

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

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Crl.Rev.P. No. 281/2005

Date of Decision:10.02.2012

DHARMENDER

..... Petitioner

Through: Mr.S.P.Sharma, Advocate

Versus

THE STATE OF NCT DELHI

..... Respondent

Through: Ms.Fizani Husain, APP.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The petitioner has moved this court under Section 397 read with Section 401 Cr.P.C. He is aggrieved by an order passed by the Ld. ASJ on 2.04.2005 in Criminal Appeal No. 17/2005. Vide this order the Ld. ASJ confirmed the order of Metropolitan Magistrate, sentencing the petitioner to undergo rigorous imprisonment for a period of three months with a fine of Rs. 500/- under Section 279 IPC and rigorous imprisonment for a period of one year with a fine of Rs. 3000/- under Section 304 –A IPC.
2. The facts of the case in brief are that on 5.11.98 the petitioner was driving bus bearing registration no.DL-1PA-1767 from Uttam Nagar and when the bus reached at main Raja Garden chowk, the petitioner hit a cyclist, as a

result of which, the cyclist got injured and was taken to DDU Hospital in a serious condition and subsequently succumbed to his injuries.

3. The counsel for the petitioner contends that no photographs of the site were taken and PW-2 has not supported the prosecution's version in toto. Furthermore, the petitioner has no previous criminal record and he is the only bread earner of the family and is facing the rigors of trial for a long period of time. Counsel for the petitioner submits that keeping in mind these factors, either the judgment of trial court and the appellate court may be set aside or the petitioner may be released on probation under Section 3 and 4 of the Probation of Offenders Act, 1958.
4. Per contra, the counsel for the State has opposed the petition stating that the rash and negligent action of the petitioner has resulted in the death of a person and the petitioner deserves no leniency in the present circumstances.
5. I have heard learned counsel for the petitioner and the State.
6. It is trite that the court has discretion to extend the benefit of probation under Section 3 & 4 of the Probation of Offenders Act to the offender, but such benefit cannot be claimed as a matter of right. It was all dependent upon the facts and circumstances of each case and the discretion was to be exercised judiciously only if the court thinks that "it is expedient" to release the accused/offender on probation.
7. The Supreme Court in **Sitaram Paswan v. State of Bihar** 2005 CriLJ4135, held that;

“8...For exercising the power which is discretionary, the court has to consider the circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word “may” clearly indicates that the discretion vests with the court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case.”

8. The Supreme Court in **Dalbir Singh v. State of Haryana, 2000**, CriLJ 2283 while dissuading the courts to give benefit of Probation of Offenders Act under Section 304A IPC held 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 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.”

9. In the present case, PW-2 Radhey Shyam who was the conductor of the bus had categorically stated before the Ld. M.M. that the bus was driven at a very fast speed in a rash and negligent manner. He also mentioned that the petitioner had jumped the red light and had struck the cyclist from the driver side, meaning thereby that the petitioner could have seen the cyclist and could have applied the brakes but he failed to do so. PW-2 had further stated that there was no traffic on the road and still the accident was caused by the petitioner due to driving in a negligent fashion and then fled from the spot after causing the accident. There is no reason to discard the testimony of this independent witness. The fact that no photographs were taken is of no relevance inasmuch as there was unshaken testimony of PW2 completely supporting the case of prosecution. Even otherwise, there was no requirement of taking of photographs of the accidental site when the site plan thereof was prepared by the police.
10. Keeping in view the facts and circumstances of the case and the above pronouncements, I am of the view that the trial court and the Appellate Court have rightly sentenced the petitioner to imprisonment and their orders require no interference. The counsel for the petitioner submitted that there are some mitigating factors, such as, dependant family and no past criminal record. Usually such factors are presented in every case of conviction. The fact remains that an innocent person has lost his life without any fault on his part. The petitioner was a driver of a commercial vehicle and was required to be extra cautious while driving on the road. 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. 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, thus endangering the life of public at large, which cannot be allowed.

11. In view of my above discussion, I do not see any impropriety or illegality in the impugned judgment and consequently, do not find any merit in the present revision petition. The petitioner shall surrender and be taken into custody for undergoing the remaining period of imprisonment awarded.

12. Revision Petition stands disposed of.

M.L. MEHTA, J.

FEBRUARY 10, 2012/akb