

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.16 of 2013**

Gendram, S/o Nankuram Bareth, aged about 35 years, R/o Village Sandail,
Police Station Korba, District Korba, Chhattisgarh

---- **Applicant**

versus

State of Chhattisgarh through Police Station Baradwar, District Janjgir-
Champa, Chhattisgarh

--- **Respondent**

For Applicant	:	Shri Gurudev I. Sharan, Advocate
For Respondent	:	Shri Amit Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board**

2.4.2019

1. This revision is directed against the judgment dated 31.12.2012 passed by the 1st Additional Sessions Judge, Sakti, District Janjgir-Champa in Criminal Appeal No.168 of 2010 affirming the judgment dated 24.9.2010 passed by the Judicial Magistrate First Class, Sakti in Criminal Case No.2304 of 2002, whereby the Applicant has been convicted under Section 304A of the Indian Penal Code and sentenced with rigorous imprisonment for 6 months and fine of Rs.1,000/- with default stipulation.
2. As per the prosecution story, on 6.5.2001 at about 7:45 a.m., Complainant Khikhram (PW1) and deceased Pooran Suryavanshi were coming to their village by a bicycle. Allegedly, near bus-stand of Baradwar, a dumper, which was coming from opposite direction, dashed the bicycle as a result of which the deceased sustained injuries and thereafter died. Allegedly, the said dumper was being driven by the Applicant rashly and negligently due to which the accident took place. A report was lodged by Khikhram (PW1). On

completion of the investigation, a charge-sheet for offence punishable under Sections 279, 337 and 304A of the Indian Penal Code was filed. Charges under Sections 279, 338 and 304A of the Indian Penal Code were framed. Total 12 witnesses were examined by the prosecution in support of its case. Statement of the Applicant was also recorded under Section 313 Cr.P.C. in which he denied the guilt. After trial, the Trial Court convicted the Applicant under Sections 279, 337 and 304A of the Indian Penal Code and sentenced him for the offence under Section 304A of the Indian Penal Code with rigorous imprisonment for 6 months and fine of Rs.1,000/-. The judgment of the Trial Court has been affirmed by the Appellate Court. Hence, this revision.

3. Learned Counsel appearing for the Applicant submits that there is no evidence on record on the basis of which it could be established that at the relevant time the alleged dumper was being driven by the Applicant. Therefore, findings of the Courts below are contrary to the evidence on record.
4. Learned Counsel appearing for the State supports the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and perused the records with due care.
6. Complainant Khikhram (PW1), who also sustained injuries in the accident, is the eyewitness of the case. He has only deposed that a dumper being driven rashly and negligently dashed their bicycle near the bus-stand and as a result of which he sustained injuries and Pooran (deceased) died. He has categorically stated that he did not know who was driving the dumper and he also did not

recognise the Applicant.

7. Firturam (PW2) and Ravi Kumar (PW5) have also not supported the case of the prosecution and turned hostile.
8. Anokhiram (PW3) and Fatteram (PW4) are the witnesses before whom inquest proceeding was done. Home-Guard Ramlal (PW6) has only stated that on getting an intimation after the incident, he went to the bus-stand. At that time, a crowd had gathered there to beat a driver of a vehicle. He brought the driver with him and locked him in the lock-up.
9. Only on the basis of the above evidence, both the Courts below have arrived at the finding that since the crowd was beating the Applicant, the offending vehicle was being driven by the Applicant himself. Apart from the above, there is no other evidence available on record on the basis of which it could be said that at the relevant time the offending vehicle was being driven by the Applicant. Home-Guard Ramlal (PW6) has also admitted the fact that he did not recognise the Applicant nor did he know the number of the offending vehicle. If a mob catches a person after an accident and begins to beat him, it does not mean that he himself was driving the offending vehicle. There is possibility that more than one person would be sitting in the offending vehicle and the actual driver would have absconded and other person sitting in the offending vehicle is caught and being beaten by the mob. It is the duty of the prosecution to establish by cogent evidence that at the relevant point of time the offending vehicle was being driven by the Applicant himself, but the prosecution has failed to establish the same. Therefore, the findings of the Courts below are contrary to the evidence available on record. Thus, the judgments of the

Courts below are held to be perverse.

10. Consequently, the revision is allowed. The impugned judgment of conviction and sentence is set aside. The Applicant is acquitted of the charges framed against him.
11. Records of the Courts below be sent back along with a copy of this order for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge