

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 823 of 2008

Atul Agrawal, aged about 40 years, S/o Kailash Sharan Agrawal,
R/o. D-6, Shriram Nagar, Raipur, Police Station Civil Lines, Raipur,
Tahsil and District Raipur, CG.

---- Applicant

Versus

State of Chhattisgarh through Police Station Bagbahra, District
Mahsamund, CG.

---- Respondent

For Applicant : Shri Manoj Paranjpe, Advocate

For State/Respondent : Shri Himanshu Sharma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

05/04/2019

Facts of the case, in brief, are that on 04.10.2007 when deceased Madhu Ben was returning home from the shop on foot, the Santro vehicle bearing Registration No. CG-06/2233 driven by the accused/applicant in a rash and negligent manner came there and hit her causing injuries on her body leading to her death four days thereafter during treatment to the hospital. On the basis of report Ex. P-4 lodged by Jagdish Pujara (PW-1) – son of the deceased, initially the offences under Sections 279 and 337 IPC were registered against the driver of the offending vehicle who later on was identified as the accused/applicant herein. However, while filling the charge-sheet, the offence was mentioned as under Section 304-A IPC as by then the deceased was dead.

2. The trial Court vide judgment dated 17.11.2008 held the accused/applicant guilty u/s 304-A IPC and sentenced him to undergo RI for two years with fine of Rs. 5,000/-, in default of payment of fine to undergo SI for six months. However, in appeal the conviction of the

accused/applicant has been maintained but the sentence has been reduced to RI for one year with fine of Rs. 5,000/- and in default of payment of fine to undergo SI for two months, vide judgment impugned dated 24.12.2008.

3. At the very outset counsel for the applicant submits that he is not pressing the conviction of the applicant but his sole request would be for reduction of the sentence to the period already undergone keeping in mind the matter being quite old and that the applicant has already remained inside for 12 days. State counsel however, supports the judgment impugned in letter and spirit.

4. From the evidence of the witnesses in particular that of PW-1, PW-2, PW-3 and PW-4 it is manifest that on the date of incident when the deceased was returning home on foot, the accused/applicant while driving the offending vehicle in a rash and negligent manner hit her which resulted in her death four days thereafter while taking treatment in the hospital. PW-4 who initially did medical examination of the deceased when she was alive, noticed number of injuries on her body including head vide report Ex. P-2 which were informed to her by the people who had brought her there, to have been caused in the accident. Likewise, PW-9 who conducted the postmortem examination of the deceased also noticed number of injuries on her body vide report Ex. P-5. This apart, no evidence has been adduced by the defence showing the accident to be the outcome of any mechanical failure in the vehicle and thus the only conclusion which could be arrived at on the basis of record is that the accident involving the death of the deceased was the rash and negligent driving of the offending vehicle by the accused/applicant. Both the Courts below have thus not

committed any legal error in holding the accused/applicant guilty u/s 304-A IPC. His conviction is thus maintained.

5. As regards sentence, keeping in mind various factors existing at the present such as the case is quite old, he has already remained inside for 12 days and by now he must be reeling under the pressure of family responsibilities, interest of justice tilts in his favour. Accordingly this Court does not see any reason in again sending him to jail and thereby disturbing his well settled family life. Being so, the jail sentence imposed on him is reduced to the period already undergone by the accused/applicant. However, in lieu thereof the fine of Rs. 5,000/- as imposed by the courts below is enhanced to Rs. 10,000/- to be deposited by him in the trial Court within a period of four months from the date of receipt of copy of this order. This order will lose its efficacy if the accused/applicant fails to make such deposit within the time mentioned above.

6. With the above observations and modifications in the order impugned, the revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge