

14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 426/2010**

SUDHIR GUPTA Petitioner
Through Mr. V.S. Yadav, Adv.

versus

STATE GOVT. OF NCT OF DELHI Respondent
Through Mr. Arvind Kumar Gupta, APP.
SI Mukesh Kumar.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
23.09.2010

%

1. I have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor in this revision petition which is directed against the judgment dated 1st June, 2010 passed by the Additional Sessions Judge dismissing the appeal of the petitioner against conviction under Sections 279/304-A Indian Penal Code, 1860 (IPC for short). The appellant has been sentenced to undergo rigorous imprisonment of one year and fine of Rs. 5,000/- and in default of payment of fine, to undergo simple imprisonment of three months. Out of the fine amount, Rs. 4,400/- has been directed to be paid to the legal heirs of the deceased.

2. Two contentions have been raised by the counsel for the petitioner. Firstly, that the statement of PW-1, Traffic Inspector Shyam Sunder should not have been taken into consideration both by the trial court and the appellate court in view of his statement under Section 161 Code of Criminal Procedure, 1973 (Code for short). It is stated that PW-1, traffic inspector Shyam Sunder has gone beyond what was stated by him before the police as recorded in his statement under Section 161 of the Code Ex.PW1/DA. As per Ex.PW1/DA, traffic inspector Shyam Sunder is not an eye witness to the accident. Secondly, it is submitted that mere fast driving does not prove rash and negligent driving on the part of the petitioner.

3. PW-1, traffic inspector Shyam Sunder in his statement recorded in the court has stated that he was an eye witness to the accident and had seen the truck number HR-10GA-0178 hitting the scooter bearing number DL-7S-F-7199. He has stated that the lady pillion rider got crushed under the said truck and the scooterist, who was driving the scooter sustained injuries. Learned defense counsel in the cross-examining, had suggested to the said witness that he had not seen the accident. He had also asked PW-1, traffic inspector Shyam Sunder

whether his statement was recorded by the police. PW-1, traffic inspector Shyam Sunder has stated that his statement was recorded only once by the Investigating Officer and was marked Ex.PW1/DA. The contradictions and specific portions of Ex.PW1/DA were not put and confronted to the said witness. PW-5, Investigating Officer-Sub Inspector Rajiv Kumar was cross examined in respect of the statement Ex.PW-1/DA of PW-1, traffic inspector Shyam Sunder, which was recorded by him. It has been stated by PW-5, Rajiv Kumar as under:-

“After interrogating Insp. Shyam Sunder Kaushik I felt that he had seen the accident. As complt. was also had seen the accident hence I have not recorded the statement of Insp. Shyam Sunder Kaushik in detail.”

4. Be that as it may, even if I completely ignore the statement of PW-1, traffic inspector Shyam Sunder, the conviction is justified and can be sustained on the statement of PW-2, Mahender Kumar Malhotra as well as post mortem report Ex.PW6/A, site plan Ex.PW5/B and the photographs Ex.PW2/B to E. In his statement PW-2, Mahender Kumar Malhotra has stated that at about 1 P.M., he was coming from Hanuman Mandir on his scooter with his wife on the pillion. When he had just crossed the monkey bridge, a truck came from flyover at a very fast

speed and hit his scooter. His wife fell down and got crushed under the truck. He fell on the other side and sustained injuries. He has stated that the truck was being driven by the petitioner. He identified the photographs Ex.PW2/B to E. He also identified the site plan, which was given mark A and on the statement of PW-5, SI Rajiv Kumar was exhibited as PW5/B. Learned trial court had also put questions to PW-2, Mahender Kumar Malhotra. In response PW-2, Mahender Kumar Malhotra has stated that the truck was being driven at the speed of about 60-70 KMPH and he was driving the scooter between 25-30 KMPH. He has further stated that the truck had hit the scooter from the back side and had taken a turn after hitting the scooter. He denied the suggestion given in the cross-examination that the scooter had slipped on the road after going over watermelon peel. PW-5, SI Rajiv Kumar has stated that on site inspection he found that the scooter was in the correct lane and the accident had taken place in the left lane at the merging point. He has stated that no water melon peel was found lying on the road and there was no indication that the scooter had slipped. The post mortem report Ex.PW6/A records that the whole facial skull of the deceased was badly crushed mostly on the right side. There were

multiple abrasions all over the upper body and thigh of the deceased. Photographs Ex.PW2/B to E also show that the scooter was hit from the back side and the wheel of the truck had crushed the skull of the deceased. Blood can also be seen on the road side. The deceased expired at the spot itself. The truck was parked at some distance.

5. Keeping in view the aforesaid facts, I do not see any reason to interfere with the impugned judgment dated 1st June, 2010 passed by the learned Additional Sessions Judge dismissing the appeal of the petitioner against the judgment of the trial court dated 26th September, 2007, convicting the appellant. On the question of sentence also, I do not find any reason to interfere. The Supreme Court in ***Dalbir Singh v. State of Haryana***, (2000) 5 SCC 82 had observed as under:

“13. 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 304-A 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 the vehicle he cannot escape from a 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.”

Accordingly, the revision petition is dismissed.

SANJIV KHANNA, J.

SEPTEMBER 23, 2010
NA