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44

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 425 of 2004

- Shiv Prasad S/o Sukhlal, aged about 32 years, R/o Village Naugai, Police Station-Katghora, Distt. Korba (CG), at present R/o Lakhanpur, Distt. Surguja (CG)

---- Applicant

Versus

- State Of Chhattisgarh through the Police Station-Lakhanpur, Distt. Surguja (CG)

---- Respondent

For Applicant	:	Shri Vishnu Koshta, Advocate.
For Respondent/State	:	Smt. Smita Ghai, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

22/11/2017

Challenge in this revision is to the judgment dated 18.8.2004 passed by Sessions Judge, Surguja (Ambikapur) in Criminal Appeal No.109/04 affirming the conviction of the applicant under Sections 287 & 304A of IPC and sentence under Section 287 of IPC of six months' SI plus fine of Rs.1000/- awarded by the trial Court while reducing the sentence of two years' SI under Section 304A to one year's SI.

02. As per prosecution case, the applicant was working as operator of a machine in Jagannath Rice Mill. On 25.5.2001 deceased Sabina and PW-1 Jhumribai were working in the said rice mill. It is alleged that



(45)

on account of negligence of the applicant, sari of the deceased came in contact with the machine as a result of which she fell down, sustained injuries on her leg, was taken to hospital, however, during treatment she succumbed to the injuries sustained. FIR (Ex.P/5) was registered against the applicant and owner of the rice mill under Sections 304A and 287 of IPC. After investigation charge sheet was filed and thereafter the trial Court framed charges under Sections 287 & 304A of IPC against both the accused persons.

03. So as to hold the accused persons guilty, the prosecution examined 10 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, vide judgment dated 27.4.2004 while acquitting co-accused Shivkumar of all the charges, convicted the applicant herein under Section 287 and 304A of IPC and sentenced him to undergo SI for six months, pay a fine of Rs.1000/- and two years' SI plus fine of Rs.1000/- with default stipulations respectively. In appeal preferred by the applicant, the appellate Court while maintaining conviction of the applicant under Sections 287 & 304A of IPC as also sentence under Section 287 of IPC, reduced the sentence from two years' SI under Section 304A of IPC to one year's SI. Imposition of fine amount under this section with default sentence has not been interfered with.



(116)

05. Counsel for the applicant submits that there is no evidence showing the applicant negligent in any manner. The most important witness of the prosecution i.e. PW-1 Jhumribai has turned hostile. He further submits that there is no evidence on record to show that it is the accused/applicant who was operating the machine in question at the relevant time. Lastly he submits that on the same set of evidence the other co-accused has been acquitted by the trial Court of all the charges.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Jhumribai was the co-worker in the rice mill. She has stated that she is not aware as to how the deceased came in contact with the machine and her sari got stuck in it. This witness has been declared hostile. PW-2 Markus Ekka, brother of the deceased in relation has not stated anything against the applicant. PW-3 Purushottam has also turned hostile. PW-4 Dr. PS Kerketta conducted postmortem on the body of the deceased vide Ex.P/1 and noticed abrasions over chest, incised wound over right leg, fracture of tibia and fibula bone, rupture of lung, peritoneal cavity full of blood and spleen ruptured. In his opinion, the cause of death was shock as a result of ultra thoracic and ultra abdominal hemorrhage and the death was accidental in nature. PW-5 Dalsai is a witness to inquest Ex.P/3. PW-6 Kameshwar has denied his



47

presence at the spot and has been declared hostile. PW-7 Dr. ID Bhatnagar examined the victim when she was taken to him in injured condition vide Ex.P/4. PW-8 Dr. Ashok Kumar conducted postmortem on the body of the deceased along with Dr. PS Kerketta (PW-4). PW-9 Subhas Das, investigating officer, has stated about the manner in which investigation was carried out by him. PW-10 Vishwar is a witness to seizure (Ex.P/7) of some part of the machine.

09. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence on record showing the applicant negligent in discharge of his duties. PW-1 Jhumribai, who is said to be present at the spot at the time of incident, has stated that when the incident occurred she was not present there as she had gone out of the mill for taking water. This witness has turned hostile. Even from the overall evidence it is not proved that the applicant was present at the spot when the unfortunate incident took place or was in charge of operation of the machine in which sari of the deceased got stuck and eventually resulted in her death. To sustain a charge under Section 304A of IPC, the prosecution must prove that it was much more than a simple negligence. However, in the present case, the prosecution has utterly failed to prove that the applicant was in any manner negligent in discharge of his duties which had direct nexus with the incident. For these reasons, conviction of the applicant under Sections 304A and 287 of IPC is held to be bad in law for want of cogent and reliable evidence and as such, the applicant is entitled to be acquitted of these charges by giving him benefit of doubt.



48

10. In the result, the revision stands allowed. The applicant is hereby acquitted of the charges under Sections 287 and 304A of IPC. The applicant is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/-

(Pritinker Diwaker)

Judge

Khan