

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 570/2013**

Lalaram Pali son of Shri Lakhan Pali, aged about 46 years, R/o. Ganganagar, PS City Kotwali, Kawardha, Civil and Revenue District Kabirdham (CG)

Appellant**VERSUS**

State of Chhattisgarh through P.S. Bemetara, Civil Distt. Durg, Revenue Distt. Bemetara, Distt. Bemetara (CG)

Respondent

For appellant	:	Mr. Adil Minhaj, Advocate.
For Respondent/State	:	Mr. Satish Gupta, Govt. Advocate

ORAL JUDGMENT**30/1/2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 14-6-2013 passed by the Additional Sessions Judge, Bemetara in Sessions Trial No. 60/2011 whereby and whereunder learned trial Court after holding the appellant guilty for committing culpable homicide not amounting to murder without any intention convicted him under Section 304-II of the Indian Penal Code, 1860 (In brevity 'IPC') and sentenced him to undergo RI for 10 years and to pay a fine of Rs. 10,000/-, in default of payment of fine to further undergo additional RI for 1 year with a direction that period of detention shall be set off under the provisions of Section 428 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.').
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. Case of the prosecution in brief is that on 9-7-2011 at about 7.30 pm the accused/appellant was driving bus No. CG 04 ZA 0605 and the deceased Dipesh Jain aged about 18 years was returning to his residence on scooty. The accused/ appellant while driving the said bus in a rash and negligent manner hit the scooty of the deceased and when the deceased came under and stuck with the bumper of the said bus, despite shouts and attempts by people, the accused/appellant still drove said bus going ahead and not stopped the bus. With the said condition, the accused/ appellant drove the bus for about 3 km and took the same at Police Station Bemetara. Thereafter eye-witnesses and other persons separated the injured from the bumper of the said bus. He was taken for treatment and when he was being shifted for better treatment to the higher centre he died near Simga. Thereafter Merg intimation Ex. P-1 and FIR Ex. P-17 were registered. Body of the deceased was sent for autopsy. P.W. 7 Dr. S.K. Sharma conducted post mortem and gave report Ex. P-5. After completion of investigation charge sheet was filed under Section 302 of the IPC before the Additional Chief Judicial Magistrate, Bemetara who in turn registered the matter as Criminal Case No. 513/2011 and committed the same for trial vide order dated 12-10-2011. The accused/appellant was arrested on 10-7-2011 during investigation. The trial Court framed the charges under Section 302 of the IPC.
4. In order to prove the guilt of the appellant, the prosecution examined 21 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case,

pleaded innocence and false implication in the crime in question.

5. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.
6. I have heard learned counsel for the parties and perused the record of the trial Court.
7. Learned counsel for the appellant submits that looking to the entire evidence adduced he is not contesting instant criminal appeal on conviction part. He is arguing only on sentence part. The accused was first offender, he is in jail since last 5 years, 6 months and 20 days and he was not having any intention to commit culpable homicide not amounting to murder. In fact though not in a very clear term he took the defence but to save himself from the mob who was chasing him to punish him and in the apprehension that he may be killed by the said mob, he has taken the said bus near the police station. There is no minimum sentence prescribed for Section 304-II, IPC and looking to the entire facts and circumstances surfaced in the trial, the accused/ appellant may be sentenced for the period already undergone by him. It is further submitted that the accused/appellant is a poor person. Even he was not in a position to deposit the fine amount hence the quantum of fine amount may also be reduced.
8. Per contra, learned counsel for the State duly supported the judgment of conviction and order of sentence awarded by the trial Court and submits that the judgment passed by the trial Court is well founded. There is no scope for interference as the accused/ appellant not stopped his bus even when the said Dipesh Jain was stuck in the bumper of the said bus. The impugned judgment does not require any interference.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.
10. On minute examination of the entire evidence led during trial it appears that this is not the case of Section 304 Part A of the IPC as it is not only a case of rash and negligent driving but the accused/appellant despite many requests to stop the bus not immediately stopped the said bus and even, this defence is not taken in his statement under Section 313, Cr.P.C. It appears that even after knowing that a person driving scooty has stuck in the bumper of the bus and the surrounding people were shouting to stop the bus, the accused/appellant did not stop the bus and took it near Bemetara police station which goes to show that he had no intention to commit culpable homicide not amounting to murder but there was element of the knowledge that with the said act it may likely to cause death of the scooty driver, hence I do not see any reason to interfere with the finding regarding conviction of the appellant under Section 304-II of the IPC recorded by the trial Court. Even otherwise, the appeal is not being assailed for conviction part. With this, conviction requires no interference and the same is affirmed.
11. So far as sentence awarded to the appellant is concerned, the appellant is in jail since last 5 years, 6 months and 20 days till date. There is no minimum sentence prescribed for the offence. Also there is no evidence collected by the police during investigation that prior to this incident he had committed any other offence relation to rash and negligent driving of the bus. Even at the time of filing of the application for suspension of

sentence and grant of bail, the accused/appellant had not deposited fine amount which goes to show the appellant is not in a condition to deposit the fine amount. On due consideration, the fine amount requires interference for the purpose of reduction of the same. Also for the substantive jail sentence, the period 5 years, 6 months and 20 days would serve the purpose for the offence committed by the appellant.

12. Consequently, the appeal is allowed in part. Conviction of the appellant under Section 304-II of the IPC is hereby affirmed. For substantive jail sentence, the accused/appellant is sentenced for the lessor period i.e. for the period already undergone by him instead of RI for 10 years. Also the fine sentence by the trial Court is reduced. The appellant is directed to pay a fine of Rs. 1,000/- in default of payment of fine, to further undergo additional RI for 2 months. The concerned authorities are directed to ensure that if the appellant does not pay the fine amount, he shall serve the sentence as per default clause. If he pays the fine amount he be released if not required in any other case.
13. The appellant may file a copy of the order before the trial Court for compliance.
14. Registrar (Judicial) is also directed to send a copy of the judgment to the trial Court.

Sd/-
(Chandra Bhushan Bajpai)
Judge

Pathak