

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 429 of 2004

Order reserved on 28.01.2019

Order pronounced on 08.02.2019

Dev Singh S/o Suraj, aged about 52 years, R/o Raipur Chauraha,
Bhilai -3 P.S. Old Bhilai, Tahsil and District Durg, CG.

---- Applicant

Versus

State of Chhattisgarh through Police Station out post Kumhari,
District Durg, CG.

---- Respondent

For Applicant : Shri Shrawan Agrawal, Advocate

For State/ Respondent : Shri I. Lakra, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

The accused/applicant has been held guilty by ACJM Durg under Section 287 and 304-A IPC by judgment dated 12.01.2004 passed in Criminal Case No. 287/2002. In appeal, the findings so recorded have been maintained vide judgment impugned in this revision petition.

2. Case of the prosecution, in brief, is that on 15.07.2001 while cleaning and oiling the machine, the deceased namely Khorbhara Ram Sahu who was working as fitter in DMC factory, Kumhari met with an accident and died on the spot. The accused/applicant was working in the same factory as operator and it is alleged that the incident happened on account of his rash and negligent act in switching on the machine while the deceased was busy in cleaning the same. After completion of investigation, charge-sheet was filed against the accused/applicant u/s 287 and 304-A IPC.

3. Learned Magistrate convicted the accused/applicant u/s 287 and 304-A IPC and sentenced him to undergo RI for four months and one year respectively. Lower Appellate Court also affirmed the findings of the trial Court vide judgment impugned date 20.08.2004.

4. Conviction part is not being pressed by the counsel for the accused/applicant and his only submission before this Court is that looking to the incident being quite old and also considering his detention period which come to 22 days, the sentence imposed on him may be reduced to the period already undergone. State counsel however, supports the judgment impugned.

5. Having seen the evidence on record, it becomes clear that the accused/applicant being the operator in the factory was duty-bound to take full care while switching on the machine as the switch board was fitted in the cabin where he use to sit and observe the operation of the plant. It has also come in the evidence that the deceased was taking every care required for performing his job of fitter by wearing the helmet and shoes needed in the same. Even the doctor conducting postmortem examination has stated that the deceased died on account of multiple fractures of the skull bone and brain material being crushed. Cause of death, according to the doctor, was haemorrhage and shock vide report Ex. P-9. Thus, it is evident that the deceased died on account of the rash and negligent act while operating the machine. His conviction u/s 287 and 304-A IPC, therefore, being based on the evidence on record does not require any interference by this Court. It is thus maintained.

6. As regards sentence, keeping in mind that the incident had taken place about 18 years back and the accused/applicant has already remain inside for about 22 days, this Court does not see any reason in again sending him to jail and disturb his well settled life at this stage. Accordingly, the sentence is reduced to the period already undergone by the applicant.

7. Resultantly, the revision petition is hereby allowed in part with the modification in the judgment impugned as above.

Sd/-
(Vimla Singh Kapoor)
Judge