

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 482 of 2009

Mohammad Asrar, S/o Mohammed Altaf, aged about 25 years, R/o Bhoipara, Nawapara, Gobra, Police Station – Gobra, Nawapara, District - Raipur, C.G.

---- Applicant

Versus

State of Chhattisgarh, Through the District Magistrate, District – Raipur, C.G.

---- Respondent

For Applicant	:	Shri Shivendu Pandya, Adv.
For Respondent/State	:	Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey
Order On Board

01.07.2019

The present revision arises out of the impugned judgment of conviction and order of sentence dated 10.09.2009 passed by the learned Additional Sessions Judge, Gariyabandh, District – Raipur, C.G. in Cr. Appeal No. 33/2009, whereby the learned appellate Court below has confirmed the conviction and sentence of the applicant as awarded by the learned Judicial Magistrate First Class, Rajim, District – Raipur, vide its judgment dated 23.04.2009 in Cr. Case No. 160/2008 for the offence under Section 304 (A) of the IPC and sentenced him to undergo RI for 6 months and to pay fine of Rs. 500/-, with default stipulations.

2. Brief facts of the case are that, in the evening of 27.10.2005, Trilok and Yogesh who were residents of Bhainsatara, were going towards Kaundkera in a bicycle. Trilok was riding the bicycle and Yogesh was sitting in the rear seat. When they both reached near

Matiyadabri, the accused/applicant, driving his Metadoor bearing registration number CG 04 ZB 0807, in a rash and negligent manner dashed the bicycle of Trilok, due to which, Trilok and Yogesh fell down from the bicycle and Yogesh, who was sitting in the rear seat, sustained grievous injuries on his head and died on the spot. The report was lodged in the Police Station Rajim. After completion of investigation, charge-sheet was filed and charges were framed against the accused/applicant under Section 304 A of the IPC by the trial Court.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 08 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide judgment of conviction and order of sentence dated 23.04.2009, learned Judicial Magistrate First Class has convicted the accused/applicant under Section 304 A of the IPC and sentenced him to undergo RI for 6 months and to pay fine of Rs. 500/- plus default stipulations. This order was appealed by the applicant and in the appeal, learned appellate Court has confirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing this revision as far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year

2005 and thereby about 14 years have rolled by since then, he is aged about 39 years, the applicant has already remained in jail for about one month and no useful purpose would be served in again sending him to jail. Therefore, it would be appropriate, in the interest of justice, if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned State counsel has no objection to this preposition.

8. Having gone through the material on record and the evidence of the witnesses including Dhaneshwar (PW-1), Trilok Sahu (PW-2), and Tikuram (PW-3) Lakhanlal (PW-4), K.L. Sahu (PW-7), Dr. Virendra Hirondiya (PW-8), established the involvement of the accused/applicant in the crime in question. This Court does not see any illegality in the findings recorded by both the Court below as regards conviction of the applicant under Section 304 A of the IPC, being so it is hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2003 and further that the applicant has already remained in jail for about one month, no useful purpose would be served in again sending him to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him with a direction to pay additional fine of Rs.5000/-.

10. In view of the above, the revision is partly allowed. While maintaining the conviction of the applicant, his jail sentence is reduced to the period already undergone by him. However, he is directed to pay an additional fine of Rs.5000/- within six months from today, failing which he shall have to undergo RI for two months. The fine amount so deposited by the applicant before the Trial Court be paid to the

complainant Trilok (injured) and the legal heirs of the deceased Yogesh, after due verification by the trial Court. The applicant is reported to be on bail. His bail bond shall stand discharged.

yasmin

Sd/-
(Rajani Dubey)
Judge