

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.955 of 2011

Raj Kumar Yadav s/o. Jagdish Yadav, a ged about 24 years,
r/o. Village Urmaal, Police Station Devbhog and Dist. Raipur
(CG).

---Appellant

Versus

State of Chhattisgarh through the District Magistrate, Raipur,
District Raipur (CG).

--Respondent

For appellant : Mr. Shivendu Pandya, Advocate.

For respondent : Mr. V.B. Singh, Panel Lawyer.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Oral Judgment

25-02-2019

1. This appeal is directed against the judgment of conviction and order of sentence dated 31-10-2011 passed by the 4th Additional Sessions Judge, Raipur (CG) in Sessions Trial No. 174 of 2010, wherein the said Court convicted the appellant for the commission of offence under Section 304 Part II of IPC for causing unintentional death of one Rahul Singh and Section 185 of the Motor Vehicles Act, 1988 (for short, the Act, 1988") and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.200/- and RI for three months with default stipulations.

2. As per version of prosecution, on 3-7-2010 at about 10-15 pm - 10.30 pm at night deceased Rahul Singh and his wife namely Alpana Singh were travelling by driving the vehicle Activa bearing registration No. CG. 04-CW 7754. During the course of crossing the road, there was quarrel between the appellant and the deceased. Appellant by driving his vehicle Bolero bearing registration No. CG 04 H 9602 dashed the vehicle Activa which caused multiple injuries on the body of Rahul Singh. He was taken to hospital where he died. It is found that the appellant was driving the vehicle after consuming alcohol that is why he was charge-sheeted for the offence as mentioned above. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

- i) It is case of accident because deceased was going to wrong side and it is not a case under Section 304 Part II of IPC for which he has been convicted.
- ii) The trial Court did not consider the fact that the appellant had no knowledge regarding injury is likely to cause death.
- iii) The evidence of the independent witnesses is not clear as to who was driving the vehicle

Bolero, therefore, serious doubt arose of the prosecution case.

- iv) Where two view are possible, one pointing of to the guilt and other to innocence of the accused/appellant, the view in favour of the accused appellant has to be adopted.
- v) The independent witnesses have not corroborated the version of prosecution.

4. On the other hand, learned counsel for the State submits that the finding recorded by the trial Court is based on proper marshaling of evidence and the same is not required to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. In the present case, date of incident is 3-7-2010 and report was lodged on the same day just after incident in which name of the appellant is mentioned as culprit and his act is also mentioned in the said report. From the evidence of K. Prasant Nair (PW/2), it is clear that the appellant was driving the vehicle Bolero in question and as per version of PW/1 Alpana Singh who was sitting in the Activa vehicle with deceased deposed that the appellant dashed her Activa vehicle by saying that he had not given the side to him that is why he dashed his vehicle and after

dashing the vehicle he dragged the vehicle Activa for a long by his Bolero vehicle which resulting multiple injuries on the body of the deceased who was first admitted in Aarogya hospital and then he was referred to Ram Krishna hospital where he died. Version of these witnesses is supported by version of Sameer Bisen (PW/4), Girish Kumar Sahu (PW/5), Nand Kumar Jhanghel (PW/6), Chandrakant Verma (PW/7), Sandeep Verma (PW/8), Vinod Verma (PW/9), Amarnath Khare (PW/11) and Rohit Singh Baghel (PW/14). All these witnesses have deposed in one voice regarding the act of the appellant. They have been subjected to searching cross examination, but nothing could be elicited in favour of the defence.

7. Dr. Rajkumar Patel (PW/19) conducted autopsy of the deceased and noticed the following injuries as per Ex.P/13.

- i) Impacted abrasion present on upper 2/3 rd part of chest on left side having size 8x3 cm vertically, underneath red colour – ecchymosis present and fracture of ribs from 2nd to 7th on left ribs. Both lobes of left lung lacerated and collection of 1.5 litres blood in thoracic cavity. Heart is empty on both side of ventricles. Right lung is pale and healthy.
- ii) Impacted abrasion present on upper part of abdomen having size 10x4 cm horizontally,

underneath red colour ecchymosis present and liver lacerated and fragmented both right and left lobe and collection of two litres blood into abdominal cavity.

- lii) Impacted abrasion present on left leg 5 cm below the knee joint in anteriomedial aspect, underneath red colour achhymosis present and all structure healthy underneath to it, where size of abrasion is 7x2cm.
- iv) Impacted abrasion present on left fore in anteriomedial aspect where size is 13zx5 cm vertically, underneath red colour echhymosis present and all structure healthy underneath to it.
- v) Multiple impacted abrasion present on right lower limb, on just above ankle in anteriomedial aspect 26x3 cm is size vertically on lower 1/3rd of thigh 15x3 cm in side vertically and on thigh just below to anterior superior iliac spine where size is 4x 1/3 and 3 x2 cm horizontally, underneath red colour ecchymosis present in all abrasion.
- vi) Impacted abrasion on right arm just above to elbow joint in anteriomedial aspect where size is 21x7 cm vertically underneath red colour ecchymosis present.

Vii) On back impacted abrasion present on just above to both buttock where size is 16x10 cm horizontally, underneath red colour ecchymosis present.

Viii) Contused lacerated wound present on right foot in lateral aspect of little toe and 5th metatarsal, underneath red colour ecchymosis present and fracture of 5th metatarsal bone.

All injuries show red colour echhymosis and partially clotted blood. All injuries are fresh and injuries are sufficient to cause death in ordinary course of nature.

As per version of this witness, injuries were caused within 12 hours of the examination and he died due to haemorrhage and shock because of the injuries.

8. From the evidence, it is clear that the appellant dashed the vehicle Activa in which deceased was sitting as he had not given side to him and even after dashing the vehicle he dragged the vehicle Activa for long which resulting into death of deceased. Looking to the entire evidence the case of causing unintentional death is established and the finding recorded by the trial Court is based on all the relevant facts placed before it. It is not a case based on irrelevant or extraneous material, therefore, finding of

the trial Court is not liable to be interfered with. Argument advanced on behalf of the appellant is not sustainable.

9. Dr. Ganesh Kumar (PW/13) who examined the appellant on 4-7-2010 at about 1.15 pm noticed that he was in state of drunken condition and consumed alcohol with heavy dose that is why he was unable to walk properly. Looking to the direct and medical evidence, the trial court opined that the appellant was driving vehicle in state of intoxication which is an offence punishable under Section 185 of the Act, 1988. This court has no reason to substitute the contrary finding. In view of this Court, the act of the appellant falls within mischief of Section 304 Part II of the IPC and Section 185 of the Act, 1988 for which the trial Court convicted him. Conviction of the appellant is hereby affirmed. The trial Court awarded rigorous imprisonment for seven years which cannot be termed as harsh, unreasonable or disproportionate. Sentence part is also not liable to be interfered.

10. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further arrest for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE