

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 624 of 2010

Mithlesh Kumar, S/o. Keshav Parganiha, aged about 24 years, R/o. Taralom, Thana Berla, District Durg, (CG).

---- **Applicant.**

Versus

State of Chhattisgarh, through the Police Station Saja, District Durg, CG.

---- **Respondent**

For Applicant : Ms. Sareena Khan, Advocate.

For State/Respondent : Mrs. Smriti Shrivastava, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

11.02.2021

The case of the prosecution in brief is that on 28.03.2009 at about 3 pm when the deceased namely Magaldas was walking on the road, the accused/applicant herein came there on his motorcycle bearing registration No. CG 04/ DD/ 0233 riding in a rash and negligent manner along with two other bike-borne companions from behind and hit him. As a result of this, he got flung away on the road. As a result of the accident the victim is said to have suffered injuries on various parts of his body. He was first taken to Devker hospital but looking to his serious condition he was shifted to sector 9 hospital, Bhilai where he succumbed to the injury suffered by him on 01.04.2009. On the intimation given by the hospital people, merg was registered against the accused/applicant under Section 304-A IPC, based on which FIR (Ex.P-6) was recorded. Seizure of motorcycle along with documents was made and the body was subjected to postmortem examination. After completion of investigation charge-sheet under the same section followed by framing of charge, was filed.

2. Learned Magistrate vide judgment dated 21.04.2010 passed in criminal case No. 332/2009 convicted the accused/applicant under Section 304-A IPC and sentenced him to undergo RI for six months and pay fine of Rs. 1000/-. Learned lower appellate Court vide judgment dated 23.11.2010 passed in criminal appeal No. 21/2010 approved the findings recorded by the learned Magistrate. Hence this revision.

3. Counsel for the accused/applicant does not press this revision on merit and confines his submission to the sentence part of the judgment impugned only. State counsel on the other hand supports the judgment impugned and submits that rashness and negligence of the accused/applicant can be inferred from the fact that he was riding the motorcycle along with his two other companions and ultimately dashed against the deceased who was simply walking on the road at about 3 pm when sufficient light was there.

4. From the evidence of PW-1 it is evident that the accused/applicant was riding his motorcycle in a rash and negligent manner by doing tripling came from behind and dashed the victim Magaldas who was just walking on the road. As the result of the accident the victim suffered injuries on his head and chest. Thereafter, he was shifted to Devkar hospital and from where he was taken to sector 9 hospital Bhilai but the injuries suffered by him proved fatal leading to his death on 01.04.2009. From the evidence of PW-1 it also emerges that after the victim met with the accident, he was taken by the side of the road where his nose and mouth were found bleeding. Evidence of PW-1 gets full corroboration from Bhagchand (PW-2) as well. On being informed by Bhagchand (PW-2), Nandkumar (PW-3) rushed to the spot and saw the victim lying on the cot. He further states that on being asked by him, the accused admitted to have ridden the motorcycle at the relevant time when the accident occurred. Dr. P.C. Deshmukh (PW-6) who conducted the postmortem examination on the

body of the deceased has opined that the injuries suffered by the victim were ante mortem in nature and cause of death was head injury. The postmortem report given by this witness is Ex. P-6. Investigating officer PW-5 has also supported the case of the prosecution. Thus the evidence on record fully establishes that by riding the motorcycle by doing tripling, the accused/applicant had been rash and negligent and it is this which made the victim lose his precious life. The mechanical examination of the vehicle also did not point out any fault attributable to the accident. The conviction of the accused/applicant under Section 304-A IPC is thus fully merited and being so it is hereby maintained.

5. As regards sentence, keeping in mind the facts and circumstances of the case and that the accused/applicant has remained behind the bars from 23.11.2010 to 29.11.2010, and that the incident had occurred in the year 2009, no useful purpose would be served in again dispatching him to jail. Thus the interest of justice would be served if the sentence imposed on him is reduced to the period already undergone. Order accordingly.

6. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan