

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 725/2010**

Date of Reserve: 08.10.2015

Date of decision: 14.10.2015

MAHENDER SINGH PETITIONER

Through: Mr.J.S.Krishwaha, Advocate.

versus

STATERESPONDENT

Through: Ms.Rajni Gupta, APP.
ASI Ashok Kumar, P.S.Kotwali.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. Mahender Singh stands convicted under Sections 279 and 304A of the IPC and has been sentenced to undergo Simple Imprisonment for four months and pay a fine of Rs.500/- and in default of payment of such fine, to suffer Simple Imprisonment for 20 days for the offence under Section 279 of the IPC and Simple Imprisonment for one year, fine of Rs.500/- and in default of such payment of fine, Simple Imprisonment for 20 days for the offence under Section 304A, the sentences, however, having been ordered to run concurrently by the Trial Court in case No.319/K/09 arising out of FIR No.662/95 (P.S.Kotwali) vide judgment and order dated 21.05.2010/28.05.2010.
2. In appeal (Crl. Appeal No.31/2000), the aforesaid judgment and order of conviction and sentence was affirmed and upheld by judgment dated 18.10.2010.

3. The revisionist petitioner assails the aforesaid two judgments primarily on the question of sentence.
4. On 26.07.1995 while the petitioner was driving a bus, one Ramiyya was hit leading to his death. It has been alleged that the aforesaid accident was caused because of rash and negligent driving of the petitioner. As a result thereof, the petitioner was prosecuted for the offence under Section 279 and 304A of the IPC.
5. In order to bring home charges against the petitioner, 12 witnesses were examined on behalf of the prosecution but none on behalf of the defence.
6. Baley Ram (PW-2) has deposed that he received a notice (Ex.PW-2/A) under Section 133 of the Motor Vehicles Act from the police. He has stated that the petitioner was employed by him as a driver for the offending vehicle and on the date of the accident the vehicle was being driven by the petitioner.
7. ASI Rajpal (PW-7) has testified to the fact that on 16.05.1997 he received a secret information that the petitioner who was present at the place of occurrence could be arrested and accordingly he arrested the petitioner. He has identified the personal search memo (Ex.PW-7/A) and the DD (Ex.PW-7/B).
8. Ms.Barkha Gupta (PW-8), Metropolitan Magistrate deposed before the Court that on 31.07.1995, an application was moved by the investigating officer of the case for conducting test identification parade but the petitioner refused to participate in the TIP.
9. Mr.Nanku Ram (PW-11) has stated that he had accompanied the deceased to Ghaziabad for some work. While they were crossing

the road near Jama Masjid, a bus came at a very high speed and hit the deceased. The deceased went down the wheels of the bus. He has identified the petitioner as the driver of the offending bus. However, aforesaid Nanku Ram has stated that the petitioner ran away from the spot. The injured was taken to the hospital by him in a TSR where he was declared brought dead.

10. The autopsy over the dead body of the deceased was conducted by Dr.Sanjeev Kumar (PW-12) who has testified to the fact that the death was because of hemorrhage and shock consequent upon laceration of lung and liver which in turn was because of the impact by blunt force on chest and abdomen. The injuries were found to be ante mortem in nature, recent in duration and was caused by vehicular accident. No attempt was made to cross examine PW-12. In the statement recorded under Section 313 Cr.P.C, the petitioner has denied the allegation and has merely stated that he has been falsely implicated.

11. For the offence under Section 279 of the IPC to be attracted, it is necessary that the following facts be proved by the prosecution. Firstly, that the accused was driving the vehicle; secondly, the accused was driving the vehicle in such rash and negligent manner so as to endanger human life and did in fact, endanger a life.

12. The aforesaid two facts have been squarely proved by the deposition of Baley Ram (PW-2), the owner of the vehicle who has categorically stated that the petitioner was in his employment and on the relevant date and time, he was driving the said vehicle (bus).

13. The aspect of rash and negligent driving was confirmed by the testimony of PW-11, the person who was accompanying the deceased at the time of accident. He has categorically stated that the offending vehicle was being driven in a rash and negligent manner and the aforesaid witness has also identified the petitioner as the driver of the said vehicle.

14. Section 304A of the Indian Penal Code provides for punishment to a person who causes the death of any person by doing any rash or negligent act not amounting to culpable homicide and for such an offence the accused could be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

15. The testimony of the doctor who conducted the post mortem clearly reveals that the deceased fell beneath the wheels of the bus. The accidental death has been proved by PW-12. That the said vehicle was being driven negligently which has been stated earlier and proved by PW-11, an associate of the deceased. That the petitioner was driving the offending bus at the relevant time has again been proved by PW-2, the owner of the vehicle. Thus, the petitioner has rightly been convicted by both the Courts below.

16. The question before this Court is regarding the imposition of the sentence. It has been submitted at the Bar that the fine has already been paid.

17. Learned counsel for the petitioner submits that petitioner is 41 years of age and is required to feed many mouths. He has two marriageable daughters and one young son, all of whom are dependent

on him. It has further been submitted that the occurrence took place in the year 1995 and it took almost 15 years for the prosecution to prove the charges against him. The petitioner has already been sufficiently punished and has remained in jail for more than five months. The counsel for the petitioner, thus, submits that interest of justice would be sub-served if the sentence imposed on the petitioner is modified to the period which he has already undergone in custody. The aforesaid submission of the petitioner is opposed by the counsel for the State and it is argued that undue sympathy in lessening the sentence which is already on the lenient side, would do harm to the criminal justice system and would only undermine the public confidence in the efficacy of law and delivery of justice. It is submitted that society cannot endure any inconsistent/inadequate sentencing pattern especially in view of the fact that many deaths are caused because of rash and negligent driving of big vehicles. It is, therefore, as has been submitted, the duty of every Court to award proper sentence, having regard to the nature of offence and the manner in which it was committed etc.

18. Sentencing of an accused in a criminal case is a serious exercise and there cannot be two opinions about the fact that the quantum of sentence imposed is required to be in consonance with the gravity of the offence. Punishment in criminal cases is both punitive and reformatory. The punitive aspect of sentencing deals with punishment meant for deterrence from repeating such acts in future. The reformatory aspect of sentencing cares for providing opportunity to the

accused to repent for his action and make himself acceptable to the society as a useful social being.

19. In determining the question of proper punishment, a Court is required to weigh the degree of culpability of the accused, the effects of the crime alleged on the society at large and the desirability of imposing a lesser sentence. A balance between the interest of the individual and the overall concern of the society is required to be struck.

20. In a case of this kind deterrent sentencing would not be relevant and useful.

21. Considering the fact that sufficient time has elapsed since the accident took place and the petitioner has, in the meanwhile, served the society and his family and no complaint with respect to rash driving has been reported against him, it would only be expedient to sentence the petitioner to the period of custody which he has already undergone. While saying so, this Court has taken into account the fact that he has to cater to his wife and three unemployed children, two being daughters of marriageable age. Considering the above facts, the conviction of the petitioner is maintained but the sentence imposed upon him is modified to the extent of the period which he has already undergone in custody.

22. The revision petition is partially allowed.

ASHUTOSH KUMAR, J

OCTOBER 14, 2015

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