

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 366 of 2008

Devendra Singh Thakur S/o Shivcharan Singh Thakur, aged about 32 years, Occupation Driver, R/o Village Tokapal (wrongly mentioned Tongpal) Police Station Parapa, District Batar (CG)

---- Applicant

Versus

The State of Chhattisgarh through Collector Bastar, Jagdalpur (CG)

--- Respondent

For Applicant	:	Smt. Rajkumari Yadav, Advocate on behalf of Shri Manoj Mishra, Advocate
For Respondent	:	Shri Himanshu Kumar Sharma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

03/04/2019

Case of the prosecution unfolds that on 14.10.2002 when the deceased Prabha Verma along with the other co-passengers was returning from Jagdalpur after watching Dussehra procession in a Jeep bearing registration No. CG17D/0138 which was driven by the accused/applicant in rash and negligent manner it dashed against a stationary truck as a result of which one of her eyes got protruded and she fell off the jeep meeting an unfortunate death on the spot.

2. On the report lodged by Mithlesh Verma (PW-4) Dehati Nalisi was registered on the basis of which FIR (Ex.P-10) came to be recorded under Sections 279 and 304-A IPC. Completion of investigation led to filing of charge sheet against the accused/applicant under the said sections.

3. Learned Judicial Magistrate First Class, Jagdalpur vide its judgment dated 28.01.2008 held the accused/applicant guilty under Sections 279 and 304-A IPC and imposed the sentence of varying quantum. Learned lower Appellate Court also proved the findings recorded by the learned Magistrate vide judgment impugned dated 14.05.2008 passed in Criminal Appeal No.07/2008.

4. Counsel for the accused/applicant submits that the Courts below have gone off the record while holding the accused/applicant guilty under Sections 279 and 304-A IPC ignoring the fact that it is the truck which was parked on the road which led to the tragic accident involving the death of the deceased. She submits that the evidence of the witnesses has not given thoughtful consideration while holding the accused/applicant guilty and, therefore, the judgment impugned is liable to be set aside. State counsel however supports the judgment impugned being just and proper and based on proper appreciation of the evidence on record.

5. The evidence of PW-4 and other co-passengers examined as PW-1, PW-3, PW-5 and PW-6 clearly goes to show that at the relevant time the accused/applicant was driving the offending vehicle at excessively high speed of 80-90 Kilometer per hour and on seeing the truck parked by the side of the road, he tried to take his vehicle forward but the deceased boarding the said jeep got entangled by the hook of the truck, fell off and one of her eyes got protruded. Over all impact of the accident was unfortunate and untimely death of the deceased. Almost all the witnesses have stated that even after being warned by them the accused/applicant was not minimizing the speed of the vehicle which ultimately dashed the stationary truck. Doctor (PW-7) who conducted postmortem examination on the body of the deceased has clearly stated that she noticed number of injuries including fracture and that the brain material of the deceased had come out. She has opined the cause of death as a result of excessive bleeding and shock.

6. Thus the rashness and negligence on the part of the accused/applicant in driving the offending vehicle carrying number of passengers on board at an uncontrollably high speed is fully established involving the death of an innocent passenger. No error is noticeable in the judgment impugned as far as conviction part thereof is concerned which is accordingly maintained.

7. As regards sentence, keeping in mind the fact that the incident had taken place in the year 2002 involving the passage of almost 17 long years since then and that the accused/applicant has already remained in jail for 25 days, this Court does see any propriety in dispatching the accused/applicant to jail and disturb his already well settled family life. His sentence, therefore, is reduced to the period already undergone by enhancing the fine to Rs.5,000/- from what has been imposed by the Courts below. Let this enhanced amount be deposited in the trial Court by the accused/applicant within a period of 4 months from today otherwise benefit of this order will not be available to him.

8. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

jjyotishi/ajay