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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 293/2015 & CRL.M.B.7027/2015**

Date of decision: 01.07.2015

DHARAMBIR

..... Petitioner

Through Mr. L.D. Mual, Mr.S.S. Mual &
Mr.Pranav Siroha, Advs.

versus

THE STATE (G.N.C.T) OF DELHI Respondent

Through Mr. Neeraj Kumar, APP.
SI Des Raj PS Vikas Puri.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

The revisionist assails the judgment and orders of Trial Court dated 15.02.2013\ 6.5.13 passed in connection with FIR no. 456/2002 (P.S.Vikas Puri) whereby he was convicted for offences under sec. 279/304A IPC and was sentenced to undergo RI for 9 months, fine of Rs. 9000/- and in default of payment of fine SI for 6 months for the offence u/s 304A IPC and SI for 3 months and fine of Rs.1000/-, with a default stipulation for one month for the offence under sec. 279 IPC, the sentences having been ordered to run concurrently.

The revisionist further assails the judgment and order passed in Criminal Appeal No. 301/4/ 2014 dated 4.4.15, whereby the trial court judgment has been upheld.

The petitioner is alleged to have been driving a bus in a rash and negligent manner, leading to dashing down a scooter, as a result of which Andrus Daniel, who was driving the scooter died at the spot. FIR was registered on the basis of DD entry no 14A whereafter police officials visited the spot and met one person by the name of Manish Sharma, who claimed himself to be an eye witness to the occurrence.

Manish Sharma has been examined as PW7 at the Trial

The bus as well as the scooter were taken into possession by the police. The petitioner was immediately arrested but released on bail.

After investigation, charge sheet was submitted whereupon cognizance was taken and after framing of the charges, the trial ensued.

The trial court after examining 10 witnesses on behalf of the prosecution and none on behalf of the defendant returned the finding of guilt against the appellant and sentenced him as aforesaid.

The appellate court did not accede to the submissions raised on behalf of the petitioner namely Manish Sharma (PW7) being a planted witness and not an eye witness to the occurrence; material contradictions in the testimonies of the witnesses inter se; absence of any material warranting a conclusion that the petitioner drove the vehicle in a rash and negligent manner and no independent witness having been put up by the prosecution to support its case.

The appellate court upheld the judgment and order of conviction recorded by the trial court.

On perusal of records, this Court is of the opinion that both the courts below have rightly convicted the appellant for the offences under sec 304A and 279 IPC. Manish Sharma (PW7) could not have been disbelieved entirely, as in his examination in chief recorded on 9.11.2006, he had supported the prosecution version in detail and had also identified the petitioner. He was cross examined for the first time after an inordinate gap of approximately five years i.e. 10.2.2011. In his cross examination also, he stood by his earlier version. The aforesaid witness was thereafter recalled for cross-examination on 17.2.2012, and that is when he resiled from his earlier statements.

Minor inconsistencies in the statement of witnesses would not justify the case being thrown out of board.

The prosecution was successful in proving the identity of the petitioner; the factum of accident occasioned by the rash and negligent driving by the petitioner in a public place and the death of a person consequent to such an accident.

Learned counsel appearing for the petitioner submitted that the MLC of deceased (Ex. PW8/A) did not bear the signature or the name of Manish Sharma PW7. There is no evidence with respect to the fact as to who took the injured/deceased to the hospital. In the absence of any evidence having been adduced on behalf of the prosecution, mere absence of the name of PW7 in the MLC (Ex. PW8/A) would not lead to the irresistible conclusion that PW7 was not an eye witness to the occurrence.

It has also been submitted that relevant and material witness namely Ravi Srivastava has not been examined and no explanation has

been offered for his non-examination. It was, in the last, canvassed that the vehicle namely the bus was being driven backwards. It is a matter of common knowledge that while reversing a vehicle rashness cannot be shown by any driver. Accident took place while the vehicle was being reversed.

After going through the entire gamut of evidence and the concurrent judgments of the courts below, this Court is of the opinion that the conviction of the petitioner under sec.304A/279 IPC is justified and does not brook of any interference.

However considering the totality of circumstances including the old age and illness of the petitioner, his willingness to make a compensatory payment of Rs. 25,000/- to the spouse or in her absence to any one of the legal heirs, over and above the fine imposed and the fact that the petitioner has remained in custody for approximately 2 months, it would only be just and proper, to modify the sentence to the period which the petitioner has already undergone.

The sentence of the petitioner is modified accordingly as period undergone.

The fine of Rs. 10,000/- in all (i.e. Rs. 9000/- for offence under sec 304A; Rs. 1000/- for offence under sec 279 IPC) has already been paid by the petitioner.

The release of the petitioner would be subject to his paying a sum of Rs. 25,000/- over and above the fine he has already paid to the spouse of the deceased and if she is not available, to any one of the heirs of the deceased. The payment of the aforesaid amount will be made before the trial court, who would ensure that the money so paid

is delivered to the spouse of the deceased or in her absence, to any one of the heirs of the deceased.

Subject to petitioner making the aforesaid payment, he shall be released forthwith from jail, if not wanted in any other case.

Revision Petition stands disposed of. No order need be passed in CRL.M.B.7027/2015 as it is rendered infructuous.

A copy of this order be sent to the superintendent of the concerned jail for information and compliance.

ASHUTOSH KUMAR, J

JULY 01, 2015
ab/as