

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

RESERVED ON : FEBRUARY 05, 2015

DECIDED ON : FEBRUARY 13, 2015

+ CRL.REV.P. 8/2015 & CrI.M.B.14/2015

SALIM KHAN

..... Petitioner

Through: Mr. Abhay Kumar with Mr. Ikrar

Siddique, Advocates

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Navin K. Jha, APP for State.

SI Praveen Chauhan, P.S. Preet Vihar.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The petitioner-Salim Khan has filed the present revision petition to challenge the legality and correctness of judgments dated 18.04.2013 (of Additional Chief Metropolitan Magistrate, East/Karkardooma Courts) by which he was convicted under Section 279/304-A IPC and dated 3.12.2014 of learned Additional Sessions Judge (East), Karkardoom Courts, Delhi whereby the findings recorded by the learned ACMM were endorsed with modification of sentence order.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 28.08.2004 at Vikas Marg, New Rajdhani Enclave,

Delhi, the petitioner while driving bus bearing registration No.DL-1PB-1944 in a rash and negligent manner struck it against one Ram Chander Gautam, a pedestrian, and caused his death. Daily Diary (DD) No.9A was recorded regarding the accident at Police Station Preet Vihar at 0826 hours on 28.08.2004 and the investigation was assigned to ASI Jai Kishan who with Ct.Vijender Singh went to the spot. He came to know from the public that the victim had been taken to Taneja hospital. The Investigating Officer did not find any eye witness at the spot or Taneja hospital and lodged First Information Report by making endorsement (Ex.PW-6/B) over DD No.9/A (Ex.PW-6/C). Statements of witnesses conversant with the facts were recorded. Post-mortem examination on the body was conducted. The accused was arrested. After completion of investigation, a charge-sheet was filed against the petitioner. The trial resulted in his conviction as aforesaid.

3. Learned counsel for the petitioner urged that conviction primarily based upon the testimony of PW-5 (Dr.Sanjay Gautam) cannot be sustained as his presence at the spot is highly suspect. The FIR was lodged by the Investigating Officer on making endorsement (Ex.PW-6/B). Had PW-5 (Dr.Sanjay Gautam) being present at the spot, he must have lodged the FIR. Contrary to that, the Investigating Officer admitted that

when he went to the spot at Taneja hospital, no eye witness was available there. The prosecution was unable to establish that the victim's death was result of rash and negligent driving by the petitioner. Learned counsel for the petitioner has placed reliance on *Bal Kishan vs. State* 2008 (105) DRJ 379; *Hira Lal vs. The State* 2012 (2) JCC 1311 and *Shivanna vs. State* 2010 (9) SCALE 88. Learned APP while supporting the judgment under challenge urged that the prosecution was able to prove the petitioner's guilt beyond reasonable doubt.

4. PW-5 (Dr.Sanjay Gautam) claimed himself to be a witness to the incident. However, no FIR was lodged on his statement. In his statement, PW-11 (SI Jai Kishan) clarified that later on deceased's son met him and claimed to have witnessed the accident. He apprised him that from the spot, he went to his house to inform his family members about the death of the victim. The version given by the Investigating Officer remained unchallenged and uncontroverted in the cross-examination. PW-5 (Dr.Sanjay Gautam) was not acquainted with the petitioner prior to the incident and did not nurture any ill-will or grievance to falsely implicate him in the crime. In his deposition as PW-5, he categorically deposed that on 28.08.2004, when he was going along with his father to State Bank of India, New Rajdhani Enclave, Vikas Marg and

reached just in front of bank at around 8:15 a.m., he had crossed the road and his father was in the process of crossing the road. In the meantime, a bus on route No.335, blue line bearing No.DL1PB1944 driven by the accused came at a very high speed in a rash and negligent manner and hit his father. The driver jumped from the driver's seat and ran away. He took his father to Taneja hospital where he was declared 'dead' on arrival. He further deposed that the accident took place due to rash, negligent and high speed. In the cross-examination, he stated that his duty hours were from 9.45 a.m. to 2.00 p.m. at Life Line hospital, Priyadarshani Vihar, Delhi. The offending bus was going towards ITO and there was no unusual traffic on Vikas Marg that time. He denied the suggestion that the speed of the bus was about 20/25 kilometer per hour. He reiterated that he had seen the accused while hitting his father from a distance of about three meters. He did not find any stone lying near the spot. No suggestion was put to the witness that he was not present at the spot at the time of incident and was introduced as a witness subsequently.

5. Similarly, the Investigating Officer was not questioned about the non-availability of PW-5 (Dr.Sanjay Gautam) at the spot at the time of incident. In 313 statement also, the petitioner did not claim that PW-5 was not a witness to the incident or that his testimony was procured

subsequently to falsely rope him in the incident. The petitioner has taken contradictory and inconsistent defence. Admitted position is that the bus in question was driven by the petitioner. The victim was hit from behind when he was crossing the road. The petitioner did not adduce any evidence to show that there was contributory negligence on the part of the victim or that he had taken all reasonable precautions to avoid the mishap. The fact that the victim was hit while crossing the road and died at the spot shows how forceful the impact was. The petitioner was unable to avoid incident apparently as the speed was beyond his control. Had the speed of the bus was 20/25 kilometers per hour, as alleged, the petitioner would have avoided the incident by applying the brakes on seeing the victim crossing the road. Initially, the petitioner sought opportunities to examine witnesses in defence but failed to do so. Statement of PW-5 (Dr.Sanjay Gautam) regarding rash and negligent driving at high speed by the petitioner remained unchallenged and there are no sound reasons to disbelieve him. The victim was a senior citizen. It was his duty to take reasonable care for the pedestrian on the road. There was an implicit duty on the petitioner to see that his driving did not endanger the life of the right users of the road.

6. Both the courts below have recorded concurrent findings of fact based upon the appreciation of evidence that the accident in question had taken place due to rash and negligent driving of the petitioner while driving the offending bus. Such judgments based upon fair appreciation of the evidence cannot possibly be interfered with by this Court in exercise of limited revisional jurisdiction under Section 401 Cr.P.C. unless and until the same are found illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out, the impugned judgments convicting the petitioner deserve to be maintained. The courts below have already taken the lenient view and modified the substantive sentence to RI for one year. No further modification of the sentence order is needed.

7. The revision petition is without any merits and is dismissed. All pending applications also stand disposed of. Copy of this order be sent to the concerned Jail Superintendent for information. Trial court record be sent back along with a copy of this order.

(S.P.GARG)
JUDGE

FEBRUARY13, 2015

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