

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 381 of 2010

Vijay Kumar, S/o Jaiveen Isai, aged about 40 years, R/o Joratarai,
Thana Bhilai Bhatti, Bhilai Durg (CG) --- **Applicant**

Versus

State Of Chhattisgarh through the P.S. Jamul, District Durg (CG)
---- **Respondent**

For Applicant : Shri T.K. Tiwari, Advocate.

For Respondent : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

28/03/2019

Facts of the case in brief are that on 30.09.2002 at about 4 PM when Dinesh Kumar (PW-2) and Mahesh Kumar (PW-1) were going on their Yamaha motorcycle bearing registration No. CG 07 ZN/2317 and as soon as they reached near the engineering college a vehicle known as crane bearing registration No. CG 07 ZH/0201 driven by the accused/applicant came there, hit them as a result of which they fell down and suffered injuries. It is said that the accused/applicant was driving the vehicle in a rash and negligent manner. On the basis of Dehati Nalsi (Ex.P-1), FIR (Ex.P-8) was taken down, and the vehicles being motorcycle and crane were also subjected to seizure under Ex.P-3 and Ex.P-2 respectively. After investigation the charge sheet was filed followed by framing of charge under Sections 279 and 338 IPC.

2. Learned trial Court vide its order dated 22.05.2010 convicted the accused/applicant under Sections 279 and 338 IPC and imposed the sentence of RI for 3 months with fine of Rs.1000/-, plus default stipulation. The said order has been affirmed in appeal also vide judgment impugned dated 28.07.2010 passed in Criminal Appeal No.36/2010.

3. Counsel for the accused/applicant submits that though there is no evidence connecting the accused/applicant with the crime in question yet he has been held guilty by the Courts below which is not sustainable in the eye of law. State counsel however supports the judgment impugned.

4. From the evidence of PW-1 and PW-2 who are the victims to the rash and negligent driving of the accused/applicant have stated that when they reached near the engineering college on their motorcycle, accused/applicant – driver of the offending vehicle came there driving the same in a rash and negligent manner, hit them, made them fall on the ground and caused number of injuries on their body. PW-2 has stated that after being hit by the offending vehicle he suffered number of injuries and the bone of his right hand got fractured and he remained under plaster for two months. PW-2 has also corroborated the version of PW-1. No evidence has been adduced by the defence to show whether there was any mechanical fault in the offending vehicle leading to the accident resulting in injuries to Dinesh (PW-2). PW-9 has clarified that at the relevant time the accused/applicant was working under him as driver. He has also stated that at the relevant time he was engaged for driving the crane in question. From the evidence of Radiologist (PW-5) also it is evident that bone of right heel of PW-2 was found to be fractured. Thus rash and negligence on the part of the accused/applicant while driving the offending vehicle on the public road is writ large. Both the Courts below have been fully justified in convicting the accused/applicant as described above. No illegality or infirmity is there in the judgment impugned as far as conviction of the accused/applicant is maintained.

5. As regards sentence, keeping in mind the fact that the incident had taken place in the year 2002 and thereby almost 17 years have rolled by, and further keeping in mind the fact that the accused/applicant has already remained inside the jail for 7 days, this Court thinks it in the

interest of justice to reduce the sentence imposed on him to the period already undergone. Order accordingly.

6. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

jyotishi/ajay