

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 533 of 2007****Judgment Reserved on 13.12.2016****Judgment Delivered on 09.01.2017**

Rajaram, 33 years, S/o Chokat Gupta, near Pathari Chowk, Nandini Nagar, Nandini, Durg.

---- Revisionist (in Jail)**Versus**

State of Chhattisgarh through DM, Durg, District Durg, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Raja Sharma, Advocate.
For the Respondent/ State	:	Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment**

1. The applicant has brought this revision against the judgment dated 28.9.2007 passed in Criminal Appeal No. 383 of 2005 by the Learned Ninth Additional Sessions Judge (F.T.C.), Durg, Chhattisgarh, whereby, he has partly confirmed the judgment of conviction and order of sentence dated 28.11.2005 passed by the Judicial Magistrate, First Class, Durg in Criminal Case No.352 of 1992 by which the Learned Judicial Magistrate, First Class has convicted the applicant under Sections 279, 337 and 304-A of the Indian Penal Code (for short 'the IPC') and sentenced him to undergo simple imprisonment for six months and to pay fine of Rs.1,000/-, in default of payment of fine to further undergo SI for one month, to undergo simple imprisonment for six months and to pay fine of Rs.500/-, in default of payment of fine, to further undergo SI for 15 days and to undergo simple imprisonment for one year and to pay fine of Rs.1,000/-, in default of

payment of fine to further undergo SI for one month, respectively. The appellate court upheld the conviction of the applicant in part by confirming the conviction and sentence under Sections 337 and 304-A of the IPC, but acquitted the applicant under Section 279 of the IPC.

2. Facts of the case are that, on the date of incident, i.e., 8.2.1992 at about 8:00 am, complainant - Mohd. Abdul Aziz Khan (PW-1) was going to hospital on his scooter bearing registration No. M.I.S. 1401 and his mother Hazra Khatoon was a pillion-rider. On Power House Road near Ahiwara Chowk, which falls under the jurisdiction of police station Nandini, Truck bearing registration No. M.B.R. 8833, which was being driven by the applicant in a rash and negligent manner dashed the scooter of the complainant. In the said accident, the scooter of the complainant was crushed under the wheels of the truck in which Hazra Khatoon, mother of the complainant sustained injuries and succumbed to the same on the same day in the hospital and the complainant was also injured. One unnumbered merg intimation was recorded in Police Station Nandini Nagar vide Ex. P/14. Inquest of deceased Hazra Khatoon was conducted vide Ex. P/4 and injured Mohd. Abdul Aziz Khan (PW-1) was examined by the doctor vide Ex. P/10. First Information Report was recorded in police station Nandini Nagar vide Ex. P/1. In the investigation, the papers of the Truck involved in the incident were seized vide Ex. P/2. The scooter of the complainant was also seized vide Ex. P/3. The spot map was prepared vide Ex. P/5 and the seized articles were examined. The postmortem of the deceased was conducted vide Ex. P/12 in which it was reported that the deceased sustained injuries in vital parts of the body and cause of death was shock and haemorrhage.

3. After completion of the investigation, charge-sheet was filed against the applicant under Sections 304A and 337 of the IPC. On his denial, trial was conducted and the learned trial Court after hearing the counsel for the respective parties and considering the material available on record, convicted and sentenced the applicant as mentioned above. Against the judgment of the trial court, the applicant preferred an appeal, which has been partly allowed by the lower appellate court as detailed in the aforesaid paragraph.

4. The grounds raised in this revision are that the judgment of conviction and order of sentence by the courts below are bad in law, which deserve to be set aside. The evidence adduced by the prosecution against the applicant is not sufficient to prove its case beyond reasonable doubt and the trial court failed to appreciate and exercise its jurisdiction. There is no evidence on record to show that at the time of accident the applicant was driving the said truck rashly and negligently. For these reasons, the applicant prays for acquittal.

5. Learned counsel for the applicant submits that the applicant was taken into custody on 28.9.2007 and by order dated 16.10.2007, the applicant was ordered to be released on bail. It is submitted that if the court is not inclined to interfere with the conviction recorded by the courts below, the sentence part may be modified to the period of custody already undergone by the applicant in jail.

6. I have heard learned counsel appearing for the parties at length and also perused the evidence available on record of the trial court. This court

while exercising the revisional jurisdiction has limited scope to examine the legality, propriety and correctness of the impugned judgment passed by the lower appellate court. The applicant has challenged his conviction and sentence on the ground that there had been no legally admissible evidence on record and for this regard the evidence before the trial court is perused.

7. Mohd. Abdul Aziz Khan (PW-1) stated that on the date of incident he was riding a scooter with his mother as a pillion-rider. He saw the truck approaching on the spot and took his scooter to the side of the road. Even then, the truck dashed the scooter due to which he fell down and got injured and his mother was crushed under the wheels of the truck, who succumbed to the injuries in the hospital. He stated the registration number of the truck as M.B.R. 8833 and identified the applicant as the driver of the truck. This statement remained unrebutted in his cross-examination. Though he has admitted that he has seen the applicant in the court for the first time, but then he also states that he has seen the applicant driving the truck involved in the incident. Ramu (PW-2) has supported the prosecution, who has lodged the FIR Ex. P/1. This evidence is also supported by the statements of Teej Ram (PW-7) and Balram (PW-8). Mohd. Ismail Khan (PW-14) has supported the statement of Mohd. Abdul Aziz Khan (PW-1) which has not been challenged in cross-examination though he appears to be a hearsay witness. Darshan (PW-15) is also a witness of this incident.

8. At the time of accident, the applicant was driving the truck rashly and negligently, is the statement of Mohd. Abdul Aziz Khan (PW-1). It is the admission of Teej Ram (PW-7) in his cross-examination that the scooter rider at the time of incident greeted the driver of the truck and at the same time

the scooter went under the truck. Balram (PW-8) stated that the truck dashed the scooter. Mohd. Motin (PW-4) admitted in cross-examination that at the place of incident road was not in a proper condition and the similar admission has also been made by Darshan (PW-15). In his cross-examination, he stated that at the place of incident, there were large number of pits on the road and due to this, the vehicles go slowly. These admissions suggest that at the relevant point of time the applicant was driving the truck in a slow speed.

9. No defence witness was examined by the applicant. The fact that whether the speed of the truck at the time of incident is slow or fast, is not of consequence, unless it is shown in the evidence, that the vehicle was being driven at such a speed that it could have been immediately controlled. As per evidence, it is established that the truck driven by the applicant dashed the scooter due to which Hazra Khatoon fell down from the scooter and thereafter crushed under the wheels of the truck resulting in her death. These are the circumstances which clearly show that at the time of incident, the applicant was driving the truck rashly and negligently and had no control over the vehicle to avoid the accident. The evidence of rest of the witnesses examined by the prosecution need not be examined looking to the only grounds urged in this revision petition.

10. On the basis of this finding, no fault can be found with regard to the legality, propriety and correctness of the findings recorded by the trial court and the lower appellate court. Accordingly, on these grounds there is no scope for interference with regard to conviction of the applicant. Now, the prayer made by the applicant that the sentence part may be reduced or

modified needs consideration. As per the record, the applicant has remained in jail only for 18 days and as such, the reduction sentence cannot be made to this extent.

11. Looking to the facts and circumstances of the case, the intention and purpose of the penal law, some relief can be given to the applicant on the ground that the applicant is facing the trial in trial court as also in appellate court and thereafter before this court in the revision for almost nine years. Hence, this revision is allowed in part and the judgment of conviction and order of sentence by the court below is upheld, however the sentence imposed under Section 304-A of the IPC by the lower appellate court is modified and it is ordered that the applicant shall undergo SI for six months.

12. The applicant is on bail. His bail bonds are cancelled. He shall surrender forthwith or taken into custody to undergo remaining part of the sentence.

Sd/-

(Rajendra Chandra Singh Samant)
Judge