

IN THE HIGH COURT OF DELHI AT NEW DELHI

Criminal Revision Petition No.1000/2002

Reserved on : 28.10.2009

Date of decision : 30.10.2009

BALDEV

..... Petitioner

Through: Mr.Anurag Jain, Advocate

versus

STATE

..... Respondent

Through: Mr.Manoj Ohri, APP.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

On 4.2.1995, Aseem while coming from Block No.15, Trilok Puri was hit by bus No. DL 1P-1947 driven by the petitioner, Baldev. The bus was coming at a fast speed; in a rash and negligent manner it struck against the victim. Aseem died on the spot. Incident occurred at about 3.55PM.

2. Eye witness account of this version was given by Noor Mohd. PW1 whose statement Ex. PW 1/A was recorded. On this statement, FIR No.79/1995, Ex.PW-7/A was registered by HC Babulal PW7 under Section 279/304-A IPC at PS Trilok Puri.

3. The injured had been medically examined by Dr. A. K. Jain PW8 vide MLC Ex. Pw 8/A, he was brought declared dead. His post mortem was conducted by Dr.S.C. Acharya PW-6 vide report PW-6/A. Injuries were opined to be ante mortem injuries caused by a blunt force impact. Dead body was identified by Kallan PW3 & Kusum PW11.

4. Investigation of the case was marked to SI Mahi Pal PW-14, who reached the spot along with Ct. Raj Kumar PW-13. Notice under Section 133 of the Motor Vehicles Act was issued to the owner of the bus Shivlangum PW-5. The said notice is Ex.PW-14/C. Accused had been produced before the Investigating Officer at the instance of PW-5. The bus was impounded and thereafter released on superdari vide superdiginama Ex.PW-5/A.

5. Another eye witness to the incident was Tehseen Ahmed PW-10. The mechanical inspection of the bus was conducted by Sikaidar Nath PW-9 and report Ex.PW-9/A had opined that no fresh damage is reported on the bus.

6. Trial Judge vide judgment dated 23.3.2002 had convicted the petitioner under Sections 279/304-A of the IPC. Vide order of sentence

dated 26.3.2002, he had been sentenced to undergo RI for a period of one year and fine of Rs.200 for the offence under Section 304-A IPC; for the offence under Section 279 IPC he had been sentenced to undergo RI for 3 months and a fine of Rs.500 in default of payment of fine to undergo SI for three months.

7. In appeal the Additional Sessions Judge had maintained the conviction as also the sentence.

8. Arguments addressed by the learned counsel for the petitioner are as follows :-

(i) Testimony of PW-1 is suspect; in his cross-examination he has admitted that he does not know English, how he could read the alphabets DL 1P on the bus is not answered;

(ii) PW-14 and PW-13 have admitted that when they had reached the spot they did not meet any eye witness including PW-1;

(iii) the bus driver had run away from the spot; he had been arrested on the following day; no judicial TIP had been conducted; his identity is in dispute;

(iv) PW-1 knew the victim Aseem; his conduct is unnatural; admittedly he did not remove Aseem to the hospital and neither did he inform any close

relative of the victim;

(v) Ex.PW-1/A shows that PW-1 can identify the bus driver; yet the name of the bus driver had not been given; PW-1 is a planted witness.

(vi) PW-1 has admitted that his duty hours were from 8.00AM -5.00PM; incident had occurred at about 3.55PM; it is a strange co-incidence that he was on leave on that day;

(vii) PW-1 in his cross-examination has admitted that the bus had collided with the pulia; this version is contrary to the version of PW-1 in his examination-in-chief;

(viii) Mechanical inspection report Ex.PW-9/A had noted no fresh damage on the bus which falsifies the version of the prosecution;

(ix) PW-3 had removed the injured to the hospital; he has also not whispered a word about the presence of PW-1 at the spot;

(x) PW10 the second eyewitness has not identified the petitioner in Court.

9. In the alternate it is submitted that if these submissions do

not find favour with the Court and the conviction is not set aside, on the quantum of sentence it has been submitted that the offence is relatable to a period which goes back to 15 years; the petitioner is a widower with a blind mother, he has three unmarried daughters and one son; he has already suffered incarceration for about 25 days. Attention has been drawn to Section 304-A IPC; the intention of the legislature can well be gathered from the fact that this offence is punishable with sentence of imprisonment or fine; ends of justice would be met in this case if the sentence is altered to one of fine or petitioner is given the benefit of probation.

10. The High Court in its revisional powers under section 397 and its inherent powers under section 482 of the CrPC will interfere only when there is a glaring defect of a serious nature which has resulted in a grave failure of justice or where there is a glaring defect in the procedure or a manifest error on a point of law which has resulted in a miscarriage of justice; in other words, it is an illegality of such a nature which would amount to an abuse of the process of the Court which can become the subject matter of such proceedings.

11. In the instant case there are two concurrent findings of fact by two Courts below. Both the said Courts have appreciated the testimony of the eye witness Noor Mohd. PW-1 in detail. PW-1 was a

resident of 15/213 Trilok Puri, i.e. the same block where the accident had occurred; that is how he knew the victim Aseem who was also a resident of the same area; categorical deposition of PW-1 in his examination-in-chief is that the accident occurred because of the negligent driving by the bus driver which coming at a high speed struck against the boy with his side, due to which the child died on the spot. Number of bus has been given by him as 1947. In his cross-examination he has admitted that he does not know English. A person not conversant with the English language can well read number; the two have no co-relation. Even otherwise no suggestion has been given to this witness to this effect and neither has this witness been confronted with his earlier statement Ex.PW-1/A recorded before the Investigating Officer; submission of the defence counsel that in Ex.PW-1/A, PW-1, he had detailed the alphabets i.e. DL- IP, thus has no force. In his cross-examination PW-1 has stated that he had seen the accused at the time of the accident as also on other occasions as he drives the bus in the same locality where PW-1 resides; PW-1 witnessed the incident at a distance of about 20 feet; he has stated that he has no personal relations with the father of the deceased.

12. Incident had occurred at about 3.55PM; injured had forth been removed to the hospital, the first DD entry about this incident had been recorded at 4.06PM vide DD No.15 which was marked to PW-14.

PW-14 along with PW-13 had reached the spot where they had learnt that the injured have been removed to Safdar Jung hospital. On their return at the spot statement of PW-1 was recorded and the rukka was sent at 6.06PM; investigation was prompt; there is no delay; submission that the PW-1 has been planted as a witness has no force. Testimony of PW-1 has been further corroborated by the site plan Ex.PW-14/B; point 'Xa' is the place where the accident had occurred.

13. In the lengthy cross-examination of PW-1 he has stuck to his stand; his version in cross-examination is not different from that given in his examination-in-chief. There is no ulterior purpose or motive as to why he would depose against the accused, no such suggestion has also been given to him.

14. PW-1 was familiar with the accused; having seen him driving the same bus in the same locality; TIP in these circumstances was not necessary.

15. The owner of the bus had come into witness box as PW-5 pursuant to Ex.PW-14/C; he had on the same document replied that the driver of the fateful bus i.e. DL-1P-1947 on 4.2.1995 was Baldev. On oath PW-5 has corroborated this version. PW-10 another eye witness although hostile on the identity of the accused; yet has categorically stated that the number of the bus which had caused the accident and the resultant death of Assem was 1947. In his statement under Section

313 of the Cr.P.C. the petitioner has stated that the accident was not caused by my bus no. DL-1P-1947 on 4.2.1995, thereby impliedly admitting that he was driving the said bus on that day. DW-1 a neighbour in his cross-examination has also admitted that Baldev used to drive the bus owned by a South Indian; the owner of the bus is Shivilangum PW-5; his name is suggestive of him being a South Indian. No dispute remains on the identity of the accused.

16. Mechanical inspection report had noted no fresh damage on the bus obviously for the reason that the bus had collided with a pedestrian; there was no force or impact suffered by the bus; conduct of PW-1 in not removing the injured to the hospital is not unnatural; it is not as if the injured remained lying at the spot; he had forthwith been given medical aid and had been removed to the hospital. PW3 had only identified the victim.

17. The impugned judgment calls for no interference.

18. However, on the quantum of sentence keeping in view the fact that the incident had occurred 15 years ago i.e. more than 1-1/2 decade from today; petitioner being a widower who has to take care of three unmarried daughters, one son and a blind mother; Court is inclined to modify the sentence.

19. Policy of sentencing is reformatory, deterrent and punitive; keeping in view the nature of the offence as is in this case, a balance

has to be maintained between the deterrent and reformatory aspect of the sentence, too lenient or too harsh a sentence may lose its efficaciousness.

20. The ends of justice would be met if the sentence awarded to the petitioner of one year under Section 304-A of the IPC is reduced to a sentence of three months; no modification is made in the sentence of fine imposed under Section 304-A; for the offence under Section 279 of the IPC the sentence is reduced from RI 3 months to RI one month; no modification is made on the fine imposed.

21. Bail bond and surety bond are cancelled; petitioner is directed to surrender to suffer the remaining sentence which is inclusive of the sentence already suffered by him. Petition is disposed of in the above terms.

INDERMEET KAUR, J.

OCTOBER 30th, 2009
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