

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

+ CRL.REV.P. 344/2008

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Decided on: 10th April, 2012

SUBHASH

..... Petitioner

Through: Mr. Puneet Mittal & Mr. Ravi Jain,
Advocates

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for State

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.(Oral)

1. By this petition, the Petitioner lays a challenge to the judgment dated 2nd June, 2008 passed by the learned Additional Sessions Judge upholding the conviction of the Petitioner for offences punishable under Sections 279/337/304A IPC and modifying the quantum of sentence awarded to the Petitioner for offence under Section 304A IPC from one year Simple Imprisonment to a period of Simple Imprisonment for six months.

2. Briefly the prosecution case is that on 12th December, 1993 at about 3:15 p.m. at Bijwasan Road, near MCD Primary School, Village Chhawla, Delhi the Petitioner while driving the truck bearing No. DIG-6502 in a rash and negligent manner so as to endanger human life and personal safety of others hit his truck against a motorcycle and thereby caused death of its rider Ajit Singh and injuries to pillion rider Satpal. On the statement of Satpal, FIR No. 409/1993 was registered under Section 279/304A/337 IPC. After completion of investigation, charge sheet was filed. Learned Metropolitan

Magistrate after recording the statements of the prosecution witnesses and Petitioner, convicted the Petitioner and sentenced him as mentioned above. Aggrieved by the judgment and order on sentence, the Petitioner preferred an appeal. The learned Additional Sessions Judge vide judgment dated 2nd June, 2008 allowed the appeal partially and modified the sentence as mentioned above.

3. Learned counsel for the Petitioner contends that the impugned judgments are based on conjectures and surmises. Learned Courts below failed to appreciate the fact that there was no evidence on record to prove that the Petitioner caused the accident. No TIP has been conducted and the arrest of the Petitioner is also doubtful. There is neither any independent witness in the case nor the testimony of PW3 Satpal is corroborated by any other evidence. It is further stated that deceased Ajit Singh was guilty of contributory negligence as he was not wearing any helmet. Moreover, PW3 has stated that the motorcycle at the time of accident was being driven at a speed of 50-60 kms while approaching the speed breaker at the crossing. Thus, it was but natural that the deceased lost the balance of motorcycle thereby causing the accident. There are inconsistencies in the testimonies of the prosecution witnesses. PW3 Satpal in his cross-examination has stated that he was present at the spot around half an hour whereas PW8 in his testimony has stated that when he reached at the spot, there was no person found at the spot. The site plan Ex.PW8/C is devoid of details. Reliance is placed upon *Abdul Subhan vs. State (NCT of Delhi) 2006 (3) JCC 1797* to contend that there were no skid marks at the point where the vehicle came to the rest after the collision. Statement of the Petitioner has not been recorded

correctly as no incriminating circumstance has been put to him, which has caused great prejudice to the Petitioner. Thus the circumstances cannot be used against the Petitioner. In the absence of any evidence to support the prosecution case the impugned judgments are liable to be set aside

4. Per contra learned APP for the State submits that impugned judgments suffer from no illegality. PW3 Satpal, the injured witness has clearly deposed in regard to the incident. Despite lengthy cross-examination, nothing material could be elicited from the testimony of this witness. PW3 has also identified the Petitioner as the driver, who was caught at the spot. PW5 the owner of the truck has deposed that on the day of accident the truck was being driven by the Petitioner Subhash. Hence, present petition has no merit and is liable to be dismissed.

5. I have heard the learned counsels for parties and perused the record.

6. PW3 Satpal, the injured witness deposed that he does not remember the date and month but it was in the year 1993 that he along with his cousin brother Ajit Singh were coming from Nangloi on motorcycle No. DBT 3646. This witness has further stated that he does not remember the exact number of the motorcycle as it was of his cousin brother Ajit Singh. He has deposed that motorcycle was being driven by Ajit and he was the pillion rider. At about 2:30 – 2:45 p.m., when they reached near village Chhawla MCD School, a truck bearing No. DIG 6502 came from the front side and the driver suddenly turned the truck on the right side without giving any signal due to which their motorcycle hit against the truck and they both fell on the road. Both, he and Ajit Singh received injuries and the motorcycle was damaged. Police arrived on the spot and made enquiries from him while

taking him to Safdarjung Hospital. He has further stated that he became unconscious on the way and regained consciousness in the night at Safdarjung Hospital. He thereafter came to know that Ajit had expired. This witness in his cross examination has stated that they were at the left side of the road side when the accident took place and the motorcycle was being driven at a speed of 50-60 kms. He has further stated that he was conscious after the accident till the police arrived there. He was taken to the hospital by the police officials. The police officials remained at the spot for about half an hour and made enquires from him regarding the accident. He did not know the nature of writing work carried out at the spot.

7. PW8 SI Ramdev Singh has deposed that on 12th December, 1993 he was posted at PS Nazafgarh. On receiving DD No. 13B he along with Const. Qurban Ali went to the place of accident and they found a truck bearing No. DIG 6502 and motorcycle No. DL 4SA 3686 in accidental condition at the spot. The driver of the truck Subhash was also present at the spot. There was no other public witness at the spot and the driver informed that the injured had been taken to some hospital. He went to Safdarjung Hospital and received the MLC of Ajit Singh who was declared brought dead. An application was given to record the statement of injured Satpal but he was declared unfit for statement. No public witness was present at the hospital therefore he went back to the spot. At the spot other contemporaneous documents were prepared and accused was arrested. In his cross-examination this witness has stated that he reached at the spot at 3:45 pm and no person was found there. He has further stated that he did not see skid marks and there was a speed breaker towards the northern side of the

spot at a distance of about 50-60 feet perhaps he did not show the speed breaker in the site plan. He has stated that when he reached at the spot he stayed there for about 45 minutes and during that period he did not prepare any document. He has also stated that the injured was not with him when he came back to the spot.

8. Before proceeding further it would be relevant to reproduce the statement of accused recorded by the learned trial court:

“Statement of accused Subhash s/o Ram Prasad :

“All the incriminating evidence o record against the accused has been put to the accused and accused has denied the same and has stated that he is innocent and has been falsely implicated in the present case. Accused has stated that he did not cause any accident and the a case is false case. Accused has stated that he does not want to lead evidence in defence.”

9. A perusal of the statement the accused shows that the manner in which the statement was recorded is most unsatisfactory and perfunctory. No incriminating circumstance has been put to the accused. The linchpin of Section 313 Cr.PC is the opportunity to ‘explain any circumstances appearing in the evidence against him’. This means that every circumstance from which the Court would draw the inference of guilt against the accused has to be put to the accused. It is the duty of the Trial Judge to question the accused properly and fairly, bringing home to the mind of the accused, in simple and clear language, the exact case he has to meet, each material point that is sought to be used against him and of affording him a chance to explain it if he can and so desires.

10. The opportunity granted under Section 313 Cr.P.C. must be real and

not illusionary. Questions must be so framed as to give to the accused clear notice of the circumstances relied upon by the prosecution, and an opportunity to render such explanation as he can of that circumstance. Each question must be so framed that the accused can understand it and appreciate what use the prosecution desires to make of the same against him.

11. The Courts employ the concept of prejudice to aid in remedying the injustice. The prejudice in the present case is apparent and grave. The manner in which the statement of the Petitioner is recorded in the present case is not a mere irregularity resulting in causing material prejudice to the petitioner.

12. Furthermore, in the present case there is no clear evidence placed on record by the prosecution to prove the manner of driving the offending vehicle. The only statement in this regard is the testimony of PW3 who has stated that the motorcycle was being driven at a speed of 50/60 KMPH and denied the suggestion that the accident did not occur with truck no.DIG 6502. There is no evidence placed on record to show that the petitioner was driving the offending vehicle in a rash and negligent manner. Thus, the prosecution in the present case has failed to prove beyond reasonable doubt that the Petitioner was driving the offending vehicle in a rash or negligent manner causing death of deceased Ajit and injuries on the person of injured Satpal, hence committing the offences punishable under Sections 337/304A IPC.

13. Keeping in view the facts of the present case, the impugned judgment convicting the Petitioner is set aside. The Petitioner is acquitted of the charges for offences punishable under Sections 337/304A IPC. The

Petitioner is on bail. The bail bond and surety bond of the Petitioner are discharged.

14. Petition stands disposed of.

(MUKTA GUPTA)
JUDGE

APRIL 10, 2012
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