

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.719 of 2006

Kushal Kumar, son of Shri Ram Charan, Caste Yadav, aged about 38 years,
resident of Akaltara Road, Janjgir, District Janjgir-Champa, Chhattisgarh

---- **Petitioner**

versus

State of Chhattisgarh through the District Magistrate, Korba, District Korba,
Chhattisgarh

--- **Respondent**

For Petitioner	:	Shri Vivek Tripathi, Advocate
For State/Respondent	:	Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

11.8.2017

1. The accused has preferred this revision under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 28.11.2006 passed in Criminal Appeal No.4 of 2006 by the Sessions Judge, Korba by which the Learned Sessions Judge, Korba has affirmed the judgment dated 30.3.2006 passed in Criminal Case No.1198 of 1998 by the Chief Judicial Magistrate, Korba convicting and sentencing the accused/Petitioner as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 279 of the Indian Penal Code	Fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for 20 days
Under Section 304A of the Indian Penal Code	Rigorous imprisonment for 6 months and fine of Rs.200/-, in default of payment of fine, to undergo simple imprisonment for 10 days

2. Brief facts of the case are that on 31.8.1998 at about 5:15 p.m., Complainant Adarsh Choudhary, Bhojeshwar Prasad Nayak and his daughter Akanksha were going on a scooter to Korba via

Village Kohadia. The scooter was being driven by Bhojeshwar Prasad Nayak. When they reached near Balco Petrol Pump, one Metador bearing registration No.MP 26 D 4250 which was coming from Korba and being driven by the accused/Petitioner in a rash and negligent manner dashed the scooter on its front and caused an accident in which Bhojeshwar, Adarsh and Akanksha received injuries. Bhojeshwar was being taken to hospital, but, on the way, he died. Offence under Section 304A, 279 and 337 of the Indian Penal Code was registered against the accused/Petitioner and after investigation, a charge-sheet was filed against him. After trial, the accused/Petitioner was convicted and sentenced as mentioned above. In appeal, the judgment of the Trial Court has been affirmed. Being aggrieved, the Petitioner has preferred this revision.

3. It is argued by Learned Counsel appearing for the Petitioner that not a single witness at all has stated that the Metador was being driven in a high speed, rashly or negligently by the Petitioner. It is further argued that the Trial Court and the Appellate Court did not appreciate the evidence of the eyewitnesses because the evidence available on record do not at all prove that who was driving the said Metador at the time of accident, but the Courts below have wrongly convicted and sentenced the Petitioner for the alleged commission of offence.
4. Per contra, Learned Counsel appearing for the State has supported the judgments of the Courts below and opposed the revision.
5. I have heard Learned Counsel appearing for the parties and perused the records of the Courts below minutely.

6. In the instant case, as many as 7 witnesses have been examined by the prosecution. PW-1, Adarsh Choudhary has deposed that he, Bhojeshwar Prasad Nayak and his daughter Akanksha were going on a scooter to Korba. When they reached near water treatment plant, one Metador bearing registration No.4250 came from their opposite direction and turned turtle on them resulting in an accident in which they received injuries. Later on, Bhojeshwar died. He has categorically stated that he does not know the Petitioner. Who was the driver of the said Metador at the time of accident has also not been mentioned by him in his deposition. Apart from him, no other eyewitness has been examined in this case.
7. PW-6, Suresh Agrawal, who was the owner of the said Metador has deposed that on 31.8.1998 the Petitioner was the driver of the said Metador. But, he has not deposed that at the time of the accident also the said Metador was being driven by the Petitioner.
8. From the statements of PW-1, Adarsh Choudhary and PW-6, Suresh Agrawal, it is established that the Petitioner was the driver of the offending Metador, but it is not established that it was the Petitioner who was driving the said Metador at the time of accident and caused the accident in question. Therefore, the offence under Sections 279 and 304A of the Indian Penal Code is not made out against the Petitioner.
9. In view of the foregoing discussion, the charges under Sections 279 and 304A of the Indian Penal Code are not proved against the Petitioner. Both the Courts below have committed error in convicting and sentencing the Petitioner. Therefore, the Petitioner is liable to be acquitted of the charges framed against him.

10. Consequently, the criminal revision is allowed. The impugned judgment of conviction and sentence is set aside. The Petitioner is acquitted of the charges framed against him.
11. It is reported that the Petitioner is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
12. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge