

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 351 of 2008**

- Chetan Kumar Nishad, S/o Mansa Ram Nishad, aged about 25 years, R/o village - Chingraud, Police Station and District Mahasamund (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through - District Magistrate, Mahasamund, District Mahasamund (C.G.)

---- Respondent

For Applicant	:	Smt. Indira Tripathi, Advocate.
For State/Respondent:		Shri Gary Mukhopadhyay, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****07/12/2018**

01. The present Revision petition is directed against the judgment and order dated 15.05.2008 passed by I Additional Sessions Judge, Mahasamund, in Cr.A. No.45/2007 affirming the judgment and order dated 01.05.2007 passed by Judicial Magistrate First Class, Mahasamund in Criminal Case No.1080/2005 convicting the applicant under Section 304 (A) IPC and sentencing him to undergo R.I. for one year and to pay fine of Rs.2,000/-, in default of payment in fine amount to further undergo additional S.I. for three months.

02. Brief facts of the case are that Punit Ram (PW/1) lodged a report (Ex.P/1) on 15.10.2002 at 9.30 PM alleging in it that on 15.10.2002 at about 4.00 PM he along with 40 persons had

gone for immersion of goddesses Durga on the tractor trolley which was being driven by the applicant and when they were coming after immersion process, near Khallari Deity Factory, Tulsiram fell down from tractor due to rash and negligent driving of the appellant and his head came under its wheel, as a result of which he died on the spot. Based on this report, offence under Section 304(A) IPC was registered against the appellant in police station Mahasamund.

03. After filing of the charge sheet, the trial Court framed the charge under Section 304 (A) IPC against the applicant.

04. So as to hold the applicant guilty, the prosecution examined as many as 10 witnesses. Statement of the applicant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. Vide judgment and order dated 01.05.2007 the trial Magistrate has convicted the applicant under Section 304 (A) IPC. The judgment of the trial Court has been duly affirmed by the appellate Court vide impugned judgment dated 15.05.2008, hence this revision.

06. Counsel for the applicant submits that the manner in which the appeal has been dismissed by the learned appellate Court cannot be said to be satisfactory. He would further submit that non application of mind and non consideration of

the material available on record by the appellate Court raised question of consequent failure to discharge its judicial obligation on the rights of the applicant. It is next submitted that the learned Courts below failed to appreciate the evidence properly and the conclusion drawn in holding the applicant guilty of the offence punishable under Section 304 (A) IPC is contrary to the evidence on record. The rash and negligent driving of the applicant was not proved by reliable and cogent evidence and in absence of such proof no liability can be fixed on the applicant. It has been also submitted that it is very clear from the evidence of PW/1 to PW/10 that prosecution has failed to prove the charge levelled against the applicant beyond reasonable doubt.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the applicant is in accordance with law and there is no infirmity in the same.

08. Heard learned counsel for the parties and perused the material available on record.

09. Punit Ram (PW/1) is the person who was sitting in the Tractor at the time of incident. He has stated that deceased Tulsiram was sitting in the tractor which was being driven by the present applicant. He has further stated that he did not know whether the deceased was sitting on Tractor or Trolley but when deceased fell down and his head was crushed, the people present there had seen him. But then in cross-examination,

this witness has stated that the driver which was sent by owner of the Tractor, was not Chetan (the appellant). He also went on to state that the driver of Kanhaiya (owner of Tractor) was driving the tractor from Chigarrod to Mahanadi whose name he does not know. This witness has emphatically stated that he had not seen as to who was driving the tractor. In para 5 of his cross-examination, he has also stated that he had not seen the deceased falling down from the Tractor.

10. Tularam (PW/2) has made almost similar statement as has been made by Punit Ram (PW/1).

11. Narottam (PW/3) is another person who was sitting in the tractor at the time of incident. He has stated that the deceased was sitting in between tractor and trolley. At the time of incident, the tractor was slow. This witness, in his cross-examination, has admitted that deceased Tulsi Ram had consumed liquor. Dileshwar (PW/4), who at the relevant time was present in the tractor, has stated that he did not know whether the deceased had consumed liquor or not. He admits that the appellant was driving the tractor moderately and the deceased had not died due to rash and negligent driving of the appellant.

12. Dr. R.K. Pardal (PW/10) is the autopsy surgeon who noticed multiple injuries including fracture of head, temporal parietal bone and leg. In para 5 and para 7 of his cross-examination, he has stated that undigested food was noticed in the abdomen of deceased in which brown colour liquid was also

found and smell of liquor was also coming.

13. Close scrutiny of the evidence makes it clear that none of the prosecution witness has clearly deposed that deceased died due to rash and negligent driving of the appellant. The prosecution witnesses in particular Punit Ram (PW/1), who is uncle of the deceased and lodger of FIR (Ex.P/1), has clearly deposed that he did not know as to who was driving the vehicle and other prosecution witness PW/2 stated that the deceased had consumed liquor whose statement gets corroborated from the evidence of Autopsy Surgeon (PW/10). The aforesaid evidence on record proved that the deceased at the time of incident had consumed liquor and he died due to his own negligence. The prosecution has not been able to prove its case beyond reasonable doubt that the deceased died due to rash and negligent driving of the appellant. Considering the entire evidence adduced by the prosecution, this Court finds it difficult to uphold the conviction of the accused/application under Section 304-A IPC.

14. In the result, the revision is allowed. The impugned judgment dated 15.05.2018 is hereby set aside. The accused/applicant is on bail. His bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
JUDGE