

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

+ CRL. REV. P. NO. 272/2012

Date of Decision: 25.05.2012

MOHAN SHYAM

.....PETITIONER

Through: Mr. Laxman Singh & Mr. O.P.
Singh, Advocates.

Versus

THE STATE (NCT OF DELHI)

.....RESPONDENT

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

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J.

1. This is a revision petition under Section 397 Cr.P.C. read with Section 401 Cr.P.C. assailing the judgment dated 04.04.2012 passed by Ld. ASJ whereby conviction of the petitioner under Section 279/304-A IPC vide judgment dated 04.07.2011 passed by the Ld. M.M. was upheld. Vide the impugned judgment, while maintaining the quantum of sentence imposed on the petitioner under Section 279 IPC, the period ordered to be undergone by the petitioner under Section 304-A IPC was reduced from 2 years R.I. to 1 year R.I. by the Ld. ASJ.

2. The present case was registered on the basis of information received telephonically at Madangir post of police station Ambedkar

Nagar on 25.5.2001 regarding an accident having taken place between a truck and a motor cycle resulting in injuries to some person near red light signal at the Khanpur Crossing. This information was lodged vide DD No. 29 and Head Constable Mahabir Singh (I.O.) along with Constable Upender rushed to the place of the said accident. Upon reaching the place, HC Mahabir Singh (PW 6) found a truck bearing registration No. HR-55-A-0058 and a LML Adreno Motorcycle lying in accidental state. Admittedly, the public had caught hold of the driver of the truck and produced him before the IO.

3. The injured person namely R.S.Tanwar (herein after referred to as deceased) had already been removed to AIIMS Hospital and was admitted vide MLC No. 45232 of 2001, where he was declared brought dead. At that time, the IO found no eyewitness at the accidental spot. Accordingly a site plan was prepared and FIR was registered U/s 279/304-A IPC after seizing the motorcycle and the truck from the spot. The petitioner was arrested vide memo Ex. PW 6/B. It has been submitted that when the IO reached back from the hospital to the accident site, he found an eyewitness Dinesh Kumar (PW 12) and recorded his statement. According to PW-12, he was the colleague of the deceased and both of them were admittedly returning back to their respective houses on their separate motor cycles when the accident took place.

4. The prosecution examined twelve witnesses to prove the fact of rash and negligent driving by the petitioner and accordingly the petitioner was convicted by the Id. M.M. as well as the Appellate court. Hence the present petition.

5. The judgment of the Learned Appellate Court as well as the Ld. Trial Court has been assailed by the learned counsel for the petitioner on the ground that it was a case of negligence on the part of deceased who did not give any signal while taking a right turn to indicate about his intention and this fact is also evident from the testimony of PW 12 and therefore, the petitioner cannot be deemed to be responsible for the accident. It has been further submitted by the ld. counsel for the petitioner that the fact of rash and negligent driving by the petitioner has not been proved beyond any reasonable doubt by the prosecution. It has been further urged by the ld. counsel for the petitioner that the appellate court as well as the ld. trial court have wrongly relied upon the testimony of PW 12 as he was an interested witness, being a colleague of the deceased and was also not found at the accidental spot by the IO and was later planted by the police and gave false testimony to implicate the petitioner. In support of the submission that PW-12 was an interested witness, it has been submitted that from the testimony of PW-12, it can be seen that he did not even remember the color of the motorcycle of the deceased which is very peculiar for a person who was presumably travelling behind the motor cycle of the deceased and was also well acquainted with the deceased and must have seen the motor cycle several times at the place where both of them were working together.

6. On the other hand, the ld. APP for the State has opposed the present petition by making a submission that the judgment of both the Courts are based on cogent and reliable testimony of eye witness Dinesh Kumar (PW 12) and other evidence brought on record by the prosecution

and the fact that the deceased and Dinesh were colleagues is not a valid reason for disbelieving his credence worthy testimony. It has been further submitted that the benefit of contributory negligence of the deceased has already been considered by the Id. ASJ while reducing the sentence under Section 304-A IPC to 1 year and hence this plea cannot be taken up by the petitioner again at the revision stage before this Court.

7. I have heard the learned counsel for the petitioner as well as the learned APP for the State and perused the record.

8. The factum of the death of the deceased due to coma suffered as a result of head injury which is possible in a road accident, was confirmed vide MLC No. 45232 /2001. The identity of the deceased was also established after identification by his family members. Hence there is no dispute regarding the death of R.S. Tanwar due to road accident. The offending truck was seized from the accidental spot. A notice under Section 133 of the Motor Vehicles Act was sent to the owner of the offending truck who stated in his reply that the petitioner was indeed driving the truck at the relevant time and date and also identified the petitioner as the driver of the offending truck in the trial Court. Consequently, it is also established that the petitioner was behind the wheel of the truck at the time of accident.

9. The contention of the learned counsel for the petitioner that PW-12 had falsely deposed against the petitioner as the deceased was known to him, is untenable as merely because the eye witness was an acquaintance of the deceased is not a valid ground to discard his testimony if it stands the scrutiny of cross examination and inspires the faith of the Court.

10. Regarding the plea of the learned counsel for the petitioner that PW-12 was not an eye witness to the case as the investigating officer did not find him at the spot of accident; it would be useful to take notice of the MLC of the deceased. The perusal of MLC indicates that the name and place of work of the deceased was mentioned on it which could not be possibly known by the doctors at the hospital unless it was so informed by PW-12. It is a matter of fact that the family members of the deceased were residing in Rajasthan and did not reach Delhi until the next day and hence could not have provided the information about the deceased at the time of preparation of MLC. Hence, it is evident that PW-12 was in fact present at the accident spot and was not planted by the police as alleged by the defense. His absence from accident spot has been explained by stating that he went to inform the employers of the deceased about the accident and also went to his house to call his family and that is why was not present at the accident spot when the I.O. reached there. This conduct of PW-12 is not unusual as the CATS ambulance had already taken the deceased to the hospital. Every eye witness cannot be presumed to behave prudently and in a consistent and defined manner. People react differently to the same incident and situations. Their reaction to an accident even if indifferent itself cannot be a ground to discard them outrightly. Consequently, I find no reason to discard the testimony of PW-12.

11. However, the most pertinent fact which is required to be proved beyond any reasonable doubt in a case under Section 304-A, apart from the identity of the accused, is the fact of rash and negligent driving by the

accused person. Proving this fact is germane to the conviction of a person under Section 304-A.

12. The two things that would assist in determining whether the petitioner was driving in a rash and negligent manner at the time of the accident are the testimony of PW-12 and the site plan prepared by the investigating officer. PW-12 stated in his testimony that on the fateful night, he and the deceased left the hotel where they used to work, on their respective motorcycles. The deceased was driving ahead of PW-12 and took a right turn towards his house, and at that time the offending truck coming from the direction of Chirag Delhi road, struck his motorcycle causing him to fall down on the road. Admittedly, the traffic light was not working at the time and only the signal light was functioning. The site plan exhibited vide EX.Pw 6/ C proved that the deceased was trying to merge in the traffic lane in which the offending truck was plying and had come directly in front of the truck while taking a right turn towards Saket. In the own words of PW-12, while taking the right turn, the deceased had not used the indicator or the horn of the motorcycle to warn the fellow commuters on the road. In the cross examination, it has been admitted by PW-12, that the truck was being driven at a medium speed, although speed itself is not an indication of rash and negligent driving. There were no skid marks on the road to show that the truck was being driven rashly and had come to a sudden halt after hitting the motorcycle of the deceased.

13. In order to prove the act of negligence and rashness, it must be shown that the act was done without proper regard to its consequences

and without any precautions taken for ensuring the safety of others. But, from the material available on record, it is nowhere seen that the truck was being driven in a wanton fashion or by flouting any traffic rules or in a reckless manner. A heavy vehicle like truck or a bus cannot be as easily maneuvered or brought to a halt within fraction of seconds. Maintaining a safe distance from such vehicles and giving proper indicators is also a very important rule of driving which was unfortunately neglected in the present case. If any vehicle comes in front of such heavy vehicles without any prior warning, then it may not be possible for such driver to avoid the collision. Had the truck been driven in a wrong lane or in an unpredictable fashion, it could be presumed that the driver was negligent in its driving. But in the present case, the truck was being driven in a manner which was in confirmation with the traffic rules and its own size. Taking a sudden right turn without any warning is in fact an indication that the deceased did not take the precaution that is required for the safety of oneself as well as the fellow commuters on the road.

14. In my opinion, the reckless manner in which the deceased was riding the motorcycle has been underplayed by terming it contributory negligence, when in fact the petitioner did not do a single thing that can be presumed to be rash or negligent. It is the duty of Courts to deal with each and every case with an open mind and arrive at a conclusion after due consideration of all the facts and circumstances. Every person is bound to anticipate the dangers 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. . 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”.

15. After due consideration of the evidence on record, I am of the opinion that the fact of rash and negligent driving by the petitioner has not been proved beyond reasonable doubt by the prosecution. Consequently, the petitioner deserves to be accorded the benefit of doubt. The impugned judgment being bad in law is hereby set aside.

16. The revision petition is accordingly allowed.

M.L. MEHTA, J.

MAY 25, 2012

ss