

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on - 04.07.2019****Order delivered on - 27.08.2019****CRR No. 522 of 2009**

- Khorash Ram Verma, S/o Puranik Ram Verma, aged about 35 years, R/o village- Mohorenga, District - Raipur (C.G.)

---- Applicant**Versus**

- State of Chhattisgarh through the District magistrate, District -Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. Shivendu Pandya, Adv.
For Respondent	:	Mr. Priyank Rathi, PL

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****27.08.2019**

1. Present revision arises out of the impugned judgment of conviction and order of sentence dated 27.10.2009 passed by 9th Additional Sessions Judge (FCT), Raipur in Criminal Appeal No. 144/2008, whereby the learned Appellate Court below has confirmed the conviction and sentence of the applicant as awarded by the learned Judicial Magistrate First Class, Raipur vide its judgment dated 13.08.2008 in Criminal Case No. 536/2007 for the offence under Section 304 A IPC and sentenced him to undergo RI for 2 years and to pay fine of Rs. 1,000/- with default stipulation.

2. The prosecution story, in brief, is that deceased Nirmala Bai had come to her sister's house for attending marriage function, where she suddenly fell ill and, thereafter, the applicant, who is Doctor by profession, called for treatment, is alleged to have administered glucose and injection while the deceased was in unconscious

condition. Further case of the prosecution is that due to wrong treatment of the applicant, the deceased died. Father of Nirmala Bai, the deceased, lodged the report in Police Station. After completion of investigation, charge-sheet was filed and charge was 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 as many as 10 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 pleading innocence and false implication in the case.

4. After hearing the parties, the learned Judicial Magistrate convicted and sentenced the applicant vide order dated 13.08.2008, which was confirmed by the appellate Court. Hence, this revision petition.

5. Learned counsel for the applicant submits that the impugned judgment of conviction and order of sentence passed by the learned trial Court and Appellate Court is contrary to law and evidence available on record. Both the Courts below committed error of law in convicting the applicant on the basis of the statement of prosecution witnesses. He further submits that both the Courts below have not considered the nature and the ground of negligent act of doctor. It is the bounden duty of the prosecution to prove the details of treatment, which render the act of the applicant doctor as negligent, but in the instant case, the prosecution has not been able to prove the negligent act of the applicant. It has been further argued that Dr. Sanyasi Rai Banjare (PW-7), who conducted the postmortem, did not state that death of deceased was due to negligent act of the applicant. The prosecution has failed to prove the negligent act of the applicant under Section 304-A IPC, therefore, the impugned judgment is liable to be set aside.

6. 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.

7. Heard learned counsel for the parties and perused the record.

8. The conviction of the applicant is mainly rests on the ground that the applicant gave wrong treatment to the deceased and due to his negligent act the deceased died. The Dr. S.R. Banjare (PW/7), who conducted postmortem examination of the deceased has opined the cause of death to be asphyxia due to inhalation pneumonia and gave his report in Ex.P/4-A. Autopsy Surgeon in para 15 has described three stages of pneumonia, but in para 17, he states that he is not in a position to clarify as to in which condition of pneumonia the deceased died. This witness has also clarified that he could not say that the deceased died due to excessive administration of water glucose. He has not stated anywhere in his evidence that because of wrong treatment the deceased died. From the evidence of this witness, only inference can be drawn that the deceased did not die due to negligent act of the applicant.

9. The requirement of Section 304-A has been dealt with by Hon'ble Supreme Court in the matter of **Suleman Rehiman Mulani & Anr v. State of Maharashtra** reported in **1968 (2) SCR 515** which reads thus :

“To impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the cause causans; it is not enough that it may have been the **cause sine qua non.**”

10. Thus, from the aforesaid evidence and material on record and in view of the decision of Hon'ble Supreme Court in the matter of **Suleman (Supra)**, it is not proved beyond reasonable doubt that the death of deceased was due to direct result of rash and negligent act of the applicant. The trial Court while convicting and sentencing the

accused/applicant has not considered the evidence of the prosecution witnesses in its true perspective and thereby committed error in convicting him.

11. In view of what has been discussed above, the findings recorded by the Courts below cannot be sustained in the eye of law and are liable to be set aside. The revision is thus allowed, judgment impugned is set aside and the accused/applicant stand acquitted of the charge leveled against him.

12. The applicant is on bail, his bail bond shall stands discharged.

13. Revision is thus allowed.

Sd/-
(Rajani Dubey)
JUDGE