

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: February 21, 2013
Pronounced on: March 12, 2013

+ **CRL.REV.P. 316/2006**
RAKESH KUMAR YADAV Petitioner
Through: Mr.Arjun Harkauli & Mr. A.S.
Rathore, Advocates
versus

GOVT. OF N.C.T. OF DELHI Respondent
Through: Mr. Sunil Sharma, Additional
Public Prosecutor for respondent-
State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. In this revision petition, legality of impugned order of 7th April, 2006 upholding petitioner's conviction for the offences under Sections 304A/338/279 of I.P.C. as well as substantive sentence of a term upto one year rigorous imprisonment is questioned.
2. The facts of this case, as noted in the opening paragraphs of the impugned order, are as under: -

“Denuded of details, the facts are that on 05.04.2000, at about 8am, at flyover G.T. Road, Shahdara, opposite street No.8, Friends Colony, Delhi, Rakesh Kumar Yadav was driving tempo No.DBL 4088 in rash or negligent manner, while Vikram and Ramesh Chand were sitting by his side. Driving the said tempo rashly, he hit it against a

pole, resultantly tempo was damaged and Vikram and Ramesh Chand sustained injuries. Ramesh Chand was taken to GTB Hospital, but he was declared brought dead. Vikram, who was also taken to the hospital, proved lucky enough to survive. Tempo No.DLB 4088 was seized from the spot. The accused slipped away from the hospital. Notice, as contemplated by the section 133 of the Motor Vehicle Act (in short the Act), was served on Madan Lal, the registered owner of the said tempo. He produced the accused before police. He was arrested and in due course of investigation, he was challaned to face trial. Madan Lal (PW1), Dr. Mukta Rani (PW2), Krishan Sahai, Constable (PW3), Kumar Santosh, SI (PW4), Lady Head Constable, Santoshi (PW5), Mohd. Sakir, SI (PW6), Tarun Sharma, Record Clerk (PW7) and Dr. Anita (PW8) were examined in the case. After hearing the accused and the State, accused was convicted for offences punishable under section 279, 338 and 304A of the Penal Code, vide judgment dated 13.01.06 and sentenced to undergo SI for three months for offence punishable under section 279, SI for one year for offence punishable under section 338 and SI for one year and to pay a fine of Rs.5000/- for offence punishable under section 304A of the Penal Code, vide order dated 20.01.06, which judgment and order on sentence has been assailed in the appeal under reference.”

3. At the hearing, it was vehemently urged by petitioner's counsel that in the absence of eye-witness account, conviction of petitioner for the offences in question is *per se* bad in law as prosecution has failed to establish that Madan Lal (PW1) was the owner of the offending vehicle in question and that the photographs of the spot and mechanical inspection report of the vehicle in question are not proved on record and even the MLC of petitioner is not on record and there is no evidence to show as to who had removed the deceased and the injured to the hospital and the plea of *alibi* taken by petitioner has been illegally discarded by the courts below and so, the impugned conviction and the sentence imposed upon the petitioner ought to be set aside.

4. In support of above submissions, reliance is placed upon decisions in *Abdul Subhan v. State* 2007 CrL.L.J.1089; *Thana Ram v. State* 1996 CrL.L.J.2020; *Shahid Khan v. State* 2013 [1] JCC 189; *Baldev Singh v. State* 2000 CrL. L.J. 2538; *State of Karnataka v. Satish* (1998) SCC CrL. 1508 and *Jagdish Prasad v. State* 184 (2011) DLT 285. In the alternative, it was also urged on behalf of petitioner that he is the first offender and that he is the sole bread-earner of his family consisting of old parents, his wife and minor children and benefit of probation was claimed by submitting that petitioner has already faced agony of these proceedings since the year 2000.

5. On behalf of respondent-State, the impugned order is sought to be defended by submitting that non-examination of eye-witness was beyond control, as the eye-witness had died, and from the deposition of Madan

Lal (PW1), it becomes amply clear that upon his receiving notice under Section 133 of *Motor Vehicle Act*, he had produced the petitioner-accused before the Investigating Officer and he had also furnished the bail-bond on behalf of petitioner-accused and that the photograph of the spot as well as mechanical inspection report are already on trial court's record, but due to inadvertence, they could not be formally proved and that the MLCs of deceased and injured clearly show that it was petitioner-accused who had taken them to hospital and that petitioner-accused, despite taking an opportunity to lead evidence in his defence, had failed to substantiate the plea of *alibi* taken by him and therefore, the impugned conviction of petitioner is well merited and benefit of probation ought not to be extended in cases of fatal accident due to rash and negligent driving like the instant one.

6. Having considered the submissions advanced by both sides and upon perusal of the impugned order, evidence on record and the decisions cited, I find that even in the absence of eye-witness account of this fatal accident, it's happening stands sufficiently established on record from the circumstantial evidence led and, in particular, the unrebutted testimony of Madan Lal (PW1) sufficiently incriminates petitioner-accused and the plea of *alibi* taken by petitioner-accused remains unsubstantiated and is infact demolished from the fact that in the MLCs of the injured and the deceased, it is clearly mentioned that they were brought to hospital by petitioner-accused and on this aspect, the prosecution's case remains unassailable. The decisions relied upon on behalf of petitioner are of no avail in view of what has been observed hereinabove.

7. In view of the aforesaid, I find no illegality or infirmity in the impugned conviction of petitioner-accused. However, on the quantum of sentence, I find that the finding returned in the impugned order of petitioner-accused removing the injured/eye-witness to hospital stands duly corroborated from the MLC of the injured as well as from the MLC of the deceased. This is the factor which somewhat mitigates the offence committed. Considering that petitioner is a first offender and is sole bread-earner of his family and he has already faced agony of these proceedings for last about 12 years, no useful purpose would be served in now sending him behind the bars, as he has already remained behind the bars in this case for more than two months. Ends of justice would be met if petitioner's substantive sentence is reduced to the period already undergone by him, while enhancing the sentence of fine from ₹5,000/- to ₹15,000/- only.

8. This revision petition is partly allowed on the quantum of sentence to the extent indicated above. Petitioner is granted four weeks' time to deposit the enhanced fine of ₹10,000/- with the trial court and if it is not so deposited, then petitioner shall be made to suffer simple imprisonment for three months.

9. This revision petition is disposed of in aforesaid terms. Trial court be apprised of this order forthwith.

(SUNIL GAUR)
Judge

MARCH 12, 2013

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