

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 204 of 2004**

- Shiv Charan Sahu S/o Jainand Sahu, aged about 43 years, Occupation Driver (Govt. Service in Forest Department), R/o village Dhurket, P.S. Dabhra, District Janjgir Champa, presently residing at Urdana Depot, Forest Division, District Raigarh

----Applicant**Versus**

- State of Chhattisgarh Through - District Magistrate, Raigarh (C.G.)

---- Respondent

For Applicant	:	Shri Awadh Tripathi, Advocate.
For State/Respondent	:	Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker**Order On Board****By Pritinker Diwaker, J.****26/04/2017**

01. The present Revision petition is directed against the judgment and order dated 31.03.2004 passed by First Additional Sessions Judge, Sessions Division, Raigarh, District Raigarh, in Cr.A. No.177/2003 affirming the judgment and order dated 01.11.2003 passed by Judicial Magistrate First Class, Raigarh in Criminal Case No.35/2003 convicting the applicant under Section 304-A of IPC and sentencing him to undergo R.I. for five months and to pay fine of Rs.600/-, in default of payment in fine amount to further undergo additional R.I. for one month.

02. Brief facts of the case are that on 13.02.2002 at about 6.00 PM, when Shyam Kumar was crossing the road, the applicant driving the Truck bearing registration No. CG-02/0783 in rash and negligent manner dashed Shyam

Kumar and fled from the spot, as a result of which Shyam Kumar sustained grievous injuries over his head and chest. Injured Shyam Kumar was immediately taken to hospital where he was declared to be dead. Dehati nalisi (Ex.P/1) was recorded and thereafter F.I.R. was registered against the applicant under Section 304-A IPC.

03. After investigation, charge sheet was filed against the applicant under Section 304-A of IPC and accordingly the charge was framed against him by the trial Court.

04. So as to hold the applicant guilty, the prosecution examined as many as 15 witnesses. Statement of the applicant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. That apart, two defence witnesses have also been examined by the defence in support of its case.

05. Vide judgment and order dated 01.11.2003 the trial Magistrate has convicted the applicant under Section 304-A IPC. The judgment of the trial Court has been duly affirmed by the appellate Court vide impugned judgment dated 31.03.2004, hence this revision.

06. Counsel for the applicant submits as under :-

- That there is material contradictions in the statement of prosecution witnesses, in particular Hariram Sao (PW/2), Basant Kumar Yadav (PW/3), Mansa Ram (PW/4) and Pardesi Mahat (PW/5);
- That there is no evidence on record to show that it is the applicant who was driving the vehicle in question in rash and negligent manner.

07. On the other hand, supporting the impugned judgment it has been

argued by the State counsel as under:-

- That the prosecution witnesses have categorically stated that vehicle in question was being driven by the applicant in rash and negligent manner leading to death of deceased. He has also argued that Shashidhar Patel (PW/1) and Hariram Sao (PW/2) have stated in their statements that it is the applicant who was driving the vehicle in question.
- That the Courts below has already taken a lenient view while imposing the sentence.

08. Heard learned counsel for the parties and perused the material available on record.

09. Shashidhar Patel (PW/1) is eye-witness to the incident. He has stated that on 13.02.2003 at about 7.00 PM when he was sitting in the bus stand, he saw the applicant coming from Sarangarh driving the truck. While deceased Shyam Kumar was trying to cross the road, at the same time, the applicant driving the truck in question in rash and negligent manner dashed the Shyam Kumar and fled from the spot, as a result of which he sustained grievous injuries over his head and chest. He has further stated that the injured Shyam Kumar was immediately taken to hospital where he was declared dead. Thereafter, he lodged the report which was registered vide Ex.P/1 as dehati nalisi. This witness has admitted the fact that at the time of incident he was not aware about the name of driver and he has not made it clear as to how he came to know the name of truck driver, however, he has denied the fact that the report was not lodged as told by him.

10. Hariram Sao (PW/2) is another eye-witness to the incident who has duly supported the prosecution case. He has stated that the truck in question was being driven by the applicant in high speed. In para 4, this witness has admitted that fact that he had informed the police that the deceased was hit by back portion of the truck resulting in injuries to his chest but if the same has not been mentioned, he cannot tell the reason.

11. Basant Kumar Yadav (PW/3), Mansa Ram (PW/4) and Pardesi Mahat (PW/5) are the witnesses who had seen the incident. However, in cross-examination, these witnesses have admitted that they have not seen the driver of the truck. One thing which emerges from the evidence of these witnesses is that the truck in question was being driven in rash and negligent manner. Dileshwar Prasad Chouhan (PW/7), Ramanuj Chouhan (PW/8), Shivilal Yadav (PW/9) and Rajkumar (PW/10) are the formal witnesses. Fakirchand Panigrahi (PW/11) - Head Constable, Gona Ram Diwan (PW/14)- Nagar Police and Somnath (PW/15)- Constable helped in the investigation. Dr. V.K. Mehta (PW/12) conducted the postmortem examination on the body of deceased vide Ex.P/12 and found (i) Lacerated wound in the size of 2 x 1 x 1/4 cm over right hand, (ii) Bruise in the size of 2 x 1 cm over right forearm, (iii) Lacerated wound in the size of 2 x 1/2 x 1/2 cm over right eyebrow, (iv) Bruise in the size of 3 x 2 cm over left shoulder, (v) Bruise in the size of 10 x 5 cm over back of left scapular region, (vi) Bruise in the size of 6 x 3 cm on left side of back, (vii) Bruise in the size of 3 x 3 cm on back side of neck, (viii) Lacerated wound of 3 x 1 x 1/2 cm over scalp, (ix) Bruise in the size of 2 x 1 cm over left knee and (x) Bruise in the size of 3 x 1 cm over neck. The autopsy surgeon opined the cause of death to be hemorrhage due

to head injury. Gajendra Prasad Tiwari (PW/13) is the Investigating Officer who has duly supported the prosecution case.

12. Shoukilal (DW/1) has stated that the deceased was on his Luna in drunken condition and that he hit his Luna with truck. In cross-examination, this witnesses has however admitted the fact that he had not seen the deceased consuming liquor. Almost similar statement has been made by Benudhar (PW/2).

13. What emerges from the evidence available on record is that it is the applicant who was driving the vehicle in question in rash and negligent manner and hit the deceased Shyam Kumar resulting in his death. PW/1 and PW/2, in cross-examination, have named the applicant and made allegations against him for driving the vehicle in rash and negligent manner. Thus, from the evidence of these witnesses, it is evident that it is the applicant who was driving the vehicle. Likewise, PW/3, PW/4 and PW/5 have clarified in their statements as to the manner in which the incident took place and deceased died. All these three witnesses have made it crystal clear in their evidence that the applicant was driving the vehicle in question in rash and negligent manner. There is no reason for this Court to disbelieve the statements of these witnesses.

14. After due appreciation of the evidence, the trial Court has recorded the finding of conviction which has been affirmed by the appellate Court. In considered view of this Court, both the Courts below were justified in recording conviction of the applicant.

15. Accordingly, the revision preferred by the applicant is bereft of any

substance, the same is liable to be and is hereby dismissed. The applicant is reported to be on bail. He be taken into custody forthwith and send to jail for serving remaining sentence imposed upon him by the Courts below.

Sd/-

(Pritinker Diwaker)

JUDGE

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