

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 267 of 2008

Ganpat Das, S/o Pekhan Das Manikpuri, aged about 33 years, R/o
Aadarsh Nagar Kawardha, Tehsil – Kawardha, District Kabirdham,
CG.

---- **Applicant**

Versus

- State of Chhattisgarh through District Magistrate Kawardha, District
Kabirdham, CG.

---- **Respondent**

For Applicant : Shri Sudhir Kumar Verma, Advocate

For State/Respondent : Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

11/02/2019

By this revision petition the applicant has assailed the judgment dated 02.04.2008 passed by Sessions Judge, Kabirdham (Kawardha) CG, affirming the judgment dated 28.12.2007 passed by JMFC, Kabirdham (Kawardha) in Criminal Case No. 213/2007.

2. On 04.02.2004 at about 10 am when deceased Saroj had accompanied her mother to the river, the offending vehicle - a Marshal jeep bearing registration No. CG-04/B-1994 dashed her which resulted in her death during hospitalization. The report to this effect was lodged by Lakhan Patel (PW-1) – the father of the deceased. After investigation the prosecution went ahead with its case culminating in conviction of the accused/applicant u/s 304-A IPC.

3. Learned Magistrate, on the basis of material on record, held the accused/applicant guilty u/s 304-A IPC and sentenced him to undergo RI for one year with fine of Rs. 1,000/-. Lower Appellate Court also took the same view and affirmed the judgment rendered by the trial Court. Hence this revision.

4. At the outset, counsel for the applicant submits that his submission would be only in relation to the sentence part of the judgment impugned and he does not want to press the conviction part thereof. He submits that as the incident had taken place about 15 years back; that the accused/applicant has already remained in jail for 23 days; and that by now he must be in the midst of his family liabilities, it would be in the interest of justice if the jail sentence imposed on him is reduced to the period already undergone.

5. State counsel however supports the judgment impugned.

6. From the evidence of Kahaniya (PW-6) - the eye witness to the incident, it is clear that it is the offending vehicle driven by the accused/applicant herein in a rash and negligent manner, which led to this tragic incident claiming the life of a girl namely Saroj. Kamla Bai (PW-8) has also corroborated the testimony of PW-6 as regards the fact that the accident took place with the offending vehicle but she was not in a position to identify its driver. PW-2 and PW-3 though not the eye witnesses to the accident yet they have claimed to hear that the driver of the offending vehicle was none else but the accused/applicant herein, is also an additional evidence for holding that PW-6 has stated the truth. Moreover, no mechanical fault in the vehicle has been established by the defence to contradict the rash and negligent act of the accused/applicant as put forth by the prosecution. In this view of the matter, the conviction of the accused/applicant u/s 304-A IPC appears to be just and proper and is hereby maintained as such.

7. Since the accused/applicant has remained in jail for 23 days and further that a considerable period of 15 years has rolled by from the date of commission of the offence, this Court feels it in the interest of justice to reduce the sentence imposed on him to the period already undergone.

Order accordingly. Looking to the facts of the case, the fine sentence awarded by the Courts below appears to be inadequate and therefore, it is hereby enhanced to Rs. 3,000/- from that of Rs. 1,000/-..

8. Revision is thus allowed in part with the aforesaid.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan