

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.Rev.P.433/2009

% Date of Decision: 10.11.2009

PAPPAN Petitioner

! Through: Mr. Anil Anand, Adv.

Versus

\$ STATE (Govt. of N.C.T. of Delhi) Respondent

^ Through: Mr. Navin Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG,J**(Oral)

1. The only grievance made by the petitioner in this case is that the Magistrate while convicting the appellant under Section 304A and 279 IPC not only awarded sentence of imprisonment but also directed payment of fine of Rs.1,000/- for the offence under Section 279 IPC and fine of Rs.3,000/- for the offence under Section 304A IPC. Additionally, the Magistrate also directed the appellant to pay a sum of Rs.50,000/- by way of compensation to the legal heirs of the deceased, which it is stated is illegal.

2. In appeal, the ASJ, despite deposit of fine by the appellant, dismissed the appeal and maintained the order passed by the

Magistrate including payment of compensation.

3. A perusal of Section 357(3) Cr.P.C. which is only an enabling provision to award compensation goes to show that such order can only be passed when a Court imposes the sentence of which fine does not form part which is not the case in hand. The said provision for the sake of reference is reproduced hereunder:

357.Order to pay compensation:

(1) & (2). xxxx

3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

4. As stated above, the sentence awarded by the Magistrate is under Section 279 and 304A IPC and also fine as its element besides imprisonment awarded to the appellant. Thus, imposition of Rs.50,000/- compensation was without the sanction of law and thus, that portion of the order cannot be sustained. Accordingly, the order of the Magistrate to the extent that it awards compensation to the victim of Rs.50,000/- in addition to awarded punishment to the appellant is set aside and the order of the Magistrate shall stand modified accordingly.

5. Learned counsel for the petitioner has also prayed for granting probation to the petitioner relying upon the judgment delivered in the case of *Paul George Vs. State of NCT of Delhi JT 2008*

(3) SC 545, *State Vs. Kaptan Singh* 2008 Cri.L.J. 1458 and *Vaswa Nand Vs. State* (2002) (I) JCC 96.

6. In the case of *Paul George Vs. State of NCT of Delhi* (supra), the Supreme Court granted probation, taking into consideration that the driver had been removed from service and 20 years have passed since the date of the incident. The relevant para is reproduced hereunder:

8. It is therefore evident that what has to be seen on the facts of the case is the nature of act and as to whether it fell within the protection available to the appellant. The facts of the present case show that the appellant, a Head Constable Driver, was posted at Kashmere Gate Police Station had been entrusted with the task of delivering a wireless message to the Police Head Quarters at the ITO in New Delhi and while on his way he had suddenly gone over the road divider which separated the lanes and had hit the scooter which was oncoming in the opposite lane. It is this act, the appellant had caused the death of one person and injuries to the other. Undoubtedly the duty entrusted to the appellant to deliver the message to the Police Head Quarters was in his capacity as a police officer and to that extent and prima facie he would be protected by Section 140 of the Act. We find however that by jumping road divider and coming-face on the incoming traffic was the factor which had caused the accident and was clearly not a matter within the colour of duty. We are, therefore, of the opinion that the case of the appellant would not be covered by Section 140 and that the initiation of proceedings and the prosecution beyond three months from the date of accident was not beyond limitation. It is also evident from the above discussion that the appellant's counsel in the various litigation that had come up the hierarchy right up to the Supreme Court had taken an ambivalent stand with regard to the sanction required under Section 197 of the Code and to the limitation imposed by Sub-section (1) of Section 140 of the Act. We now come up to the sentence of the appellant.

9. This litigation has been going on for the last 20 years and has been fought tenaciously through various courts, we are also told that the appellant who has had a good career throughout but for this one aberration has since been dismissed from service on account of his conviction. We, therefore, while dismissing the appeal, feel that the ends of justice would be met if we direct that the appellant be released on probation under Section 4 of the Probation of Offenders Act, 1958 on conditions to be imposed by the Trial Court. The appeal is disposed of in the above terms.

7. In the case of *Kaptan Singh (Supra)* also benefit of Probation of Offenders Act was granted. The relevant portion is reproduced hereunder:

18. I thus impose the minimum sentence. I sentence, the respondent to undergo simple imprisonment for 1 month for having committed the offence punishable under Section 279 IPC. I sentence the respondent to undergo simple imprisonment for period of 3 months for the offence under Section 304A IPC. Both sentences shall run concurrently. However, I grant benefit of probation to the respondent under the Probation of Offenders Act 1958.

19. I grant 2 weeks time to the respondent to furnish the requisite bond to the Registrar (General) of this Court as required by law undertaking good behavior for a period of one year. If the bond is filed, sentence imposed would remain suspended for a period of one year. If respondent successfully completes the period of probation, the sentence would not be given effect to.

20. LCR be returned.

21. No costs

8. In *Vaswa Anand's case (supra)* also in a case where 15 years had lapsed since trial, the accused was released on probation.

9. In this matter also, the trial commenced w.e.f 10.02.1997, that is, the date of the incident and the judgment of conviction has been passed on 28.05.2009. The conviction was awarded on 02.05.2009

10. On the other hand, the learned APP has relied upon the judgment delivered by the Supreme Court in the case of *Dalbir Singh Vs. State of Haryana 2000 IV AD (SC) 507* which is also a case where a blue line bus was involved in the incident which is also the case in hand where the Hon'ble Supreme Court has been pleased to observe:

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

Thus, bestowing our serious consideration on the arguments addressed by the learned Counsel for the appellant we express our inability to lean to the benevolent provision to Section 4 of the PO Act. The appeal is accordingly dismissed.

11. However, judgment in the case of Paul George (Supra) is a later judgment. Taking all the facts into consideration, I am of the considered view that the interest of justice will be met by granting probation to the petitioner subject to his furnishing a bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the trial Court for remaining in good conduct for 1 year, on the condition that he shall also deposit the compensation of Rs.50,000/- with the trial Court for the benefit of the legal heirs of the victims within 15 days from today under Section 4 of the Probation of Offenders Act. The petitioner shall be released only after the orders are passed by the Magistrate accepting the bond of probation and deposit of Rs.50,000/- as compensation and his sentence would stand amended accordingly.

12. The revision is disposed of accordingly.

13. A copy of the order be sent to the trial Court.

14. Dasti.

MOOL CHAND GARG, J.

NOVEMBER 10, 2009
anb