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

+ CRL.REV.P. 176/2013

MAHESH KUMAR ..... Petitioner

Through: Mr. Rana Kunal, Advocate

versus

STATE ..... Respondent

Through: Mr. Mukesh Gupta, learned  
Additional Public Prosecutor for  
respondent-State

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**ORDER**

% **09.07.2013**

Vide order of 27<sup>th</sup> February, 2013, Appellate Court upholds petitioner's conviction for the offence under Section 304A of the IPC but reduces the sentence from rigorous imprisonment for two years to rigorous imprisonment for one year, while maintaining the sentence of fine of Rs.2,000/- and the sentence awarded under Section 279 of the IPC. The challenge to the aforesaid Appellate Court's order of 27<sup>th</sup> February, 2013 by petitioner's counsel is on the ground that prosecution case suffers from various infirmities rendering the prosecution version doubtful.

During the course of hearing, attention of this Court was drawn by petitioner's counsel to deposition of *Rikshaw Puller* (PW-5) to point out that he demolishes the prosecution version of deceased being accompanied by her son- *Prince Kumar* (PW-1) and of having witnessed

the accident. It was contended by petitioner's counsel that *Rikshaw Puller* (PW-5) had not identified petitioner to be the driver of the offending bus and Triloki Nath (PW-4), owner of the offending bus, has erroneously named petitioner as the driver of the offending bus. Acquittal of petitioner is sought by petitioner's counsel on the strength of the so called aforementioned infirmities in the prosecution case. Alternatively, benefit of probation is sought by petitioner's counsel while relying upon Apex Court decision in *Paul George Vs. State of N.C.T. of Delhi* 2008 II AD (cr.) (S.C.) 361 and decision of a Coordinate Bench of this Court in Crl. Rev. No. 433/2009 *Pappan Vs. State (Govt. of N.C.T. of Delhi)*, rendered on 10<sup>th</sup> November, 2009.

On the quantum of sentence, it was submitted by petitioner's counsel that petitioner is aged about forty two years and has already remained behind bars for twenty two days and he has already faced the agony of these proceedings for more than one decade and has four minor children to support. Refuge under Section 265-A of the Cr.P.C. is sought by petitioner's counsel by urging that in cases under Section 304A of the IPC, trial courts now the days are encouraging the *plea bargaining* and are awarding light sentences and if this Court is not inclined to grant probation, then petitioner's prayer for *plea bargaining* deserves to be considered.

Learned Additional Public Prosecutor for respondent-State supports the impugned judgment and submits that hostility of *Rikshaw Puller* (PW-5) to the prosecution does not cause any dent in prosecution case, as there is deposition of eye witness (PW-1) whose presence at the spot is quite natural and the identity of petitioner is well established from

the deposition of Triloki Nath (PW-4), who is the owner of the offending bus. To resist the grant of probation, learned Additional Public Prosecutor for respondent-State relies upon decisions of Apex Court in *Thakur Singh Vs. State of Punjab* 2004 SCC (cri) 1183 & *State of Punjab Vs. Balwinder Singh* (2012) 2 SCC 182. Regarding plea of bargaining, it is asserted by learned Additional Public Prosecutor for respondent-State that this plea was available to the accused during the trial and not when concurrent findings of guilt of petitioner have been already recorded. Thus, dismissal of this petition is sought.

Having considered the submissions advanced by both the sides and on perusal of the impugned order, evidence on record and the decisions cited, I find that prompt registration of the FIR on the statement of eye witness (PW-1), who is none other than the son of the deceased, rules out false implication of petitioner and the deposition of the eye witness firmly establishes the prosecution case. The identity of petitioner as an accused stands duly established from the deposition of PW-4, who is the owner of the offending bus and cross-examination of this witness does not reveal as to why he would falsely implicate petitioner in this case. Otherwise also, bare perusal of petitioner's statement under Section 313 of the Cr.P.C. reveals that he has no worthwhile defence to offer nor any evidence in defence has been led to demolish the otherwise reliable prosecution version. Conviction of petitioner for the offence under Section 304A/ 279 of the IPC, as confirmed by the Appellate Court, is well merited.

On the quantum of sentence, I find that probation was granted by the Apex Court in *Paul George (Supra)* in the peculiar facts and

circumstances of the said case, as the accused therein was police official who on account of accident of vehicle in question caused by him, had been dismissed from service and had faced the agony of proceedings for two decades and due to the incoming traffic on the road he had jumped divider and this was the factor which had caused the accident and so, decision in *Paul George (Supra)* is distinguishable. In *Pappan (Supra)* the manner in which the accident took place does not stand disclosed and so, the decision of a Coordinate Bench of this Court does not have a precedential value. Rather Apex Court decisions in *Thakur Singh and Balwinder Singh (Supra)* reiterated the ratio of the Apex Court decision in *Dalbir Singh Vs. State of Haryana* (2000) 5 SCC 82 discouraging the grant of probation, as number of vehicular accidents have tremendously increased over the years. The pertinent observations made by the Apex Court in *Balwinder Singh (Supra)* are as under:-

*'For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the courts are expected to consider all the relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt.'*

In the instant case, petitioner was rashly and negligently driving the blue line bus when he had caused the accident in question. The manner in which the accident in question had taken place, dissuades this Court to consider petitioner's plea for grant of probation, as judicial notice can be taken of the fact that blue line buses in the capital had

become notorious for causing a number of vehicular accidents. After having lost before two courts, petitioner cannot now belatedly seek benefit of *plea bargaining*. The purpose of introducing the *plea bargaining* was to avoid the agony of long drawn proceedings in cases of petty offences. Due to callous driving of vehicles by errant drivers, valuable lives are lost and in Delhi there is high rate of motor accidents.

In light of the aforesaid, petitioner cannot be permitted to avail of the *plea bargaining* in this case and that too, at such a belated stage.

Finding no illegality or infirmity in the impugned order and the order of the trial court, I dismiss this petition. Petitioner, who is present in the Court, is directed to be taken into custody to serve out the sentence awarded by the Appellate Court.

With aforesaid directions, this petition is disposed of.

Copy of this order be given *dasti* under the signatures of the Court Master to learned Additional Public Prosecutor for respondent-State to ensure its compliance.

**(SUNIL GAUR)**  
**JUDGE**

**JULY 09, 2013**

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