



08/31/17

HIGH COURT OF CHHATTISGARH, BILASPUR

(36)

Criminal Revision No. 211 of 2004

Ashok Kumar

Versus

State Of Chhattisgarh

CAV ORDER

Post for pronouncement of Order on..26..09/2017

Sd/-
SHARAD KUMAR GUPTA
Judge

25..09/2017

A.F.R. 37

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22/09/2017

Delivered on 26/09/2017

Criminal Revision No. 211 of 2004

(Arising out of judgment/order dated 27.03.2004 in Criminal Appeal No. 46/2004 of the learned Additional Session Judge, Baikunthpur Korea)

- Ashok Kumar S/o Nansai aged 22 years, R/o Village – Madhala, District – Korla (C.G.)

---- Applicant

Versus

- State Of Chhattisgarh Through District Magistrate, Korla (C.G.)

---- Non-applicant

For Applicant	:	Shri D.N. Prajapati, Advocate
For State	:	Shri R.K. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

CAV ORDER

1. The applicant preferred this Criminal Revision against the judgment dated 27.03.2004 pronounced by the Additional Session Judge, Baikunthpur (Korea) in Criminal Appeal No. 46/2004 whereby the Additional Session Judge affirmed the Judgment of conviction and order of sentence dated 15.01.2004 pronounced by JMFC, Baikunthpur (Korea) in Criminal Case No. 214/2003 whereby and whereunder the applicant was convicted for the offence under Section 304A of the Indian Penal Code (hereafter called as 'IPC') and



sentenced to undergo rigorous imprisonment for one year and also to pay fine Rs. 1000/-, with default stipulation.

2. The unfolded prosecution case is that on 07.07.2002 in afternoon the deceased Harilal Cherwa, his wife Phool Kunwar, his daughter Neera Kumari were returning back from the Charcha market to their house by the jeep number CG/16/A/0070. The deceased had put his bag containing water bottle on the carrier at top of the jeep. Near the railway crossing at Kharbat, Neera Kumari felt thirst, thus the deceased asked to the applicant to stop the jeep but instead of stopping the jeep, he drove it speedily. At that moment of time, the deceased tried to take out the water bottle from the said bag by standing on the back of the jeep. The barrier of forest check point at Kharbat, at that time, was down. The head of the deceased dashed with that wooden barrier and as a result he fell down, out of the jeep. The deceased was rushed to hospital by his family members and others, where the doctors declared him brought dead. Thereafter, a mere intimation was registered in outpost Charcha. After completion of the inquiry and investigation, charge sheet was filed against the applicant. After conclusion of the trial, the trial Court and the appellate Court convicted and sentenced the appellant as aforesaid. Hence, this revision.



3. Advocate Shri D.N. Prajapati for the applicant argued that the forest barrier was at such a height that the jeep could have easily passed through. Therefore, both the Sub-ordinate Courts have committed error in convicting and sentencing the applicant, as they have not appreciated the evidence properly. The benefit of doubt has to be given to the applicant.
4. Shri R.K. Jaiswal, Panel Lawyer for the State supported the findings given by both the Courts below submitting that they are in accordance with law.
5. I have gone through the records with utmost care.
6. It is well settled law that a Revisional Court by exercising its revisional power only may interfere with the findings of the lower Court where the lower Court has committed some illegality or given perverse findings or carried out miscarriage of justice.
7. Shri D.N. Prajapati, counsel for the applicant relied on para-6 of the judgment in **Tukaram Sitaram Gore v. State {AIR 1971 Bombay 164}**. The relevant part is extracted as under:-

"6. I have come across several cases of prosecutions under Section 304-A in which Magistrates appear to have presumed negligence, once a man is knocked down and killed by a motorist. There can be no such presumption. Not only must there be evidence of rashness or negligence acceptable to the Court but, as laid down by the Supreme Court



in the case of Suleman Rahiman v. State of Maharashtra (AIR 1968 SC 829), there must be proof that the rash or negligent act of the accused was the proximate cause of the death and there must be a direct nexus between the death of a person and the rash or negligent act of the accused. In running-down cases the death of the pedestrian may very well be purely accidental, or may be due to his own negligence. To presume that because a pedestrian has been knocked down and has died, the driver of the motor vehicle that knocked him down must be guilty of rashness or negligence overlooks these two possibilities. It is necessary for subordinate Courts to bear in mind that the prosecution must produce evidence to establish rash or negligent driving of the motor vehicle by the accused. "

8. In Vishnu Kumar v. State {2013 (1) LRC 176(Del)} the High Court of Delhi has observed that the defence taken by the accused that the deceased had in-fact fallen down from bus while attempting to get down from the moving bus. The prosecution failed to rule out the possibility of the deceased falling down from bus while trying to get down before bus has stopped completely. Conviction set aside extending benefit of doubt to the accused.

9. In Arjun Singh v. State of Rajasthan {2013(1) LRC 307(Raj)} the Rajasthan High Court observed that in absence of evidence that the accused was rash or negligent in his



driving, only due to fact that accident has taken place, the accused cannot be held guilty of rash or negligent driving.

10. It is the prosecution case that the deceased Harilal Cherwa, Phool Kunwar and Neera Kumari were sitting on the back seat of the jeep. PW-1 Vishwanath Sahu, PW-2 Rajroop stated in para-1 of their statement on oath that the deceased, his wife and his daughter were sitting on the back side of the jeep. It is also the prosecution case that when the jeep reached very near to the said barrier, the deceased was trying to take out the water bottle from the bag which was kept on the carrier of the jeep, by standing on back side of the jeep, his head struck with the down wooden barrier of the Forest Department, the wooden barrier did not hit the front portion of the jeep. It emerges from these facts that at the time of the accident, except the back portion of the jeep, remaining part of the jeep had already crossed the said barrier. It is noticeable from these facts that four wheeler like car, jeep used to cross generally even when the barrier was kept down. It is not the prosecution case that while the deceased was trying to take out the water bottle by standing on the back side of the jeep, he or somebody told the applicant to stop the jeep but the applicant ignored it and did not stop the jeep. Looking to these facts and circumstances, and considering the aforesaid judicial precedents, this Court finds that both the sub-ordinate Courts



have given the perverse findings causing miscarriage of justice that the applicant was driving the said vehicle allegedly in a rash or negligent manner which was the proximate cause of death of the deceased and there must have a direct nexus between the death of the deceased and rash or negligent act of the accused. Thus, this Court allows this revision and sets aside the judgment of conviction and order of sentence dated 27.03.2004 and 15.01.2004. Consequently, the applicant is acquitted from the charge under Section 304A IPC.

11. The applicant is on bail. His bond shall stand discharged subject to the provisions contained in Section 437A of the Cr.P.C.

Sd/-
Sharad Kumar Gupta
Judge