

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 226 of 2005

Rambahoran, S/o. Manauram Dhobi, aged about 35 years, R/o. Hardikala, P.S. Chakarbhata, District Bilaspur (C.G.)

---- Applicant

Versus

State of Chhattisgarh

----- Respondent

For Applicant : Mr. Ajay Mishra, Advocate

For Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

02.04.2019

By this revision, the applicant has challenged legality and propriety of the judgment dated 24.05.2005 passed by the Additional Sessions Judge Bilaspur in Criminal Appeal No. 48/2005, affirming the judgment of conviction and order of sentence dated 23.04.2005 passed by the Judicial Magistrate First Class, Bilaspur, in Criminal Case No. 544/2000, whereby learned Judicial Magistrate First Class after holding the applicant guilty for the offence punishable under Section 279 read with section 338 I.P.C. sentenced him to undergo R.I. for six months and to pay fine of Rs. 100/-, in default of payment of fine to further undergo R.I. for 15 days, which on appeal, the appellate Court has also affirmed the judgment impugned. Hence, this revision.

2. Facts of the case, in brief, are that on 21.09.1997 at about 3.30 PM, the applicant was driving the motorcycle bearing registration No. MP -26 Y B 2435 with rash and negligent manner and hit the victim. The victim in the said accident suffered a fracture on his left hand humerus bone and rib was also broken. (FIR Ex.P-1) was lodged in Police Station Chakarbhat against the applicant and the motorcycle was seized under Ex.P-2. After completion of investigation, charge sheet was filed against him under Section 279, 337 and 338 IPC and charge was framed accordingly.

3. Counsel for the applicant/accused does not assail the conviction part of the judgment impugned and his only request is that looking to the incident being quite old and also considering the fact that he has remained under detention of 10 days, the jail sentence imposed on him may be reduced to the period already undergone and thereby protect their well settled family life from being up-rooted at this stage.

4. State counsel however, supports the findings recorded by the both the Courts below.

5. Heard the State counsel and perused the evidence on record.

6. As per evidence of prosecution witnesses, especially evidence of injured Fekulal (PW-1), (PW-2), (PW-3), (PW-4), it is established that at the time of incident the applicant was driving the vehicle and has caused fatal injury to Fekulal (PW-1). As per evidence of doctor (PW-10), he noticed multiple abrasions on the left forearm, abrasion in the size of 3cmx2cm to left side of the

chest, lacerated wound in the size of 2cm x1 cm above the ankle, abrasion in the size of ½ cm x 5cm on the left ankle, and abrasion 1 ½ cm x 1cm over the left ear. Even the radiologist vide his report vide Ex. P-9 has noticed fractures on the humerus bone and rib was also broken. The complainant(PW-1) was admitted in the hospital about 1 month. Defence has cross-examined these witnesses at length, but has not been able to elicit anything in their cross-examination to show that the present applicant was not driving the vehicle. Seizure witnesses (PW-3) has also admitted his signature on the seizure memo Ex. P-2. Thus, rash and negligence on the part of the applicant while driving the offending vehicle on the public road is writ large. Both the Courts below have been fully justified in convicting the accused/applicant as described above. No illegality or infirmity is there in the judgment impugned as far as conviction of the accused/applicant is maintained.

7. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 22 years ago and the applicant has already remained in jail for a period of 10 days and deposited fine amount imposed on him, in my opinion, no useful purpose is going to be served in again sending him to jail. Accordingly, his sentence is reduced to the period already undergone by him.

8. With the above, the revision stands allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE