

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : MARCH 12, 2015

DECIDED ON : APRIL 17, 2015

+ CRL.REV.556/2014

ABDUL MAZID

..... Petitioner.

Through : Ms.Naomi Chandra, Advocate.

versus

STATE

..... Respondent.

Through : Mr.Navin K.Jha, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. By a judgment dated 05.07.2013 in case FIR No.194/99 registered at Police Station Seemapuri the petitioner Abdul Mazid was convicted under Sections 279/337/338/304A IPC by the Court of Metropolitan Magistrate. By an order dated 31.07.13, he was awarded various prison terms. The petitioner unsuccessfully challenged the judgment in Crl.A.No.51/2013. Aggrieved by the said orders, the petitioner has filed the instant revision petition.

2. Allegations against the petitioner were that on 03.07.99 at about 7:55 a.m. at A&B, Chowk near the corner of park, Green Field
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Modern Public School Road, he was found driving bus bearing No.DL1P-5868 in a rash and negligent manner and while so driving, he hit against Sonal, Gaimda Lal, Pooja and Maninder Kaur. Sonal and Gaimda Lal sustained simple injuries while Pooja suffered grievous injuries; Maninder Kaur expired. The petitioner was arrested at the spot and FIR was lodged by the Investigating Officer after recording complainant's (Jagdeep Jalota) statement (Ex.PW-1/A). Victims were taken to hospital for medical examination. Post-mortem examination on the body was conducted. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the accused for committing the above said offences. The prosecution examined 12 witnesses to substantiate its case. In 313 statement, the petitioner pleaded false implication and claimed that accident occurred due to failure of brakes. The trial resulted in his conviction as aforesaid.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the offending vehicle was being driven by the petitioner who was arrested at the spot. It is not denied that in the accident Maninder Kaur lost her life while the other victims sustained simple/grievous injuries. The prosecution examined PW-1 (Jagdeep Jalota), PW-2 (Ms.Pooja), PW-3 (Ms.Sonal), PW-8

(Mamta) and PW-9 (Inderdeep) who gave consistent version that the offending bus was being driven by the petitioner at a very fast speed, rashly and negligently. The bus first hit PW-1's car and thereafter it hit one cycle rickshaw. It again struck against some school going girls. Thereafter, it turned towards left side and struck against a tree before halt. It speaks volume as to how the petitioner was rash and negligent in driving the vehicle and had no control over it. Apparently, the petitioner did not take reasonable care while driving the vehicle in question as a result of which number of victims sustained injuries. The burden was heavily upon the accused to prove that the accident was result of failure of brakes and there was no rash and negligent driving by him. The petitioner did not examine any witness to prove that the brakes of the bus had failed and he was unable to control it due to it. Contrary to that the vehicle in question was mechanically got inspected during investigating and as per inspection report (Ex.PW-12/K), brakes of the bus were in order. The defence deserves outright rejection.

4. The impugned judgments are based upon fair appraisal of the evidence. Concurrent findings on fact recorded by the courts below that the bus was being driven rashly and negligently by the petitioner are well founded. The findings are neither perverse nor illegal. There are no

sound reasons to take a different view in the matter. PW-2 (Pooja) in the cross-examination started crying saying that she could not see the presence of the accused driver as he had spoiled her life. She could not properly walk after the accident and always remained ill due to that. It shows the gravity of the offence. The public injured witnesses who had witnessed the occurrence had no animosity to falsely implicate the accused. The findings on conviction are upheld.

5. Learned counsel for the appellant prayed for modification of the sentence order as the incident pertains to the year 1999 and the petitioner has already served the substantial period of substantive sentence. I find no adequate reasons to reduce the sentence awarded to the petitioner. In the instant case a precious life has been lost due to rash and negligent driving of the accused. School going children suffered vital injuries on their bodies. While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving, one of the prime consideration is deterrence. No sufficient ground exists to show leniency. The sentence awarded by the trial court is commensurate with the gravity of the offence.

6. The revision petition lacks merits and is dismissed. Trial Court record (if any) along with a copy of this order be sent back

forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail
for intimation.

(S.P.GARG)
JUDGE

APRIL 17, 2015
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