

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 126 of 2021**

State of Chhattisgarh, Through – Police Station Sarkanda, District Bilaspur
(C.G.)

---- Appellant

Versus

Vishnu Nishad, S/o Firantaram Nishad, aged about 37 years, R/o Near
Durga Mandir, Lingiyadih, R/o Rajkishore Nagar, Sarkanda, Police Station
Sarkanda, District Bilaspur (C.G.)

----Respondent

For Appellant	:	Mr. Dinesh Tiwari, Deputy Govt. Advocate.
For Respondent	:	Mr. Nitansh Kumar Jaiswal, Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****05.08.2021**

(1) Proceedings of the matter have been taken-up through Video Conferencing.

(2) Present appeal is directed against the judgment dated 28.08.2018 passed by Judicial Magistrate, First Class, Bilaspur in Criminal Case No. 762/2015 acquitting the respondent/accused of the alleged commission of offence punishable under Sections 279 & 338 of the Indian Penal Code.

(3) Case of the prosecution, in brief, is that when complainant Narendra Kumar Yadav (PW-9), who is working on the post of Stenographer in the Office of

Additional S.P., Bilaspur, was returning to his home from his office for taking lunch in his Hero Honda Motor-cycle bearing registration No. CG 12-A 5269 (henceforth "Hero Honda Motorcycle"), at that time, respondent/accused, while driving the Tractor bearing registration No. CG 10 D 4693 (henceforth "Tractor") rashly and negligently dashed to Hero Honda Motorcycle of complainant from behind, as a result thereof, complainant sustained multiple/grievous injuries on his both the hands and legs & backbone and his motorcycle was also got damaged. Based on this, FIR (Ex.P-1) was registered under Sections 279 & 337 IPC against the respondent/accused (driver of tractor). After filing of charge sheet under Sections 279, 337 & 338 of IPC, the trial Court stated the substance of accusation under Sections 279 & 338 IPC to the respondent/accused.

(4) So as to hold the respondent/accused guilty, the prosecution has examined as many as 10 witnesses. Statement of the respondent/accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the case.

(5) The trial Magistrate after hearing counsel for the respective parties and considering the material available on record has acquitted the respondent/accused as mentioned in paragraph No. 2 of this order. Hence, this acquittal appeal.

(6) Learned counsel appearing for the appellant/State would submit that from the evidence of Dhirendra Tiwari (PW-1), Ayodhya Prasad Pandey (PW-3) &

Narendra Yadav (PW-9) adduced by the prosecution, it is proved that respondent/accused while driving the alleged tractor, committed the accident of injured – Narendra Yadav (PW-9), despite that, learned trial Court has acquitted the respondent/accused of the alleged offences, therefore, he prays to allow the acquittal appeal and respondent/accused be convicted under Sections 279 & 338 of the IPC as there are sufficient material available on record calling for his conviction.

(7) On the other hand, learned counsel for the respondent/accused would submit that none of the witnesses have stated in their evidence that at the time of accident, respondent/accused was driving the alleged Tractor. He would further submit that in criminal cases to hold the guilt, it is required that conclusive proof must be there in the record but in this case no such evidence have been adduced by the prosecution, therefore, learned trial Court has rightly acquitted the respondent/accused of the offences punishable under Sections 279 & 338 of the IPC, which does not call for any interference in the instant acquittal appeal.

(8) I have heard learned counsel for the parties and perused the material available on record including impugned order with utmost circumspection.

(9) From the evidence of prosecution witnesses namely Complainant - Narendra Yadav (PW-9), Dharendra Tiwari (PW-1), Ayodhya Prasad Pandey (PW-3), U.S. Pandey (PW-5) & Santosh Prajapati (PW-6), it is proved that on the date on incident, Narendra Yadav met with an accident near Nutan Chowk, Bilaspur and his motorcycle was dashed from behind by the Tractor. These facts

have been fully corroborated by FIR (Ex.P-1) and seizure memo of tractor-trolley etc. (Ex.P-2) and Hero Honda Motorcycle (Ex.P-3).

(10) Narendra Yadav (PW-9), who is complainant/injured, has stated in his statement that due to the accident, he sustained injuries over his hip, head and legs and also on his backbone and due to that injuries he is still unable to stand and move here and there. He has also stated in his evidence that below portion of his hip has paralyzed. His above statement has been corroborated by Dharendra Tiwari (PW-1), who is not only his colleague but as soon as he received his phone call, he went to CIMS Hospital, Bilaspur from where he was taken to Appolo Hospital, Bilaspur and he saw the injuries sustained by victim in the said accident.

(11) Dr. Deepak Jangde (PW-10) has examined victim – Narendra Yadav (PW-9) on 22.12.2014 and has prepared his medical report (Ex.P-9). He has stated in his evidence that on being examination of victim/injured, he found that there was no movement on his both the legs, he was complaining pain on his head and chest also. Injured/victim has received injuries on his right ear, right hand, left knee, left ankle and below the left knee and he was unable to lift his both the legs. After primary treatment, he was admitted in emergency ward of CIMS hospital. His statement has been well supported by the medical report (Ex.P-9), which has been prepared and proved by him.

(12) Dr. Ashish Jaiswal (PW-7), who is Orthopedic Surgeon of Appolo Hospital, Bilaspur, has stated in his evidence that on 22.12.2014 Narendra Yadav (PW-9)

was admitted in Appolo Hospital because there was fracture on his back-bone, due to which, his both the legs were paralyzed. His aforesaid statement has been corroborated by Injury Certificate (Ex.P-7), which was prepared and proved by him.

(13) Looking to above evidence, learned trial Court has rightly held that due to accident, victim Narendra Yadav (PW-9) was severally injured and his D-12 (Thoracic Vertebrae) was fractured, as a result thereof, his both the legs were paralyzed.

(14) So far as question of driving the alleged Tractor by respondent/accused is concerned, Ayodhya Prasad Pandey (PW-03), who is owner of the tractor, has stated that at the time of accident, respondent/accused was working as driver of his tractor. He has also stated in his examination-in-chief that he has issued driving certificate (Ex.P-5) in the name of respondent/accused but in cross-examination, he has stated that document (Ex.P-5) was written by the police and on behest of the police, he has signed in it. He has further stated that he does not know that accident was occurred by which of the vehicle.

(15) Arjun (PW-4), who is brother of respondent/accused, has also stated that respondent/accused was working as driver of tractor of Ayodhya Prasad Pandey (PW-3).

(16) Dhirendra Tiwari (PW-1) and injured Narendra Yadav (PW-9) have stated in their evidence that respondent/accused was driving tractor at the time of

accident. Narendra Yadav (PW-9) has also stated that driver of the tractor was driving it rash and negligent manner but Dhirendra Tiwari (PW-1) has accepted the suggestion in the cross-examination that he did not know that who was driving the said tractor at the time of accident.

(17) Injured - Narendra Yadav (PW-9) has also accepted the suggestion in the cross-examination that other persons were told him that the respondent/accused is driver of the tractor, by which the accident had occurred. Aforesaid acceptance of both these witnesses shows that they were not seen the driver (Person), who was driving the tractor at the time of accident. Therefore, their statements are not believable that at the time of accident, respondent/accused is a person, who was driving the alleged tractor.

(18) Santosh Prajapati (PW-6), who is said to be eye witness to the incident, has stated in his evidence that he did not see the accident, rather when he came out from his office after the accident, then he saw damaged motorcycle lying on the road and one tractor was standing there in the place of occurrence. He has stated that persons, who were present there, were told him that accident happened between tractor and motorcycle. He has clearly stated that he does not know how the accident had occurred, he has not supported the case of the prosecution.

(19) From the evidence of Ayodhya Prasad Pandey (PW-3) and Arjun (PW-4), who is brother of respondent/accused, it is proved that respondent/accused was working as tractor driver of Ayodhya Prasad and he has given the requisite

certificate in this regard. But only on this ground, it cannot be proved that at the time of accident, respondent/accused was driving the tractor. Although Ayodhya Prasad Pandey (PW-3) has stated in his examination-in-chief that at the time of accident, respondent/accused was driving the tractor but in cross-examination, he has stated that he does not know that from which of the vehicle the accident had occurred. None of the witnesses of prosecution has stated that he saw the respondent/accused driving the alleged tractor at the time of accident. Thus, prosecution has failed to prove the fact that at the time of accident, respondent/accused was driving the tractor, by which the accident had occurred.

(20) In view of the foregoing discussion and on going through evidence adduced by the prosecution witnesses and particularly the fact that prosecution has utterly failed to prove its case, and the trial Court is fully justified in recording the finding of acquittal, which is based on proper appreciation of evidence available on record, hence, this Court is of the view that the judgment impugned acquitting the respondent/accused of the offence punishable under Sections under Sections 279 & 338 of the Indian Penal Code, is just and proper, which does not call for any interference by this Court.

(21) Accordingly, the acquittal appeal preferred by the appellant/State is devoid of any substance and, therefore, the same is liable to be and is hereby dismissed.

Sd/-
(N.K. Chandravanshi)
Judge

