

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1037 of 2018**

State of Chhattisgarh, Through Police Station Sarkanda, District-
Bilaspur (C.G.) **---- Petitioner**

Versus

Gitesh @ Raju Kashyap, S/o Shyamlal Kashyap, Aged About 23
Years, R/o Jabdapara, Street No. 1, Sarkanda, Bilaspur, District-
Bilaspur (C.G.) **---- Respondent**

For State/ Petitioner : Mr. Vinod Kumar Tekam, PL.

For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****12/11/2018**

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of Vishwadeepak Tripathi.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 207 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 04.09.2017 passed by Judicial Magistrate First Class, Bilaspur (C.G.) in Criminal Case No. 5085/2015, wherein the said court acquitted the respondent for commission of offence under Section 304-A of IPC for driving one Auto bearing registration

No. CG-10 C-1618 rashly and negligently on 01.09.2007 at about 12:30 p.m. near village- Lokhandi and caused death of one Ram Kumar Yadav.

5. In the present case, case of the prosecution is based on statement of Surendra Yadav (PW-1) and Ram Jhul (PW-2). Rest of the witnesses are witnesses of assistance during investigation after registration of FIR. Surendra Yadav (PW-1) who is claiming to be eyewitness deposed (Para 4) that he is unable to tell the speed of offending vehicle Auto at the time of incident. Ram Jhul (PW-2) deposed (Para 1) that auto was driving in very slow motion. When both the witnesses have not deposed anything regarding rash and negligent driving of the respondent, there is nothing on record to conclude that the incident occurred due to rash or negligent driving of the respondent.
6. In absence of evidence, the trial court opined that the offence charged is not established. After reassessing the entire record, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
7. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge