

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

+ **CRL.REV.P. 635/2007**

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Reserved on: 16th February, 2012

Decided on: 20th April, 2012

SARJEET SINGH

..... Petitioner

Through: Mr. A.K. Trivedi, Advocate

Versus

STATE

..... Respondents

Through: Mr. Manoj Ohri, APP for the State
with SI Ram Kishan, IGI Airport.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the order dated 7th November, 2007 passed by the learned Additional Sessions Judge upholding the order of conviction of the Petitioner passed by the learned Metropolitan Magistrate on 11th April, 2005 under Sections 279/337/304A IPC and order on sentence dated 20th April, 2005. The learned Metropolitan Magistrate vide order dated 20th April, 2005 sentenced the Petitioner to undergo Rigorous Imprisonment for 1 year for offence punishable under Section 304A IPC and a fine of Rs. 5000/- and in default of payment of fine to undergo Simple Imprisonment for two months, a fine of Rs. 1000/- for offences punishable under Section 279 IPC in default of payment of fine to undergo Simple Imprisonment for one month and a fine of Rs.500/- for offence punishable under Section 337 IPC and in default of payment of fine to undergo Simple Imprisonment for one month.

2. Briefly the prosecution case is that on 28th September, 1994 at about 4.45 p.m. at T-Point, IGI Airport, near Centaur Hotel, the Petitioner was driving Truck bearing No.DEL 2133 in rash and negligent manner so as to endanger human life and safety of others and while doing so he hits his truck against two wheeler scooter bearing No. HYT 2521 and thereby caused death of one Hari Lal and grievous injuries to Shri Bhagwan. Accordingly FIR was registered under Sections 279/338/304A IPC. After completion of investigation, charge sheet was filed. Learned Metropolitan Magistrate after recording the prosecution evidence and statement of the accused, convicted 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 7th September, 2007 dismissed the appeal and upheld the judgment and order on sentence 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 despite examining 11 witnesses including one alleged eye witness and one injured witness, there is no evidence on record against the Petitioner. Learned courts below while passing the impugned judgments failed to appreciate that the investigating officer PW4 was not produced by the prosecution for cross-examination causing prejudice to the Petitioner. There are contradictions in the statement of this witness which discredits his testimony. The truck number mentioned in the FIR, the recovery memo and the mechanical inspection report is also incorrect. There are contradictions in the testimony of PW3 and the investigating officer. PW3 Jai Naresh has deposed that the deceased expired

on the next day of the incident, that is, 29th September, 1994 however the deceased actually died on 2nd October, 1994, which fact has been proved by the testimony of PW9 and PW10. The doctor, who treated the deceased, has not been examined by the prosecution. There is no evidence placed on record to prove that the offending vehicle was being driven in a rash and negligent manner. In view of the discrepancies in the prosecution version and uncorroborated testimony of the witnesses the prosecution has not been able to prove its case. Thus, in the absence of any evidence to support the Prosecution story and the fact that the Petitioner was driving the offending vehicle in a rash and negligent manner, 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. PW 6 Shri Bhagwan and PW3 Jai Naresh have fully supported the prosecution case and deposed that the offending vehicle was being driven by the Petitioner in a rash and negligent manner. The Petitioner in his statement under Section 313 Cr.P.C. has admitted that at the time of incident he was driving the offending vehicle and his defence is only a simple denial. The contradictions as pointed out by learned counsel for the Petitioner are minor contradictions, which do not go to the root of the matter. Hence the revision petition is liable to be dismissed.

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

6. PW6 Shri Bhagwan is the injured witness who has deposed that on 28th September, 1994 he was going to his house by scooter No. HYT 2521 along with Hari Lal who was the pillion rider. At about 4:30-4:45 p.m. at T-Point, he had to turn towards Rangpuri and one half body truck was coming

from the side of Airport. When he turned towards Rangpuri, the accused, while driving his Tempo negligently at a very high speed, struck against his scooter. The number of the offending vehicle was DEL 2133. The right front side of the truck hit against his scooter and they sustained injury. Hari Lal became unconscious. At that time the Complainant was conscious but after some time he also became unconscious. Driver tried to run away. This witness in his cross-examination has stated the police did not meet him in the hospital on that day and the police met him only after about 10 to 11 days. He has further stated that he was discharged after 10 days from the hospital and had not asked anybody to call the police or to get his statement recorded. He has admitted that he did not visit the spot along with the investigating officer.

7. PW3 Jai Naresh the alleged eye-witness has deposed that on 28th September, 1994 at about 4/5 p.m. he was going to Centaur Hotel from Rangpuri by his car. One Shri Bhagwan and Shri Hari Lal were going towards Rangpuri by scooter bearing No. HYT 2521. When he reached at T-Point he saw one half body truck DEL 2133 came from the side of Cargo and intended to go to Rangpuri in a rash and negligent manner. When the scooter entered the main road, the truck struck against the scooter. Both the persons fell down on the 'Patri'. Scooter came under the right rear wheel of the truck. He informed the PCR Van which reached at the spot. He removed the injured persons to the hospital and the next day, he came to know that Hari Lal had expired. This witness in his cross-examination has stated that he has a business of transport and has his office at Centaur Hotel. He had accompanied the injured persons in the police Gypsy to the Hospital. He has further stated that besides him there were three police officials along

with two injured persons in the police Gypsy. Both the injured persons were employed in the Centaur Hotel at the relevant time. He remained at the hospital for about four hours and the police did not record his statement in the hospital on that day. The cremation ceremony had taken place on 29th September, 1994. He had gone to his house straightaway from the cremation ground and had not met any family member of the deceased. He has also stated that the other injured, whose name was Shri Bhagwan, was also admitted in the same hospital on the same day and was discharged after about 1½ months.

8. PW 9 Sh. Banwari Lal, the brother of the deceased Hari Lal has deposed that on the date of incident he came to know about the accident and rushed to Safdarjung Hospital. When the condition of his brother deteriorated, he was removed to Batra Hospital. On 2nd October, 1994 his brother Hari Lal died in the early hours. The fact that the deceased died on 2nd October, 1994 is also stated by PW10 Dr. B. Swain, who conducted the post mortem of the deceased.

9. In the present case it may be noted that PW4 Dharam Singh, the investigating officer appeared on 27th July, 2007 and got his statement recorded under examination-in-chief when his cross-examination was deferred as the counsel for the Petitioner was not available. However, thereafter this witness was never called for his cross-examination and thus this material witness i.e. the investigating officer has not been cross-examined. Thus the testimony of PW4 as stated in his examination-in-chief cannot be looked into. No doubt it is well-settled that the non-examination of the investigating officer is not fatal to the prosecution case, however, each

case has to be looked on by its peculiar facts. In the present case, the corroborative evidence of site plan, mechanical inspection report etc. have not been proved. It is thus to be seen whether on the basis of the testimony of the two witnesses i.e. PW6 Shri Bhagwan and PW 3 Jai Naresh the conviction of the Petitioner can be sustained. It may be noted that PW6 Shri Bhagwan is an injured witness and has stated about the entire incident. In view of the fact that he is an injured witness, his testimony has to be given credence. According to PW7 the Petitioner was apprehended on the spot. PW6 and PW3 have stated that the Petitioner was driving the vehicle at a very high speed but because the vehicle was being driven at a high speed does not mean it was being driven in a rash and negligent manner. Since the evidence of PW4 Dharam Singh cannot be looked into and thus the site plan etc. have not been proved, it cannot be said that the Petitioner was driving vehicle in a rash and negligent manner.

10. In the present case, the chain of evidence connecting the petitioner to the alleged accident is not complete. The only basis on which the prosecution has tried to implicate the Petitioner is because he was driving the offending vehicle on the date of incident. Driving the offending vehicle has not been denied by the Petitioner, however the same does not prove that the accident had taken place due to his negligence or rash driving. The prosecution has not been able to establish its case beyond reasonable doubt against the petitioner.

11. Hence keeping in view the circumstances of the present case, the impugned judgments convicting the Petitioner are set aside. The Petitioner is acquitted of the charges punishable under Section 279/337/304A IPC. The

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

12. Petition stands disposed of.

(MUKTA GUPTA)
JUDGE

APRIL 20, 2012
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