

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 24/2001

Judgment Reserved on: 13th October, 2009

Judgment Delivered on: October 20, 2009

AJAY KUMAR

..... Petitioner

Through: Mr.R.P.S. Sirohi, Advocate

versus

STATE

..... Respondent

Through: Ms.Fizani Husain, 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.

1. On 28.2.1989, the unfortunate life of victim Radhey Shyam was lost in a bus accident. The said vehicle was bus no.DEP 6776 being driven by the appellant Ajay Kumar. The bus had hit the cyclist under the right rear side tyre. He had succumbed to his death at the spot.

2. Vide judgment dated 13.9.2000, Ajay Kumar had been convicted by the Court of the M.M. under Sections

279/304-A IPC. He had been sentenced to undergo RI for two years and a fine of Rs.5,000/- in default of payment of fine SI for 3 months for the offence under Section 304 A IPC. For the offence under Section 279-A of the IPC, he had been sentenced to undergo SI for 3 months and fine of Rs.1,000/- in default of payment of fine SI 15 days.

3. In appeal vide impugned judgment dated 16.1.2001, the conviction of the appellant was maintained but the sentence was reduced to RI for 1 year for the Section 304-A IPC with a fine of Rs.1000/- in default of payment a fine to undergo SI for 2 months. No modification was made in the sentence imposed under Section 279 of the IPC.

4. It is this judgment which is the subject matter of the present revision petition.

5. Learned counsel for the petitioner has urged that both the Courts below have faulted in relying upon the versions of PW-6 and PW-8, the purported eye witnesses; it is submitted that PW-6 was having a dhaba which was on the left side of the place of occurrence; PW-8 was a chance witness and he had deposed that the cycle was behind the offending bus; in these circumstances, it was not possible for either of the two so called eye witnesses to have witnessed the incident. The defence of the accused had all along been that some other vehicle had hit the deceased; the mechanical inspection report of the offending vehicle also does not

corroborate the eye witness account as set up by the prosecution; scratches and blood marks had been noted on the right side rear outer tyre of the bus; version of the eye witness PW-6 is to the effect that the right side front wheel of the bus had crushed the cycle; there is no explanation for this discrepancy. The I.O. SI Ranbir Singh has also not been examined for which no plausible explanation is forthcoming; for this proposition reliance has been placed upon 2006 CrL.L.J. 1512 Chuni Lal vs. State of Haryana. It is argued that in similar circumstances it had been held that the non-examination of the I.O. in an accident case under Section 304-A of the IPC would amount to a serious lapse/ omission on the part of the prosecution; giving benefit of doubt to the petitioner, he had been acquitted. Reliance has been placed upon 2007 (2) Crimes 58 (SC) State of M.P. vs. Bacchudas @ Balram & Ors. to support the submission that where there are variations in the versions of the witness, benefit of doubt has to accrue in favour of the accused; the cardinal rule of criminal justice being that wherever two views are possible the one favouring the accused has to be followed. In the alternate it has been submitted that even if this Court is not willing to alter the conviction of the accused; the incident having occurred almost two decade ago i.e. in the year 1989 and the accused not being a previous offender benefit of probation be extended to him. For this proposition reliance

has been placed upon 2008 CrI.J 1458 State vs. Kaptan Singh.

6. Revisional powers of High Court under Sections 397 and 401 of the IPC are to be exercised to correct a miscarriage of justice arising from a misconception of law, irregularity of procedure and similar infirmities.

7. On the perusal of the record it is noted that the first eye witness whose statement was recorded at the spot itself is Sunder Lal PW-6. He on oath deposed that he has a dhaba near the Koriya Pull. In the year 1989, date and month he could not recollect, at about 9.30AM a bus driven by the accused Ajay Kumar came from the front side of Fateh Puri towards Koriya Pull at a high speed; a cyclist was also coming from the same side; the bus came at a high speed and the right side front wheel of the bus crushed the cyclist; the bus stopped at a distance. The accused driver was apprehended at the spot. The bus was seized vide exhibit memo No.PW-6/A. His statement was recorded by the police. At his instance the site plan was prepared. In his cross-examination PW-6 has reiterated that his statement was recorded at the spot by the police; the accused had been apprehended by the public persons at the spot. He has admitted that he is illiterate and his statement had not been read over to him by the police. He has however categorically reiterated that his statement was recorded by the police and signed by him at the spot. His dhaba was about 15 steps

away from the spot, there was heavy rush on the road at that time; he asserted that he had seen the incident. He denied the suggestion that the accused had left the place after the incident. He also denied the suggestion that he had not seen the incident.

8. There was yet another eye witness and he is Ashok Kumar Jain PW-8. PW-8 had deposed that on 28.2.1989, he was coming from Ashok Vihar on a two wheeler scooter, at about 9.30AM in front of the Railway Station at the S.P.Mukherji Marg a bus no.6767 came from the left and after crossing him hit a cyclist at some distance in front of him. The bus dragged the cyclist and the back side wheel of the bus ran over the cyclist. The public raised alarm. The victim succumbed to his death at the spot. In his cross-examination he has stated that his scooter was ahead of the bus; he had seen the accident at a distance of about 7-8 feet, 70-80 persons have been collected at the spot, he had given his visiting card to the police. He had admitted that the cyclist was on the right side and at the time of the accident, no traffic was moving around.

9. Version of the prosecution has been hinged on these two material witnesses i.e. the eye witness accounts of PW-6 and PW-8. PW-6 is a natural witness having a dhaba on the left side of the place where the incident had occurred. He had admittedly witnessed the incident about 15 steps away;

time was at about 9.30AM in the morning; visibility was clear being the early morning hour of the day. PW-6 was admittedly on the left side of the road from where he had seen the occurrence; his perceivability was clear; there is nothing whatsoever which can be gathered from his version that he could not see the occurrence from where he was stationed. No such suggestion has also been given to him.

10. PW-8 was a chance witness. Like PW-6, he also had no ulterior purpose or motive to implicate the accused; he had no axe to grind. Admittedly his two wheeler scooter was behind the offending bus when it overtook him from the back side rashly and after crossing him immediately crushed the cyclist. He had witnessed the incident at a distance of about 7-8 feet.

11. The presence of the accused at the spot is fortified by the suggestion given by learned defence counsel to PW-6 which was to the effect that the accused had left the place after the incident thereby admitting that the accused was present at the time of incident.

12. The defence of the accused under Section 313 Cr.P.C. was that he was not driving the bus at the time of the accident; this was not suggested to either PW-6 or PW-8; in fact a contrary suggestion has been given to PW-6 as discussed supra. No evidence in defence has also been led.

13. The photographs taken at the spot have been

proved in the testimony of PW-9 HC Om Prakash. The said photographs clearly depict that a Tata bus no. DEP 6776 is stationed at the spot. Photographs of the victim taken at the spot have also been perused. The bus had been seized vide Ex.PW-6/A. The mechanical inspection report Ex.PW-2/A of the vehicle shows scratches and blood marks on the right rear outer tyre. Ocular version of PW-8 is also categorical that the bus had dragged the cyclist and the back side wheel of the bus crushed the cyclist which had resulted in his death; that is how the scratch marks on right side outer tyre of the bus had appeared.

14. It also has to be borne in mind that neither of the two eye witnesses are in any manner related to the victim or have any special sympathy for him. They are also not enemical or ulteriorly motivated towards the accused. Both the said witnesses are fully reliable and cogent, their versions had given detailed graphic versions of the incident.

15. The non-examination of the I.O. would not entitle the accused to a benefit; lapses of investigation should not accrue to the benefit of the offender; criminal justice should not be made a casualty for a wrong committed by the Investigating Officer.

16. Prosecution has been able to establish that after the offending bus hit the cyclist he was dragged upto a short distance; the right rear wheel of the bus had crushed him; at

the time of the accident there was no traffic moving near the cyclist; the bus was being driven at a high speed in a rash manner. It is true that in judging whether a driver of a motor vehicle is guilty of a rash or negligent act within the meaning of Section 279 of the I.P.C., no abstract standard can be laid down and the Court has to judge what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient having regard to all the circumstances of the case. In the instant case from the evidence gathered on record it can be said that Ajay Kumar was both rash and negligent. He was the driver of a bus and had lost control over his act resulting in his colliding with the cyclist resulting in his death.

17. Conviction of the appellant calls for no interference. On the proposition of the sentence imposed upon the appellant, it is no doubt that the incident is almost two decades old having occurred in the month of February, 1989. It is also not in dispute that the accused is a first offender and has no other criminal background. The nominal roll of the appellant shows that he had not suffered any incarceration in this case. The fine imposed upon him stands deposited.

18. While imposing a sentence, the first facet that must be kept in mind is that the accused must realize that he has committed the act which is not only harmful to the society

of which he forms an integral part but is also harmful for his own future both as an individual and as a member of the society. The second facet highlights the punitive deterrent aspect of a sentence and the third facet highlights the reformatory aspect of a sentence. In a modern civilized society the reformatory aspect of the sentence is given great importance; however a too lenient or a too harsh sentence, both lose their efficaciousness. One does not deter and the other may frustrate, thereby making the offender a hardened criminal.

19. In this background having regard to the facts and circumstances of the present case it would meet the ends of justice if the sentence of imprisonment imposed under Section 304 A of the IPC which was imposed on 16.1.2001, is reduced from one year to RI for 3 months. This would adequately meet the ends of justice with a balance and due regard to the policy of sentencing on both the aspects; i.e. of a punitive deterrent sentence and a reformatory aspect of the sentence. Bail bond and Surety bond of the petitioner is cancelled; he is directed to suffer the remaining sentence. With this modification, the revision petition is disposed of.

INDERMEET KAUR, J.

OCTOBER 20, 2009

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