

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 440 of 2009

Minesh Kumar Tamrakar, S/o Jogendra Tamrakar, aged about 24 years, R/o. Village – Amlipadar, Police Station Deobhog, District Raipur, CG.

---- **Applicant**

Versus

State of Chhattisgarh through the District Magistrate, District Raipur, CG.

---- **Respondent**

For Applicant : Shri Mandwi Bhardwaj, Advocate

For State/Respondent : Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

02/05/2019

Facts of the case necessary for disposal of this revision petition in brief, are that on 04.07.2007 Premlal Pradhan (PW-2) along with his wife (PW-1) and his son aged about 1 ½ years was going to attend a marriage on bicycle and on the insistence of his minor son for biscuit, he parked his bicycle by the side of the road and went to the nearby shop for getting biscuit, the accused/applicant herein came there riding a Hero Honda motorcycle bearing registration No. CG. 04/3511 and hit the bicycle as a result of which it fell down and caused number of injuries to the minor child who was sitting in the basket fitted on its handle. Thereafter he was taken to Deobhog hospital and while being taken to Dharamgarh hospital on reference, he succumbed to the injuries suffered by him on the way itself. On the report lodged by Premlal Pradhan (PW-2), offence under Sections 279, 337 and 304-A IPC was registered against the accused/applicant and after investigation the *challan* was filed accordingly.

2. By judgment dated 30.04.2009 learned Magistrate convicted the accused/applicant under Sections 279 and 304-A IPC and sentenced him to undergo RI for six months and pay fine of Rs. 1,000/-, plus default

stipulation. The findings recorded by learned Magistrate have been confirmed vide judgment impugned dated 05.09.2009 passed in Criminal Appeal No. 34/2009. Hence this revision.

3. Counsel for the accused/applicant submits that most of the witnesses have not supported the case of the prosecution but even then the both the Courts below have convicted the accused/applicant under Section 304-A IPC which is not proper. State counsel however supports the judgment impugned.

4. From the evidence of PW-1 – the mother of the deceased child it is apparent that while her husband had gone to buy the biscuit by parking the bicycle beside the road, the accused/applicant came there riding the offending motorcycle in a rash and negligent manner and hit the bicycle as a result of which it along with the minor child fell towards the road side causing head injuries to the child which ultimately proved fatal while being taken to the hospital. PW-2 has also supported the case of the prosecution. Though PW-3, PW-4, PW-5 and PW-6 have stated that the bicycle fell down on account of the movement of the child sitting in the basket yet it cannot be taken as a complete truth because these witnesses had come only after hearing the crises raised by PW-1 after the accident had already taken place and therefore, there was no occasion for them to see the occurrence. The motorcycle in question was also subjected to physical examination but yet the brake, clutch and accelerator were found to be in order. It has also come in the evidence of the witnesses that the place where the accident took place was a busy locality and therefore, the accused/applicant was supposed to take proper care while riding the motorcycle and should have been at the moderate speed. The medical evidence including the postmortem report also go to show that apart from other injuries, the frontal head bone of the deceased child was fractured. Thus, the negligence on the part of the accused/applicant in riding his

motorcycle and causing injuries to the minor child ultimately leading to his death is quite evident. His conviction therefore, is fully justified and is hereby maintained.

5. As regards sentence, keeping various factors in mind in particular that the incident had taken place in the year 2007 and the accused/applicant has already remained in jail for 19 days, this Court is of the opinion that the interest of justice would be met if the sentence imposed on him is reduced to the period already undergone, by enhancing the fine amount to Rs.3,000/- from that of Rs.1,000/-, to be deposited in the trial Court within a period of four months from today. Failure in making such deposit will not make this order available to the applicant.

6. Revision thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge