

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 06th April, 2015
Judgment Pronounced on: 01st May, 2015

CRL.REV.P. 432/2006

YATENDER KUMAR

..... Petitioner

Through: Mr. Prag Chawla & Ms. Ruchi
Kapur, Advocates

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. P.K. Mishra, APP
SI Manu Sahrawat, PS: Pandav
Nagar, Delhi

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the order on conviction dated 10.08.2005 and the order on sentence dated 24.08.2005 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for two years and fine of Rs.5,000/- under Section 304-A IPC, in default of payment of fine to further undergo RI for four months; rigorous imprisonment for a period of six months and a fine of Rs.1,000/- under section 279 IPC, in default to undergo RI for one month and upholding the same by the learned Additional Sessions Judge vide judgment dated 15.05.2006, the present revision petition has been filed by the petitioner.

However, the learned Additional Sessions Judge modified the sentence only to the extent of two years rigorous imprisonment to 18 months for offence under Section 304A IPC.

2. Factual matrix, as emerges from the record, is that on 4.1.2000, at about 1:15 pm, at bus stop Ganesh Nagar, near Mother Dairy, the petitioner, who was driving Bus No.DL 1PA 2713 in a rash and negligent manner, struck the same against a DTC bus, causing death of one Nikhil. The case of the prosecution was that at the time of accident, the petitioner was deputed as driver of the bus and was driving the bus rashly and negligently which resulted into accident which snatched a life. An FIR of the case was recorded. On completion of investigation, report under Section 173 Cr.P.C. was filed.
3. Notice under Section 279/304A IPC was given to the petitioner, to which he pleaded not guilty and claimed trial.
4. To prove its case, the prosecution examined 9 witnesses. After conclusion of prosecution evidence, the statement of the petitioner was recorded under Section 313 Cr.P.C. in which he had claimed innocence. The petitioner opted to lead defence evidence and in his defence one witness was examined. The learned Metropolitan Magistrate vide judgment dated 10.08.2005 held the petitioner guilty for the offence punishable under Section 279 and 304A IPC and convicted him for the said offences. The order on sentence was passed on 24.08.2005.

5. Thereafter, the petitioner filed an appeal bearing Criminal Appeal No.41/2005. The learned Additional Sessions Judge vide judgment dated 15.05.2006 confirmed the conviction and sentenced awarded to the petitioner. However, the sentence under Section 304A IPC was modified from two years rigorous imprisonment to 18 months.
6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the courts below and claiming acquittal.
7. Argument advanced by the learned counsel for the petitioner is that rash and negligent driving has not been established. There is no convincing evidence that the petitioner was driving the bus at the time of alleged incident. The accident as alleged was caused by another bus and the petitioner has wrongly been booked in the present case. The prosecution case is based on sole testimony of PW4 Naresh Kumar Sarin who was interested one and there is no other independent witness to prove the prosecution case.
8. There is no basis in this contention of the learned counsel for the petitioner inasmuch as eye witness Naresh Kumar Sarin (PW4) had specifically stated that on 04.01.2000 at about 1.00 p.m., he along with his brother-in-law Nikhil Mahan was left their house in order to go to Shakar Pur; At about 1.15 p.m. when they reached at bus stop Ganesh Nagar, one was already standing on bus stop; in the meanwhile, another bus route No.469 DL 1PA 2713 came from behind; PW4 boarded the bus; his brother-in-law also board the

same bus while he was at the foot board of the bus; in the meanwhile bus driver started the bus due to which his brother-in-law crushed and hit between two buses i.e. one which was already standing on the bus stand and the one which they boarded; he raised alarm and asked the bus driver to stop the bus; PW4 immediately got down from the bus and informed the police, again said, someone informed the police personnel who were present; he came to the spot and found Nikhil was sitting on the side of road; he took him to Ram Lal Kundal Lal hospital along with 2/3 public persons; he was admitted there who had sustained internal injuries; on seeing the serious condition of Nikhil, doctors advised them to shift the injured to Apollo hospital; he was shifted; he met the police on 10.01.2000 at police station and lodged complaint to police Ex.PW4/A; on 06.02.2000, Nikhil expired in hospital due to injuries sustained by him; at his instance site plan Ex.PW4/B was prepared; accused (petitioner) was the same person who was driving the bus at the time of incident.

9. PW7 Arun Kumar Jha, owner of the bus had categorically stated on oath that he was owner of bus No.DL 1PA 2713 and the petitioner was driver on the said bus; on 15.01.2000, he received notice to produce his bus driver to the police as his bus was involved in the accident; on receipt of the same, he had given written reply Ex.PW7/A; on 15.01.2000 he produced his driver i.e. the petitioner in the police station; his bus which was impounded was taken on superdari by executing superdari nama Ex.PW7/B.

10. The testimony of PW7 is based upon document Ex.PW7/A which is the reply given by this witness to the notice under Section 133 of the Motor Vehicles Act. In the entire trial, appeal or in the present revision petition, it has not been suggested that PW7 was not the owner of the bus bearing No.DL 1PA 2713. The petitioner had not questioned the issuance of notice to PW7 under Section 133 of the Motor Vehicles Act and his reply Ex.PW7/A.
11. The next argument advanced by the learned counsel for the petitioner is that learned Courts below had overlooked the testimony of DW1 Rajinder Pal in which he deposed that he was working as conductor; on 04.01.2000, his duty was on bus No.DL 1PA 2713 from 6.15 a.m. to 2.30 p.m.; said bus was running under the DTC kilometre scheme; on the said date during his duty hours, no accident of the said bus had taken place. He was cross-examined in which he categorically stated that he had not brought any material/document to show that he was deputed as conductor on the fateful day; seat of the conductor was near the rear gate bus of bus; he was on his seat; he had worked with the petitioner for about a year. It was suggested to him that he was deposing falsely to help the petitioner.
12. DW1 miserably failed to show that he was working as conductor on that day, particularly when he had not participated in any proceedings at the time of incident such as removing the victim or involving in any other act and also not having any document in support of his testimony.

13. The learned MM in his judgment has dealt with the testimony of DW1 and found that it was interesting to note that DW1 Rajinder Pal had deposed that no such accident had taken place, but he did not come forth as to how deceased met with accident in view of the testimony of PW4 and ultimately did not find him trustworthy. Similarly, the testimony of DW3 has been dealt with by the learned Additional Sessions Judge in para 32 of the judgment and found that it was not his case that the petitioner was not driving the offending bus on the day of incident and his testimony was not found reliable.
14. PW4 Naresh Kumar Sarin had categorically stated that the petitioner was driving the offending bearing No.DL 1PA 2713 at the time of incident; he boarded the bus from the front gate of the bus; while his brother-in-law Nikhil was on the foot board of the bus, the petitioner started the bus due to which Nikhil came and crushed between the two buses. Testimony of PW4 has been duly supported with documentary evidence i.e. reply Ex.PW7/A of PW7 Arun Kumar Jha, owner of the offending bus to the effect that the petitioner was driving the vehicle on the fateful day of the accident i.e. 04.01.2000.
15. Apart from the unimpeached and credible testimony of PW4 Naresh Kumar Sarin passing the test of cross-examination, the other corroborative evidence is the MLC of deceased Ex.PW2/A, post mortem report Ex.PW1/A and mechanical inspection report Ex.PW5/A. PW2 Dr. Mukesh had deposed that on 04.01.2000,

injured Nikhil Mahan was brought to hospital with the alleged history of road side accident and prepared his report Ex.PW2/A. PW1 Dr. L.C. Gupta had deposed that on 06.02.2000, he conducted post mortem on the body of Nikhil Mohan vide post mortem report Ex.PW1/A. In his opinion, cause of death was septicemic shock resulting from and secondary to polytrauma which was caused directly because of road traffic accident/vehicular accident. There is enough evidence against the petitioner in the form of testimony of the eye witness Naresh Kumar Sarin (PW4) that due to the rash and negligent driving of the petitioner, deceased was crushed between the buses. He identified the petitioner as driver of the offending bus and categorically stated the petitioner was negligent which resulted into death of the deceased. The petitioner has not even disputed the presence of this witness at the spot at the time of incident but claimed that he was not rash and negligent. There is no reason to disbelieve the testimony of eye witness (PW4) which established the rash and negligent act of the petitioner causing the death of deceased Nikhil. PW7 Satish Hans, owner of the offending bus further corroborated the prosecution case that he was owner of the bus; bus was the case property; same was got released on superdari and further corroborated the driving of the offending vehicle on the day of incident by the petitioner.

16. In case *Devender v. State 2011 X AD (Delhi) 113*, the essential ingredients to constitute an offence punishable under Section 279 IPC have been mentioned i.e. there must be rash and negligent

driving or riding on a public way and the act must be so as to endanger human life or be likely to cause hurt or injury to any person. For an offence under Section 304-A IPC, the act of accused must be rash and negligent which should be responsible for the death. In the present case, it has been established by the prosecution that on the fateful day, Naresh Kumar Sarin (PW4) along with his deceased brother-in-law Nikhil had boarded the offending bus and when the deceased on the foot board of the bus, petitioner started the bus due to which deceased was crushed between two buses i.e. one which was driven by the petitioner and the other stationed on the stop. Witness Arun Kumar Jha (PW7), owner of the offending bus further corroborated the prosecution case that he was owner of the bus and the same was the case property which was got released on superdari. It was also corroborated from the testimony of PW7 that the petitioner was driving the tempo on the day of incident. The testimony of the eye witness found to be reliable and trustworthy. In the above mentioned set of evidence, the circumstances were sufficient enough to establish that the petitioner had been driving the bus no.DL 1PA 2713 in a rash and negligent manner.

17. The argument advanced by the learned counsel for the petitioner that the rash and negligent driving has not been established by any independent witness is without any basis.

18. ***In view of discussion made above, the conviction of the petitioner under Section 279 and 304-A IPC is upheld.***

19. The submission made by the learned counsel for the petitioner on the quantum of sentence in the present case is that the incident had taken place on 04.01.2000; charge sheet was filed on 31.07.2000; judgment of conviction was passed by learned MM on 10.08.2005; order on sentence was passed on 24.08.2005; learned Additional Sessions Judge passed the judgment on 15.05.2006 and presently we are in the year 2015; the petitioner has suffered the agony of the proceedings for about 15 years and is the only bread earner of the family; a lenient view may be taken on the quantum of sentence of imprisonment.
20. In view of discussion made above, the judgments passed by the Courts below cannot be said to be not sustainable in the eyes of law and deserve to be upheld. However, this Court is of the considered opinion that it would not serve any purpose to send the petitioner behind the bar. Accordingly, the sentence of imprisonment is modified to the period already undergone by the petitioner, subject to enhancement of fine from Rs.5,000/- to Rs.25,000/- for offence under Section 304A IPC, in default the petitioner shall undergo simple imprisonment for four months and the adjustment of fine already paid.
21. The petitioner shall appear before the Chief Metropolitan Magistrate (East) within the period of one month from the date of order to pay the fine, failing to which surrender to serve the sentence in default of payment of fine.

22. The present revision petition is dismissed with the modification on the quantum of sentence. File of the trial Court be sent back.

P.S.TEJI, J.

May 01, 2015
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