

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCRA No. 701 of 2009

- Dinesh Kumar Shukla, S/o- Shri Bhawani Shankar Shukla, Aged about- 35 years, R/o Village Kura, P.S.- Nandghat, Durg (C.G.)

---- Appellant

**Versus**

- State of Chhattisgarh, through- P.S.- Nandghat, District- Durg (C.G.)

---- Respondent

For Appellant : Shri Vaibhav A. Goverdhan, Advocate.

For State/Respondent : Shri Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna SharmaJudgment on Board17/02/2020

1. This petition is preferred against the judgment dated 24<sup>th</sup> September, 2009 passed by Additional Sessions Judge (F.T.C.), Bemetara, District- Durg (C.G.) in Sessions Trial No. 35/2007 wherein the said Court convicted the appellant for commission of offence under Sections 279 and 337 of the Indian Penal Code (for short "the IPC"), 1860 and sentenced him to undergo simple imprisonment for one month and fifteen days and fine of Rs. 300/- with further default stipulation.
2. In the present case, name of the complainant is Dinesh Kumar Soni. As per version of the prosecution, on 12<sup>th</sup> January, 2007 at about 09:15 pm, the appellant was driving a tractor & trolley bearing registration No. CG 07 ZG 0729 & CG 07 ZG 0730 respectively. The complainant was going to his village Kura from Nandghat. The appellant by driving negligently or intentionally

dashed the complainant that is why the complainant sustained injury. The matter was reported and investigated, the appellant was charge-sheeted and after completion of trial, the trial Court convicted as mentioned above.

**3. Learned counsel for the appellant submits as under:-**

(i) Charge was framed against the appellant under Section 307 of IPC, but he was not convicted for that section and no charge was framed for commission of offence under Sections 279 and 337 of IPC, but he was convicted for these two offences which is not permissible under the law.

(ii) There is nothing on record that the appellant was driving the vehicle rashly and negligently, therefore, his conviction for the said offences is not sustainable.

(iii) The trial Court has overlooked material omission and contradiction in the statement of the prosecution witnesses, therefore, finding of the trial Court is not sustainable.

(iv) The trial Court has not evaluated the evidence properly, therefore, conviction and sentence of the appellant is liable to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of evidence which is not required to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below wherein judgment has been passed.

6. Dinesh Kumar Soni (PW-1) deposed before the trial Court that at the time of incident, he was driving motor-cycle while the appellant was driving a tractor. As per version of this witness, the appellant dashed his motor-cycle that is why he sustained injury. The other witnesses namely Ambar Vajpayee (PW-2) and Rohit Kumar Nishad (PW-3) have deposed before the trial Court what is informed by the complainant. As per version of Dr. T.M. Mahitleshwar (PW-7), the complainant sustained simple injury as per his examination.
7. The trial Court after evaluating the evidence recorded finding that it is a case of negligent driving of vehicle and causing simple injury which falls within mischief of Sections 279 and 337 of IPC, 1860. In the present case, no charge is framed for driving vehicle rashly and negligently as defined under Sections 279 and 337 of IPC. The appellant was charged under Section 307 of IPC for which intention or knowledge is the basic ingredient while for commission of offence under Sections 279 and 337 of IPC any act done rashly and negligently is the basic ingredient. Ingredient of both the offences are different in nature.
8. In absence of charge of rashness or negligent driving, the appellant was not able to defend his case from that angle. There is a provision of Section 216 of the Code of Criminal Procedure, 1973 for altering the charge during trial, the trial Court should have altered the charge or should have framed the charge alternatively, but that is not done in the present case, therefore,

without charging for rashly and negligently driving, the finding of the said offence is not sustainable.

9. Accordingly, the appeal is allowed. Conviction and sentence of the appellant for commission of offence under Section 279 and 337 of IPC, 1860 is hereby set aside and he is acquitted of the said charge framed against him.

**Sd/-**

**(Ram Prasanna Sharma)**  
**Judge**

*Vasant*