

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 279 of 2008

Khomal Sahu, son of Shri Dhanaram Sahu, aged about 28 years,
resident of Podi Bahar Korba, Police Chowki Rampur, Police
Station Korba, District Korba, Chhattisgarh

---- Applicant

Versus

State of Chhattisgarh through Arakshi Kendra, Police Station
Chowki Rampur, Police Station Korba, District Korba (C.G.)

--- Respondent

For Applicant : Shri Rishi Sahu, Advocate

For State/Respondent : Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

26/04/2019

FIR (Ex.P-1) lodged by Mohammad Islam (PW-2) says that on 12.12.1998 at about 11 AM a vegetable laden auto rickshaw bearing registration No. M.P. 26 D/5110 driven by the accused/applicant herein in which the deceased was on board, was being driven rashly and negligently, passed under a barrier as a result of which the head of the deceased got hit by an iron rod making the deceased fall down on the ground. FIR further says that when PW-2 tried to stop the auto rickshaw the accused/applicant drove away with the same. The injuries suffered by the deceased eventually proved fatal.

2. Though initially the charge sheet was filed against the applicant under Sections 279 and 337 IPC, after the death of the deceased the same got converted under Section 304-A IPC inclusive of 279 IPC. Learned trial Court vide judgment dated 25.09.2007 convicted the accused/applicant under Sections 304-A and 279 IPC and sentenced him to undergo RI for one year. By judgment impugned dated 16.04.2008 the findings recorded by the learned Magistrate have been affirmed in its entirety.

3. Counsel for the accused/applicant submits that there is no evidence to show that the accused/applicant was rash and negligent while driving the

vegetable laden auto rickshaw yet both the Courts below have fallen in a serious legal error by convicting him under Section 304-A assimilating the conviction under Section 279 IPC. He submits that the accused/applicant being in a drunken state himself was responsible for falling from the moving auto rickshaw and met unfortunate untimely death.

4. The carelessness of the accused/applicant is writ large from the fact that he allowed the deceased to board in the vegetable laden auto rickshaw when he was in a drunken state. PW-1 has also stated that on account of the vehicle rolling on the slope was in high speed and this way the accused/applicant was supposed to control the same but he did not do so and the unfortunate incident occurred involving the death of the deceased. Even the Doctor (PW-5) has stated that apart from number of injuries the deceased has suffered fracture of skull bone and the death was the outcome of coma and the death was accidental in nature. The report given by the Doctor (PW-5) is Ex.P-7. PW-3 though has not supported the seizure of the papers pertaining to the offending vehicle yet he has admitted his signature thereon. Evidence of PW-1, 2 and 5 clearly goes to show that the death of the deceased was accidental which had taken place on account of rash and negligent act of the applicant where he permitted a drunken fellow on the already vegetable laden auto rickshaw which he was not supposed to do. PW-4 has clearly stated that he was informed by PW-2 that accused/applicant was driving the said auto rickshaw in a negligent manner where on account of being hit by a barrier he suffered head injuries and met an untimely death. Thus there is enough evidence to prove the rash and negligence on the part of the accused/applicant leading to the death of innocent person, therefore, no fault can be found in the well reasoned findings recorded by both the Courts below particularly the conviction part thereof. Hence the conviction of the accused/applicant is hereby maintained.

5. As regards sentence keeping in mind the fact that the incident had occurred in the year 1998 and by already remaining in prison for 13 days he had suffered a lot for his felony, this Court does not see any logical reason in

again sending him to jail after a lapse of substantial period of time. Being so, the sentence imposed on the accused/applicant is reduced to the period for which he had already been in jail. This Court however directs the applicant to pay fine of Rs.3000/- to be deposited in the trial Court within a period of 4 months from today or else he may not derive the benefit of this order.

6. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay