

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 220 of 2007

Md. Yusuf Khan S/o Abdul Nazir Ali aged about 25 years R/o
Village Salva P.S. Bakunthpur District Surguja (Now Korea) CG.

---- **Applicant**

Versus

- State of Chhattisgarh through P.S. Ambikapur, District Surguja, CG.

---- **Respondent**

For Applicant : Ms. Soniya Kuldeep, Advocate

For State/Respondent : Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

27/02/2019

In the FIR (Ex. P-1) lodged by PW-3 it is alleged that on 05.11.1993 when the minor daughter of the PW-2 was playing by the side of the road, the accused/applicant came there driving the bus bearing registration No. MP 27/5507 in a rash and negligent manner and hit her causing number of injuries on her body which ultimately led to her death after being hospitalized. The offence was registered against the accused/applicant u/s 304-A IPC and the prosecution against him came to be launched.

2. On consideration of the evidence on record learned trial Court held the accused/applicant guilty u/s 304-A IPC and imposed the sentence of SI for six months with fine of Rs. 5,000/- vide judgment dated 13.12.2001 passed in Criminal Case No. 1133/1993. In appeal, the findings recorded by learned trial Court came to be affirmed vide judgment dated 28.04.2007 passed in Criminal Appeal No. 08/2002 which is under challenge in this revision petition.

3. Counsel for the accused/applicant submits that though the witnesses examined by the prosecution have given contradictory statements yet both the Courts below have erroneously held the accused/applicant guilty u/s 304-A IPC. He further submits that the findings so recorded being based on such contradictory evidence cannot be allowed to stand.

4. State counsel however, supports the judgment impugned.

5. From the evidence of PW-1, PW-2, PW-3, PW-4, PW-5 and PW-8 it is established that on account of rash and negligent driving by the accused/applicant the minor daughter of PW-2 came under the wheels of offending vehicle and succumbed to the injuries suffered by her after being taken to the hospital for treatment. Some of the witnesses have even stated that had the applicant not sped away with the vehicle after hitting the girl, she would have survived. In addition to this, the doctor (PW-9) who gave the postmortem report Ex. P-3 has also stated that the deceased died on account of her head being crushed which could be caused on account of road accident. Thus the rash and negligent act of the accused/applicant involving death of deceased is clearly proved and being so his conviction u/s 304-A IPC does not suffer from any illegality or infirmity. His conviction is thus maintained.

6. As regards sentence, keeping in mind various factors existing at the present such as the case is quite old, that he has already remained inside for 14 days and by now he must be reeling under the pressure of family responsibilities, interest of justice tilts in his favour. Accordingly, this Court does not see any reason to again send him to jail and thereby disturb his well settled family life. Therefore, the jail sentence imposed on him is reduced to the period already undergone by the accused/applicant. However, in lieu thereof the fine of Rs. 5000/- as

imposed by the courts below is enhanced to Rs. 8,000/- to be deposited by him in the trial Court within a period of three months from the date of receipt of copy of this order. This order will lose its efficacy if the accused/applicant fails to make such deposit within the time mentioned above.

7. With the above observations and modifications in the order impugned, the revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan