific description regarding the incident was deposed. As per story of the

prosecution, Sameer Khan along with his two friends were returning home when this incident happened. The prosecution not adduced those witnesses in their support before the trial Court. The other part of the prosecution story was not opposed on behalf of the applicant that the incident happened by the truck being driven by the applicant at the relevant point of time, but the applicant denied this fact that he was driving the vehicle in a rash or negligent manner.

10. As there is no admissible evidence before the trial Court that the applicant was rash and negligent in driving the vehicle. With absence of above material ingredient of Section 304 A of the IPC, conviction of the applicant for the same is incorrect, illegal and improper, which requires interference.

11. Consequently, this revision filed by the revisioner/applicant is allowed and he is acquitted from the charge under Section 304A of the IPC. He is reported to be on bail. He be set at liberty forthwith. Fine amount, if paid, shall be refunded. His bail bond shall continue for a further period of 6 months, as per requirement of Section 437-A of the Code.

Sd/-
(C.B.Bajpai)
JUDGE

