

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2070 of 2019

State of Chhattisgarh, Through - Police Station - Ambikapur,
District - Surguja (C.G.) **---- Petitioner**

Versus

Shiv Kumar @ Shiva, S/o- Late Chaitram Ghasiya, Aged
about- 39 years, R/o- Near Pahuna Shop, Police Station
Ambikapur, District- Surguja (C.G.) **---- Respondent**

For State/petitioner : Mr. Raghvendra Verma, Govt. Advocate

For Respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

17/10/2019

1. Heard on I.A. No. 1/2019, which is an application for condonation of delay in filing the instant petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 72 days in filing the petition is condoned.
3. Heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 12th March, 2019 passed by Judicial Magistrate First Class, Ambikapur District- Surguja (C.G.), in Criminal Case No. 1742/2014, wherein, the said Court acquitted the respondent for charges

under Sections 279, 337 & 338 of the Indian Penal Code, 1860.

5. In the present case, the respondent was driving a car at the time of accident while Sweety Agrawal (PW-2), Yogesh Agrawal (PW-3) and their children were sitting in a scooty which is two wheelers vehicle. Yogesh (PW-3) admitted (Para-5) that his vehicle was two wheelers and his license is valid for sitting of two persons and in this case four persons were sitting in the said vehicle (scooty). The Prosecution is under obligation to establish that respondent was driving his car negligently and rashly.
6. After evaluating the evidence of Sweety Agrawal (PW-2) and Yogesh Agrawal (PW-3), the Trial Court opined that negligence on the part of respondent is not established but negligence on the part of Yogesh Agrawal (PW-3) is established, as he was driving a two wheelers vehicle (Scooty) with four persons. It is likely that balance of two wheelers is disturbed and that may be a reason of accident.
7. Finding of the Trial Court is one of the plausible view, it is settled law that if two views are possible, the view which is favourable to the respondent/accused, should be accepted, therefore, this Court has no reason to record contrary finding regarding commission of offence. It is not a case where respondent should be called for hearing again for full consideration of this petition.

8. Accordingly, application for grant of leave to appeal is rejected. Consequently, this petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle