

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 482 of 2019**

State of Chhattisgarh Through District Magistrate, District Surguja (C.G.)

---- Appellant

Versus

Mukesh Rajak, S/o Ramnihora Rajak, Aged about 26 years R/o Machatoki, P.S. Bango, District Korba (C.G.).

---- Respondent

For Appellant	:	Mr. K.K. Dewangan, Dy. Govt Advocate
For Respondent	:	None.

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

10/07/2019

1. Heard finally.
2. This acquittal appeal is preferred under Section 378 (1) of the Cr.P.C against the judgment dated 04/09/2015 passed in Criminal Case No. 2417/2012 passed by the Judicial Magistrate First Class, Ambikapur whereby the Appellant has been acquitted from the charge punishable under Sections 279 & 338 of the IPC.
3. Facts of the case are that on 18/04/2015 Complainant Kripashankar (PW1) lodged a FIR (Ex.P-1) alleging therein that his nephew (Bhanja) namely Krishna was dashed by a truck bearing registration No. CG04 JB 8868, which was being driven by the accused/Respondent in a rash and negligent manner. As a result of which Krishna got injured. The Injured was medically examined by Dr. B.M. Kamre (PW6). After

investigation, a charge-sheet has been filed. The learned Judicial Magistrate First Class framed the charges. To prove the guilt of the accused/Respondent, the prosecution has examined as many as 8 witnesses.

4. After trial, the learned Judicial Magistrate First Class has acquitted the accused/Respondent from the charges framed against him. Hence, this acquittal appeal has been preferred by the State.
5. Counsel appearing on behalf of the Appellant/State submits that Injured Krishna (PW4) and Santosh (PW2) have supported the case of the prosecution and have categorically stated that at the time of incident, the vehicle was being driven by the Respondent in a rash and negligent manner, inspite of this fact the learned Judicial Magistrate First Class has acquitted the accused/Respondent from the charge.
6. I have heard counsel for the Appellant and perused the records of the trial Court as well as impugned judgment.
7. Though Injured Krishna (PW4) has deposed that at the time of incident, the truck was being driven by the respondent in a rash and negligent manner, during his cross-examination in para 5 & 6 he categorically stated that he does not recognize the Respondent and he only saw him first time in front of the Court. This witness also admitted that there was name of the Respondent in theailable warrant, therefore, he took the name of the Respondent. From the above admission of this witness, it is clear that neither he has known to Respondent and nor recognized him.

8. Santosh (PW2) has deposed that at the relevant time the Accused/Respondent was driving the truck in rash and negligent, but in his cross-examination in para 3, he admitted that he came to know about the incident by a *Thelawala* and he had not seen the incident. He had only seen the truck while going. From the above admission of this witness, it is also clear that he had not seen the Respondent driving the vehicle. Therefore, there is no evidence on the record, on the basis of which, it can be said that at the relevant time, the truck was being driven by the Respondent.
9. The trial Court has elaborately discussed the entire evidence and came to the conclusion that basis ingredients for establishing offence under Sections 279 & 338 of the IPC is lacking and recorded finding of acquittal.
10. After reassessment of entire evidence, this Court has no reason to record contrary finding. It is not a case where the Respondents should be called for hearing again for full consideration of this appeal.
11. Accordingly, the acquittal appeal is liable to be and is hereby dismissed.

Sd/-
(Arvind Singh Chandel)
Judge