

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 706 of 2011

Daman Lal S/o. Rajkumar Dhimar, aged about 25 years,
residence of village Aamdi, Police Station Arjuni, Tahsil and
District Dhamtari (CG)

---- **Applicant**

Versus

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

---- **Respondent**

For the Applicant : Mr. Sunil Sahu, Advocate
For the Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 07.04.2021

Case of the prosecution in brief is that complainant Omprakash lodged the FIR (Ex.P-8) in police Station Dhamtari, stating therein that her sister namely Uma had gone to repair her scooty at Ratnabandh Dhamtari where the accident had taken place on account of rush and negligent driving of tractor bearing registration no. CG-05-A 2669 by the driver of the offending vehicle and she received injuries on her body. It is stated that before the accident of Uma, the applicant had dashed the motorcycle bearing registration No. 05 E 8562 in which two persons were traveling and received injuries on their body. It is also stated that while driving the tractor, he hit the pedestrians on the road namely Meena Tiwari and Ankita Mishra, as a result of which all the injured were admitted in the hospital for

treatment. It is further stated that during the treatment Meena Tiwari and Kashiram Kunjam were died in the hospital on 29.07.2009. Merg (Ex.P-6 and Ex.P-7) were also registered and on the basis of which FIR was registered against the applicant for the offence under Sections 279,337 and 304(A) IPC. After registration of offence and completion of investigation, charge sheet was filed against the accused/applicant.

2. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Sections 279, 338 and 304 (A) IPC and sentenced him to undergo RI for one year and to pay fine of Rs. 1000/- u/s. 279 IPC, RI for six months year and to pay fine of Rs. 500/- u/s. 338 IPC, RI for one year and to pay fine of Rs. 1000/- 304(A) IPC. Learned Lower Appellate Court vide impugned judgment dated 03.12.2011 passed in Criminal no. 82/2011 modified the sentence part

3. Learned Counsel appearing for the applicant submits that he is not pressing this revision on merit and confining his argument to the sentence part thereof only. According to him, at present the appellant is aged about 35 years and the incident had taken place in the year 2009 and that he has already remained in jail for a period 6 days, no useful purpose would be served in again sending him to jail, and therefore, the sentence imposed upon him may be reduced to the period already undergone by him.

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

5. From the statement of the (PW-2) and (PW-4) who are the eye witnesses to the accident, it is clear that on the date of incident the applicant driving the offending vehicle bearing registration No.no. CG-05-A 2669 in a rush and negligent manner and dashed the motorcycle of the injured/victims. From the evidence of (PW-3) it is also clear that the applicant hit her from the tractor and her aunt namely Meena Tiwari and they were admitted in the hospital for treatment where Meena Tiwari died in the hospital. From the evidence of (PW-3), it is clear that the applicant hit her on the road while she was going with Meena Tiwari and from the said accident her shoulder got fractured. Doctor (PW13) who examined Ankita Mishra and has also supported the case of the prosecution. It is also clear from the postmortem reports of Meena Tiwari (ExP-4) and Kashiram Kunjam (Ex.P-5). Dr. (PW-5) who conducted the autopsy of Meena Tiwari and Kashiram Kunjam has also supported the case of the prosecution. From the statement of other important witnesses, it is apparent that the accident occurred due to rash and negligent manner driving of the offending vehicle by the applicant. No mechanical fault in the vehicle leading to the accident in question has been attributed by the defence. In the case at hand, the applicant has been found to be guilty of rush driving the vehicle on a public street and his act unfortunately resulted in loss of a precious human life. Further, from the evidence of the

important witnesses, the act of the applicant while driving the tractor in a rash and negligent which resulted in the horrendous accident claiming the life of the deceased, is established from the testimony of the material collected by the prosecution, and that way both the Courts below do not appear to have gone wrong in holding the applicant guilty as described above, His conviction is therefore, maintained.

6. As regards sentence, keeping in view the fact that the incident had taken place in the year 2009, that the accused/applicant has already remained in jail for a period of about six days and further that by now he must be leading a well settled life saddled with innumerable responsibilities, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone. In lieu of this, the applicant however, would be required to pay an enhanced sum of fine of Rs. 10,000/- from that of Rs. 1000/-. Let this amount be deposited by the accused/applicant in the trial Court within a period of four months from today. Order accordingly.

7. Revision is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE