

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 311 of 2007

Kamta Prasad, aged 31 years, S/o Shri Tetku Prasad, By
Profession Driver, R/o Purana Ravan Bhata, P.S. Mahasamund,
Tahsil and District Mahasamund (CG).

---- Applicant

Versus

State of Chhattisgarh through the P.S. Mahasamund, District
Mahasamund (CG).

---- Respondent

For Applicant : Shri Jameel Akhtar, Advocate

For State/Respondent : Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

11/02/2019

This is a case where the accused/applicant driving the Jeep bearing registration No. MP-23/2880 rashly and negligently ran over a boy who at the relevant time was trying to cross the road. The boy succumb to the injuries in the hospital during treatment. Offence under Section 304 (A) IPC was registered against the accused/applicant and after conclusion of trial he was convicted accordingly by Chief Judicial Magistrate, Mahasamund vide order dated 28.08.2008 and sentenced to undergo RI for one year. In appeal also, learned lower Appellate Court maintained the findings recorded by learned Magistrate vide judgment impugned herein dated 30.06.2007. Hence this revision.

2. 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 fact that the incident is of the year 2001 and the applicant has already

remained inside for 17 days. State counsel however supports the judgment impugned in letter and spirit.

3. It is apparent from the record that on seeing the boy crossing the road the applicant could not stop the vehicle which indicates that it was being driven at an excessively high speed. Accident involving the death of the boy has also been corroborated by one of the passengers of the offending Jeep namely Ajay Kumar (PW-2). Offending vehicle was subsequently seized under Ex. P-2 which was duly identified under Ex. P-4 and the driving licence of accused/applicant was also seized under Ex. P-3. The act of accused/applicant being rash and negligent while driving the vehicle is further established from the fact that even after seeing the boy running across the road could not apply the brake and trampled the boy which ultimately resulted in his death. The factum of accidental death of the deceased boy on account of head injury has also been corroborated by the postmortem report (Ex. P-5). This being the position, both the Courts below do not appear to have gone wrong in slapping conviction on the accused/applicant under Section 304 (A) IPC. It is hereby maintained.

4. As regards sentence, keeping in mind various factors existing for the present, such as the case is quite old, that he has already remained inside for 17 days and by now he must be reeling under the pressure of family responsibilities, interest of justice tilts in his favour where he can not be required to be sent to jail at this stage. Accordingly this Court does not see any reason to again send him to jail and thereby disturb his well settled family life. Being so, the jail sentence imposed on him is reduced to the period already undergone. However, in lieu thereof the fine of Rs. 3,000/- is being imposed to be deposited by the applicant in the trial Court within a period of three 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.

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

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/ajay