

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 658 of 2015

State of Chhattisgarh through the District Magistrate, Raipur, District
Raipur (C.G.)

---- Appellant

Versus

Virendra Yadav, son of Virsingh Yadav, aged about 31 years, R/o
Bhathagaon, near Danteshwari Temple, PS Purani Basti, Distt. Raipur
(CG)

---- Respondent

For appellant/State

: Mr. C.S. Patel, GA.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

31/07/2015

1. Heard on application for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure, 1973 followed by memo of acquittal appeal.
2. The appellant/State has preferred this application for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure against the judgment dated 20-2-2015 passed by the Judicial Magistrate 2nd Class, Raipur in Criminal Case No. 120/12 acquitting the respondent for the offence under Sections 279 and 338 of the Indian Penal Code, 1860 by affording him benefit of doubt. It is within limitation.
3. By filing the instant application, the appellant has taken the ground that the judgment of acquittal is illegal, improper and incorrect and liable to be set aside. It is passed without appreciation of material available. Prosecution witnesses were natural and trustworthy. The trial Court over looked the case of the prosecution and statement of witnesses and passed the impugned judgment in a mechanical manner which is bad in law and liable to be set aside. Prosecution proved its case beyond doubt against the respondent hence he ought to have been convicted. The trial Court ignored the settled principles of law laid down by Hon'ble Apex Court. It is prayed that leave to appeal may be granted and the appeal may be heard on merit after admission.
4. Heard learned counsel for the appellant.

5. In order to appreciate the application for grant of leave to appeal, this court has to assess as to whether the court below has committed any illegality or impropriety in the impugned judgment.
6. Learned counsel for the appellant/applicant duly supported the application followed by acquittal appeal and submitted that on the basis of the ground taken, the application may be allowed and the acquittal appeal be heard on merit.
7. Brief facts of the case are that on 7-3-2012 at about 8 pm respondent while driving auto rickshaw bearing registration No. CG 04 T 7769 in a rash and negligent manner hit Luna bearing registration No. MP 23/2304 driven at the point of moment by the complainant/ P.W. 1 Mithilesh Dewangan and thereby the complainant and victim received two fracture on his right forearm. Matter was reported to police and after due investigation, challan was filed against the respondent. Learned trial Court after affording opportunity to adduce evidence and hearing, acquitted the respondent as the charges framed were not proved beyond all probable and reasonable doubt.
8. For appreciation regarding leave to appeal, evidence adduced before the trial Court perused.
9. P.W. 1 Mithilesh Devangan admitted in para 6 of his cross-examination that the auto was being driven on side of the road. P.W. 4 Punit Devangan deposed in para 2 of the examination-in-chief that the complainant was on bicycle, near Kali Mandir, the auto driven by the complainant hit his bicycle. The incident occurred due to fault of both, the complainant and the respondent. This witness specifically denied the fact in para 4 of the examination-in-chief in a leading question by the prosecution after declaring him hostile with due permission from court that the victim was driving Lune at the time of accident. In para 5 of the cross-examination, this witness was unable to state as to in what mannter the auto was being driven.
10. No eye-witness or direct evidence for accident is adduced by the prosecution. It was a clear case of prosecution that the complainant was driving his Luna. Luna bearing registration No. MP 23 / 2305 was also seized but as the witness P.W. 4 Punit categorically denied this fact that the complainant was driving Luna instead he stated that the complainant was driving cycle which goes to show that this witness is stating different story and

thereby makes the prosecution case suspicious. As the complainant himself stated that he was driving Lune, P.W. 4 Punit Devangan's statement is of no help to the prosecution. The complainant himself deposed that auto was being driven on side of road. As per prosecution story, the instant case is of head-on collision. If both the alleged vehicles were opposite to each other and if the auto was on his side of road, it cannot be said that the applicant was driving the vehicle in rash and negligent manner. One more fact though not directly relevant for the present case but even after 12 years of formation of state of CG, the complainant was still using the lune with the registration number of old Madhya Pradesh which goes to show that in totality how much the complainant was negligent regarding taking a new registration number after closure of series MP 23 prevalent for Raipur RTO before formation of Chhattisgarh. While appreciating the entire evidence this court is of the considered view that this is not a fit case where leave to appeal may be granted for hearing of acquittal appeal.

11. The trial Court has not committed any illegality or impropriety while acquitting the respondent of the charges framed against him.
12. Therefore, the application for grant of leave to appeal is hereby dismissed. Consequently, the acquittal appeal is also dismissed.

Chandra Bhushan Bajpai
Judge

Pathak