

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 785 of 2008

Gopal Nayak, age – 24 years, S/o Shri Kholuram Nayak, R/o Village – Paterapali, P.S. Bagbahara, Tahsil and District – Mahasamund, C.G.

---- Applicant

Versus

State of Chhattisgarh, Through P.S. Bagbahara, Tahsil and District – Mahasamund, C.G.

---- Respondent

For Applicant	:	Shri J.A. Lohani, Adv.
For Respondent/State	:	Shri Priyank Rathi, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

10.07.2019

The present revision arises out of the impugned judgment of conviction and order of sentence dated 01.12.2008 passed by the Sessions Judge, Mahasamund, C.G. in Cr. Appeal No.47/2008, whereby the learned appellate Court below has confirmed the conviction and sentence of the applicant as awarded by the learned Judicial Magistrate First Class, Mahasamund, vide its judgment dated 20.03.2008 in Cr. Case No. 545/2007 for the offence under Section 304(A) of the IPC and sentenced him to undergo RI for two years and to pay fine of Rs. 5,000/-, with default stipulation.

2. Brief facts of the case are that on 09.10.2007 at about 08.00 a.m., the grand son of the complainant namely Gaurav, aged about 5-6 years old, was crossing the road from his old house to new house, at that time, the applicant who was driving the tractor trolley bearing

registration number CG 06 B 0235 in rash and negligent manner, dashed the child Gaurav(deceased), due to which he sustained grievous injuries and was shifted to the hospital, where he died. Thereafter, a report was lodged in the police station by grandfather of the deceased namely Rajnarayan Upadhyay. After completion of investigation, charge-sheet was filed and charges were framed against the accused/applicant under Section 304(A) of the IPC by the trial Court.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 09 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide judgment of conviction and order of sentence dated 20.03.2008, learned Judicial Magistrate First Class has convicted the accused/applicant under Section 304(A) of the IPC and sentenced him to undergo RI for two years and to pay fine of Rs.5,000/-, with default stipulation. This order was appealed by the applicant and in the appeal, learned appellate Court has confirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing this revision as far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year

2007 and thereby about 12 years have rolled by since then, he is aged about 40 years, the applicant has already remained in jail for about 10 days and no useful purpose would be served in again sending him to jail. Therefore, it would be appropriate in the interest of justice if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned State counsel has no objection to this proposition.

8. Having gone through the material on record and the evidence of the witnesses including Rajnarayan Upadhyay (PW-1), Smt. Shanti Upadhyay (PW-2), Geeta Upadhyay (PW-3), Bhajanlal (PW-6), Lalit Sahu (PW-8) and Dr. Seema Binkar (PW-9) establishes the involvement of the accused/applicant in the crime in question. This Court does not see any illegality in the findings recorded by both the Court below as regards conviction of the applicant under Section 304(A) of the IPC. Being so, it is hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2007 and further that the applicant has already remained in jail for about 12 days, no useful purpose would be served in again sending him to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him with a direction to pay additional fine of Rs.5000/-.

10. In view of the above, the revision is partly allowed. While maintaining the conviction of the applicant, his jail sentence is reduced to the period already undergone by him. However, he is directed to pay an additional fine of Rs.5,000/- within six months from today, failing which he shall have to undergo RI for two months. The fine amount of

(Rs.5000/-) so deposited by the applicant before the trial Court be paid to the parents of the deceased Gaurav, after due verification by the trial Court. The applicant is reported to be on bail. His bail bonds stand discharged.

yasmin

Sd/-
(Rajani Dubey)
Judge