

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.216 of 2006

Sudhanshu Agarwal, S/o Shri Narayan Agarwal, aged about 35 years, R/o House No.18/121, New Shanti Nagar, P.S. Civil Lines, District Raipur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through P.S. City Kotwali, District Raipur, Chhattisgarh

--- Respondent

For Applicant	:	Shri Maneesh Sharma, Advocate
For Respondent/State	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

15.5.2018

1. This revision has been preferred against the judgment dated 30.3.2006 passed by the 12th Additional Sessions Judge (FTC), Raipur in Criminal Appeal No.41 of 2006 arising out of the judgment dated 31.1.2006 passed by the Judicial Magistrate First Class, Raipur in Criminal Case No.512 of 2005 convicting and sentencing the accused/Applicant as under:

Conviction	Sentence
Under Section 304A of the Indian Penal Code	Rigorous Imprisonment for 6 months and fine of Rs.1,000/- with default stipulation
Under Section 337 of the Indian Penal Code	Rigorous Imprisonment for 1 month and fine of Rs.300/- with default stipulation

2. Case of the prosecution, in brief, is that on 30.3.2002 at about 10:00 p.m., near Shyam Talkies, Budhapara, the Applicant, while driving his Maruti Car bearing registration No.MP 24 G 3110 rashly and negligently, dashed the Yamaha Motorcycle being driven by Mohd. Sajid on which Complainant Tanvir was a pillion rider. As a

result of the accident, Mohd. Sajid died. The matter was reported by Complainant Tanvir vide First Information Report (Ex.P1). On completion of the investigation, a charge-sheet was filed against the Applicant for an offence punishable under Sections 279, 337 and 304A of the Indian Penal Code. Charges were framed against him under Sections 279, 337 and 304A of the Indian Penal Code.

3. After trial, the Trial Magistrate convicted and sentenced the Applicant as mentioned in the first paragraph of this order. An appeal, being Criminal Appeal No.41 of 2006 was preferred by the Applicant. The Appellate Court affirmed the judgment of conviction and sentence passed by the Trial Court. Hence, this revision.
4. Learned Counsel appearing for the Applicant submits that no proper identification of the Applicant was done. In the First Information Report (Ex.P1) also, name of the Applicant is not mentioned. No cogent evidence is available on record to show that the car in question was being driven by the Applicant. From the evidence on record, the offence alleged against the Applicant is not proved beyond reasonable doubt. Therefore, the Applicant may be acquitted of the charges framed against him.
5. Learned Counsel appearing for the State supports the impugned judgment and submits that there are sufficient evidence on record to establish that the Applicant was driving the offending car rashly and negligently. Therefore, the Courts below have rightly convicted and sentenced the Applicant.
6. I have heard Learned Counsel appearing for the parties and perused the record with due care.

7. Complainant Tanvir Khan (PW1), who was sitting as a pillion rider on the Yamaha Motorcycle along with deceased Mohd. Sajid at the time of accident of the motorcycle, has stated that when they reached near Shyam Talkies, the driver of offending Maruti Car bearing registration No.MP 24 G 3110, driving the car rashly and negligently, came from wrong side and dashed the motorcycle due to which Mohd. Sajid died on the spot. As per the statement of this witness, the incident was witnessed by Mohd. Aslam, Mohd Javed, Siraj Khan and Mohd. Salam. In paragraph 6 of his cross-examination, he has categorically stated that the offending vehicle was being driven by the Applicant. After the incident, he had seen the Applicant coming out from the seat of the car.
8. Alok Dani (PW2) is the witness of seizure (Ex.P2) by which documents of the offending Maruti Car were seized. He has not supported the above seizure.
9. Thakurdas (PW3), an eyewitness, has stated that the incident took place between the car and the Yamaha Motorcycle in his presence.
10. Ramesh Agrawal (PW4), who is a motor mechanic, is the witness who mechanically examined the offending car and prepared a report (Ex.P3).
11. Dr. Ulhas Gonnade (PW5) is the witness who conducted post mortem examination on the dead body of deceased Mohd. Sajid. His report is Ex.P4 in which he has opined that the death took place due to shock and haemorrhage as a result of the head injury and its complications.

- 12.** Sub-Inspector B.R. Dhurve (PW6) has deposed that he investigated the offence in question. During investigation, he prepared inquest (Ex.P5). He recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. He prepared spot-map (Ex.P8). He seized the offending Maruti Car and its documents vide Ex.P2 and also seized the Yamaha Motorcycle vide Ex.P9.
- 13.** From a minute examination of the above evidence, it is clear that Tanvir Khan (PW1) is the eyewitness of the incident and he was with the deceased at the time of the accident. He has categorically stated that the Applicant was driving the offending Maruti Car rashly and negligently on wrong side. He remained firm during his cross-examination. Thus, I am of the considered opinion that the findings recorded by both the Courts below convicting the Applicant under Sections 304A and 337 of the Indian Penal Code are well founded and that being so the findings are not required to be interfered with. Hence, the conviction imposed under Sections 304A and 337 of the Indian Penal Code is affirmed.
- 14.** As regards the quantum of sentence, keeping in view the facts and circumstances of the case that the Applicant has already undergone 6 days, the incident took place in the year 2002, i.e., about 16 years back, he has no known criminal antecedent and he is now aged more than 50 years, I am of the considered opinion that it would be in the interest of justice if for the conviction under Sections 304A and 337 of the Indian Penal Code the jail sentence is reduced to the period already undergone by the Applicant. Ordered accordingly. The fine sentences of Rs.1,000/- and

Rs.300/- are affirmed. However, for the offence under Section 304A of the Indian Penal Code, the Applicant shall deposit an additional fine of Rs.1,25,000/- before the Trial Court within two months from the date of receipt of this order. In default of deposit of this amount of Rs.1,25,000/-, the Applicant shall be liable to undergo additional rigorous imprisonment for two months. On deposit of the amount of Rs.1,25,000/- by the Applicant, the same shall be paid by the Trial Court to the dependent family members of the deceased in equal ratio within one month from the date of the deposit.

15. Consequently, the revision is allowed in part to the extent indicated above. The Applicant is on bail. His bail bonds are discharged.
16. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge