

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No.2008 of 2019**

State Of Chhattisgarh Through District Magistrate, Raipur Chhattisgarh,
---- Petitioner

Versus

Yogesh Kumar Sahu S/o Chandulal Sahu Aged About 22 Years R/o Village
 Haldi, P. S. Bhatapara, District Raipur Chhattisgarh **-----Respondent**

For Petitioner/State: Shri Gurudev I Sharan, Government Advocate.
 For Respondent: Shri Satyendra Shriwas, Advocate.

Single Bench:Hon'ble Shri Deepak Kumar Tiwari J
Order On Board

15.12.2021

1. This is an application for grant of leave to Appeal under Section 378(3) Cr.P.C against the judgment of acquittal dated 30.08.2016 passed in Criminal Case No.679/2013 by the Court of Judicial Magistrate, First Class, Raipur, District Raipur (CG) whereby the accused/Respondent has been acquitted from the offence punishable under Sections 279, 337 and 338 IPC.
2. Brief facts of the case are that on the date of incident i.e. 10.02.2011 at about 9.00 p.m, near Kolhan Nala, Village Jaronda, Kharora Road, PS Dharsiva, the accused/Respondent, while recklessly driving his vehicle bearing registration No. 04 HA 2468, dashed the vehicle i.e. Alto Car bearing registration No.CG 04 JD 5123 due to which, Jogiram (PW-1) and Prashant Agrawal (PW-2) got hurt and Bhagvati Verma (PW-3) got grievously hurt.
3. After completion of the investigation, the police has filed charge sheet. The accused/Respondent has denied the charges as stated in his

pleading by stating that the accident was not caused due to his mistake as he had slowed down the vehicle on account of crossing the speed breaker. He has further stated in his statement that he has been falsely implicated in the case and not produced any defence evidence.

4. In order to prove its case, prosecution has examined as many as 5 witnesses.

5. After appreciating the evidence, the trial Court, by way of the impugned judgment, has acquitted the accused/Respondent.

6. It is submitted that the trial Court has erred in proper appreciation of the evidence. The findings recorded by the trial Court are unjust and perverse, therefore, it is prayed that leave to Appeal may be granted.

7. Heard and perused the case minutely.

8. In the particulars of the crime, it was stated that the vehicle driven by the accused/Respondent hit the Alto Car from behind, but the prosecution witnesses Jogiram (PW-1) and Prashant Agrawal (PW-2), who are the injured witnesses, have stated contrary by deposing that the said vehicle was coming from the opposite side and hit their vehicle. Prashant Agrawal (PW-2) has stated that the vehicle driven by the accused/Respondent was in a very high speed of above 80 due to which, the vehicle was running in a zig zag manner and looking to the vehicle of the accused/Respondent, he slowed down his vehicle, but the accused/Respondent hit his vehicle.

9. Bhagvati Verma (PW-3), who was also in the vehicle i.e. Alto Car stated that at the time of accident, he had slept and therefore, he did not know about the accident. Jogiram Verma (PW-1) did not state about the speed of the vehicle or that the vehicle was coming in a zig zag manner. He had only stated that the vehicle was coming from the wrong side and dashed their vehicle. It is admitted by the prosecution witnesses that

Bolero has crossed the 2nd speed breaker near the place of incident. So the plea taken by the accused that he had just crossed the speed breaker by slowing down the vehicle may be presumed and it is settled position of law that evidence of high speed simplicitor is not an ipso facto proof of rashness or negligence. It is incumbent upon the prosecution to prove the act of rashness and negligence on the part of the accused/Respondent. In this case, no other public witnesses were examined by the prosecution except Jogiram Verma (PW-1) and Prashant Agrawal (PW-2), who are the material witnesses of the case. There is material contradiction in the manner in which the accident occurred. Even the particulars of charge have wrongly been framed.

10. FIR (Ex.P-1) was lodged after three days of the accident and from the site plan (Ex.P-2), there is no indication of the vehicles, therefore, from the site plan also, no inference can be drawn that the accident occurred due to the rash and negligent act on the part of the accused/Respondent.

11. In view of above, this Court is of the opinion that the trial Court has properly appreciated the evidence and therefore, the acquittal recorded by the impugned judgment does not call for any interference. The prosecution has miserably failed to establish the act of rashness or negligence on the part of the accused/Respondent, therefore, the acquittal is affirmed and resultantly, the application fails and is hereby dismissed accordingly.

Sd/-

(Deepak Kumar Tiwari)
JUDGE