

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

+ **Crl. Rev.P. No. 785/2010**

% Reserved on: 12th July, 2011

Decided on: 22nd July, 2011

OM PRAKASH Petitioner

Through: Mr. Prag Chawla, Adv.

versus

STATE NCT OF DELHI Respondent

Through: Mr. Pawan Bahl, APP for State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. On 12th November, 2001 at about 10.15 PM at Mori Gate Chambery the Petitioner was driving truck bearing No. RJ-14-1G-3779 in a rash and negligent manner so as to endanger human life, as a result of which he struck against the scooter. Mr. Nathu Ram who was driving the scooter received injuries and later succumbed to the injuries received in the said accident. A case FIR No. 502/2001 under Section 279/304A IPC was registered at P.S.

Kashmere Gate, Delhi on the complaint of one Bijender Singh Shekhawat. On filing of a charge-sheet the Petitioner was tried and convicted for said offences and sentenced to undergo imprisonment for six months for offence under Section 279 IPC and one year for offence punishable under Section 304A IPC and a fine of Rs. 1,000/- and in default of payment of fine to further undergo Rigorous Imprisonment for three months. On an appeal being filed the same was dismissed. Thus, the Petitioner is before this Court by way of the present revision petition.

2. Learned counsel for the Petitioner urges that PW1 Bijender Singh has not stated that the Petitioner was driving the truck in a rash and negligent manner. In fact, PW1 in his cross-examination has admitted that he could not say if the truck was being driven negligently and that he did not know the meaning of “Laparwahi”. It is contended that the judgment of the Learned Trial Court and the Learned Appellate Court is based on conjectures and surmises. It is the duty of the prosecution to prove its case beyond reasonable doubt. Reliance is placed on *State of Karnataka Vs. Satish 1999 (1) JCC (SC) 97* to contend that merely saying that the vehicle was being driven ‘at a high speed’ does not mean that the vehicle was being driven in a rash and negligently manner. There should be evidence to prove that the vehicle was driven rashly and negligently. Petitioner says that the essential ingredients of

the offence under Section 304A IPC are missing and thus he be acquitted of the charges. In the alternative, it is prayed that the Petitioner has already undergone imprisonment for a period of 8 months and, thus, he be released on the period already undergone.

3. Learned APP on the other hand contends that a perusal of the testimony of PW1 Virender Singh Shekhawat, the sole eye-witness and PW7 Constable Praduman Kumar clearly shows that the truck was being driven at a high speed in a rash and negligent manner. Ex.P1 to Ex.P7, that is, the photographs of the spot show the skid marks which were caused due to applying brakes at high speed. The same shows the rashness with which the Petitioner was driving the vehicle. Even PW1 in his testimony has stated that the scooter was dragged to a distance which fact is corroborated by the skid marks of the truck. In view of the concurrent findings of the Courts below and there being no perversity in the judgment, no interference is warranted by this Court.

4. I have heard learned counsel for the parties and perused the record. PW1 Bijender Singh the eye-witness has categorically stated that the truck was at a very high speed and was being driven in a very rash and negligent manner. No doubt that this witness in his cross-examination has stated that he could not tell the speed of the truck or whether it was 40 Kilometers per hour.

Merely saying in the cross-examination that the witness did not know the meaning of 'Laparwahi' or 'Negligence' does not wash away the testimony of this witness recorded in his examination-in-chief. Reliance of the Petitioner on *State of Karnataka* (supra) is misconceived. In the said decision, the Hon'ble Supreme Court noted that both the Courts below gave a concurrent finding that the truck was being driven at a high speed. There was no specific finding that the truck was being driven in a rash and negligent manner. In the light of these findings of the Courts below the Apex Court held that merely because it was being driven at a high speed it cannot be assumed that it was driven in a rash and negligent manner.

5. Learned counsel for the Petitioner has placed great reliance on the fact that PW1 in his cross-examination has deposed that he could not say what was the speed of the truck or whether it was 40 km per hour. However, this witness in his examination in chief has said that at about 10.30 p.m. he was going towards ISBT and when he reached near Mori Gate Terminal he saw that one truck bearing No. RJ-14-1G-3779 came from the side of Boulevard Road and hit a two wheeler scooter and took the same to some distance. The truck was at a very high speed and was driven in a rash and negligent manner. This witness has further stated about the factum of arrest of the Petitioner whom he had apprehended at the spot and taking of the photographs. Thus

the testimony of the witness is clear and cogent and he has narrated the facts as the events unfolded PW3, Dr. K. Goel, and PW4 Dr. Jitender both of them have deposed in regard to the injuries sustained by the deceased. PW3 has opined that these injuries could not be possible by a simple fall. The post mortem report Ex. PW3/A records that the injuries caused were by blunt force impact possible in a road accident. PW7 Constable Praduman Kumar has proved the photographs Ex. P1 to Ex.P7 which were taken just after the incident on the same day. The photographs clearly show the skid marks on the road and the scooter underneath the truck. From a perusal of the testimonies of witnesses and other evidence placed on record it is clear that the truck/vehicle was being driven at a high speed in a rash and negligent manner.

6. I do not find any perversity much less any illegality in the impugned judgments on the perusal of the evidence on record. It may be noted that the power of revision vested in this Court is a kind of supervisory jurisdiction in order to prevent miscarriage of justice arising from the misconception of law or irregularity of procedure committed by the subordinate Courts. The revisional power of this Court is to be exercised to see that justice is done in accordance with the recognized rules of criminal jurisprudence and the subordinate Courts do not exceed their jurisdiction or abuse their powers

vested in them under the Code of Criminal Procedure.

7. The Hon'ble Supreme Court in *Dalbir Singh vs. State of Haryana*, 2000 (5) SCC 82 while dealing with a case punishable u/S 304A IPC held as under:-

“1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

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.....”

8. Therefore, in view of the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court, I find no merit in the present revision petition. The same is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JULY 22, 2011/‘ga’