

HIGH COURT OF MADHYA PRADESH : JABALPUR

Criminal Revision No. 1557/2005

Somnath

Versus

The State of Madhya Pradesh

For the applicant: Shri M.A. Khan, Advocate

For the respondent: Shri Akshay Namdeo,
Panel Lawyer

Present: **Hon'ble Mr. Justice S.C. Sinho**

O R D E R
(30.11.2011)

1. Applicant has filed this criminal revision under section 397 r/w section 401 of Cr.P.C. being aggrieved by the impugned judgment dated 13.10.2005 passed by Additional Sessions Judge, Dindori (M.P.) in Criminal Appeal No.09/2002, arising out of judgment dated 18.12.2001 passed by J.M.F.C., Dindori in Criminal Case No.64/2000, whereby the applicant has been convicted under Section 304-A and 337 of I.P.C. and sentenced to R.I. for one year and R.I. for three months respectively.
2. The prosecution story in brief is that Smt. Sukhmat Bai was traveling along with his husband Kamal Singh Gond on 23.06.2004 in Truck No.M.P.20/6426 of M.P.E.B. Department which was being driven by appellant rashly and negligently on account of which the truck turned turtle, as a result of which Kamal Singh Gond died on the spot. After due investigation,

the charge sheet was filed.

3. Shri M.A. Khan, learned counsel for the appellant has submitted that as per statement of prosecution witnesses PW-4 Lallu Singh and PW-5 Mohan Singh who were even not declared hostile by the prosecution, they have specifically stated that a dog came in front of the truck and appellant tried to save the dog due to which the truck turned turtle, meanwhile the barring of the staring was broken.
4. Both the courts below have held applicant guilty on the pretext that the applicant has not taken this defence in his statement under Section 313 of Cr.P.C. It is not expected from the applicant that he should state his defence in his accused statement under Section 313 of Cr.P.C. It is the whole duty of prosecution to prove the case beyond any reasonable doubt that the accident had taken place due to rash and negligent driving of the applicant.
5. Thus as per statement of Lallu singh (PW-4) and Mohan Singh (PW-5), applicant was driving the truck on a State Highway meanwhile a dog came in front of the truck and to save the dog he suddenly turned the truck as a result of which the truck turned turtle.
6. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.
7. In these facts and circumstances, the prosecution has failed to prove the case beyond reasonable doubt against the applicant and the courts below have committed an illegality in convicting and sentencing the applicant.

8. Consequently, this criminal revision is allowed. The impugned judgment dated 13.10.2005 passed by Additional Sessions Judge, Dindori (M.P.) in Criminal Appeal No.09/2002 and judgment dated 18.12.2001 passed by J.M.F.C., Dindori in Criminal Case No.64/2000 are hereby set aside. The appellant is acquitted of the charge under Sections 304-A and 337 of I.P.C. He is on bail. His bail bonds are discharged. Fine amount, if deposited, be refunded to the applicant.

(S.C. Sinho)
Judge

psm