

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 483 of 2008

C.N. Tiwari, S/o Harihar Nath Tiwari, aged about 40 years, R/o Komdo, P.S. Jashpur Nagar, District Jashpur (CG)

---- Applicant

Versus

1. Nishant Gupta, S/o Shri Krishna Kumar Gupta, aged about 34 years, Caste Baisya, R/o College Road, Jashpur Nagar, District Jashpur (CG).
2. Sujit Chaurasiya, S/o Late Laxmichand Chaurasiya, aged about 43 years, Caste – Chaurasiya, R/o Ward No.7, Bazardand, P.S. Jashpur Nagar, District Jashpur (CG)
3. The State of Chhattisgarh, through P.S. Jashpur Nagar, District Jashpur (CG)

--- Respondents

For Applicant : Mr. Manoj Kushwaha, Advocate

For Respondents No.1 & 2 : None

For Respondent/State : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

19/06/2019

On 01.01.2001 some boys namely Nitesh, Sidhesh, Abhishek, Bifnaram and Sudhansingh had gone on a picnic to Komdo Dam for celebrating the New Year event and as soon as the boat owner Sujeet Chaurasiya was about to ferry them, accused Nishant Gupta and one Abhijeet came there and persistently asked Sujeet Chaurasiya to permit him for taking the boat into the dam. When the boat was in the middle of the Dam, water entered it making it drown involving the lives of Nitesh, Sidhesh and Abhishek whereas Nishant Gupta (accused). However, other passengers being Raja Shukla, Bifnaram and Sudhansingh Rajput swam back safely. On the information of one Chandradeep Tiwari, *merg* intimations were recorded in respect of the deceased boys which resulted in the registration of FIR against accused – Sujeet and Nishant under Section 304 IPC. After investigation *challan* was filed against the two accused under section 304/34 IPC.

2. Having taken note of the evidence learned trial Court vide judgment dated 16.10.2007 held both the accused persons guilty under Section 304-A IPC with imposition of fine of Rs.1000/- each. In appeal the conviction of accused – Sujeet was set aside whereas that of Nishant was maintained. At the same time learned lower Appellate Court struck down the jail sentence of accused – Nishant but enhanced the fine amount to Rs.15,000/- from that of Rs.1000/- as was imposed by the trial Court. Hence this revision by the complainant.

3. Counsel for the applicant/complainant submits that though negligence on the part of both the accused persons in taking the boat in the deep waters without observing the safety measures is writ large yet the lower Appellate Court has committed a serious legal error in acquitting Sujeet who was involved, may be passively, in the accident claiming four lives. Likewise, the waiver of jail sentence and enhancement of fine imposed on accused - Nishant is also an incorrect approach adopted by the lower Appellate Court. He thus submits that the findings recorded by learned lower Appellate Court are thus off the records and, therefore, the judgment impugned is liable to be set aside and the one passed by trial Court deserves restoration.

4. None appears for the respondents/accused to put-forth their case. State/counsel however, assisted the Court.

5. Of course, from the evidence of the witnesses it comes out that when accused Sujeet – the owner of the boat was to ferry the passengers including the deceased boys into the dam, accused – Nishant along with his colleagues reached there and insisted him to have the boat to be taken in waters. There is no evidence to show that the boat was having some fault leading to the accident in question. Had it been so, some incident of this kind must have taken place earlier also because number of rounds carrying number of passengers were already undertaken in the day time

also. Even assuming that there was some fault in the boat, there is no evidence to show that it was within the knowledge of accused Sujeet. Incident, in fact, is completely attributable to accused Nishant because it is on his insistence accused Sujeet permitted him to take the boat in the deep waters and, therefore, he has been rightly convicted by the Courts below under Section 304-A IPC. Likewise, keeping in mind the facts and circumstances of the case, the waiver of jail sentence of this accused and enhancement of the fine sentence to Rs.15,000/- also appears to be in the interest of justice and, therefore, the same is hereby maintained.

6. As regards accused Sujeet, some of the witnesses have not even stated conclusively as to his ownership over the boat in question or that he was aware of the mechanical faults in the boat leading to incident in question. What can be summed up from the overall evidence is that he just succumbed to the persistent demand of accused Nishant which resulted in this tragic incident involving four innocent lives. In this view of the matter, his acquittal under Section 304-A IPC does not appear to suffer from any illegality or infirmity.

7. Thus the revision preferred by the complainant is without any substance and it is hereby dismissed.

**Sd/-
(Vimla Singh Kapoor)**

Judge