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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 06.12.2013

+ CRL.REV.P. 695/2013, Crl.M.A.18331/2013 and Crl.M.B.2427/2013

GANGA DHAR Petitioner

Through: Ms. Usha Saxena, Adv.

versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through: Mr. Amit Ahlawat with SI
Yogendra, P.S. Gulabi Bagh.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

SUNITA GUPTA, J. (Oral)

1. This is a criminal revision petition u/s 397 read with Section 401 and Section 482 Cr.P.C against the order dated 21.11.2013 passed by the learned Additional Sessions Judge whereby the appeal filed by the petitioner against the judgment dated 06.08.2013 passed by learned Metropolitan Magistrate convicting the petitioner u/s 279/304A IPC and sentencing him to jail for a period of six months was dismissed.

2. I have heard Ms. Usha Saxena, Advocate for the petitioner and have perused the record.

3. As per the prosecution case, on 16.04.2004, information was received regarding an accident at P.S Gulabi Bagh vide D.D.No.12A

at 1.20 p.m on which SI Shyam Sunder along with Constable Ishwar Singh, reached main road, Choudhary Nand Lal Marg, near gate no.2, Gulabi Bagh and found a taxi bearing No.DL IT 2889 parked at the site and a mob had gathered around it. One Trilochan Singh claiming himself to be an eye witness to the incident met the police officials whose statement was recorded wherein he stated that he had seen the driver of the offending vehicle driving his vehicle in a rash and negligent manner and at a high speed and in the process hit one Sikh person who was going on the road along the *patri*. After the incident the driver attempted to run away from the spot but he was apprehended with the help of the crowd. In the meanwhile, son of the injured came to the spot and took his father in a private vehicle to the hospital. On enquiry, name of the accused was revealed as Gangadhar, son of Shamsunder. This statement of the eye witness Trilochan Singh culminated in registration of FIR No.84/2004 u/s 279/337 IPC . On receipt of information regarding death of injured, offence u/s 337 IPC was converted into 304A IPC. After completing investigation, charge-sheet was submitted against the accused.

4. Prosecution examined 13 witnesses in order to substantiate its case. In his statement recorded u/s 313 Cr.P.C, the petitioner did not dispute that he was driving the offending vehicle at the relevant time. However, his whole case was that the deceased himself was

negligent in crossing the road and it was because of his negligence he had struck against his car and fallen down.

5. After meticulously examining the testimony of the eye witness and the other material on record, learned Trial Court concluded that the prosecution had succeeded in proving the guilt of the accused beyond any shadow of doubt. Accordingly accused was convicted u/s 279/304A IPC. He was sentenced to undergo rigorous imprisonment for a term of six months each as punishment for the offence u/s 279/304A IPC. Both the sentences were to run concurrently.

6. Feeling aggrieved, an appeal was preferred before learned Additional Sessions Judge, however, the same was dismissed vide judgment dated 21.11.2013.

7. Assailing both these judgments, present revision has been preferred by the petitioner.

8. It is submitted by learned counsel for the petitioner that there is the solitary testimony of PW-10, Trilochan Singh. The learned Trial Court has not taken note of the defence of the petitioner whereby he has stated that the deceased had been negligent in crossing the road and it was because of his negligence that he had struck against his car and fallen down.

9. A perusal of the Trial Court judgment reveals that it is not disputed by the petitioner that:-

- (i) he was driving the offending vehicle i.e taxi bearing No.DL IT 2889
- (ii) The accident had taken place by his vehicle.

10. The only plea taken by him is that it was due to negligence of the deceased that he had struck against his car and fallen down. This aspect of the matter was considered by the learned Trial Court and it was observed as under:-

“21. APP for the state has forcefully contended that the prosecution has been successful in proving its case against the accused. He has contended that accused Ganga Dhar in his statement u/s 313 Cr.P.C has admitted that he was driving the car in question on the fateful day. He has contended that the fact that the accused was involved in the accident on the alleged date, time and place is not in doubt. The only question which remains to be proved on behalf of the prosecution is the fact that he was driving the vehicle in a rash and negligent manner as a result of which , he had caused the accident resulting in the death of one Ajmer Singh. APP has placed reliance on the testimony of PW 10 , Trilochan Singh, who is the star witness of the prosecution in this case. Trilochan Singh, PW 10 has deposed that on the relevant date, he was present at Gulabi Bagh, Phatakwal road. He had seen the accused driving the taxi and hitting one Sardarji. He is categorical in his version that the accused was driving the vehicle at a very fast speed and in a wrong carriage way and had struck against the said person. He has deposed that initially, the accused had started running away but was apprehended but then again managed to escape from the spot. The Counsel for the accused, on the other hand, pointed out that in the cross-examination, this witness had conceded that the accused had not been apprehended in his presence. I have carefully gone through the testimony of this witness and have also seen the particular part of the said cross examination which

is actually in line with the testimony given by him in his examination-in-chief. The witness had asserted that even though the accused had been apprehended after the accident, he had managed to escape. The remaining part of his cross examination shows that the witness was present at the spot and had seen the accident. He had stood the test of cross examination and there is nothing brought on record to show that he was a planted witness or an interested one. On the other hand, the accused had alleged that the deceased had suddenly crossed the grill of the road and had struck against his car and fallen down. He had claimed that the accident had taken place due to the negligence of the deceased rather than his rash and negligent driving. No such suggestion was given to PW 10, Trilochan Singh while he was in the witness box. I am, therefore, inclined to hold that the prosecution has been able to prove the guilt of the accused beyond all shadow of doubt. Accordingly, I convict the accused u/s 279/304A IPC."

11. Before the Appellate Court also, similar plea was taken and did not find favour by observing that PW-10 Trilochan Singh has deposed categorically that the accident has taken place due to rash and negligent driving of the petitioner. His testimony was firm and coherent in respect of rash and negligent act of driving of the appellant of taxi and striking against the deceased. Taxi was found at the spot, accused was apprehended at the spot by the police, as such the appeal was dismissed.

12. The submission that the prosecution case rests on the solitary testimony of PW Trilochan Singh is again devoid of merit inasmuch as, it is settled principle of law that solitary testimony of a witness can form basis of conviction. The only rider is that it should be

truthful, reliable and inspire confidence. In the instant case, the witness has stood the test of cross examination. Nothing could be elicited to discredit his testimony. Moreover accused is not alleging any animosity, ill-will or grudge against him for which reason, he would falsely implicate the petitioner and will allow the real culprit to go scot free. In fact, accused has admitted that he was driving the vehicle in question at the relevant time. Not only that, accident has also taken place with his vehicle. He is attributing negligence on the part of deceased which he failed to prove.

13. There is concurrent finding of two courts below holding the petitioner to be rash and negligent in driving the offending vehicle which struck against the pedestrian resulting in his death. The findings do not suffer from any infirmity which calls for any interference.

14. It was next submitted by learned counsel for the petitioner that the petitioner is aged about 39 years of age. His family comprises of two children, aged about 3 and 2 years and they are dependent upon him. He is a taxi driver by profession, as such he should have been granted the benefit of probation under the Probation of Offenders Act, 1958 (for short “the PO Act”). This submission was also made before the learned Trial Court but the plea did not find favour and rightly so, because even a decade ago, considering the galloping rate

of road accidents in India and its devastating consequences, in *Dalbir Singh v. State of Haryana*, (2000) 5 SCC 82, it was held that 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 consideration should be deterrence. A professional driver should not take a chance thinking that even if he is convicted, he would be dealt with leniently by the Court. The following principles laid down in that decision are very relevant:-

“1. When automobiles have become death traps 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 a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

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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 Indian Penal Code as attracting the benevolent provisions of Section 4 of the Probation of Offenders 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 the vehicle he cannot escape from a 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.”

15. The same principles have been reiterated in **B.**

Nagabhushanam v. State of Karnataka, 2008 (5) SCC 730.

16. *State of Punjab v. Balwinder Singh and Others*, (2012) 2

SCC 182 was a case where the appellant was convicted by the Trial Court and sentenced to undergo rigorous imprisonment for 2 years, sentence was upheld by the Sessions Judge. However, keeping in view the fact that the appellant has suffered protracted trial for about 17 years and had undergone custody for 15 days, the High Court reduced the quantum of sentence to period already undergone but enhanced the fine amount to Rs.25,000/- each. State preferred an appeal before the Supreme Court. Following the decision in

Dalbir Singh(supra), it was held as under:-

“13. It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents,

this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304A Indian Penal Code as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in *Dalbir Singh* (supra).

14. While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the Court.

15. For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the courts are expected to consider all 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.

16. In the light of the above principles, we express our inability to accept the reasoning of the High Court in reducing the sentence of imprisonment to the period already undergone, that is, 15 days. Merely because the fine amount has been enhanced to Rs. 25,000/- each, is also not a sufficient ground to drastically reduce the sentence, particularly, in a case where five persons died due to the negligent act of both the drivers of the bus and the truck. Accordingly, we set aside the impugned order of the High Court and impose a sentence of rigorous imprisonment for six months with a fine of Rs. 5,000/- each. The trial Court is directed to take appropriate steps for surrender of the accused in both the appeals to serve the remaining period of sentence. The appeals are allowed to the extent mentioned above.”

13. Coming to the factual matrix of the case, the Trial court has already taken a liberal view by not imposing any fine upon the

petitioner or awarding any compensation to the family of the deceased. In the facts and circumstances of the case, though a precious life has been lost and in the aforesaid judgments, Supreme Court has also observed that the Criminal Courts cannot treat the nature of offence u/s 304A IPC as attracting the benevolent provisions of Section 4 of the PO Act, the petitioner is not entitled to be released on probation as prayed for by learned counsel for the petitioner.

14. In view of the foregoing, there is no merit in the revision petition. The revision petition and the pending applications are accordingly dismissed.

SUNITA GUPTA, J

DECEMBER 06, 2013

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