

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 9th November, 2009*
Judgment Delivered on: 12th November, 2009

+ **CRL.REV.P.542/2002**

ROOP LAL Petitioner
Through: Mr.H.J.S.Ahluwalia, Adv.

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.

1. On 18.12.1990, bus No.DEF-8200 was being driven on route no.256 by the petitioner Roop Lal. At Durga Puri Chowk at about 12.55 PM, the said bus hit against the victim Amar Singh who succumbed to his death. Charge-sheet was filed under Section 279/304-A of the IPC.

2. The eye-witness account of complainant Virender Kumar PW-4 and HC Khoob Singh PW-5 was believed by the Trial Court. The mechanical inspection of the bus had been conducted by Radhey Mohan Sharma PW-2 vide report Ex.PW-2/A noting

damage on the rear right side with both the tyres punctured. Photographs Ex.P-1 to Ex.P-3 of the spot of occurrence had been taken by Sanjay Kumar PW-8. Post-mortem on the victim had been conducted by Dr.L.T.Ramani PW-6 vide his report Ex.PW-6/A and the injuries had been opined to be ante-mortem; death was instantaneous consequent to the multiple injuries suffered by the victim because of vehicler accident. Investigating officer ASI Iqbal Singh PW-12 had reached the spot along with Const.Balwan Singh PW-7; site plan had been proved as Ex.PW-12/C and had been prepared at the instance of eye-witness PW-5.

3. The Trial Court vide judgment dated 5.1.2002 convicted the petitioner under Section 279/304-A of the IPC. Vide order of sentence dated 16.1.2002 he had been sentenced to undergo RI for 15 months and to pay a fine of Rs.300/- in default of payment of fine to undergo SI for 15 days for the offence under Section 304-A of the IPC; no separate sentence had been awarded for the offence under Section 279 of the IPC.

4. Appeal of the appellant had been dismissed by the Appellate Court vide judgment dated 17.7.2002. No modification was made in the sentence either.

5. On behalf of the petitioner, before this court, it has been urged that the judgments of both the courts below are illegal and arbitrary which has resulted in a miscarriage of justice demanding interference by this court. It is submitted that on 10.10.2000,

petitioner had been convicted by the Trial Court under Section 279/304-A of the IPC. This judgment had become the subject matter of an appeal before the Sessions Judge who had on 30.4.2001 remanded the case back to the Trial Court; the judgment and order of sentence had been set aside; Trial Court had been directed to adduce opportunity to the accused to adduce his defence evidence and then decide the case afresh. With these directions the matter had been remanded. Thereafter, the second judgment had been passed by the Trial Court on 5.1.2002. A perusal of this impugned judgment with special reference to para 6 shows that the fresh submissions which the accused had been permitted to address before the Trial Court had not been gone into. Para 6 of the judgment is as follows:

“6. I am not reproducing the facts and evidence in the case as the same already stands mentioned by me in my judgment dated 10.10.00 and the same be read as part of this judgment. I am of the considered view that prosecution has established its case beyond the shadow of reasonable doubt.”

This by itself shows that the trial court had not applied its mind afresh; the directions of the Sessions Judge had not been adhered to; on this count alone the petitioner is entitled to a benefit of doubt and a consequential acquittal.

6. Attention has also been drawn to the second judgment of the Appellate Court i.e. impugning this judgment dated 5.1.2002. The Sessions Judge vide order dated 17.7.2002 had dismissed the appeal without considering this submission which is now sought to

be propounded before this court. It is stated that this callous attitude of both the courts below has gravely prejudiced the rights of the petitioner; he has not been a fair hearing; principles of natural justice not having been adhered to; it is clear that the judgment of the courts below suffer from a bias; petitioner is entitled to the relief prayed for.

7. It has secondly been submitted that the testimony of the eye-witnesses PW-4 and PW-5 are contrary to one another; whereas PW-4 has stated that the victim was standing at the corner; PW-5 has stated that while he was walking the bus had hit him. Both PW-4 and PW-5 are police officials; the victim is also a police officer; these are reasons which had weighed in the mind of the so-called eye-witness at the time of their deposition; bias and prejudice is writ large; the PCR van had admittedly not been shown in the site plan; the distance of the eye-witness from the spot of incident not having been depicted in the site plan also throws doubt on the veracity of the versions of the said eye-witnesses. On merits also petitioner is entitled to a benefit of doubt.

8. Lastly it has been submitted that this FIR relates to the year 1990 i.e. almost 2 decades from today; petitioner has already rooted himself in society; he being a family man it would be unjust and unfair to relegate him back to the shackles of judicial custody; in the event that the court is not inclined to alter his conviction he

may be granted benefit of probation; nominal roll of the petitioner shows that he has already suffered incarceration of about 20 days.

9. Arguments have been heard. Record has been perused.

10. The first submission of the learned defence counsel is incorrect and clearly falsified from the perusal of the record. On 10.10.2000, the petitioner had been convicted under Section 279/304-A of the IPC and had been sentenced to undergo RI for 15 months and to pay a fine of Rs.300/- in default of payment of fine to undergo SI for 15 days for the offence punishable under Section 304-A of the IPC. No separate sentence had been awarded under Section 279 of the IPC. The appeal against this judgment had been disposed of on 30.4.2001 with directions to the Trial Court to consider the matter afresh after giving opportunity to the accused to adduce his defence evidence. In para 6 of the said judgment reference had been made to enquiry reports which the accused had wished to prove. Permission had accordingly been given to the petitioner to lead his defence evidence.

11. Thereafter the perusal of the record shows that three witnesses have been examined in defence. On 6.7.2001 DW Zile Singh was present but discharged on the request of learned defence counsel. On 9.8.2001 three witnesses on behalf of the defence had been examined and thereafter defence evidence had been closed. Perusal of the record further shows that the defence witnesses examined were DW-1 Arvind Singh who was the LDC from the

Record Room, Karkardooma Courts. He had proved the order of the appellate court vide which directions had been given to the Metropolitan Magistrate to allow the accused to produce evidence in defence. DW-2 Lalit Kumar was the depot manager at Wazirpur. He had reached the spot after the accident. This is an admitted version. DW-3 Zile Singh posted at ATI, Road Safety Cell had also reached the spot after the accident was over where as per his version the rehriwala had told him that there was an eye-witness to the incident and as per the version of that eye-witnesses the accident had occurred because of the negligence of the deceased and not because of the fault of the driver. No detail of the said eye-witness had been given by DW-3 and neither was the detail of rehriwala who had told him this had been given in this version. He had proved a site plan Ex.PW-3/B which as per his version in his cross-examination had been prepared by him on the basis of his own knowledge.

12. It was after the examination of all these three witnesses of the defence that the second judgment i.e. the judgment dated 5.1.2002 had been passed by the learned Metropolitan Magistrate. This judgment has in detail discussed the evidence produced in defence. The enquiry report as per the version of the petitioner had exonerated him from the departmental proceedings had been considered and find mention in para 14,15 and 16 of the judgment. Thereafter appellate court vide its impugned judgment dated

17.7.2002 had considered all these submissions afresh. The Sessions Court had rejected the testimony of the defence witnesses as is evident from para 9 and 10 of the said judgment. Submission of the defence counsel on this score that he has suffered a bias and grave prejudice as the court of the learned Metropolitan Magistrate had not decided the case afresh is contrary to the record. The entire defence evidence including the enquiry reports which had purportedly exonerated the petitioner had been gone into by the trial judge; the same had been re-considered at the Session level again. This submission of the counsel for the petitioner has no force.

13. The version of the eye-witnesses i.e. PW-4 and PW-5 have also been perused. Their testimony has to be read in the context of the site plan which has been proved as PW-12/C. The site plan at point A shows the place where the dead body was lying after the accident had occurred; point B is place of the accident; site plan further states that the distance between the dead body and the accidented bus is about 15 paces. Submission of the defence counsel that the driver was neither rash nor negligent does not appear to be borne out from the either ocular testimony of the eye-witnesses or the documentary evidence which is the site plan before this court. PW-4 has in clear terms stated that the victim was standing at the corner of the chowk when the bus came and hit him; it stopped at a distance of 30 to 40 paces away after the

accident. PW-5 has corroborated this version; he has stated that the bus had hit the pedestrian who was going ahead of him on the road; Amar Singh fell on the road and the rear wheel of the bus run over him; he expired at the spot. The mechanical inspection report Ex.PW-2/A also shows that both the rear tyres of the bus were punctured and damage was noted. PW-5 had denied the suggestion that the victim was trying to board the bus from the front gate pursuant to which he had fallen down.

14. It is apparent that the accused was taking a sharp turn, a 90 degree manoeuvre; it was incumbent upon him to have slowed his speed to take this turn; he did not do so; the consequence was the fateful accident. Bus had stopped 15 paces away from the dead body; this by itself shows that the bus was at a fast speed and the driver had no control over it. Even presuming that it was the case where the victim was trying to board the bus; it was the duty of the driver to have slowed his speed to avoid the accident.

15. Site plan was prepared at the instance of PW-5; as per his version the PCR van where PW-5 was posted was at a distance of about 20 meters from the place of the accident and he was standing outside the van. PW-4 was also posted in the PCR but no question had been put to this witness in his cross-examination about his positioning at the time of the accident; eye-witness account of both PW-4 and PW-5 are credible and natural; both of them were on duty at the PCR van and in the normal course of

their duty hours they had witnessed the accident. Merely because they were police officials does not discredit their version or purge it.

16. Trial Court had rightly appreciated their testimonies; further merely because the petitioner had been exonerated from the departmental proceedings is no ground to hold that the eye-witness account of PW-4 and PW-5 would not establish the version of the prosecution. Proceedings in the present FIR are distinct. Admittedly, DW-2 and DW-3 had reached the spot after the accident was over; site plan was prepared by DW-3 on his own showing; DW-3 not giving the detail or the name of the rehriwala or the so-called eye-witness who had seen the accident; his testimony is of no help to the accused.

17. The conviction of the petitioner by both the court below calls for no interference.

18. Undisputedly, the incident is about 19 years old; of the sentence of 15 months RI awarded to the petitioner he has suffered incarceration of about 20 days. He is on bail since August, 2002; he has re-established his roots and ties in society and with the family; to uproot him at this stage may not be fair but at the same time the policy of sentencing especially for offences of this nature requires a deterrent; the deterrent has become all the more important in today's scenario where accidents are on the rise. Petitioner was a professional bus driver. While balancing

both the views interest of justice demands that the sentence of RI for 15 months awarded by the court below be reduced to RI for four months which would be inclusive of the sentence already suffered by the petitioner; no modification is made in the fine which has been imposed.

19. Bail bond and surety bond of the petitioner are cancelled. The petitioner is directed to surrender forthwith to suffer the remaining sentence.

(INDERMEET KAUR)
JUDGE

12th November, 2009
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