

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

+ CRIMINAL REVISION PETITION No.496/2001

Reserved on : 02.12.2009

% Date of decision : 04.12.2009

Ram Karan Petitioner.

Through Mr.Rajesh Mahajan, Advocate.

Versus

State (Delhi Admn) Respondent.

Through Mr.Manoj Ohri, Advocate.

CORAM

HON'BLE MS.JUSTICE INDERMEET KAUR

1. Whether 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 20.10.1989, at about 9.00AM at house no.10/117 Patel Street, Vishwas Nagar, Shadhara a construction was being raised under the contractor ship of the petitioner Ram Karan. The owner of this property was one Gopal Kishan PW-6.

2. Malba and iron rods were thrown at the construction site pursuant to which Rama Kant, a labourer sustained injuries and he scummed to his death.

3. Ram Karan, the petitioner was charge sheeted under Section 304A of the IPC; before the Trial Court nine witnesses have been examined; of whom the star witness of the prosecution was Santosh Kumar PW-9, an eye-witness. He had deposed that he was working as a Mason in the adjoining factory at Patel Gali, Vishwas Nagar being factory no.10/34; the factory was 2-3 houses away from the house under construction; demolition work was going on; the petitioner i.e. Ram Karan was asked not to carry out demolition because some mishappening may take place. He has further deposed that although the petitioner had been asked to stop the work, he replied that it was his work and he knew how to do it. Malba fell upon Rama Kant, pursuant thereto he slipped into a nali and sustained injuries. He was removed to the hospital where he was declared brought dead. The FIR had been recorded on the statement of PW-9; the said statement is Ex.PW-10/A.

4. In his cross-examination PW-9 has admitted that Rama Kant was also at fault because he was standing below the house

despite being asked by Gopal (PW-6) to move aside. It has been reiterated that the incident had taken place because of the negligence of the petitioner Ram Karan.

5. The owner of the house has been examined as PW-6, namely, Gopal Kishan. As per his version he was not present at the spot when the incident had occurred. He had removed the injured to Dayanand Hospital. The police had brought the contractor to the Police Station in the afternoon; the police had asked the name of the contractor, whose name had been disclosed by PW-6 as Ram Karan; thereafter PW-6 was allowed to go.

6. The post-mortem on the deceased was conducted by Dr.L.K. Barua, PW-7. Vide his report PW-7/A the injuries were opined as anti-mortem and death was caused due to blunt force impact ie. rubbing against road surface; shock and coma had led to the death of the victim resulting from the fracture of the cervical vertebrae and the cerebrum. The other witnesses are by and large formal.

7. In his statement under Section 313 of the Cr.P.C., the accused had pleaded innocence; in defence he had produced one witness; DW-1 has stated that the petitioner was not present at

the spot at the time when the incident had occurred; the work was not being done under his supervision.

8. The Trial Court on the basis of the evidence adduced before it had disbelieved the version of defence; the case as set up by the prosecution had been accepted; the petitioner had been convicted under Section 304A of the IPC. Vide order of sentence dated 12.3.2001, he had been sentenced to undergo RI of 9 months and to pay a fine of Rs.1000/-; in default of payment of fine to undergo RI for one month.

9. In appeal before the Additional Sessions Judge, while maintaining the conviction the sentence was modified and the petitioner was directed to be released on probation for a period of two years on his furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount. He had been directed to pay Rs.50,000/- as compensation to the heirs of the deceased as also costs of Rs.1000/-.

10. This was vide judgment dated 28.7.2001; which has now become the subject matter of this present revision petition.

11. Before this Court the judgment of two fact finding Courts below has been assailed on three points :-

(i) the prosecution has failed to prove that the

petitioner was the contractor who was supervising the construction of the building owned by PW-6. No documentary evidence had been proved to this effect and besides the version of PW-6 and PW-9, there is no other evidence with the prosecution to establish this averment;

(ii) the Investigating Officer has not been examined; this has caused prejudice to the accused as crucial documents i.e. the site plan and rukka have remained unexhibited;

(iii) contributory negligence qua the deceased cannot be ruled out. Attention has been drawn to the testimony of PW-9 wherein in his cross-examination he has admitted that :-

“Rama Kant was also at fault because he was standing below the house despite being asked by Gopal to move aside”.

12. This Court is sitting in revision. Powers of a Revisional Court are limited. There are two concurrent findings of fact by two Courts below. What this Court has to appreciate or go into is only on the legality, correctness or the propriety of the finding, order or sentence which is under challenge.

13. On this touch stone, the arguments addressed by the learned defence counsel have to be tested.

14. PW-9 is an eye-witness. He is an independent entity; no

ulterior purpose or motive has been attributed to him as to why he would falsely implicate the petitioner for any reason whatsoever. He has categorically deposed that the house under construction was in the process of being demolished; the petitioner i.e. Ram Karan had been asked not to carry out the demolition because some mishap could take place but he did not accede to their request; incident had occurred at 9.00AM; the petitioner inspite of this warning had replied that it was his work and he knew how to carry out it.

15. Incident had occurred at 9.00AM in the morning hours in a busy area i.e. in the Patel Gali of Vishwas Nagar. Petitioner did not exercise the due care and precaution expected of a prudent man in carrying out this work; even lay persons like PW-9 had noted that there was a danger and a hazard attached to this demolition work; warning to the said effect had been given to the petitioner but to no avail.

16. PW-6 was the owner of the house on which the demolition work was being carried. He had disclosed the name of the contractor i.e. of Ram Karan, the present petitioner. Ram Karan had thereafter been apprehended and brought to the police station and only then PW-6 was allowed to leave. PW-6 has also

on oath deposed that while the construction work of his house was going on he had asked his contractor i.e. Ram Karan to stop the work because public was coming and going but Ram Karan inspite of this replied that his labour was doing the work properly and PW-6 should not worry. PW-6 has attributed the incident to the fault of the contractor i.e. the petitioner.

17. In his statement under Section 313 of the Cr.P.C., the petitioner has nowhere made any denial that he was not the contractor carrying out the work at site; his version is a simple and bald denial.

18. In defence DW-1 has deposed that Ram Karan was not present at the spot at the time of the incident. This fact is not in dispute. The witness of the prosecution have also not testified to this effect; yet the petitioner cannot wriggle out from his responsibility. It was under his supervision that this work of the demolition of the house of PW-6 was being carried out. Inspite of repeated warnings and caution notes having been given by PW-6 and PW-9, the petitioner did not pay any heed and continued the work without care and the caution which ought to have been exercised by a reasonable and a prudent person. This is especially so keeping in view the fact that the incident had

occurred in the morning hours i.e. at 9.00AM in a busy area; the demolition involved the breaking of the house structure which included concrete malba and iron girders falling down; in these circumstances the possibility that any person could have been struck or hit pursuant thereto could not have been excluded. The rash and negligent act of the petitioner appears to be writ large.

19. The non-examination of the Investigation Officer has not prejudiced the accused; rukka and the site plan not having been proved would not create a dent in the version and testimony of the eye-witness PW-9 who has given a clean, cogent and a categorical version; his version is corroborated by the testimony of PW-6.

20. In 83 (2000) DLT 476 Ambika Prasad and Anr. Etc. vs. State (Delhi Administration, Delhi) the Supreme Court in a case under Section 304A of the IPC had held that the non-examination of the Investigating Officer would not have any bearing on the appreciation of the evidence of the eye-witness; it being unfortunate that Investigating Officer has not stepped into the witness box without any justifiable ground but the conduct of the Investigating Officer could not be a ground for discarding the evidence of the eye-witness whose presence on the spot is

established beyond reasonable doubt.

21. The contributory negligence by the deceased as has been argued by the defence counsel, in view of the version of PW-9 is also not made out. The rule of contributory negligence may be a good defence in a civil action but it has little place in an indictment for criminal negligence. Once it is established that the accused has caused the death of the person by his negligent act not amounting to culpable homicide, contributory negligence on the part of the deceased is irrelevant. The act of the petitioner was an act showing an utter disregard for the life and safety of others; it goes beyond a mere matter of compensation.

22. Conviction of the petitioner calls for no interference. The sentence which has been imposed upon the petitioner is also on the lesser side, he has been given the benefit of probation. The compensation of Rs.50,000/- which had been directed be paid by him was vide order dated 28.7.2001, i.e. more than 8 years from today. The said compensation has to be paid to the heirs of the deceased for the loss of a precious life of a close member of their family by the rash and negligent act of the petitioner. The said sentence calls for no interference.

23. Revision petition is without any merit. It is dismissed.

December 04, 2009
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(Indermeet Kaur)
JUDGE