

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.421 of 2005

Order Reserved on : 21.7.2017

Order Passed on : 31.7.2017

Vijay @ Mangal Singh, S/o Shyam Singh Rajput, aged about 31 years,
resident of Nawalpur, P.S. Korba, District Korba (Chhattisgarh)

---- Petitioner

versus

The State of Chhattisgarh through District Magistrate, Korba, Chhattisgarh

--- Respondent

For Petitioner : Smt. Indira Tripathi, Advocate
For State/Respondent : Shri Samir Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The accused has preferred this revision under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 14.9.2005 passed in Criminal Appeal No.7 of 2005 by the Learned Sessions Judge, Korba by which the Learned Sessions Judge has affirmed the judgment dated 23.2.2005 passed in Criminal Case No.2076 of 2002 by the Learned Judicial Magistrate First Class, Korba convicting and sentencing the accused/Petitioner as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304A of the Indian Penal Code	Rigorous imprisonment for 1 year and to pay fine of Rs.500/-, in default of payment of fine, to further undergo imprisonment for 2 months

2. Brief facts of the case are that on 20.5.1997 at about 8:00 a.m., Suman Singh (deceased) along with Raghunath Singh (PW-6), Hridaylal (PW-3) and Deocharan (PW-4) had gone to Bhainsamuda Mines to crush boulders. The boulders crushed by Suman Singh and Hridaylal (PW-3) were loaded in a truck bearing registration No.MP 26 D 0108. While the truck was taking the loaded crushed boulders out from the mines, Suman Singh held the door of the conductor side, stepped up and began to ask from the driver of the truck about the boulders crushed by him. In the meanwhile, the driver of the truck rashly drove the truck on the slope towards the downside, due to which the truck, after being driven on the slope to some distance turned turtle on Suman Singh. As a result of the accident, Suman Singh died on the spot. The incident was informed to Village Kotwar Sahdeo (PW-2) by a labour Deocharan (PW-4). Sahdeo (PW-2) informed this incident to Village Sarpanch Manishankar Kashyap (PW-1), who lodged the First Information Report in Police Station Korba on 20.5.1997 at 11:00 a.m. Crime No.312 of 1997 was registered under Section 304A of the Indian Penal Code. After investigation, a charge-sheet was filed before the Judicial Magistrate First Class, Korba. The Petitioner/accused denied the guilt. After trial, the Petitioner/accused was convicted and sentenced as mentioned above. Being aggrieved by the judgment of conviction and sentence passed by the Learned Judicial Magistrate First Class, the Petitioner/accused preferred an appeal, being Criminal Appeal No.7 of 2005 before the Court of Session. The Learned Sessions Judge, affirming the judgment of conviction and sentence dismissed the appeal. Hence, this revision.

3. I have heard Learned Counsel appearing for the parties and perused the entire records of the Courts below.
4. The prosecution has examined 14 witnesses. No witness has been examined in defence. Out of 14 prosecution witnesses, PW-3 Hridaylal, PW-4 Deocharan, PW-6 Raghunath Singh and PW-10 Vidya Kumar are eyewitnesses.
5. PW-1, Manishankar Kashyap has deposed that on 20.5.1997 at about 9:00 a.m., Kotwar Sahdeo (PW-2) came to his house and informed him about the incident. He along with Sahdeo (PW-2) went to the place of occurrence. At the spot, he saw that a truck loaded with boulders had turned turtle and body of Suman Singh had pressed under the boulders. He further deposed that as per the information gathered from the labours at the spot, the truck rashly came down on the slope from the upside and turned turtle on Suman Singh. He did not depose the names of labours who narrated him about the incident.
6. PW-2, Sahdeo also deposed that he did not witness the incident. He came to know about the incident from a labour Deocharan (PW-4).
7. The witnesses examined by the prosecution as eyewitnesses, namely, Hridaylal, PW-3 and Deocharan, PW-4 have deposed that they do not know the Petitioner/accused by name or by face. As per their statements, at the time of occurrence, they were going for crushing the boulders. At that time, Suman Singh was behind them. At that time, a truck loaded with boulders rashly came down on the slope from the upside and turned turtle on Suman Singh. In cross-examination, PW-3, Hridaylal narrated that he did not see

how Suman Singh was pressed under the boulders. He further deposed that he did not see the truck turning turtle. Eyewitness PW-4, Deocharan has also deposed in similar fashion. He has admitted in paragraph 4 of his cross-examination that they were moving much ahead, therefore, he did not see the incident. He further deposed that he did not see which driver was driving the offending truck. He further deposed that he had heard that Vijay was driving the offending truck, but he did not disclose the name from whom he heard so.

8. Another eyewitness Raghunath Singh, PW-6 has also deposed that he does not recognise the Petitioner/accused. As per his statement, at the time of occurrence, after loading of the boulders in the truck, Suman Singh, holding door of the truck and standing informed the driver of the truck that the truck had been loaded with the boulders and at that juncture the truck turned turtle on Suman Singh. This witness has further deposed that he could not recognise that who was driving the offending truck. This witness has also been declared hostile.
9. Eyewitness Vidya Kumar, PW-10 has deposed that he did not witness the occurrence. He has also deposed that neither he knows the accused nor he recognises him.
10. PW-8, Uday Kumar Singh, owner of the offending truck has deposed that on the date of incident, the Petitioner/accused, who was driver of the offending truck had gone to Bhainsamuda Mines for taking crushed boulders. He had heard that while taking the crushed boulders from the mines the truck had turned turtle.
11. It was argued by Learned Counsel appearing for the

Petitioner/accused that even if the above statement of PW-8, Uday Kumar Singh is relied upon, it reveals the only fact that the Petitioner/accused was the driver of the offending truck, but it does not reveal that it was the Petitioner/accused who was driving the offending truck at the relevant point of time, i.e., at the time of occurrence.

- 12.** It was also argued on behalf of the Petitioner/accused that none of the eyewitnesses examined by the prosecution has supported the prosecution case. Despite that, both the Trial Court and the Appellate Court have relied upon the statements of PW-3 Hridaylal, PW-4 Deocharan, PW-6 Raghunath Singh and PW-10 Vidya Kumar.
- 13.** Per contra, Learned Counsel appearing for the State opposed the arguments advanced on behalf of the Petitioner/accused and supported the impugned judgment.
- 14.** It is evident from the deposition of PW-3 Hridaylal, PW-4 Deocharan, PW-6 Raghunath Singh and PW-10 Vidya Kumar that they have not supported the case of the prosecution. All of them have deposed in similar fashion that they did not witness the incident. From the statement of PW-8, Uday Kumar Singh, it is clear that the Petitioner/accused was the driver of the offending truck, but his statement does not go to show that it was the Petitioner/accused who was driving the offending truck at the time of occurrence.
- 15.** The evidence available on record do not establish that it was the Petitioner/accused who was driving the offending truck at the relevant point of time, i.e., at the time of incident and as a result of

his driving the accident took place.

16. In view of the foregoing discussion, the charge under Section 304A of the Indian Penal Code is not proved against the Petitioner. Both the Courts below have committed error in convicting and sentencing the Petitioner. Therefore, the Petitioner deserves to be acquitted of the charge framed against him.
17. Consequently, the criminal revision is allowed. The impugned judgment of conviction and sentence is set aside. The Petitioner is acquitted of the charge framed against him under Section 304A of the Indian Penal Code.
18. It is reported that the Petitioner is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.

Sd/-

(Arvind Singh Chandel)
JUDGE