

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 290 of 2007

1. Jhumak Lal aged about 42 years S/o Chhabi Lal, R/o Ghoda Mandir, ward No.13, P.O. -Dallirajhara, Police-Station-Rajhara, District-Durg (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh Through Station House Officer P.S.-Bhanpuri, Distt. -Baster (C.G.)

---- Respondent

For the Applicants	:	Shri Arvind Dubey, Advocate.
For the State/Respondent	:	Shri Vijay Bahadur, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

07/02/2017

1. This revision has been brought against the judgment in Criminal Appeal No.352/2005 passed by Additional Sessions Judge, Balod on 15.06.2007 by which the judgment of trial Court convicting and sentencing the applicant under Section 304 A of IPC was upheld.
2. The case of prosecution in brief is this, that deceased Banauram was proceeding towards Rajhara main road on foot along with Amar Singh, who was holding a bicycle, then a dumper having registered MP/024-C/2163 driven by applicant rashly and negligently dashed against Banauram, who died on spot. Police-Station-Mahamaya registered the offence against applicant. After completion of

investigation applicant was charge-sheeted.

3. Trial Court read out the substance of accusation under Section 304-A of IPC against the applicant, applicant denied the charge. Prosecution and defence were afforded the opportunity to adduce evidence. On completion of trial, the judgment dated 19.9.2005 was passed by the trial Court, by this judgment applicant was convicted under Section 304-A and sentenced with R.I. for one year and fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one month. This judgment was challenged before the Sessions Court of Additional Sessions Judge, Balod, District-Durg, appeal was heard and decided, by which the judgment of conviction and order of sentence passed by the trial Court, was confirmed.
4. The grounds in this revision are these, that both the Courts below have failed to appreciate, that the evidence of prosecution was not trustworthy, by the evidence of prosecution itself it is demonstrated, that the deceased died due to his own fault. The rashness or negligent driving of the applicant has not been proved by the prosecution. In this ground, it is prayed that the judgment of conviction against the applicant by the Courts below, be set aside and suitable order be passed.
5. Learned counsel for the applicant has submitted, that Sahdev Ram PW/7 has very clearly stated, that deceased was found crushed under the rear wheel of the truck. Witness on the spot Amar Singh PW/1 has also admitted, that he could not see the accident and he could not say whether applicant was driving the truck rashly or negligently, there are witnesses of prosecution who arrived on the spot after the accident took place. It is submitted, that applicant was entitled for benefit of doubt.

6. Considering the material on record and the arguments submitted from both the sides the question in this appeal is, whether the conviction against the applicant is supported by evidence of prosecution beyond all reasonable doubts ?
7. Amar Singh PW/1 is the person, in whose company deceased Banauram was travelling on foot. He has stated, that when he and Banauram arrived at the spot applicant came from behind driving a tipper and dashed Banauram, Banauram died on the spot. No statement has been made whether the driving of applicant was rash or negligent. In cross-examination, he has admitted, that he could not see in what manner applicant was driving the vehicle and he cannot make any statement, that applicant was driving rashly or negligently. Further he has stated, that he was walking in front and deceased Banao Ram was walking behind of him.
8. Loknath PW/2 is the son of deceased, he arrived on the spot after the incident took place. No statement of allegation has been made by him against the applicant.
9. Tulsiram PW/6 has stated, that he has not witnessed this incident and he has no knowledge of the incident, Sahdev PW/7 has stated similarly. Tulsiram PW/6 has arrived on the spot later on, he has not witnessed the incident, no statement has been given by him about the driving of applicant.
10. Sahdev Ram PW/7 has stated, that when he arrived on the spot he saw deceased crushed under the rear wheel of the truck, no other particulars has been given him about the incident. Kanhaiya Lal PW/11, Bhikhari PW/13, Chhabilal PW/14 and Maniram PW/15, have not given any statement in support

of the prosecution.

11. ASI C.S. Ladeswar PW/3 has investigated the case, Constable Sohan Lal PW/4 has helped in the investigation. Dr. P. Ghanendra PW/5 conducted postmortem of the deceased vide Ex.P/4 and opined, that deceased Banauram died due to accidental injuries. Head Constable Veer Bahadur Singh PW/8 recorded FIR Ex.P/8 and conducted the inquest procedure and has also done some investigation. The prosecution in this case has fully rested on the evidence of Amar Singh PW/1, who was the eyewitness present on the spot when the incident took place.
12. After scrutinizing the statement of Amar Singh PW/1, it is very clear that he has not stated anything about criminating of the acts of applicant on the other hand, that he did not witness the incident and he could not make any statement whether the driving the applicant was rash or negligent. Even then prosecution has not taken care to declare this witness hostile.
13. It is though proved, that the deceased met with accident which caused his death and for his death the truck No.-M.P./024-C/2163 and the person driving it were responsible. The applicant can be held responsible, but this responsibility cannot be treated as criminal responsibility. To appreciate this act under criminal liability, it was essential for the prosecution to establish, that applicant has committed inadvertent act which resulted in the death of deceased Banauram. It was required, that proof of rashness and negligence by the applicant while driving the concerned truck should have been brought on record. This requirement was not fulfilled as none of the witnesses examined by the prosecution have stated in this respect.
14. For these reasons, the conviction recorded by the trial Court and upheld by

the lower appellate Court, is found to be not based of legally admissible evidence, hence, perverse. For these reasons, this revision petition is allowed and the conviction against the applicant recorded by the Courts below, is hereby set aside.

Sd/-

(Rajendra Chandra Singh Samant)

Judge