

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 7 of 2005

- Jeth Mal Jain

---- Petitioner

Versus

- State Of Chhattisgarh

---- Respondent

For Applicant	Mr. Shobhit Koshta, Advocate
For Respondent /State	Mr. Bhaskar Pyasi, Panel Lawyer

S.B.: Hon'ble Mr. Justice Prashant Kumar Mishra

Judgment On Board

27/3/2018

1. Heard.
2. Challenge in this revision application is to the applicant's conviction under Sections 337 and 304A of IPC and sentence of fine of Rs.500/-, in default of payment of fine, to undergo additional RI for 25 days for the offence under Section 337 of IPC, and R.I for 6 months and fine of Rs.2000/- , in default of payment of fine, to undergo additional RI for 4 months for the offence under Section 304-A of IPC.
3. On 10.11.1993, at about 14:30 hours, deceased Shashi Sharma, who was riding the Hero Honda motorcycle and his wife PW-3 Anjana Sharma, who was the pillion rider of the said motorcycle,

were travelling from Patan to Raipur, whereas, the applicant, who was riding the other Hero Honda Motorcycle, and his friend, who was the pillion rider, were travelling from Raipur to Patan. Near Jamgaon village, the applicant caused the accident while driving his Hero Honda Motorcycle in a rash and negligent manner resulting in head-on collision of both the vehicles, after which, all the four persons sustained injuries and were taken to DKS hospital, Raipur, for treatment. Shashi Sharma died on the way to the hospital.

4. Case of the prosecution is based on the statement of PW-3 Anjana Sharma, who was the pillion rider with the deceased, as also on the statements of PW-1 Hariprasad Chandrakar, PW-2 Sushil Kumar, PW-7 Kamlesh Kumar and PW-8 Sanjay Dubey, all of whom reached the place of occurrence immediately after the incident. However, the Courts below have convicted the applicant merely on the basis of statement of PW-3 Anjana Sharma.
5. Assailing the conviction and sentence, Mr. Shobhit Koshta, learned counsel for the applicant, would argue that there is absolutely no evidence to record a finding of rash and negligent driving by the applicant. He would submit that in absence of the postmortem report having been proved by examining the Doctor, the death is not connected with the accident, therefore, the conviction under Section 304-A of IPC has wrongly been made.
6. Per contra, learned counsel for the State would support the

impugned judgment.

7. In the *Dehatinalisi* recorded at the instance of PW-3 Anjana Sharma, there is mention of rash and negligent driving by the applicant. Similarly, in her deposition also, Anjana Sharma has only stated about the rash and negligent driving by the applicant without mentioning the speed of their own vehicle and the relative speed of the offending vehicle.
8. Driving at a speed higher than the permissible limit on a road depends upon several factors like condition of the road, volume of traffic, the timing etc., because a particular speed of a vehicle on a wide road or highway may not amount to rash and negligent driving, whereas, the same speed in a residential locality or on narrow road may amount to rash and negligent driving.
9. It is not a case where the applicant was driving a heavy vehicle or a four wheeler and the deceased was driving the motorcycle so as to fasten the liability on the person who was driving the heavier vehicle.
10. PW-3 Anjana Sharma would state in her deposition that when they witnessed the motorcycle driven by the applicant coming from the opposite side, they kept their side, however, she has not stated that they slowed down their own vehicle while keeping their side. Even this fact of keeping their side is not mentioned in the *Dehatinalisi* or in the FIR -Ex.P/6. Thus, this part of the statement is an improvement from the earlier

version informed to the Police, as recorded in the *Dehatinalisi* or in the FIR. The other witnesses, who reached the place of occurrence immediately after the incident, have seen all the four persons lying on the road in injured condition. Therefore, it is difficult to conclude only on the basis of statement of PW-3 Anjana Sharma that it was the applicant who was responsible for rash and negligent driving in a high speed as this has not been corroborated by the independent witnesses

11. In addition to the above, the postmortem report has not been proved by examining the Doctor, therefore, there is serious dent in the prosecution case as to whether the death was direct result of the accident or not.

12. On the strength of the above discussion, I have no hesitation in holding that the finding that the applicant was driving the vehicle in a high speed in a rash and negligent manner is perverse in view of the state of evidence on record.

13. Consequently, the revision application is allowed and the conviction and sentence imposed on the applicant under Sections 337 and 304 A of IPC is set-aside.

Sd/-

Judge

(Prashant Kumar Mishra)