

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.132 of 2019**

- State Of Chhattisgarh Through Police Station- Darima, District- Surguja, Chhattisgarh.

---- **Petitioner****Versus**

- Lalchand Panika S/o Sukhlal Panika Aged About 30 Years R/o Village- Saraipara, Rajpuri, Police Station- Kotwali, Ambikapur, District- Surguja, Chhattisgarh.

---- **Respondent**-----
For the Petitioner/State : Smt. Shubha Shrivastava, Panel

Lawyer

For the respondent : None
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****20.02.2019.**

1. Heard on IA No.01/2019 for condonation of delay in filing the petition.
2. On due consideration, the application is allowed and the delay of 62 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition is preferred against the judgment of acquittal dated 10.7.2018 passed by Judicial Magistrate First Class, Ambikapur Distt Surguja (CG) in Criminal Case No.4835/2012 wherein the said Court acquitted the respondent for the charge under Section 304 A of the Indian Penal Code for driving vehicle bearing registration No.CG 15A 9368 rashly and negligently and causing death of one Ku. Sayal.

5. To substantiate the charges, the prosecution has examined as many as 8 witnesses. Jagat Ram (PW-1) deposed that he reached to the spot only after the incident. Tejbhan Singh (PW-2) also deposed before the trial Court that he has not seen the incident, therefore, unable to say who was driving the vehicle at the time of the incident. Dhanpati (PW-3) deposed in examination-in-chief that driver of the vehicle fled away from the spot after the incident. This witness has been subjected to leading questions and in answer to a leading question he deposed that the respondent was driving the vehicle, but in his cross-examination he deposed that he did not see the incident and did not know the name of the person who was driving the vehicle at the time of the incident. Heeralal (PW-4) has not supported the version of the prosecution. Durga Bai (PW-6) deposed that the driver was driving the vehicle slowly. Looking to the entire evidence, the trial Court opined that no one has witnessed the incident and as there is nothing on record as to who was driving the vehicle at the time of the incident, it is not established that the respondent was driving the vehicle at the time of the incident. View taken by the trial Court is one of the plausible view which is based on relevant material placed on record. It is not based on irrelevant and extraneous materials. It is not a case where the respondent should be called for full consideration of the matter.

6. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**