

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 247 of 2011

Md. Imran Hussain @ Imu Hussain, S/o. Munna Bharti, aged about 27 years, Caste Musalmaan, R/o. Village Bagicha, District Jashpur (CG)

---- **Applicant**

Versus

State of Chhattisgarh, Through District Magistrate Jashpur, District Jashpur (CG)

---- **Respondent**

-- For Applicant : Mr. J.K. Saxena, Advocate.
For Respondent : Mr. Anil Tripathi, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 05.04.2021

Facts of the case in brief is that on 11.09.2008 the accused/applicant who was having no valid licence to drive vehicle, drove motorcycle bearing registration No. CG 15D/3832 rashly, negligently and at an excessive speed on the public road and hit Ku. Sarita Gupta, as a result of the incident, Ku. Sarita Gupta sustained grievous as well as simple injuries on her body. After the accident, she was admitted in PHC Bagich and thereafter she was referred to District Hospital Ambikapur for treatment. FIR (Ex. P-4) lodged by PW-10 in police station Bagicha under Section 279 and 337 IPC against the applicant. After completion of the investigation, charge sheet was filed under Section 279,337 and 338 IPC against the applicant.

2. Trial Court vide judgment dated 13.12.2010 convicted the accused/applicant under Sections 338 IPC and 3/181 of the Motor Vehicle Act and imposed the sentence of RI for three months and to pay fine of Rs. 500/- under Section 338 and to pay fine of Rs. 500/- under Section 181 of the M.V. Act plus default stipulation. Learned lower appellate court also affirmed the same as a whole vide judgment impugned dated 20.04.2011. Hence, this revision.

3. Conviction is not being pressed on merit and the sole prayer made by the counsel for the applicant is confined to reduction of sentence imposed on the accused/applicant to the period already undergone on account of the fact that the case is quite old and the accused/applicant has already remained in jail for some time.

4. State counsel however, supports the findings recorded by the both the Courts below.

5. Having heard counsel for the parties and perused the evidence on record particularly that of (PW-2) and (PW-3), it is clear that on the fateful day the applicant was driving the offending vehicle in a rash, negligent and at an excessive speed on the public road and hit Ku. Sarita Gupta from her back, as a result of the said incident, Ku. Sarita Gupta sustained multiple injuries on her body.

6. The accident occurred solely due to the rash and negligent driving by the rider. (PW-3) injured/ victim had made the statement before Bagicha Police in which the name of the

applicant was specifically mentioned in the FIR. She was cross examined by the defence counsel. During cross examination, she stated that she identified the rider of the motor cycle. As a close scrutiny of the oral testimony of PW-2 and PW-3, it is found that both the witnesses have identified the accused and deposed that due to the rash and negligent driving of the applicant, the accident had occurred. No mechanical fault in the vehicle leading to the accident in question has been attributed by the defence. In the present case, it is also clear from the evidence that at the time of incident, the applicant was not valid driving licence to drove the bike. Even the Doctor (PW-7) who examined the victim has supported the case of the prosecution narrating multiple injuries and fracture was noticed by him on her body and submitted his report under (Ex.P-3). This court has held that it is common experience that in such localities, old aged people and children who were trying to cross the road without taking note of the oncoming vehicle and a duty was cast on the driver/applicant to drive the vehicle in such a manner and at such a speed that he could stop the vehicle.

7. Thus the negligence and rashness on the part of the applicant is driving the offending vehicle and the injuries to the victim is fully established and being so, the conviction recorded by the both the Courts below does not appear to suffer from any illegality or infirmity and therefore, the same is hereby maintained.

8. As regards sentence, considering the fact that the incident had occurred in the year 2008 and since then considerable period has passed by and further that the accused/applicant has remained in jail for about nine days, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone. Order accordingly.

9. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh