

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

+ CRL.REV.P. No.86/2012

Date of Decision: 18.05.2012

HIRA LAL

.... PETITIONER

Through: Mr. Sudarshan Rajan, Advocate

Versus

THE STATE OF NCT OF DELHI

.....RESPONDENT

Through: Ms. Fizani Hussain, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present revision petition has been filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. assailing the judgment dated 2.02.2012 passed by the Id. ASJ whereby the conviction of the petitioner under Section 304-A as recorded by the Id. M.M. vide order dated 11.06.2009, was upheld.

2. The case of the prosecution in brief was that on 15.10.1994 at about 3.15 p.m. at Outer Ring Road, Mangolpuri, Delhi, the petitioner was driving a truck bearing registration no. DIG-3698 in a rash and negligent manner and struck a bicycle going in front of it resulting in the death of two persons. After completion of investigation, charge sheet was filed in the trial Court under Sections 279/304-A IPC to which the

petitioner pleaded not guilty. 11 witnesses were examined by the prosecution including one eye witness PW-1, Ramesh Pandey who was also the complainant and was stated to be riding his bicycle behind the deceased persons. On the basis of evidence on record, the trial Court found the petitioner guilty, but the Appellate Court found that the petitioner was not served notice for the offence under Section 279 IPC and hence while maintaining the conviction under Section 304-A IPC, the petitioner was acquitted of the charge under Section 279 IPC.

3. The learned counsel for the petitioner has submitted that the order of the Id. ASJ is bad in law and is liable to be set aside. It has been submitted that the identity of the driver of the offending truck has not been established by the prosecution and even the eye witness had stated that he had allegedly seen the petitioner from the back side, from a distance of about 100/ 180feet and even his TIP was not conducted to prove his identity. It has been stated that it was erroneous to believe the testimony of PW-1 as he was the relative of the deceased persons and hence being an interested witness has falsely deposed against the petitioner. It has been further submitted that even if it is presumed that the petitioner was indeed the driver of the offending truck on the relevant day and time, still on the perusal of the evidence on record and the testimony of the eye witness PW-1, it is evident that the fact of rash and negligent driving by the petitioner has not been proved by the prosecution and hence the impugned judgment suffers from grave illegality and deserves to be set aside.

4. Per contra, the learned APP for the State has submitted that the judgments of the Id. ASJ and the Id. MM are rightly based on the

appreciation of material evidence and reliable and cogent testimony of the eye witness PW -1 and there is no justifiable reason to interfere with them.

5. I have heard the rival submissions and perused the record.

6. It is not disputed that the death of the two deceased persons occurred due to injuries suffered in a road accident on the fateful day. It has also been established that at the time of the accident PW-1 Ramesh Pandey was present at the spot of the accident and met the police officials who rushed to the site on seeing the accident. It was PW-1 who gave the name of the injured persons to the person preparing their MLCs after reaching the hospital.

7. In order to deal with the contention of the learned counsel for the petitioner that the identity of the driver of the truck was not established by the prosecution, it would be pertinent to note that the petitioner himself had admitted driving the truck on the relevant day in the reply given by him to the notice under Section 251 Cr.P.C. Even the defense witness examined by the petitioner could not refute the submission of the prosecution that the petitioner was indeed the driver of the offending truck at the time of the accident. It had also been stated by the petitioner in his cross examination that a bus was at the right side of the road and the truck was on the left side. All these facts sufficiently establish the identity of the petitioner as the driver of the truck and consequently this plea of the learned counsel for the petitioner stands demolished.

8. The next argument of the learned counsel for the petitioner that it was not correct to accept the testimony of PW-1 as he was the relative of the deceased persons and an interested witness, is untenable. It is settled

legal proposition that when the testimony of a witness is consistent and cogent on all material aspects and withstands the rigors of cross examination without being shaken, then it cannot be discarded merely on the ground that the witness was related to the victim. If the testimony of a witness inspires the confidence of the Court, then it is bound to be accepted against the defense.

9. But in order to hold an accused guilty under Section 304-A, the most crucial factor that must be amply proved by the prosecution, apart from the identity of the accused, is the fact of rash and negligent driving by the accused person. Without this fact being proved, the case under Section 304-A is like a house of cards, bound to crumble sooner or later.

10. From the perusal of the site plan and the testimony of PW-1, it is apparent that the bicycle on which the deceased persons were riding was plying between a truck on the left side of the road and a blue line bus on the right side of the road. On the face of it, the manner of riding the bicycle by the deceased persons reeks of risk taking and callousness. There can be no explanation of riding a bicycle in the middle lane of the road between two extremely heavy vehicles. Apart from being a violation of the traffic rules, it is highly dangerous and invitation to an impending disaster. It is also a matter of record that the speed of the truck was 30/35 kms per hour which shows that the truck was at a reasonable pace. There were no skid marks of the tyres of the truck on the road which would show that the truck was driven in a rash manner or stopped with a jerk. There can be no question of overtaking the bicycle when there was a bus right besides the truck itself. All these facts in totality make it impossible to concur with the fact that the truck was being driven in a rash and

negligent manner. These factors, instead give the impression that it was the devil may care attitude of the deceased persons which caused them to land in front of the front tyre of a truck on a busy road.

11. In **State of Kerala vs. Satish (1998)8 SCC 493**, it has been rightly held by the Apex Court that,

“Criminality is not to be presumed, subject of course to some statutory exceptions. In the absence of any material on the record, no presumption of “rashness” or “negligence” could be drawn by invoking the maxim “res ipsa loquitur”. There being no evidence on the record to establish “negligence” or “rashness” in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view.”

12. No doubt it is the duty of the drivers of commercial vehicles to be cautious on the road, but is equally the responsibility of people driving any type of vehicle to be mindful of the correct manner of use of vehicle on the road in order to avoid collision with the other vehicles. Every person is bound to anticipate the perils normally expected on the road and not challenge his own safety by driving in the dangerous fashion as evidenced in the present case. It is not that in every case of road accident, the driver of a commercial or heavy vehicle shall be presumed to be guilty of rash and negligent driving and without any iota of evidence against him, he will be deemed guilty from the start of the trial. The Courts instead of acting like a mouthpiece of prosecution, should weigh

the evidence meticulously before making the driver of the commercial or heavy vehicle an easy and predictable scapegoat. It is quite possible, as proved in the present case that a person can be himself responsible for his accidental death. The Courts have to be detached from any kind of undue sympathy and public emotion while dealing with every case and until the factum of rash and negligent driving is proved beyond any doubt against the accused, the Courts should desist from jumping to a prejudiced conclusion.

13. In view of the facts and circumstances of the present case and after perusal of evidence on record, I am of the firm view that the prosecution has not been able to discharge the burden of proving rash and negligent driving by the petitioner beyond reasonable doubt.

Consequently, the impugned judgment and order on sentence being bad in law are liable to be set aside. The revision petition is hereby allowed.

M.L. MEHTA, J.

MAY 18, 2012

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