



29

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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 74 of 2004

APPLICANT : Veer Prasad Chauhan

VERSUS

RESPONDENT : State of Chhattisgarh

POST FOR PRONOUNCEMENT OF JUDGMENT ON

ON 18 November, 2016

Sd/-
Anil Kumar Shukla
Judge



30

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 74 of 2004

Judgment reserved on : 10. 11. 2016

Judgment delivered on: 18. 11. 2016

Veer Prasad Chauhan, S/o. Dakhalram Chauhan, Aged about 35 years, Occupation- Driver, R/o. Rajpur, P.S. Lailunga, District Raigarh (C.G.)

---- Applicant

Versus

State of Chhattisgarh through District Magistrate Raigarh (C.G.)

---- Respondent

For Applicant :- Mr. Vipin Punjabi, Advocate

For Respondent :- Mr. Suryakant Mishra, P.L.

Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

1. By this revision petition, the applicant has challenged the legality & propriety of the appellate judgment dated 31.01.2004 passed by the 4th Additional Sessions Judge, (F.T.C.) Raigarh, in Criminal Appeal No. 161/2003, affirming the judgment of conviction & order of sentence dated 23.09.2003 passed by the Judicial Magistrate First Class, Gharghoda, in Criminal Case No.179/2002, whereby & whereunder learned Judicial Magistrate First Class after holding the applicant guilty for causing death by rash and negligent driving of Veer Prasad Chauhan, convicted for the offence punishable under Section 304 A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 6 months and to pay a fine of Rs. 1000/-, in default of



31

payment of fine to further undergo rigorous imprisonment for three months.

2. Judgment is challenged on the ground that the trial Court has failed to exercise the jurisdiction vested on it by not considering unchallenged statements/evidence of the defence witnesses and thereby committed illegality.

3. The prosecution case, in short, is that on 26.02.2002 at about 9.40 PM, the applicant while driving the bus bearing registration No. M.P. 26/3099 rashly and negligently dashed deceased Naresh S/o. Sadhuram from opposite direction as a result thereof he died on the spot. After the accident, the applicant stopped the bus and the passengers alighted the bus and saw blood was oozing from the head of deceased Naresh and he died on the spot. Subhash Chand (PW-1) immediately lodged the F.I.R. vide Ex.P/2. Report of the incident was lodged in the police Station Lailunga, whereupon offence under Section 304 A of the IPC was registered against the applicant. Merg intimation was also recorded vide Ex.P/1. Dead body of the deceased was sent to Community Health Centre, Lailunga vide Ex.P/5. Autopsy was conducted by Dr. Shailendra Upadhyay (PW-4) vide Ex.P/5 who found clotted blood filled on surface of brain, lacerated wound on right plam size "5x3" muscle deep and lacerated wound above right wrist size "2 x1" muscle deep. Type of death was accidental. Spot map was prepared vide Ex.P/7.

4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code') and after completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Gharghoda.

5. In order to prove the guilt of the applicant, the prosecution has examined as many as 9 witnesses. The applicant has examined defence witness namely Manoj Kumar Toppo (DW-1).
6. After providing opportunity of hearing to the parties, learned Judicial Magistrate First Class, Gharghoda has convicted and sentenced the applicant as aforementioned. While dismissing the appeal, learned 4th Additional Sessions Judge(FTC) Raigarh affirmed the conviction & sentence of the applicant vide judgment impugned.
7. I have heard learned counsel for the parties, perused the judgment impugned and records of the Courts below.
8. Learned counsel for the applicant argued that the finding recorded on the basis of evidence adduced by the prosecution is not in accordance with law. He further argued that the witness related to the accident was not examined and no test examination of bus was made. He further submits that (PW-9) Tajul Husain has turned hostile and he has not supported the case of the prosecution. The trial Court while convicting and sentencing the applicant not considered the evidence of the witnesses available on record. There are material contradiction in the statements of the prosecution witnesses, therefore, their evidence is not trustworthy and cogent. Hence, the conviction and sentence of the applicant is not sustainable and he may be acquitted of the charge framed against him.
9. On the other hand, learned State counsel supported the judgment impugned and argued that the applicant was the person who was driving the vehicle at the time of said accident. The circumstance in which the accident occurred clearly shows that the applicant was



driving the vehicle rashly and negligently and caused death of one person. Learned State counsel further argued that after appreciating the evidence available on record, the appellate Court has rightly confirmed the conviction and sentence of the applicant and the trial Court has neither exceeded nor failed to exercise the jurisdiction vested in it.

10. The question for consideration before this Court is - "Whether the finding of the First Appellate Court suffers from any illegality, perversity or is valid and correct."

11. Subhash Chand (PW-1) who is brother of the deceased has deposed in his evidence that on 26.02.2002 at about 8 pm Manoj Kumar Toppo, who was residing in the same village had informed him that Joshi bus dashed Naresh while he was going on his bicycle after closing his hotel. Manoj Kumar Toppo further told that Joshi bus was coming from opposite side of Naresh and due to rash and negligent driving of the bus driver, the accident took place and Naresh died. Manoj Toppo had also stated the bus number as MP- 26- 3099. After receiving the information, Subhash Chand lodged FIR vide Ex.P/2 in police Station Lailunga. This witness went to the place of occurrence and saw that Naresh suffered head injury and blood was oozing from his nose and his hand was also injured. According to the statement of Manoj Toppo, he lodged the FIR.

12. Most important witnesses of the incident are Manoj Kumar Toppo (PW-2) and Gurudeo (PW-3). Manoj Kumar Toppo had stated in his evidence that the bus was driven by Veerprasad and when the bus reached near Korwapara, at that time, Naresh was coming on his bicycle on the opposite side. There was sound of huge crash when the bus turned on the right side of the road, thereafter, the applicant



39

stopped the bus. Manoj Kumar and Gurudeo got down of the bus and saw that Naresh suffered head injury and blood was coming from his nose and people were screaming that Naresh died. The said accident had occurred due to driver's mistake as stated by Manoj Kumar whereas, witness Gurudeo stated opposite to this version in his evidence. Manoj Kumar also stated in his evidence that if the driver wanted to save the passengers and Naresh, he could have applied brake of the bus.

13. The other important witness of the incident is Gurudeo (PW-3). He had stated that the present applicant was driving the bus and the person who died in the accident was coming from front. He further deposed in his evidence that the applicant was driving the bus properly, but, as a Mahua tree was there on the way, the driver tried to save deceased- Naresh, but met with an accident. Thereafter, driver stopped the bus and this witness along with other witnesses got down the bus and saw that Naresh died & blood was coming.

14. As far as the evidence of Manoj Kumar Toppo (PW-2) is concerned, it is clear from his evidence that he was standing behind the bonat of the bus. Even from the evidence of Gurudeo (PW-3), it is clear that he was sitting behind the seat of driver, right side of window. The incident had happened at about 8.00 pm, in such a situation, the person standing next to the driver can easily see how the driver was driving the bus, rather the person who was sitting behind the driver.

15. On the point of negligent driving, the trial Court as well as the appellate Court have rightly convicted the applicant for the offence punishable under section 304A of IPC. Doctor who conducted the



postmortem of the deceased opinioned that the death of the deceased was due to the accident.

16. The other witnesses of the prosecution namely, Tajul Khan (PW-9) who was named in the FIR has stated in his evidence that police has seized the registration certificate of bus, Insurance, permit, fitness and licence certificates vide Ex.P/4 from the applicant. Neither the statement of this witness has been recorded by the prosecution nor by the defense. The applicant has not produced any defense in his defense to the effect that the accident took place due to mechanical problem or break failure. Considering all the facts and circumstances of the case and after evaluating the evidence of the witnesses, I am of the considered opinion that the Courts below have not committed any illegality or infirmity in convicting the applicant under section 304A of IPC.

17. Consequently, the revision being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
Anil Kumar Shukla
Judge