

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL APPEAL No. 523 of 2009

Reserved on: August 25, 2014

Decision on: September 8, 2014

STATE

..... Appellant

Through: Ms. Isha Khanna, APP.

Ms. Inderjeet Sidhu along with
Ms. Era Kaur, Amicus Curiae for
the victim's family.

versus

INTEZAR & ANR.

..... Respondents

Through: Mr. A. Alam, Advocate for R-1
along with Respondent No.1.

CORAM: JUSTICE S. MURALIDHAR

ORDER
08.09.2014

1. This order should be read in continuation of an order dated 22nd January 2014 passed by this Court reversing the judgment dated 2nd December 2008 passed by the learned Metropolitan Magistrate to the extent that it had acquitted Respondent No. 1 of the offences under Sections 279 and 304A IPC.

2. On an analysis of the evidence, this Court found Respondent No. 1 guilty of the said offences in relation to an unfortunate motor vehicle

accident that occurred on 18th/19th July 1994 which resulted in the death of five year old Mohd. Anis.

3. On the question of punishment this Court heard the submissions of Ms. Inderjeet Sidhu, learned Advocate assigned at the request of this Court, by the Delhi High Court Legal Services Committee ('DHCLSC') to appear for the family of the victim Mohd. Anis, Ms. Isha Khanna, learned APP for the State and Mr. A.Alam, learned counsel for Respondent No.1.

4. At the outset it requires to be noted that for the offence under Section 279 IPC, the maximum punishment is six months and a fine of Rs. 1,000 or both. For the offence under Section 304A IPC, the maximum punishment is two years or fine or both.

5. It is also noted that in the claim filed by the family of the victim a sum of Rs. 2,15,000 was awarded as compensation under the Motor Vehicles Act, 1988 and the said amount has been received by the family.

6. The Supreme Court has repeatedly emphasized that given the large number of motor vehicle accidents in the country there should be a uniform sentencing policy. In its recent order in ***Satya Prakash v. State 2013 X AD (Delhi) 303*** this Court called upon the Government of NCT of Delhi as well as the Union of India to submit proposals for

a uniform sentencing policy in road accident cases. The said case is still pending.

7. As far as the decided cases are concerned, in one line of cases the Supreme Court has emphasized the need to have deterrent punishment in road accident cases. These decisions include *State of Karnataka v. Sharanappa Basanagouda* 2002 (3) SCC 738, *State of Karnataka v. Muralidhar* AIR 2009 SC 1624, *State of Punjab v. Balvinder Singh* 2012 (2) SCC 182 and *Guru Basavaraj v. State of Karnataka* 2012 (8) SCC 734. In the said decisions the Supreme Court emphasized social order and collective conscience as having to weigh against individual difficulty. The recent decisions in *State v. Sanjeev Nanda* 2012 SCC (8) 450 and *Alister Anthony Pareira v. State of Maharashtra* AIR 2013 SC 3802 involved multiple deaths as a result of rash and negligent driving.

8. Then there is the other line of cases where the Supreme Court has taken a somewhat lenient view on the question of punishment given the facts and circumstances. In *A.P. Raju v. State of Orissa* 1995 Supp (2) SCC 385, the Court was dealing with the incident of a child who died while standing with two other children nearby a banyan tree, the incident having occurred more than 15 years prior to the date on which the case was being considered by the Court. The appellant had been acquitted by the trial Court in March 1981 and convicted by the High Court in 1985. Taking into account the above factors, the Supreme Court considered it appropriate to release the Appellant

under Section 360 Cr PC on the Appellant entering into a bond with one surety to keep good conduct, be of good behaviour and keep peace for a period of one year.

9. In *Munni Kachhi v. State of M.P. (2005) 13 SCC 386* a similar approach was adopted. This Court too has in *Ajay Kumar v. State 2009 X AD (Delhi) 40* noted that too harsh or too lenient a sentence, both lose their efficacy. In *Baldev Singh v. State of Punjab (1995) 6 SCC 593*, compensation was awarded by the Supreme Court under Section 357 (3) Cr PC. It was held in *K.A. Abbas H.S.A. v. Sabu Joseph (2010) 6 SCC 230* that the compensation may be determined keeping in view the facts and circumstances of the case, and in particular the nature of the crime and the capacity of the offender to pay.

10. On the aspect of payment of compensation, the recent amendment to the Cr PC thereby introducing Section 357A is relevant. The said provision reads as under:

“357A Victim Compensation Scheme – (1) Every State Government in coordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the

State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the Scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

11. In terms of the above provision, the Government of National Capital Territory of Delhi ('GNCTD') issued a notification dated 2nd February 2012 setting up the Delhi Victims Compensation Scheme, 2011 (DVCS). It envisages creation of a victims compensation fund. In terms of Clause 3 of the DVCS compensation should be paid to the victims as decided by the Delhi Legal Services Authority ('DLSA'). In term of Clause 5 (2), an inquiry is to be conducted by the DLSA within sixty days from the date of receipt of the claim/petition. Clause 7 envisages the time period and method of disbursement of compensation. Clause 9 envisages recovery of compensation awarded by instituting proceedings before the competent court of law. A Schedule for calculation of compensation is enclosed with the Scheme.

12. Turning to the facts of the present case, as noticed earlier, the family of the deceased boy aged five years at the time of occurrence of incident consisted of the father, the mother, a brother aged nine years and a younger sister aged about 2 and half years. The deceased was studying in Class II at the time of his death. In 2001, the father of the deceased died and at that time he was skilled labour earning Rs. 5,000-6,000 per month. As noted earlier, the family of the deceased boy has received Rs. 2,15,000 awarded by the Motor Accident Claims Tribunal ('MACT'). The Court is informed that the family had filed further proceedings in this Court seeking enhancement of the said compensation. However, they were unable to prove the said details.

13. The present status of the family of the deceased is that mother of the deceased is 40-46 years, his elder brother is about 29 years and his sister is married. Three younger brothers aged 19, 17 and 16 respectively were born after the death of the deceased. It appears that the only surviving legal heir is the mother. The brothers are stated to be unskilled labour employed in a factory, earning Rs. 2500-4,000 per month.

14. The accident took place on the intervening night of 18th/19th July 1994. The trial Court acquitted both the accused after a long drawn trial of 14 years on 2nd December 2008. This Court admitted the appeal on 16th July 2009. Ultimately after five years, i.e., on 22nd January 2014 the Court reversed the acquittal of Respondent No. 1. In other words Respondent No. 1 has already faced an ordeal of 20 years of litigation. Respondent No.1 is a TSR driver earning Rs. 9,000 per month with a family to support. He is not shown to have been involved in any accident thereafter. He was holding a valid driving licence even at the time of the accident.

15. Keeping all the above factors in view, the Court refrains from sentencing the Respondent No. 1 to serve a term of imprisonment for the offences under Sections 279 and 304 A IPC. Instead it invokes Section 360 Cr PC read with Section 4 of the Probation of Offenders Act, 1958 and directs that the Respondent No. 1 be released on probation subject to his furnishing to the trial Court a bond to keep good conduct and be of good behaviour for a period of two years.

16. Additionally, the Court directs that a case for claim of compensation in terms of Section 357A Cr PC will stand instituted in the name of the eligible legal heirs of the deceased Mohd. Anis before the DLSA in terms of the present order. Acting on the present order, the Secretary, DLSA will hold an inquiry in terms of Clause 3 read with Clause 5 of the DVCS and complete it within a period of sixty days from the date of receipt of the present order. It will be open to the Secretary, DLSA to call for further particulars/documents from the family of the victim in order to determine the appropriate compensation to be paid and also disburse the compensation amount so determined. The DLSA will take into account the compensation received by the family under the Motors Vehicles Act.

17. Considering the economic status of Respondent No.1, the Court directs that the DLSA will not institute proceedings under Clause 9 of the DVCS to recover the compensation amount from the Respondent No.1.

18. The appeal is disposed of in the above terms. Order be given *dasti*. A certified copy of this order together with a copy of the complete paper book be delivered to the Secretary, DLSA forthwith for compliance.

19. A certified copy of this order together with the trial court record will be sent forthwith to the trial Court for Respondent No.1 to furnish

the bond of good behaviour. Respondent No.1 will appear before the trial Court on 23rd September 2014 for that purpose.

S. MURALIDHAR, J.

SEPTEMBER 08, 2014

Rk

