

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 96 of 2014

Govind Singh S/o Late Manohar Singh Thakur, aged about 58 years, R/o Archana, Road-wage, Power House, Bhilai, Civil & Revenue District Durg, CG.

---- Applicant

Versus

State of Chhattisgarh, through P.S. Balod, Civil & Revenue, District Balod, CG.

---- Respondent

For Applicant : Ms. Kiran Jain, Advocate.

For State/Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

07.04.2021

FIR (Ex.P-1) lodged by Dhaniram Sahu (PW-1) goes to show that on 17.11.2011 he received a telephonic information that on the Guru – Balod main road turning his brother Kuber and one Surendra met with an accident. Surendra was riding the motorcycle bearing registration No. CG 07 LA 3293 in which Kuber was sitting as a pillion rider. The accident took place when the mini bus bearing registration No. CG 07 E 2277 driven by the accused/applicant herein in a rash and negligent manner hit the motorcycle of the victims in which the pillion rider Kuber died on the spot whereas the main rider Surendra suffered number of injuries on his body including fracture of right tibia. On reaching the spot Dhaniram Sahu (PW-1) noticed the injury on the right foot, hand, forehead and head of Surendra, and his brother Kuber had suffered injuries on his forehead which led to his death. On the basis of FIR, offences were registered against the accused/applicant under Sections 279, 337 and 304-A IPC whereas the *challan* was filed after investigation by adding the offence u/s 338 IPC.

2. Learned trial Court vide judgment dated 14.08.2013 convicted the accused/applicant under Sections 304-A and 338 IPC and sentenced him to undergo RI for six months with fine of Rs. 1500/- u/s 304-A, and RI for three months with fine of Rs. 500/- u/s 338 IPC. By the judgment impugned dated 06.12.2014 learned lower appellate Court also affirmed the findings recorded by learned Magistrate as a whole. Hence this revision.

3. Heard the arguments advanced by counsel for the parties and perused material on record.

4. From the evidence of (PW-2) namely Gulshan who is an eye witness to the accident in question, the rash and negligent driving of the accused/applicant is fully established. He has stated that the offending vehicle leading to the accident was driven at a highly excessive speed and caused the accident. After the accident, this witness had arranged the private ambulance for shifting the victim to hospital. PW-3 is the witness to the seizure of motorcycle under (Ex.P-6). One of the victims and eye witness to the accident namely Surendra (PW-4) has stated that when he was riding the motorcycle in which the deceased was occupying the pillion seat, the mini bus in question driven by the accused/applicant in a rash and negligent manner came from the opposite direction at a high speed and hit the motorcycle of the victims as a result of which they both fell down and scattered on the road. According to him, the deceased died on the spot whereas the injured was shifted to Durg hospital but he chose to take treatment in Dhamtari hospital. He has also stated that apart from driving at a high speed, the accused/applicant turned the offending vehicle without giving proper signal and it is this which led to the tragic accident. He has stated that he suffered injuries on hand, foot, face, and the elbow was fractured and ligament of the knee was injured. Rajeev (PW-5) has also supported the case of the prosecution stating that after the accident,

he shifted injured Surnedra to hospital whereas the deceased was taken by the police to Balod. Doctor (PW-10) who medically examined Surendra (PW-4) has noticed as many as seven injuries including fracture of tibia. This witness also conducted the postmortem examination of the deceased and opined that his death was shock as a result of head injury. The defence though examined as many as three witnesses in support of its case, it has not been able to rebut the allegations of the prosecution. Not even any mechanical fault in the mini bus in question leading to the accident has been attributed by it. Thus, there is ample evidence to hold the accused/applicant guilty under Sections 304-A and 338 IPC. Both the Courts below have been fully justified in recording the finding of conviction to this affect. It is hereby maintained.

5. As regards sentence, keeping in mind the fact that the incident is quite old and that the accused/applicant has suffered a lot by facing the prosecution since 2011 and by remaining inside for about one week, this court is of the considered opinion that the interest of justice would be served if the sentence imposed on the accused/applicant is reduced to the period already undergone. However, in the interest of justice, the fine imposed on the applicant is enhanced to Rs. 5,000/-. The benefit of this order would be available to the accused/applicant only when he deposits the fine amount before the trial Court.

6. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge