

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.179 of 2006

Judgment reserved on: 02.12.2016

Judgment delivered on: 21.12.2016

Kaushal Kumar Sahu S/o Asharam Sahu, Aged about 40 years, R/o Village Rawabhatha, Raipur, District Raipur (C.G.)

---- Applicant

Versus

State of Chhattisgarh Through District Magistrate, Kanker, District Uttar Bastar Kanker (C.G.)

---- Non-applicant

For Applicant	:-	Smt. Prabha Sharma, Advocate on behalf of Smt. Renu Kochar, Advocate.
For Non-applicant/State	:-	Mr. Sanjeev Pandey, Govt. Advocate.

SB: Hon'ble Shri Justice Anil Kumar Shukla

C A V Order

1. Challenge in this revision is to the judgement of conviction and order of sentence dated 02-03-2006 passed by the First Additional Sessions Judge, Kanker, District Kanker (C.G.) in Criminal Appeal No. 68/2005 whereby the learned Additional Sessions Judge has affirmed the judgement of conviction and order of sentence passed by the Judicial Magistrate First Class, Kanker, District Kanker in Criminal Case No.34/2004 dated 02-08-2005 whereby & whereunder learned trial judge after holding the accused/applicant guilty of offence, convicted him under Section 304-A of the IPC and sentenced to undergo rigorous imprisonment for one year & to pay a fine of Rs.1000/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

2. The impugned judgement is challenged on the ground that without any clinching evidence, learned trial Court has convicted and sentenced the applicant in the aforesaid manner and thereby committed illegality.

3. Case of the prosecution, in brief, is that on 12-09-1999 at about 4-00 O'clock in the evening at main road of Village Nathiyanawagaon, one Tata 407 Truck bearing registration No. MP 23 D/8708 which was driven by the accused/applicant towards Raipur in a rash and negligent manner dashed a girl namely, Dipika who was standing beside the road. She sustained grievous injuries on her body. The matter was reported to the police and the police registered an offence under Section 279 and 337 of the IPC against the applicant. Thereafter, the injured Deepika was admitted to K.D. Hospital, Kanker for treatment from where she was referred to Christian Hospital, Dhamtari but she died on the way. On the basis of morgue intimation, a case bearing No.62/1999 was registered against the applicant in Police Station, Kanker apart from under Section 279,337 of IPC, Section 304-A of IPC was also added. After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Kanker.

4. The prosecution examined as many as 13 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.') where he denied the charges against him in the prosecution case and pleaded innocence and false implication in the crime in question and in his support, no defence witness has been examined.

5. After hearing both the parties, learned trial Court convicted and sentenced the applicant as aforementioned, against which the applicant preferred an appeal. The appellate Court while affirming the conviction, dismissed the appeal.

6. Being aggrieved by the judgements of both the Courts below, the instant revision has been preferred.

7. I have heard learned counsel for the parties, perused the judgement impugned and records of the Courts below.

8. Learned counsel for the applicant would argue that there are full of omissions and contradictions in the evidence adduced by the prosecution which has not been considered by both the Courts below. She further argued that learned Courts below have erred in holding that the accident occurred due to rash and negligent driving of the driver of the vehicle whereas the accident was occurred due to fault of the deceased, therefore, the applicant be acquitted of the charge and the revision be allowed.

9. *Per contra*, Shri Sanjeev Pandey, Govt. Advocate appearing for the State/respondent, supporting the impugned judgement, submitted that the conviction and sentence awarded by the learned Additional Sessions Judge do not warrant any interference by this Court.

10. The question arises for consideration before this Court is whether the conviction and sentence awarded to the applicant suffers from any illegality and perversity or not?

11. The statements of Hemlal (PW-1), Ramki Bai (PW-2), Shri Ram (PW-3), Santosh Kumar (PW-4), Satyendra Kumar (PW-5), Birsingh Netam

(PW-6), Mannuram (PW-7), Daljit Singh (PW-8), D.P. Shukla, (PW-9) Head Constable, Dr. A.K. Verma (PW-10), Baliiram Sinha (PW-11), Motor Mechanic, Krishna Kumar Naik (PW-12), Head Constable and Meinuddin Gori (PW-13) were recorded in the court below.

12. Hemlal (PW-1), Shri Ram (PW-3), Santosh Kumar (PW-4), Satyendra Kumar (PW-5), Birsingh Netam (PW-6), Mannuram (PW-7) who were the eyewitnesses to the incident, have stated that when Dipika, aged about 6 years was playing beside the road, the accused/applicant driving his vehicle in a rash and negligent manner dashed her due to which she sustained grievous injuries. While taking to hospital, she died on the way. It has not been denied by the witnesses in the cross-examination that the vehicle was driven by the accused/applicant rashly and negligently. Both the Courts below have given the same finding regarding rash and negligent driving of the driver.

13. Hemlal (PW-1) lodged FIR immediately after the incident vide Ex. P-1. According to FIR, the incident took place at main road of Village Nathiyanawagaon and according to map (Ex. P-4), the accident was occurred beside left side of the road. Thus the deceased was on the edge of the road. It is the duty of the driver, especially while driving the vehicle in the village, that he should carefully drive the same and he has control over the vehicle, then the accident would not occur.

14. Dr. A.K. Verma (PW-10) conducted the post mortem report on the deceased vide Ex. P-7. He opined that the cause of death was due to shock and haemorrhage. He also opined that pelvis bone was broken and the death was due to accident. Duration of death was 12-18 hours.

15. So far as the finding that the applicant was driving the vehicle at the time of accident is concerned, Satyendra Kumar (PW-5) disclosed the number of the vehicle as MP-23/8708 which has been corroborated by the statement of Birsingh (PW-6). Santosh Kumar (PW-4) and Birsingh (PW-6) have also deposed in a similar manner. Birsingh (PW-6) has deposed in his evidence that on receiving intimation through phone, the police, Charama caught hold the accused/ applicant. Thus , it is established that on the date of incident, the applicant was driver of the offending vehicle.

16. Having heard learned counsel for the parties and after considering the statements of the prosecution witnesses, it is clear that both the Courts below have rightly held that the accused/applicant was guilty of the offence under Section 304-A of the IPC. I do not find any illegality, irregularity in the impugned judgements of the Courts below. This Court is also of the view that looking to the increasing number of road accidents on account of rash and negligent driving of the drivers, it would not be in the interest of justice to take a lenient view with regard to the sentence imposed upon the applicant. Accordingly, the criminal revision is liable to be and is hereby dismissed.

17. The applicant is on bail. His bail bond is cancelled. He shall surrender immediately before the Judicial Magistrate First Class, Kanker to serve the remaining period of sentence imposed upon him.

Sd/-
(Anil Kumar Shukla)
Judge

