

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 19.09.2018

Judgment Delivered on :03/10/2018

CR.A. No. 274 of 2013

Raju Kosale, S/o. Puranlal Kosale, Aged About 32 Years, R/o. Village Shanker Nagar, Simga, Distt. Raipur (C.G.)

---- Appellant

Versus

State Of Chhattisgarh, Through : SHO, P.S. Simga, Distt. Raipur C.G.

-----Respondent

For Appellant	: Mr. Y.C. Sharma, Advocate
For Respondent/State	: Mr. Ashok Swarnakar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

03/10/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge, Bhatapara, District – Raipur (C.G.) in Sessions Trial No.16/2011 on 25.02.2013 convicting the appellant for the offence under Section 304 of the Indian Penal Code (twice) sentencing him with simple imprisonment of 10 years and fine of Rs.100 (twice) and under Section 307 of the Indian Penal Code (twice) and sentencing him with simple imprisonment for 1 year along with fine of Rs.100/- (twice) with default stipulations.

2. The case of prosecution in brief is this that on account of previous enmity with the deceased Fulgopal and Shiv Kumar, the appellant with intention to cause their death, dashed the truck bearing registration No.C.G.-04-J.K.-9991 driven by him against the motor cycle on which both the deceased and injured Khelcharan and Ashwini were riding. Resultantly, Shivkumar died on the spot, whereas Fulgopal succumbed to the injuries later on and Ashwini suffered injuries. One unnumbered morgue intimation (Ex.P-2) was recorded on the spot on the basis of information given by Khelcharan (P.W.-3) on 28.02.2011. FIR (Ex.P-27) was also lodged by him. Offence under Section 279, 337, 304-A of the Indian Penal Code were initially registered against the appellant. Later on, on the basis of the investigation made and the statement given by the witnesses, the offences registered were converted for the offence under Section 302 of the Indian Penal Code (twice) and 307 of the Indian Penal Code (twice) and the charge-sheet was filed against the appellant before the concerned Court.
3. Appellant was charged with offence under Section 302 of the Indian Penal Code (twice) and 307 of the Indian Penal Code (twice). The appellant denied the charges and prayed for trial. The prosecution examined as many as 26 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On

completion of trial, impugned judgment has been delivered, in which the appellant was acquitted of the charge under Section 302 of the Indian Penal Code (twice) and instead of that he stands convicted and sentenced as mentioned hereinabove.

4. It is submitted by the learned counsel appearing on behalf of the appellant that the conviction held against the appellant is totally without any support from the evidence of prosecution. The fact had been, that it was a case of simple accident. There is no theory of previous enmity proved by the prosecution, so as to hold that the appellant intended to cause death of the deceased persons. Hence, the conviction against the appellant is bad in law. It is prayed that he may be acquitted of all the charges. It has been prayed in alternative that in case this Court is not inclined to allow this appeal and acquit the appellant in that case, the sentence of imprisonment against the appellant, which is too harsh may be reduced.
5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Hence there is no room for interference in the impugned judgment, hence, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.

7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. Khelcharan (P.W.-3) has stated that on the date of incident, the appellant was abusing the deceased Fulgopal because Fulgopal had urinated in front of his house and then the appellant has also slapped him. Subsequent to that, when he and the deceased persons were going on the motor cycle, a truck dashed them from behind, he was told by the villagers and police that it was the appellant, who had dashed them, which resulted in the death of Shivkumar and Fulgopal. In cross-examination, he admitted that it was dark at the time of accident and it was difficult to identify the person coming and going. He has also admitted that after the motor cycle was dashed from behind, he went unconscious and does not know after how much time, he came into consciousness. This witness had named the appellant only on the basis of the information given to him by the villagers and the police. He himself has not seen that it was the appellant, who had dashed the motor cycle during the truck driving.
9. Ashwani (P.W.-5) is another witness, who was riding the same motor cycle, he has stated that both the deceased, Khelcharan (P.W.-3) and this witness were sitting on the same motor cycle, which was driven by Khelcharan (P.W.-3). All of them stopped in front of the house of the appellant to urinate, while they were

urinating, the appellant came out from the house and abused the deceased Fulgopal and also slapped him and then quarrel took place. After intervention of some other persons, the appellant was pacified. Subsequent to that all of them proceeded further on motor cycle, which was dashed by a truck, because of which, the witness himself and Khelcharan (P.W.-3) suffered injuries and he saw the deceased Fulgopal vomiting blood. This witness has not named the appellant as the person, who was driving that truck and has admitted in his cross-examination that he has not come to know as to which truck had dashed their motorcycle.

10. Shivprasad (P.W.-1) is the witness of previous incident and he has seen the quarrel between the appellant and the deceased person. He has stated that he later on came to know that the appellant had driven his truck causing accident with the motor cycle of the deceased and injured persons. Jai Prakash (P.W.-2) has similarly stated about the previous incident but he has not given any statement against the appellant. Gopi (P.W.-4), is brother of the deceased – Shivkumar, he has not stated anything against the appellant. Aaskaran Sonwani (P.W.-6) is hostile witness, who has not stated anything adverse against the appellant. Ghasi Banjare (P.W.-8) has stated that he came to know later on that the appellant was the person, who had caused the incident.

11. Gagandeep Singh (P.W.-14) is the owner of the truck bearing registration No. C.G.-04-ZA-9991. He has stated that he had employed the appellant as his driver and he was informed on 28.02.2011 by the appellant, that truck has met with some accident with motor cycle and subsequent to that the appellant had left the truck and fled away from the spot. His statement has remained unrebutted in his cross-examination. This statement has relevance as an extra judicial confession of the appellant, but this evidence is only to this extent, that truck driven by the appellant had met with an accident and there is no evidence about the previous quarrel with the deceased and the injured persons and about any intention of the appellant to cause death of the deceased persons. Any how, the relevancy shall be examined later on after discussing the evidence of other witnesses.
12. Rupau Das (P.W.-7) is the witness of Panchanama of dead body (Ex.P-3) of Shivkumar. Omkumar Tandon (P.W.-9) is the witness of Panchnama of dead body of the deceased Fulgopal vide (Ex.P-9). Vijay Kumar (P.W.-10) and Sonu @ Bedram (P.W.-12) are also witness to the same. Raju Sonwani (P.W.-11) is a witness of seizure of number plate of the truck bearing registration No.C.G.-04-ZA-9991 on the spot and Manoj Kumar (P.W.-13) is the person, who conducted mechanical inspection of the truck bearing No..C.G-04-ZA-9991. Ranjeet Sonwani (P.W.-24) is the witness of seizure of papers of the vehicle vide (Ex.P-3).

13. A.S.I., K.L. Dhruwa (P.W.-18) is the Investigation Officer and A.S.I., R.L. Sahu (P.W.-19) is the witness, who has lodged unnumbered FIR (Ex.P-2) at the instance of Khelcharan (P.W.-3). It was not named against the appellant, but mentioned only that driver of the truck No. C.G.-04-ZA-9991 was the person causing accident and in his deposition, he has proved the rest of the investigation done by him.
14. Dr. G.S. Som (P.W.-15) has stated that on examining the injured Khelcharan (P.W.-3), he found simple injuries caused to him vide his report (Ex.P-16). Similarly in examining Ashwani (P.W.-5), he found simple injuries caused to him vide his report, Ex.P-17. Then on examining Fulgopal, he found injuries of fracture on pubic bone vide Ex.P-18 and referred him for further treatment at higher center. Dr. A. Rao (P.W.-17), who has treated the deceased Fulgopal, before his death has confirmed that the deceased had fracture in pubic bone and he has expired on 04.03.2011 during the course of treatment. Dr. Devendra Nayak (P.W.-25) has further treated the deceased Fulgopal and operated him surgically before he died on 04.03.2011.
15. Dr. G.S. Som (P.W.-15) has conducted the autopsy of the deceased Shivkumar and given the description of the injuries caused to him has opined that cause of death was shock due to hemorrhage from external injuries and also opined that the death appears to be accidental in nature. Postmortem report of the

deceased Fulgplal has not been proved by the concerned physician but it can be gathered from the circumstances and the other evidence on record including the evidence of the doctor, who had treated him that the deceased died as a result of the injuries suffered by him. There is no evidence to suggest that injuries were caused to the deceased persons otherwise than the collision with the truck. This evidence has come that soon before the incident, the deceased and the injured persons had a quarrel with the appellant for the reason that the deceased and injured persons were urinating in front of the house of the appellant, to which he has objected. All these witnesses in this case who have stated that they came to know, it was the appellant, who was driving the truck at the time of accident, have not disclosed their source of information. One of the main witness Ashwani (P.W.-5) has clearly not made any statement against the appellant. The only evidence of relevance i.e. present in this case is the evidence of Gagandeep Singh (P.W.-14) that he was informed by the appellant on phone that the appellant had caused some accident with some motor cyclist.

16. This information can be connected with the incident that has occurred because the truck causing accident was bearing registration No.C.G.-04-JK-9991, which is not disputed and the statement of Gagandeep Singh (P.W.-14) is clear that the appellant was the person, who was employed as driver and was driving the same truck on 28.02.2011. Hence, on the basis

unrebutted evidence of Gagandeep Singh (P.W.-14), it can be held that the appellant was driver, who dashed the truck against the deceased and injured persons at the time of accident.

17. Whether this incident was accidental or intentional, is question which remains unanswered looking to the evidence i.e. present in the case. Although there is evidence that there had been a quarrel of the appellant with the deceased and injured persons but only for this reason it can not be assumed that the appellant had intended to cause death of the deceased persons and injure the injured persons. Medical examination report and postmortem report clearly shows that all the riders of the motor cycle were in inebriated conditions, when their motor cycle met with an accident with the truck driven by the appellant. The appellant can be held guilty of the rashness and negligence in this case because he was driving at the speed, which was uncontrolled and because of which he dashed the motor cycle and his truck crushed the deceased persons because of which they have died. Similarly, negligence is also present there as the appellant did not make any attempt to drive in accordance with the norms of driving and drove in inadvertent manner.
18. Hence, it is a case in which the appellant could have been convicted for the offence under Section 304-A of the Indian Penal Code (twice) for the death of Shivkumar and Fulgopal and under Section 337 of the Indian Penal Code for causing injuries to

injured Khelcharan (P.W.-3) and Ashwani (P.W.-5) by his rash and negligent act.

19. Hence, on the basis of these findings, it appears that the conviction of the appellant under Section 304 and 307 of I.P.C. is totally uncalled for and bad in law. Accordingly, the appeal is allowed. The conviction of the appellant under Section 304 of the Indian Penal Code (twice) and Section 307 of the Indian Penal Code (twice) and the sentence imposed upon him for the same are hereby set-aside and instead of that the appellant is convicted for offence under Section 304-A of the Indian Penal Code (twice) and 337 of the Indian Penal Code (Twice). The appellant is in jail since 06.03.2011, hence, looking to the sentence of imprisonment that is provided under the provisions in which the appellant has been convicted, the appellant is sentenced with imprisonment already undergone by him in jail. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram