

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1876 of 2019

State of Chhattisgarh Through The Police Station Darima, District-
Surguja, Chhattisgarh. **---- Petitioner**

Versus

Heeralal Tirkey S/o Late Sukhal Tirkey Aged About 55 Years R/o
Village Paratappur Mahuwari, District- Surguja, Chhattisgarh.

---- Respondent

For State petitioner : Mr. D.K. Tiwari, Dy.G.A.

For Respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

28/01/2020

1. Heard on I.A. No. 01/2019, which is an application for condonation of delay in filing of instant petition.
2. On due consideration, the application is allowed and the delay of 57 days in filing the instant petition is hereby condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of Cr.P.C.
4. This petition is preferred against the judgment dated 22-02-2019, passed by learned Judicial Magistrate First Class, Ambikapur, District-Surguja (C.G.), in Criminal Case No.45/2013, wherein the said Court has acquitted the respondent for commission of offence under Section 304-A of the I.P.C. 1860 for causing death of one Amar Sai by negligently driving motor-cycle bearing registration No. C.G.-15 ZH-7502.
5. To substantiate the charge, prosecution examined as many as 17 witnesses, though it is deposed by witnesses that

respondent was driving vehicle at the time of the incident but after evaluating the evidence the trial Court recorded finding that negligence on the part of the respondent is not established. Though, it is not on evidence that respondent was driving vehicle in high speed but from the evidence, the speed of vehicle is not ascertained. It has to be established that respondent has flouted the law which resulted into the accident. It is settled law that mere driving the vehicle at a high speed can not be said to be a sole factor which tantamount to rashness or negligence.

6. Looking to the totality of evidence, finding recorded by the trial Court is one of the plausible view if two views are possible, the view which is in favour of respondent/accused should be preferred.
7. In view of the legal position, it is not a case where interference of this Court is required with the judgment of the trial Court. It is also 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, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge