

*** HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. A. No.172/2010

Date of Decision : 14.3.2012

STATE

..... Petitioner

Through: Ms.Jasbir Kaur, APP.

Versus

SATYAWAN

..... Respondent

Through: Mr. D.V.Goel, Adv.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. This is an appeal filed by the State against the judgment dated 07.8.2009 passed by Mr.S.K.Gautam, learned ASJ, (West-04), Delhi by virtue of which the learned ASJ has upheld the conviction of the respondent for an offence under Section 279/337/338/304A IPC in Crl.A.No.05/04/2009 titled Satyawan Vs. State but reduced the sentence of imprisonment to the already undergone by him during the course of trial, while as the respondent has not undergone even a single day's imprisonment.
2. Briefly stated the facts of the case are that the respondent was driving a DTC bus bearing RC No.DL IP

1640 on 30.4.1997 at about 8.10 am in a rash and negligent manner at the crossing of North Avenue Road and West Avenue Road, New Delhi and thereby caused simple injuries to one Karishma, grievous injuries to one Sanjeev Kumar and also death of one minor girl Priyanka, who were travelling along with their parents in an Auto. As a consequence of this, a case under Section 279/337/338/304A IPC was registered vide FIR no.426/97 of P.S. Punjabi Bagh and the respondent was arrested and later enlarged on bail because of the offences being bailable one.

3. After investigation, the charge sheet was filed and trial was conducted which culminated into the finding of guilt and imposition of sentence upon the respondent by the learned Magistrate on 27.4.2009. The learned Magistrate held the respondent guilty on all the four counts i.e. Section 279/337/338/304A IPC. For the three offences under Section 337/338/304A IPC the respondent was sentenced to SI for 6 months each and all the substantive sentences were directed to run concurrently.
4. In addition to this, a compensation /fine to the tune of

₹3,000/-, ₹5,000/- and ₹10,000/- was directed to be paid by the respondent for offences u/s 337, 338 and 304A IPC respectively and in default of payment of the fine, further SI of 30 days was imposed. So far as the offence under Section 279 IPC is concerned, no separate sentence was imposed as the said offence was held to constitute a minor offence as compared to the other three offences.

5. The respondent, feeling aggrieved by the judgment of conviction and order of sentence, assailed the same by way of an appeal before the learned Court of Sessions which passed the impugned order dated 07.8.2009 by virtue of which although the compensation/fine amount was substantially upheld but the sentence of imprisonment on all three accounts under Section 337/338/304A IPC was held to be harsh, keeping in view the fact that the respondent had been facing trial for 11 years and the fact that he is the only bread earner of his family, accordingly, the order of sentence was modified and he was visited with sentence of imprisonment already undergone by him during investigation, inquiry

and trial for the offence under Section 304A IPC.

6. So far as the compensation amount is concerned under Section 304-A IPC, it was sustained by the Appellate Court. As regards the offence under Section 338 IPC, he was sentenced till rising of the Court and a fine of Rs.1,000/- or in default 30 days SI, as well as Rs.2,000/- to be deposited as compensation to be given to the injured Sanjiv. As regards the offence under Section 337 IPC also, he was sentenced to imprisonment till rising of the Court and a fine of Rs.500/- or in default, 7 days SI and a fine of Rs.1,000/- to be deposited as compensation, which was to be given to the injured Karishma. So far as Section 279 IPC is concerned, like the order of MM, no separate sentence was imposed on him.
7. The State being aggrieved by this modification of the order of sentence has, accordingly preferred the present appeal against the impugned order.
8. I have heard the learned APP as well as the learned counsel for the respondent.
9. The learned APP has contended that the Court has shown

misplaced sympathy to the respondent by setting aside the substantive sentence of 6 months on all the three counts despite the fact that the act of rash and negligent driving of a heavy vehicle by the respondent had not only caused the death of one minor child but also caused simple and grievous injuries to the other occupants of the Auto.

10. The learned Trial Court had appropriately sentenced the respondent to 6 months RI, keeping in view the length of the trial as well as the fact that he was the sole bread earner which sentence otherwise ought to have been of 2 years because the Respondent was driving a bus under DTC.
11. It has been contended since the fatal accidents on the Delhi roads are on rise and the tendency to drive the vehicle rashly is not visited with harsh and stern punishment, the imposition of punishment by the learned Sessions Judge will be construed as showing misplaced sympathy to such offenders. Accordingly, he has prayed for enhancement of sentence to the respondent.
12. The learned counsel for the respondent has contested the

submissions made by the learned APP and has stated that the respondent had been facing trial for more than 11 years which in itself was a sufficient punishment. It was further stated that the appellant has a daughter and a son, who are school going and in case the appellant is visited with a substantive punishment of imprisonment, it is going to have a devastating effect on the entire family. Therefore, he has contended that the order of the learned Sessions Judge does not deserve to be altered.

13. I have carefully considered the submissions of both the parties. The rash and negligent driving by the offenders resulting in injuries and even death of the pedestrians and the other persons using the road, especially caused by the drivers of the buses in the city of Delhi is one of the main factors in the past decade for increased deaths on the Delhi roads. These drivers of the DTC buses on Delhi roads have a scant regard for the other road users on account of whose recklessness, young lives at times have been snuffed out of life. In all such cases, the object of law is lost sight by showing misplaced

sympathy to the drivers on account of long trials and various pleas which have been taken by the accused persons before the Trial Court.

14. The Apex Court from time to time, has reminded the Courts below of its duties and sentencing policy in such cases by its observations. The recent judgment of the Apex Court in the case titled Alister Anthony Pareira Vs. State of Maharashtra, **(2012) 2 SCC 468** is worthwhile quoting so far as the question of sentencing in an accidental case is concerned. It was observed by the Apex Court in the said case:-

"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the

society for award of appropriate sentence.

86. xxx xxx xxx

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88. In Dalbir Singh this Court was concerned with a case where the accused was held guilty of the offence under Section 304-A IPC. The Court made the following observations (at pp. 84-85 of the Report)

"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."

15. The aforesaid observations of the Apex Court in Alister Anthony Pereira's case (supra), clearly show the broad parameters which the Court must follow while sentencing a person in rash and negligent driving cases, especially, where death has been caused.
16. It has also been observed in the said judgment that a liberal attitude leading to the imposition of meagre sentences on the Appellant or imposition of token

sentences in such cases will be counterproductive in the long run and against societal interest.

17. Keeping in view the aforesaid observations of the Apex Court, I feel that the sentence which was imposed by the Magistrate was not only fair but also reasonable. Although, in an accident case, he could have sentenced the respondent to 2 years of RI but he chose to sentence him to only 6 months not only under Section 304A but also for the offence under Section 337/338 IPC and made all the three sentences to run concurrently so as to make it a maximum of 6 months, which is in my considered view, was not adequate but nevertheless which was sufficient enough to meet the ends of justice.
18. The learned Sessions Judge in its order dated 7.8.2009 has shown misplaced sympathy in reducing the sentence already undergone by him for an offence under Section 304A IPC till rising of the Court and has shown scant regard for the life of the citizen more so, when a minor was killed on account of negligence of the respondent.
19. The learned Sessions Judge ought to have known that the offences under Section 279/337/338 IPC including

Section 304A are bailable offences where the police invariably releases the accused on bail at the time of arrest itself and in the instant case, there was no evidence brought before the Court that the respondent had suffered any incarceration for the aforesaid offences. As a matter of fact, the learned counsel for the respondent had very fairly admitted that the accused/respondent had not undergone judicial custody even for a day. Therefore, sentencing him to already the period undergone by him was nothing but a mockery of the sentence imposed on the respondent. Even the sentences which were imposed for the other offences under Section 337 /338 IPC were also grossly inadequate in as much as he had been sentenced till rising of the Court which in fact means nothing. Merely because the respondent was the sole bread earner or that he had faced trial for 11 years, in my view, should not have been the ground to set aside the sentence imposed by the trial Court. I, therefore, feel that the learned Sessions Judge has fallen into a serious error in reducing the sentence on all three accounts for which he was

sentenced by the Magistrate.

20. I feel that the judgment and the order passed by the learned Sessions Judge is totally erroneous, illegal, inappropriate, keeping in view the fact that one innocent minor had lost his life, while as the other two injured had simple and grievous injuries, respectively.
21. I accordingly, set aside the judgment and order of sentence passed by the learned Sessions Judge and restore the sentence imposed by the learned MM.
22. Since the respondent is present in the Court, he be taken into custody and produced before the lockup Incharge of Patiala House Courts, for undergoing the sentence imposed upon him.
23. Copy of this order be given to him.
24. Dasti.

V.K. SHALI, J.

MARCH 14, 2012
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