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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 529/2012**
RAJPAL

..... Petitioner

Through Mr. R.S. Jhakar, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through Mr. Navin Sharma, APP for State.
S.I. R. Singh

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
ORDER
22.02.2013

1. By this order I propose to decide the present Criminal Revision Petition which has been filed by the petitioner/revisionist against the order dated 09.08.2012 passed by Sh. Rajneesh Kumar Gupta, ASJ, Tis Hazari Courts, Delhi, wherein the petitioner/revisionist was convicted under section 279/ 304 A IPC and was sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs. 200/- under Section 279 IPC and rigorous imprisonment of 9 months and to pay fine of Rs. 500 under Section 304 A IPC.

2. Succinct account of the case is that on 05.01.1997 at about 9.05a.m. in front of DDA Picket Jail Road, the revisionist was driving the bus bearing

No. DL- 1P- 1962 in an allegedly rash and negligent manner endangering the human life and personal safety of others and while driving so the revisionist had hit a cyclist/ Dinesh (deceased) thereby causing death of Dinesh. After investigation, the charge sheet had been filed against the accused u/s 279/ 304A IPC and notice u/s 279/304A was framed against the revisionist to which he pleaded not guilty. In order to prove its case, the prosecution examined 13 witnesses. The statement of revisionist was also recorded under section 313 Cr. P. C. and one witness was also examined by the revisionist in his defence. After conclusion of trial, final arguments were heard by Sh. M.P. Singh, M.M. -02, West Delhi and revisionist was convicted vide judgment dated 19.12.2011 and vide order dated 21.12.2011 he was sentenced for an offence u/s 279 IPC to undergo SI for a period of one month and fine of Rs. 200 and in default of fine, SI for one week and for the offence u/s 304A IPC to undergo RI for a period of 9 months and fine of Rs.500 and in default of fine, to undergo SI for two weeks.

3. An appeal against the said judgment of conviction dated 19.12.11 and order on sentence dated 21.12.2011 was preferred by the revisionist and the same was dismissed by the impugned order dated 9.8.2012 passed by the learned ASJ. Hence the present criminal revision petition by the

petitioner/revisionist.

4. Arguing the present petition, counsel for the petitioner submits that the testimony of the PW-4, ASI Sushil Joseph does not inspire much confidence as he deposed in his cross-examination that the accident in question took place on the other side of the divider of the road in front of the picket, as per the site plan proved on record as PW12/C, but, the accident in question had taken place not exactly outside the police picket but far away from the said picket. Counsel further submits that this witness further deposed in his cross examination that he had reached the spot after hearing the noise of the impact. He further deposed that he did not know how many passengers were there in the bus. He also deposed that he had not taken the injured to the hospital but he was taken to the hospital by the public. Counsel also submits that in fact at the end of his cross-examination he admitted that he had not seen the actual collision with the offending bus and the cycle.

5. The contention raised by the Counsel is thus that as the said witness was not an eye witness to the said accident, therefore, the learned trial Court and the appellate Court could not have given any credence to his testimony. Counsel also submits that the police did not take steps to

take the site photographs of the incident. Counsel also submits that it is an admitted case of the prosecution that the road where the accident had taken place is a very busy road and therefore the petitioner could not have driven his vehicle in a rash and negligent manner at such a busy road.

6. I have heard counsel for the petitioner at considerable length and given my anxious consideration to the arguments advanced by him.

7. As per the case of the prosecution a cyclist was hit by the petitioner who was driving the blue line bus bearing number DL-IP-1962 in a rash and negligent manner coming from the side of Tilak Nagar chowk. Due to the impact of the said collision, the cyclist fell down on the road and rendered himself unconscious. The petitioner was apprehended at the spot itself by Head Constable Veerpal (PW2) and Head Constable Sushil Joseph (PW4) as there was a police picket just across the road and both these police officials were present in the said picket. The prosecution has succeeded in proving the case of rash and negligent driving against the petitioner beyond a reasonable doubt and the petitioner/accused has not disputed the fact that he was driving the offending vehicle which had hit the cyclist. The main contention raised by the petitioner in the present petition is that PW4 was not the eye-witness and therefore no credence can be given to his testimony.

This aspect has been dealt with by the Ld. Appellate Court intricately and this court do not find any perversity or infirmity in the reasoning given by the Ld. Appellate Court. Even if it is taken that PW4 was not an eye witness of the said accident, no convincing argument has been advanced by counsel for the petitioner to discredit the testimony of PW2, HC Veer Pal as his testimony remained unchallenged and un-rebutted. I also do not find any force in the argument of counsel for the petitioner that the driver could not have been driving the vehicle at a fast speed at such a busy road as no such evidence was adduced in defence to prove that there was heavy traffic on the road at the time of the said incident. At times, the busy road may not have heavy traffic and seeing the way the cyclist was hit by the bus which resulted into the death of the victim, it cannot be fathomable that the petitioner was not driving the said bus in a rash and negligent manner.

8. The Ld. MM and the Appellate court have rightly placed reliance on the judgment of *Paras Nath v. State of Delhi, 2003(3) JCC 1500*, wherein it has been held that hitting a person from behind is in itself a rash and negligent act.

9. As far as challenge to the order passed by the Appellate court with respect to quantum of sentence is concerned, it would be worthwhile to

reproduce the observations made by the Apex court in *Dalbir Singh v. State of Haryana*, (2000) 5 SCC 82, which have also been relied on by the Appellate court. The said case also involved a bus driver knocking down a cyclist who succumbed to death. Observing that such cases of road rage must be dealt with heavy hands by the courts, the Apex Court commenced its judgement with the opening paragraph reproduced as below-

1. The automobiles have become death traps and any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain deterrent element in sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and frolic.

The Apex court went on to observe that-

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly

inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

10. The aforesaid judgment has been relied upon in another judgment passed by the Apex court in the case, *Alister Anthony Pereira v. State of Maharashtra*, (2012) 2 SCC 648, wherein the Apex Court while commenting on the sentencing policies to be adopted by the courts in such cases of road accidents, observed as follows-

84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case

and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

11. Thus, the petitioner in the present case, who drove the heavy vehicle i.e. the bus in a rash and negligent manner thereby causing death of the deceased, the cyclist, must be bound to bear the consequences of his negligent act and must not be entitled to any leniency with respect to the quantum of punishment as a liberal attitude leading to the imposition of scanty sentence on him would be perilous and against the societal interest. The learned Appellate court has therefore rightly rejected the petitioner's plea regarding grant of probation and upheld the order of sentence passed by the learned MM.

12. This court, thus, do not find any illegality, perversity or infirmity in the said consistent orders passed by both the courts below and the same are upheld accordingly.

13. Petitioner is now directed to surrender before the Ld. Trial Court

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within a period of two weeks from the date of this order to undergo the order of sentence passed by the Ld. MM.



KAILASH GAMBHIR, J

FEBRUARY 22, 2013
Mg/g