

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

+ CRL.REV.P 490/2008

% Reserved on: 26th March, 2012
Decided on: 7th May, 2012

RAJESH KUMAR Appellant

Through: Mr. Binod K. Aggarwal, Advocate

versus

STATE Respondent

Through: Mr. Manoj Ohri, APP for the State
with SI Rohit Kumar.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the order dated 12th August, 2008 passed by the learned Additional Sessions Judge upholding the order of conviction of the Petitioner passed by the learned Metropolitan Magistrate convicting the Petitioner for offences punishable under Sections 304A and 279 IPC. The learned Metropolitan Magistrate vide order dated 2nd January, 2008 had sentenced the Petitioner to undergo Rigorous Imprisonment for 6 months and a fine of Rs. 500/- and in default of payment of fine to undergo Imprisonment for five days for offence punishable under Section 279 IPC and further to undergo Rigorous Imprisonment for 1 year and a fine of Rs.3,000/- under Section 304A IPC, in default of payment of fine to undergo Imprisonment for twenty days. Under Section 20 of the Motor Vehicle Act, the Petitioner was disqualified from driving any heavy motor vehicle and light motor vehicle except scooter, motorcycle and car for one year.

2. Briefly the prosecution case is that on 11th February, 2001 at about 5:00 p.m. at Lajpat Rai Marg, near Defence Colony flyover, the Petitioner was driving Qualis bearing No. DL IV-6500 in a rash and negligent manner so as to endanger human life and while doing so hit against Monica Francis who sustained fatal injuries due to which she succumbed to death. The statement of Ms. Rooth Francis was recorded who stated that she was going to Defence Colony market along with her mother Ms. Monica. When they got down from the bus opposite Defence Colony petrol pump, started crossing the road, and went ahead of central patri she heard a loud horn. She took turn and saw that one vehicle was coming from Mool Chand side at a very high speed and hit her mother Monica. She also sustained jerk from the vehicle and fell down. They were taken by one lady in her car. Thereafter she regained consciousness in a hospital whose name was revealed later on as Santom Hospital. She further stated that she came to know the name of that lady as Uma Pradhan who stated her not to worry and that she will pay all her expenses. She further stated that she came to know from the nurse that her mother expired and Uma Pradhan left the hospital after coming to know about the death of her mother. She further stated that the accident in which her mother died and she suffered injuries was due to high speed, rash and negligent driving of the car of Uma Pradhan. On the basis of this statement of Rooth Francis, FIR No. 86/2001 was registered under Sections 304A/279. On a notice being issued to the owner of the vehicle Sawarmal Poddar, the name of the driver, who was driving the vehicle No. DL-1V-6500 on the date of incident, was informed as Rajesh S/o Sharda Prasad. After completion of investigation, charge sheet was filed. Learned Metropolitan Magistrate after recording the prosecution evidence and

statement of the Petitioner under Section 313 Cr.P.C., 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 order dated 12th August, 2008 dismissed the appeal and upheld the judgment passed by the learned Metropolitan Magistrate.

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 independent witness to corroborate that the said accident was caused due to the negligence of the Petitioner. PW1 has stated that the driver of the vehicle i.e. the Petitioner was not at fault and on the contrary the complainant and her mother(deceased) were at fault as they were crossing the road without seeing the moving traffic all of sudden. The Driver/Petitioner applied the brakes but the Qualis hit a lady who fell down. They got her lifted and took her to a doctor. It is further stated that the learned courts below failed to appreciate that there are material contradictions in the testimony of PW2, the injured eye-witness. Learned Trial Court and learned Appellate Court have sustained the conviction of the Petitioner erroneously on the sole testimony of this witness(PW2) which is full of ambiguities. Furthermore, the mechanical Inspector who conducted the inspection of the alleged offending vehicle has not been examined. Burden was on the prosecution to prove that the accident was caused due to the negligence and rashness of the Petitioner which burden has not been discharged by the prosecution in the present case. Learned courts below have ignored the factual matrix of the case and passed

the impugned judgment on the basis of uncorroborated testimony of PW2. The prosecution has not been able to produce any evidence on record to show the manner of driving to prove that the Petitioner was driving the offending vehicle negligently. In the absence of any evidence to support the prosecution story and the fact that the injuries sustained by the deceased were because of her own negligence and fault, 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. PW2, the injured witness who was present along with the deceased, has completely supported the prosecution case and has duly identified the Petitioner. There are no contradictions in the testimony of witnesses and evidence placed on record clearly implicates the Petitioner. Furthermore, the Petitioner in his statement under Section 313 Cr.P.C has stated that he was standing on the red light, when the traffic light became green he moved his vehicle but did not cause any accident nor hit the ladies, rather when he reached at the spot, the accident had already taken place. On humanitarian ground he removed the injured to the hospital but later on he was falsely implicated in the present case. Thus from the statement, it is evident that the Petitioner was driving the vehicle at the time of accident near the spot.

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

6. PW1 Uma Poddar has deposed that in February, 2001 in the evening after about 3:00 p.m. she was coming from the South Delhi to Pitampura on Qualis 6500 being driven by the Petitioner. At defence colony flyover two ladies were crossing the road from the middle of the road. The driver

applied brakes but the Qualis hit an old lady who fell down. They got her lifted and took her to a doctor at Pitampura. She was conscious and speaking. The doctor gave her treatment but told them that she was sinking due to shock and old age. It is further stated by this witness that she went home and informed the police. The other lady was also taken with the injured. Qualis driver/accused was not at fault. The ladies were crossing the road without seeing the heavy traffic all of sudden. This witness has been declared hostile by the learned APP. In the cross examination by the learned APP, she stated that she had not stated to the police that the accident took place due to the negligence and fault of the accused. She has voluntarily stated that the two ladies were at fault and were crossing the road without seeing the heavy traffic. The driver was attentive. The vehicle did not belong to her and was a hired vehicle.

7. PW2 Rooth Francis deposed that on 11th February, 2001 at about 5-5:30 p.m. at defence colony petrol pump at the main road, she and her mother Monica were crossing the road. The accused was driving the Qualis bearing No. DL IV 6500 rashly and did not blow any horn and hit against them. They both fell on the road. They were removed to Santom Hospital, where her mother was treated. She died after two-three hours. This witness has stated she was discharged after giving treatment. Police was informed and her statement was recorded. This witness has stated that the accused was at fault and did not take reasonable care. The police conducted the post mortem of her mother. It is further stated that after the death of her mother, accused left the hospital and no one came for their help. This witness in her cross examination has stated that there was heavy traffic on the road and

there was no zebra crossing. She has stated that she had written the vehicle number on her left hand. It is further stated that the accident took place at defence colony and the accused took them to the Santom Hospital, Pitampura. It is stated that they were helped by the accused and were taken to the hospital, her statement had not been recorded any time and it was the first time that her statement was being recorded.

8. On a perusal of the testimony PW2, it is clear that the accident took place and the deceased succumbed due to receiving injuries on her person. It may be noted that PW2 the injured witness has stated that the accident had taken place at defence colony and they were taken to Santom Hospital. PW2 in her statement before police had stated that when they were crossing the road she heard a loud horn and when she turned towards the vehicle the vehicle struck against them whereas in her testimony before the Court she had stated that the accused did not blow any horn and struck against them. This witness has not stated anything in regard to the manner of driving besides making a bald statement that the offending vehicle was being driven rashly. PW1 was declared hostile as she stated that brakes were applied by the Petitioner while driving the offending vehicle and he was attentive while driving the said vehicle. She has further stated that the two ladies were at fault and without taking note of the heavy traffic they suddenly started crossing the road.

9. It is clear from the testimonies that the offending vehicle was being driven by the Petitioner at the time of incident and the offending vehicle hit the old lady. The relevant aspect to be noted is that the road on which the accident took place is a busy road. Site plan Ex.PW6/B does not indicate

that the ladies were crossing the road from a place earmarked for the pedestrians to cross the road or that there was any zebra crossing. The two ladies were crossing the road with heavy vehicular traffic from the middle thus they were negligent. This is a case of contributory negligence on part of PW2 and the deceased. PW1 has that the driver applied brakes and was cautious while driving the vehicle. PW2 in her testimony has stated that the driver and the lady helped them after the accident. The conduct of the driver of not running away and taking the deceased to hospital is also relevant. The MLC of deceased Ex.PW5/A records no external injury on the person of the deceased. It may be noted that the deceased was an old lady aged about 70 years and after the accident was under shock. For attracting the provisions of Section 304A IPC the negligent act of the accused must be culpable and gross and not merely based on an error of judgment, or the one which arises because of lack of intelligence. For holding an accused criminally liable one has to take into consideration all the attending circumstances which must also include any situation created by the negligent act of the injured person. In the present case, there is no evidence on record to show that the Petitioner was driving the offending vehicle at a very high speed or in a rash and negligent manner. There are no skid marks on the road to show that the vehicle was being driven at a high speed. Thus, in view of circumstances of the present case it cannot be held that the accused was grossly negligent or reckless that he must be held criminally liable. The prosecution in the present case has not been able to prove its case beyond reasonable doubt against the Petitioner.

10. Thus, keeping in view the circumstances of the present case, the impugned order convicting the Petitioner is set aside. The Petitioner is acquitted of the charges punishable under Sections 279/304A IPC.

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

(MUKTA GUPTA)
JUDGE

MAY 07, 2012
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