

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CRIMINAL REVISION NO. 28 /2004

(240/07)

APPLICANT
(in Jail)

: Dukhilai, S/o Dhanai, aged 33 years,
Occupation-Driver, R/o Khagharia,
Police Station-Deepkheda, District Katni
(M.P.)

15/01/07
S. K. Verma

-VERSUS-

NON-APPLICANT

: State of Chhattisgarh through Station
House Officer, Police Station -
Manendragarh, District Korla (C.G.)

R.D.R. (J)
15/01/07

CRIMINAL REVISION U/S 397 READ WITH SECTION 401 OF THE
CODE OF CRIMINAL PROCEDURE

Conviction

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 28 of 2004

Applicant : Dukhilal

VERSUS

Non-applicant : State of Chhattisgarh

SB: Hon'ble Shri Goutam Bhaduri, J.

Present: Mr. Malay Shrivastava, Advocate for the applicant.
Mr. Anupam Dubey, Dy. G.A. for the State.

JUDGMENT

(Passed on 30th January, 2015)

1. This is a revision against the judgment dated 08.01.2004 passed by the Additional Sessions Judge, Manendragarh, in Criminal Appeal No.247/2003 whereby the order passed by the Judicial Magistrate First Class, Manendragarh, in Criminal Case No.1320/94 on 24.09.2003 was affirmed.
2. The case of the prosecution was that on 01.07.1994 one Anjani Prasad Mishra and deceased Chhatrapal were returning in a Truck bearing No.C.P.L. 940 from Korba towards Ramnagar Open Cast Colliery. At village Lai within jurisdiction of Manendragarh at about 10 O'clock, the vehicle was parked to the side of the road and the driver Anjani Prasad was taking bath. When the deceased Chhatrapal was passing near by his Truck, at that time, the offending Truck bearing No.M.P. 21 2062 which was coming from Nagpur, driven in a rash and negligent manner dashed Chhatrapal whereby Chhatrapal died on the spot and the driver fled away towards Manendragarh. The driver Anjani Prasad tried to chase the offending Truck and thereafter lodged an FIR by Ex.P-10 on the same date at about 11:30 O'clock. On the basis of the report, a case was registered under Section 304-A of IPC and the investigation was made. The panchnama of the dead body was prepared by Ex.P-3 and the body

of the deceased was subjected to post mortem wherein it was affirmed that the death was caused because of the accident by the Doctor PW-1. Thereafter, the offending Truck was seized and the statement of the witnesses were recorded and the charge sheet was filed.

3. During the course of trial, the applicant abjured his guilt and claimed to be tried. On behalf of the prosecution, six witnesses were examined and on statement of accused recorded under Section 313 of Cr.P.C., the applicant stated that the witnesses have wrongly stated against him. The learned Judicial Magistrate after evaluating the evidence convicted the accused applicant under Section 304-A of IPC and sentenced the appellant to 6 months R.I. and fine of Rs.500/- and further in absence of payment of fine, 1 month additional R.I. was ordered. The said finding was assailed in the criminal appeal. The Additional Sessions Judge too affirm the finding of the trial Court, hence this revision.
4. Learned counsel appearing on behalf of the applicant would submit that both the Courts below have failed to appreciate the facts and failed to take into notice that the accident occurred due to rash and negligent act of the deceased himself. He further submits that the statement of the eye-witnesses of the accident are too vague which could not have been relied by the Court below. He submits that on proper appreciation of the statement, it would go to show that the benefit of doubt should have leaned in favour of the applicant. It is also contended that the incident was of 1994 and the applicant has almost passed the agony of trial for more than 20 years. Therefore, taking into the facts into account the revision may be allowed.
5. Per contra, learned State counsel opposes the same and submits that for the death caused by the rash and negligent act of the applicant, six months R.I. have been awarded which is too meager and it cannot be claimed for interference of the quantum of the sentence. He further

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submits that the witnesses have also categorically supported the case and it would go to show that the evidence is correctly appreciated and the order of both the Courts below are well merited which do not call for any interference in exercise of revisional jurisdiction of this Court.

6. I have heard learned counsel appearing for the parties at length and perused the evidence on record.
7. The Doctor in this case namely R.S.Bhojak was examined as PW-1. He has stated that he had conducted the post mortem of the deceased. The report was marked as Ex.P-1. According to the Doctor, the accident had occurred by impact some heavy vehicle and the injuries which were caused were opined to have been committed by such accident and the death was proved to be accidental. Therefore, this fact that the death of Chhatrapal was due to accident and that too it attributed to vehicular accident is not in dispute.
8. The eye-witness in this case namely Anjani Prasad Mishra was examined as PW-4. He in his statement had stated that on 01.07.1994 when he was coming back with a transmission engine, he stopped his vehicle at a place known as Lai and parked the vehicle to the left side of the road. He was taking bath in the hand-pump nearby. He had further stated that after completing his bath, the Khalasi was about to take his bath and at that time the vehicle coming from Nagpur bearing No.M.P.21-2062 dashed the Helper Chhatrapal whereby he sustained injuries and eventually died. He had further stated that after causing such accident, the offending vehicle tried to fled away from the scene so it was chased by a Scooter and thereafter it was intercepted at Manendragarh barrier. Subsequent to it, the report was made to the Police Station. The FIR is marked as Ex.P-10 which also falls in line to the statement made. Ex.P-10 reveals incident was reported on 01.07.1994 at about 11:30 O'clock and the accident is shown on 01.07.1994 at about 10 O'clock.

9. The eye-witness Budhsen was examined as PW-6. He had stated that while he was standing near a hand-pump, the driver was taking his bath, at that time, the offending Truck dashed the said Khalasi of the Truck and fled away. The witness had stated that immediately after the accident, the Truck fled away from the scene. Nothing incriminating facts have come in cross examination to negate such incident.
10. Mr. S.N. Tripathi, who was examined as PW-3, in his statement has deposed that during the investigation, it came to notice that at the time the vehicle was being driven by the applicant thereafter from the possession of the applicant the papers of the Truck was seized by Ex.P-6. The accused in his statement has not given any explanation and instead has denied the incident. Therefore taking into account the evidence, it appears that both the Courts below have come to correct finding of fact that at the relevant time the vehicle was being driven in rash and negligent manner which caused the accident by which the death of Chhatrapal was caused. Consequently, the finding arrived at by the learned Courts below cannot be faulted that any perverse finding is recorded.
11. In the result the revision has not merit and is accordingly dismissed.

Sd/-
Goutam Bhaduri
Judge