

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 533 of 2008**

- Khagesh Kumar, S/o Lakhan Lal Yadav, aged about 24 years, R/o village Bhauthidih, P.S. - Suhela, District Raipur (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : P.S. Suhela, District Raipur (C.G.)

---- Respondent

For Applicant	:	Shri Anil Singh Rajput, Adv.
For Respondent/State	:	Shri Wasim Miyan, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****12/07/2019**

01. Being aggrieved by the order dated 31.07.2008 passed by 2nd Additional Sessions Judge, Baloda Bazar, in Criminal Appeal No.301/2004 confirming the judgment and order dated 03.11.2004 passed by Judicial Magistrate First Class, Baloda Bazar, in Criminal Case No.1343/2004 convicting the accused/applicant under Sections 279 and 304 (A) of IPC and sentencing him to pay fine of Rs.200/- and R.I. for six months with fine of Rs.1,000/-, plus default stipulation respectively.
02. Brief facts of the case are that on 24.07.2002 at about 10.00 AM, complainant Jagatram Yadav, owner of Tractor and

Trolley bearing registration No. M.P.-23-JA-6829, lodged an FIR in Ex.P/12 alleging therein that on that very day at about 8.30 AM, when applicant Khagesh Kumar, who is brother of complainant Jagatram Yadav, was driving the tractor trolley and was going to village Kesla after loading *Pairakhatia* in it along with labourer Toranlal, Nohar, Hemant and Punau, the said tractor and trolley met with an accident with electric wire due to rash and negligent driving of the applicant, as a result of which Punau Ram Nohar and Toranlal sustained injuries and, thereafter, they were taken to hospital where Punau Ram Nohar declared brought dead.

03. After completion of usual investigation, charge sheet was filed against the accused/applicant under Sections 304 (A) and 336 IPC, however, the charges under Sections 279, 304-A and 337 of IPC were framed by the trial Court against the accused/applicant.

04. So as to hold the accused/applicant guilty, the prosecution examined as many as 16 witnesses. Statement of the accused/applicant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. Vide judgment and order dated 03.11.2004 the trial Magistrate has convicted the applicant under Sections 279 and 304-A IPC. The judgment of the trial Court has been confirmed by the appellate Court vide impugned judgment

dated 31.07.2008, hence this revision.

06. Learned counsel for the applicant submits that the manner in which the appeal has been dismissed by the learned appellate Court cannot be said to be satisfactory. He would further submit that non application of mind and non consideration of the material available on record by the appellate Court raised question of consequent failure to discharge its judicial obligation on the rights of the applicant. It is next submitted that the learned Courts below failed to appreciate the evidence of Kumari Bai, wife of the deceased and Budaru Ram, brother of the deceased properly and the conclusion drawn in holding the applicant guilty of the offence punishable under Sections 279 and 304 (A) IPC is contrary to the evidence on record. The rash and negligent driving of the applicant was not proved by reliable and cogent evidence and in absence of such proof no liability can be fixed on the applicant. It has been also submitted that most of the prosecution witnesses turned hostile and have not supported the prosecution case saying that they have not seen the applicant driving the vehicle.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the applicant is in accordance with law and there is no infirmity in the same.

08. Heard learned counsel for the parties and perused the material available on record.

09. Toran Lal (PW/1) is the witness, who at the time of incident was sitting on the Tractor Trolley, has stated that he is not aware as to who was driving the offending vehicle. On being asked by the Court that as he entered in to compromise with the applicant, therefore, is not disclosing the truth, has been denied. Nohar Lal (PW/2) and Hemant Kumar (PW/4) have stated that the deceased died when he came into contact with electric wire. These witnesses have also stated that they are not aware as to who was driving the offending vehicle at the time of incident. Amarchand (PW/6), father of the deceased, is hearsay witness. He has stated that he came to know about the death of deceased due to rash and negligent driving of the applicant by the persons present at the spot. In cross-examination, this witness admits that he was informed by the crowd present there and he saw the applicant standing near tractor. Kumari Bai (PW/8) is the wife of deceased. She has stated that her husband died due to electric current when he was going in the offending vehicle. Budharu (PW/11) has stated that on the date of incident, the offending vehicle tractor trolley was being driven by the applicant in which pairakutti had been loaded. He was sitting on the tractor, whereas the deceased was sitting on trolley on pairakutti, who was rubbed with electric wire and died. The applicant was driving tractor trolley in moderate speed. This witness has also stated that had the applicant blown horn and made them aware of electric wire, they would have bent their

heads and the incident could not have been occurred. Kamal Singh Chandrakar (PW/14) – Head Constable, recorded mere intimation vide Ex.P/11.

10. Close scrutiny of the evidence makes it clear that most of the prosecution witnesses, except Amarchand (PW/6) and Kumari Bai (PW/8), father and wife of the deceased, have not stated anything specific against the applicant and what they deposed is that the deceased died when he came into contact with electric wire. That apart, Budharu (PW/11), who at the time of incident was present and sitting on the tractor has specifically stated that the tractor and trolley was being driven by the applicant in a moderate speed and the incident could not have been occurred if prior warning had been given regarding electric wire. From the evidence of prosecution witnesses including PW/6 and PW/8, father and wife of deceased, what picture emerged is that the deceased did not die due to rash and negligent driving of the applicant.

The requirement of Section 304-A has been dealt with by Hon'ble the Supreme Court in the matter of **Suleman Rehiman Mulani & Anr V. State of Maharashtra** reported in **1968 (2) SCR 515** which reads thus :

“To impose criminal liability under s. 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be

*the cause causans; it is not enough that it may have been the **cause sine qua non.***"

11. Thus, from the aforesaid evidence and material on record and in view of the decision of Hon'ble Supreme Court in the matter of **Suleman (Supra)**, it is proved beyond reasonable doubt that the applicant has no direct nexus with the crime in question and deceased did not die due to rash and negligent driving of the applicant. The trial Court while convicting and sentencing the accused/applicant has not considered the evidence of the prosecution in its true perspective and thereby committed error in convicting him.

12. In view of what has been discussed above, the findings recorded by the Courts below cannot be sustained in the eye of law and are liable to be set aside. The revision is thus allowed, judgment impugned is set aside and the accused/applicant stand acquitted of the charges levelled against him. The applicant is on bail, his bail bond shall stand discharged.

13. Revision is thus allowed.

Sd/-

(Rajani Dubey)
JUDGE