

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.464/2009**

Falendra Kumar s/o Kashi Ram Sahu, Age 24 years R/o Vill. Rishda
P.S. & Tahsil – Baloda Bazar, District Raipur (CG)

---- Applicant

Versus

State of Chhattisgarh through Station House Officer P.S. & Tahsil
Baloda Bazar, District Raipur (CG)

---- Respondent

For Applicant	:	Shri Hemant Gupta, Advocate
For State	:	Shri Lav Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**ORDER****22/01/2016**

1. Heard.
2. The applicant has filed this revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C'.) against the judgment passed on 10.9.2009 in Cr. Appeal No.25/2009 passed by the Second Additional Sessions Judge, Baloda Bazar, whereby and whereunder the Additional Sessions Judge affirmed the judgment of conviction passed on 29.7.2009 in Criminal Case No.1389/2003 whereby and whereunder the Judicial Magistrate First Class, Baloda Bazar after holding the applicant guilty under Section 304A IPC and Section 146/196 of the Motor Vehicles Act, 1988 sentenced to undergo R.I. for 3 months and to pay fine of

Rs.1000/- in default of payment of fine to further undergo additional imprisonment for 15 days; and fine of Rs.500/- in default of payment of fine to further undergo additional imprisonment for 7 days. The trial Court also convicted the co-accused Krishna Kumar who has not preferred any appeal before the Court of Sessions. Against the order passed by the appellate Court, the applicant has preferred Cr. Revision before this Court stating that the trial Court has erred in not appreciating the evidence in its right perspective thereby committed illegality or impropriety while affirming the judgment passed by the trial Court as the prosecution failed to prove the act of the applicant as rash and negligent, hence, the conviction and sentence awarded to the applicant by both the Courts below is not sustainable under the law. Therefore, it is prayed that the instant revision may be allowed and the impugned order of conviction and sentence passed by the Courts below be set aside.

3. Heard counsel for both the parties and perused the judgments of the Courts below.

4. Learned counsel for the applicant submits that he is not assailing the conviction under Section 146/196 of the Motor Vehicles Act, but he is submitting the arguments regarding illegality and impropriety committed by both the Courts below for sentencing the applicant under Section 304A of the IPC. Learned counsel would submit that the applicant was driving the said Tractor at the point during going towards the fields and the

Tractor laid down one side and the death of Asharam occurred on account of said incident is not disputed. The applicant is assailing the judgment passed by both the Courts on the point that the prosecution has failed to prove that the applicant was driving rash and negligent. If any incident committed it was on account of bad road condition and the mud and the fact which was beyond the control of the applicant. Learned counsel would further submit that as the conviction is solely based on the evidence of PW2-Dauram, it goes to show that initially he never stated to the Police in his statement that the incident committed because of the fault of the applicant. He submits that at the instance of this witness and others the applicant had attempted to take the Tractor and on the spot the field was filled with water, mud and as one tyre reached near the mud and thereafter, the said tyre immersed in the water and the Tractor laid down one side and with this, the applicant also the ill fated Asharam came under the Tractor. The person initially attempted and succeeded to save the applicant and Asharam, but as the face of the deceased drowned, he failed to take breath and thereby he succumbed. He submits that as the applicant was not rash and negligent hence despite the incident he cannot be convicted for the offence under Section 304A of the IPC and thereby the revision may be allowed. The judgment of conviction and sentence passed by the trial Court affirmed by the appellate Court may be set aside and the applicant be acquitted.

5. Per contra, learned counsel for the State/respondent opposed the instant revision and submitted that the trial Court after appreciating the entire evidence convicted the applicant also for the offence under Section 304 A of the IPC and the same was affirmed by the Sessions Court. The prosecution proved its case hence there is no illegality or impropriety committed by the Courts below and the revision may be dismissed as not maintainable.

6. In order to appreciate the arguments advanced in this behalf by both the parties, I have perused the evidence adduced by the prosecution before the trial Court.

7. On close scrutiny of the evidence it goes to show that it is only PW2- Dauram on whose sole evidence the conviction is based. After appreciation of the entire evidence, stated by the said witnesses, specifically at paragraph 10 it goes to show that he had not stated anything to the Police regarding the fault of the applicant. While considering the facts as mentioned in paragraph 5 to 10 it goes to show that under the directions of this witness and others, the applicant has taken the Tractor on the way and applicant was simply following the directions made in this behalf to take the Tractor in a particular direction. Also from perusal of the statement as referred in the above paragraphs it goes to show that while the prosecution failed to prove the rash and negligent act of the applicant which is a core issue to convict anyone for the offence. Though the incident is ill fateful where the said Asharam succumbed, as the rash and negligent act is not proved beyond all

probable doubt, the conviction and sentence awarded by the trial Court affirmed by the appellate Court requires interference.

8. In the considered view of this revisional Court, there is no legally admissible evidence so as to hold the applicant guilty under Section 304A IPC. Consequently, the instant revision is partly allowed. The judgment of conviction and order of sentence awarded to the applicant by the trial Court also affirmed by the appellate Court so far as it relates to Section 304A IPC is concerned is hereby set aside and the applicant is acquitted for the said charge. The judgment of conviction and the sentence awarded to the applicant under Section 146/197 of the Motor Vehicles Act requires no interference. The court below is directed to realize the fine amount under Section 146/196 of the Motor Vehicles Act for Rs.500/- if not paid. The trial Court is further directed to refund the fine amount of Rs. 1000/- awarded under Section 304A IPC if deposited.

9. The revision is allowed in part.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE