

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.269 of 2009**

Samnath, S/o. Lachhunath, aged about 26 years, R/o. Village
Tahkapal, Police Station Parpa, District Bastar (CG)

----Applicant

Versus

State of Chhattisgarh, Through the PS Frezerpur, District Bastar
(CG)

---- Respondent

Shri Praveen Tulsyan, counsel for the applicant.
Shri Lav Sharma, Panel Lawyer for the State/respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****25.01.2016.**

This Criminal Revision is directed against judgment dated 19.02.2009 passed by Sessions Judge, Bastar at Jagdalpur in Criminal Appeal No.68/2008. By the impugned judgment, the learned Sessions Judge, while dismissing the appeal preferred by the applicant, upheld the judgment of conviction and sentence passed by Judicial Magistrate First Class, Bastar at Jagdalpur in Criminal Case No.93/07, whereby and whereunder the trial Court while holding the applicant guilty for causing death not amounting to culpable homicide of Somaruram held that the applicant while driving the truck in rash and negligent manner hit Somaruram, who was in a cycle, and thereby caused his death and convicted him under Section 304-A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and to pay fine of

Rs.500/-, in default of payment of fine, to further undergo RI for one month.

2. Learned counsel for the applicant submits that the Session Court has erred in not appreciating the evidence in its right perspective thereby committed illegality and irregularity while affirming the judgment passed by the JMFC Bastar at Jagdalpur. There was no any admissible evidence regarding rash and negligent act of the applicant, but the trial Court as well as the appellate Court failed to appreciate same and also there were material improvement of the witnesses in their court statement, hence, it is prayed that the instant revision may be allowed and the impugned judgment may be set aside.

3. Heard counsel for both the parties and perused the judgment impugned of the trial Court as well as the appellate Court.

4. It is submitted on behalf of the applicant that Laxman @ Astu (PW-1), lodger of the First Information Report, admitted that he had no knowledge as on whose fault the incident happened. Though at the time of the incident, Laxman (PW-1) was in the truck which was being driven by the applicant, but he has not seen the actual incident and conviction cannot be based on the basis of the evidence of Laxman (PW-1). Laxman @ Ganpat (PW-2) had improved his statement before the trial Court that he was in the same truck being driven by the applicant and the

applicant was driving his truck in a speedy manner and thereby the accident happened. Learned counsel would submit that the said witnesses was asked that at the time of the incident, whether he was in a cycle which was denied by this witness. As submitted, in statement of the Laxman @ Ganpat (PW-2) recorded under Section 161 of the Code, he did not say anything that he was in the truck which caused the said accident. From his statement it is not specific that he was in the same truck. Thereby this witness improved his statement recorded under Section 161 of the Code and on the basis of his statement conviction cannot be held as proper. There is no other witness who saw the incident. The fact that the applicant was the driver of the said truck and in a accident Somaruram, who was going in a cycle, met the accident with the said truck and he died on account of injuries sustained by him, is not in dispute. Learned counsel would further submits that as the act of the present applicant that he was driving the truck in a rash and negligent manner is not proved, no conviction can be based on the basis of the evidence adduced during the trial , hence, by convicting the applicant, the trial Court as well as the appellant court committed illegality, hence revision may be allowed and the applicant may be acquitted for the charges.

5. Per contra, counsel for the State opposed the arguments advanced and submitted that the judgment passed by the Court below is well founded. Laxman @ Ganpat (PW-2), eye witness of

the incident, categorically stated that as the applicant was driving the truck in speedy manner the incident happened, hence, the trial Court as well as the appellate court have not committed any illegality or impropriety which requires no interference, hence, the instant revision may be dismissed as not maintainable.

6. In order to appreciate the arguments advanced in this behalf, evidence adduced by the prosecution before the courts below are perused.

7. On perusal of the entire evidence it goes to show that Laxman (PW-1) is the lodger of the First Information Report and merged intimation before the Kotwali Police. As per both the documents, at the time of the incident, Laxman (PW-1) was in the said truck and in the accident the truck hit and caused injuries to the Somaruram thereby he succumbed to the injuries. This witness Laxman (PW-1) in his cross examination in para 10 stated that he had no knowledge that on whose fault the accident happened. In his entire statement this witness has not stated that he was sitting in the cabin on the other hand, this witness is a labour and truck was carrying sand. With this, and in the specific statement that he was in the cabin it can be very well presume that he may be sitting in the back side of the truck over the sand filled in the truck that is why he categorically admitted that he did not know on whose fault the accident happened. In the considered view of this Court, no conviction can be based on the basis of the statement of Laxman (PW-1). So far as the evidence

of Laxman @ Ganpat (PW-2) are concerned, as per this witness also he along with other persons seated in the truck and were going towards Jagdalpur for labour work. The truck was being driven by the applicant and the truck made a hit to the cycle of the deceased Somaruram. Somaruram fell down and sustained injuries. The applicant had taken him in his truck to the hospital and it was the applicant who admitted him to the hospital and during treatment Somaruram died. As per this witness, the applicant was driving the truck in a speedy manner thereby the said accident had happened. During cross examination, suggestions were given that at the time of the incident he was going in a cycle for which he denied for the same. He had also put question regarding name of the applicant and number of the vehicle. Statement of Laxman @ Ganpat (PW-2) recorded under Section 161 of the Code is on the record though the same was not used by the defence during trial. But as per the said statement it appears that he had improved his court version by saying that he was also sitting in the said truck driven by the applicant. As per his statement recorded under Section 161 of the Code, he was going towards Jagdalpur for his labour work and one red coloured truck hit Somaruram's cycle and caused injuries. On perusal of the statement it goes to show that as he was not sitting in the said truck, his statement that the said truck was being driven in a speedy manner, cannot be accepted without probable doubt and also simply driving the truck with speed does not amount to rash and negligent act unless stated specifically. And also it appears that

Laxman @ Ganpat (PW-2) if at all sitting along with Laxman (PW-1) for the labour job he must have also in the dallas of the truck filled with sand as shown in the merged intimation and First Information Report. The statement of Laxman @ Ganpat (PW-2) is not of sterling character on which the conviction could be based. It was the duty of the prosecution to prove the rash and negligent act of the applicant in which the prosecution failed to adduce specific evidence which could warrant the conviction of the applicant.

8. In the considered view of this court, while convicting the applicant for the offence 304A of the IPC by the trial Court and also affirmed by the Sessions Court, both the Courts committed illegality and impropriety which requires interference.

9. Consequently, the revision is hereby allowed. Judgment of conviction and sentence passed against the applicant by the Court below and affirmed by the session Court are hereby set aside. The applicant is acquitted of the charges framed against him. Fine amount, if any, paid shall be refunded. The applicant is on bail. He be set at liberty forthwith. His bail bonds would be continued for further period of six months as requirement under Section 437A of the Code.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE