

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 392 of 2007

- B.D. Datta . S/o G.R. Datta, aged about 38 years, R/o M.I.G.-1, 2580, M.P.H.Bo. Nandini. Road, Bhilai, District-Durg (C.G.)
- Harendra Kumar Tiwari S/o Baratnath Tiwari, R/o Shesh Colony, A.C.C. Jamul, Qr. No. 4/88, Distt.-Durg,c.G.

---- Applicants

Versus

- State Of Chhattisgarh, Through Police Station Jamul, District-Durg (C.G.)

---- Respondent

For the Applicants	:	Smt. Smita Jha, Advocate.
For the State/Respondent	:	Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

10/01/2017

1. This revision is directed against the judgment in Criminal Appeal No.245/2005 passed by 7th Additional Sessions Judge (FTC), Durg on 30.07.2007, whereby the judgment of conviction and order of sentenced passed by the trial court, was upheld.
2. The case of prosecution is this, that applicant No.1 is contractor and applicant No.2 is employee, as supervisor under him. On the date of incident on 18.04.1998, a contract work of construction was carried out in ACC Cement Factory, Jamul. A new labour, deceased Baldev

was employed and was doing his job in presence of supervisor. Deceased was working at considerable height using a gas cutter for cutting girder of the kiln. At this time, deceased was not wearing a safety belt. At about 3:00 p.m., in the afternoon, deceased Baldev fell down from a height of 26 meter and got seriously injured. He was immediately shifted to hospital, later on he succumbed injury and died. One information Ex.P/4 was sent to the P.S.-Jamul, informing about the accident and death of deceased Baldev. One merg intimation (unexhibited) was recorded by P.S.-Jamul. Inquest of the body of deceased was conducted vide Ex.P/1. Dr. S.K. Mandgay PW/9 conducted autopsy on dead body of the deceased and vide his report Ex.P/3, he has opined that the cause of death of the deceased was Coma, which was caused by head injury. One FIR was lodged against applicant No.2 registering offence under section 304A of IPC. Statements of witnesses were recorded. On completion of investigation, both the applicants were charge-sheeted.

3. Substance of accusation was read out to both the applicants by the trial Court, applicants denied committing of the offence. Prosecution has examined 10 witnesses. On examination under Section 313 of Cr.P.C. applicant pleaded innocence and false implication, no evidence was led in defence. The impugned judgment was passed by the trial Court, in which both the applicants were convicted under section 304-A of IPC and sentenced with imprisonment of 4 months and with a fine of Rs.500/- respectively. Appeal was preferred, which was heard and decided by the 7th Additional Sessions Judge (FTC) Durg, in which, the conviction and sentence passed by the trial Court,

was upheld.

4. The grounds in this revision are these, that the judgment of conviction and order of sentence passed by the Courts below, is perverse and without the support of legally admissible evidence. There had been evidence that deceased was provided with safety equipments but he himself was negligent in using the safety equipments. There is nothing in evidence to directly implicate the applicants. It cannot be held that it was negligence of applicants, which was the cause of death of the deceased and acquittal is prayed for.
5. It is submitted by the learned counsel for the applicants, by the evidence of prosecution itself, no case against applicants is clearly made out. On the date of incident, applicant No.1 was not present on the spot. On the contrary, it is a statement in evidence, that he was at Nagpur though there is evidence about presence of applicant No.2, but he cannot be held responsible for the negligence of the deceased himself. There is ample evidence to show that the workers were provided with training on safety measures and also provided with the safety equipments. For these reasons, it becomes responsibility and duty of workers, to follow the safety measures and use the safety equipments. Deceased himself failed to use such safety equipments, which have resulted in the accident which caused his death. It is also submitted that applicant No.1 has paid compensation to the dependents of deceased, as per the requirement of Workmen's Compensation Act, 1923. On this ground, it is prayed that applicants are entitled for acquittal.

6. Considering the material on record and the arguments submitted from both the side the question in this appeal is, whether the conviction against the applicant is supported by evidence of prosecution beyond all reasonable doubt ?
7. In this case, all the prosecution witnesses have not been examined neither all the documents have been exhibited. Sukhiram PW/1 has stated, that he is employee under applicant No.1 since 12 years. On the date of incident, deceased Baldev was engaged for the first time and he was given the job of cutting. While doing this job Baldev fell down got injured and died. At the time of this job being done, applicant No.2 was present on the spot and he was supervising the job. Further he has stated that safety belt was not given to the deceased Baldev, had he been given the safety belt, the accident could have been averted. In cross examination, he has stated that the labors are given safety belt by the contractor, but no entry regarding this is made anywhere. He himself has no knowledge whether deceased was given safety belt by contractor. Further he states, that he did not see when the deceased fell down and from where he fell down, he came to know about the incident later on. He is unable to make this statement that deceased has died due to his own negligence.
8. Heeraman Raout PW/2 has stated that he was present at the time, when Baldev fell down and died. Had the deceased put on the safety belt, the accident could have been averted. Further he has stated that safety belt was available but due to hurry, deceased could not wear it,

as it happens a number of times. In cross examination, he admitted that all the labors are given safety training every year, and also are given safety equipments like helmet, spectacles, safety belt, shoes etc. On the date of incident, contractor (applicant No.1) was not present on the spot but applicant No.2, was present. He has no knowledge whether applicant No.2 asked deceased to put on safety belt.

9. Bhagwani PW/7 has stated similarly, that on the date of incident, deceased had come for the first time and was cutting girder with gas cutter, who fell down from the height, got injured and died. He did not see whether deceased had put on safety belt at the time of doing the job or not. In cross examination, he has admitted that contractor and supervisor provide safety equipment and belt before extracting work from the labors. He himself had put on safety belt on the date of incident. K.A. Singh PW/8, is a Safety Officer in the establishment of ACC Cement Factory, Jamul. Spot map was prepared by him vide Ex.P/2. In cross examination, he has stated that safety equipments are provided to the labors by the contractor, he is not the witness of this incident.

10. Statement of other witnesses B.B. Singh PW/3, R.N. Singh PW/4, Dhnraraj Singh PW/5 and Prakash Singh PW/6, who had been the witnesses of inquest Ex.P/1, is not under challenge. Similarly statement of Dr. J.Y. Manu PW/10, who was the first to examine the deceased and sent information to the police vide Ex.P/4, his statement is unchallenged. The Dr. S.K. Mandgay PW/9 conducted autopsy of

deceased and reported his opinion vide Ex.P/3, which is also not subject to any objection by the defence.

11. Section 304A of IPC provides, whoever causes the death of any person by doing any rash or any negligent act not amounting to culpable homicide, shall be punished. To hold responsible for this offence, either rashness or negligence on the part of accused persons has to be specifically proved by the prosecution. Negligence can be either civil or criminal, for criminal negligence the requirement is that a person undertakes a risk of doing an act with recklessness and with disregard to consequences and criminal negligence is a gross and culpable negligence that is to be said a failure to exercise the rules of caution.
12. This is a case, where the deceased was executing the orders of Supervisor of applicant No.2, on the spot. There is no reason to believe that supervisor present on the spot was unaware, that deceased was not wearing the safety belt, and thus, he was running a risk for his life. Even then, applicant No.2 did not attempt to take control of the situation and give directions to the deceased to wear safety belt and follow safety procedure. Hence, very clearly this is a case, in which applicant No.2 having knowledge that the consequences may be grave or fatal allowed the deceased to execute his order, the job at his risk which resulted in the accident and caused his death. Under these circumstances, the evidence of prosecution is sufficient and it has been established that applicant No.2. had acted

rashness as well as negligently, at the time of incident, to get executed the work which resulted in accident and death of the deceased. Hence, the act and conduct of applicant No.2, is directly covered under the provision of Section 304-A and punishable accordingly.

13. On the basis of the evidence of prosecution and the circumstances present, there had been no ground to wrap in applicant No.2 for this criminal responsibility. There is evidence on record, that at the time of incident, he was not present on the spot and out of station as well. Hence, for these reasons, there is nothing to hold that the act of rashness and negligence was taken place at his instance or at his direction. At the most, he being the contractor and the employer of the deceased, he can be held responsible for civil liability. As submitted by the counsel for applicant No.1 has provided compensation to the dependents of the deceased, as per the requirement of Workmen's Compensation Act, 1923. As per this finding, the conviction of applicant No.1 is definitely bad in law and perverse, which is required to be set aside.

14. It is submitted that learned counsel for the applicant the sentence of applicant No.2, may be modified. Looking to the circumstances, that almost 18 years have passed since the date of incident, the dependents of deceased have been provided with compensation and that the applicant No.2 has suffered sufficient hardship in facing the trial, appeal and prosecuting this revision and that Section 304-A of IPC does not make mandatory that sentence of imprisonment should

be passed and necessarily. Only payment of fine may serve the purpose in this case. It would serve no purpose by sending the applicant No.2 to jail to serve the remaining sentence. Considering all these statements and the circumstances, at present, it appears that it would be appropriate to interfere with the sentencing part with respect to applicant No.2.

15. For the reasons aforementioned and the finding arrived at, this revision is partly allowed. The conviction of applicant No.1 by the trial court and the upheld by the learned lower appellate Court, is hereby set aside. Conviction against the applicant No.2 is maintained but the sentence passed by the trial Court and upheld by the lower appellate Court, is set aside. Applicant No.2 is sentenced with a fine of Rs.20,000/-, in default of payment of fine, he shall be required to undergo S.I. for six months. The amount of fine shall be paid as compensation to the dependents of deceased Baldev Singh under the provisions of Section 357 of Cr.P.C.

Sd/-
(Rajendra Chandra Singh Samant)

Judge