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HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.434 of 2011**

- Ganesh Prasad Tiwari, aged about 35 years, S/o Shri Kishun Prasad Tiwari, R/o Rajmahal Chowk, Kawardha, District – Kabirdham, Chhattisgarh

---- Applicant**Versus**

- State of Chhattisgarh, Through the District Magistrate, Kawardha, District – Kabirdham, Chhattisgarh

---- Respondent

For Applicant : Shri Ratnesh Kumar Agrawal, Adv.

For Respondent : Shri Ashish Tiwari, G.A.

Hon'ble Smt. Justice Vimla Singh Kapoor**Order on board****31.03.2021**

On 27.10.2008 at 8.30 p.m. when the accused/applicant was going to the market for buying sweetmeats and crackers on his motorcycle along with deceased Madhu Choubey, and as soon as they reached near the Ambedkar Chowk, in order to save a cyclist Ramsanehi (PW-4) he applied sudden break on his motorcycle which led to skidding of the same as a result of which they both fell of it. Madhu Choubey was taken to hospital by Roshan Singh Thakur (PW-1) but unfortunately she succumbed to the injuries suffered by her, while taking treatment in the hospital. The report was lodged by her husband (PW-3) and after postmortem examination on her body, the charge-sheet was filed under Sections 304 (A) and 337 IPC.

2. Learned Magistrate vide its judgment dated 19.05.2011 found the accused/applicant guilty under Sections 337 and 304 (A) IPC and imposed the sentence of RI for one year with fine of Rs.1000/- under Section 304 (A) and to pay fine of Rs.500/- under Section 337 IPC. The same has been affirmed in appeal also.

3. From the evidence of Roshan Singh Thakur (PW-1) who at the relevant time was standing at a beetle shop in Ambedkar Chowk, he saw the accused/applicant riding the motorcycle at an excessively high speed and when he applied break in order to save Ramsanehi (PW-4) who was paddling a cycle, he hit him and made him fall down on the ground and lose his consciousness. Ramsanehi (PW-4) has also stated that the accused/applicant was riding the motorcycle at a great speed and hit his bicycle, as a result of which he fell down on the ground and suffered injuries on various parts of his body. Dhananjay Choubey (PW-3) the husband of the deceased while supporting the case of prosecution has stated that the accused/applicant was riding the motorcycle at a high speed and hit the cyclist PW-4. Dr. Santosh Lunia (PW-6) who conducted the postmortem examination on the body of the deceased has noticed lacerated wound on the posterior of the skull and there was a compressed fracture also on her head. The cause of death of the deceased, according to this witness was hemorrhagic shock. Dr. Salil Mishra (PW-5) is the doctor who did MLC of the deceased as also the injured PW-4 had also supported the case of the prosecution. Sudden application of break by the accused/applicant which resulted in the hitting of the bicycle of PW-4 indicative of the fact that the accused/applicant was riding the

motorcycle at an uncontrollable speed. No evidence to the contrary has been brought forth by the defence to show that there was any mechanical fault in the motorcycle for which the accused/applicant lost his control over the same.

4. Thus, the arguments advanced by counsel for the accused/applicant and the perusal of material available on record could not convince this Court from taking a view other than the one taken by the Courts below in holding the accused/applicant guilty under Sections 304 (A) and 337 IPC. His conviction is therefore maintained.

5. As regards sentence, considering the fact and circumstances of the case, that the incident had taken place about 13 years back and that by remaining in jail for five days the applicant has already suffered a lot for his recklessness and therefore, this Court is of the opinion to reduce the sentence of the accused/applicant to the period already undergone. However, this Court deems it proper to enhance the fine amount to Rs.5000/- to be deposited by the accused/applicant in the trial Court. Order accordingly.

6. This order would be available to the applicant only after the enhanced fine amount is deposited by him.

7. The revision is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge