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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.609/2015**

Date of decision: 04.12.2015

RAMESH KUMAR Petitioner
Through: Mr.Rohan Garg, Advocate.

versus

STATE Respondent
Through: Ms.Rajni Gupta, APP.
SI Balbir Singh, P.S. Mandir
Marg

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

Crl.M.A. No. 13926/2015

1. Exemption granted subject to all just exceptions.
2. Application stands disposed of.

Crl.M.A No.13925/2015

1. For the reasons shown in the application, the delay of 20 days in filing the petition is condoned.
2. The application stands disposed of accordingly.

CRL.REV.P.609/2015

1. Ramesh Kumar, the revisionist, was convicted and sentenced by the court of the learned Metropolitan Magistrate in connection with

FIR No. 146/05 (PS Mandir Marg) for simple imprisonment for two years, fine of Rs. 10,000/- and in default of payment of fine SI for 3 months for the offence under sections 279/204A IPC.

2. On appeal by the petitioner (Crl. A. No. 09/2014) , the ASJ 01, Patiala House Courts, New Delhi, while upholding the conviction reduced the sentence from 2 years to 1 year SI for the offence under section 304A IPC. The Trial court had not sentenced the petitioner separately for the offence under section 279 IPC. The appellate court, however, awarded a sentence of SI for 6 months for the offence under section 279 IPC and also clarified that the sentences so imposed shall run concurrently.

3. The petitioner is alleged to have driven a TATA 407 vehicle bearing registration no. DL 1C 6156, on 15.04.2005, in such a rash and negligent manner that one pedestrian, Shankar Lal Pathak, was hit by the vehicle, resulting in his death.

4. Ct. Vijay Kumar, (PW.2) was on duty on 15.04.2005. He has testified before the Trial court that on the day of the occurrence, a TATA 407 bearing registration no. DL 1C 6156 was spotted by him which was coming from the side of C.P. in a rash and negligent manner. The aforesaid vehicle hit one pedestrian who was crossing the road towards Bangla Sahib Gurudwara. He stopped the vehicle and overpowered the driver (the petitioner). The injured died on the spot.

5. On the statement of Ct. Vijay Kumar (PW.2), FIR was recorded. PW.2 has further testified to the fact that the offending vehicle was seized (Ex. PW2/B) and the driving licence of the

petitioner was also taken in possession. The site plan was prepared at his instance.

6. HC Chand Ram (PW.3) has stated before the Trial Court that on receipt of DD No. 13A, he along with the IO went to the spot where Ct. Vijay (PW.2) was present. He along with the IO went to the hospital and learnt that the deceased was declared brought dead.

7. Brahamadev Sharma (PW.4) and Smt Savita (PW.5) have identified the deceased vide their identification statements (Ex. PW4/A and Ex. PW4/5). The identity of the deceased was established as Shankar Lal Pathak. The aforesaid two witnesses were never cross-examined despite opportunity having been given to the petitioner.

8. The offending vehicle was mechanically inspected by T.U. Siddiqui (PW.7). He has proved his report (Ex. PW7/A).

9. During Trial, no objection was raised with regard to the genuineness of the FIR, MLC death report and the Post Mortem report (Ex. PW.1/A, Ex.A, Ex. B and Ex.C). Hence the aforesaid documents stand admitted by the petitioner.

10. The petitioner has examined Ashok Kumar as DW.1.

11. Ashok Kumar, who was the helper of the petitioner, has deposed that on the day of the occurrence, the police officials tried to stop the vehicle for the purposes of checking the registration documents. The insurance of the vehicle had expired. DW.1 has stated that the police officials demanded Rs. 1000/- for letting the petitioner go but the same was not paid. In the meantime an accident took place nearby and the petitioner was falsely implicated in the aforesaid case.

12. The petitioner has denied of any such occurrence in his statement recorded under section 313 of the CrPC.

13. It has been argued on behalf of the petitioner that he wanted to examine himself as a defence witness but his application under 315 CrPC was not taken on record by the Ld MM. It was further argued that the deposition of the sole eyewitness i.e PW2, is full of material contradictions. Since PW.2 is a police witness, his statement ought to have been scrutinised with greater care and circumspection but the same was not done either by the Trial court or the Appellate court.

14. The Ld. counsel for the petitioner has also tried to demonstrate that if at all the accident had taken place, it was because of the contributory negligence of the deceased. With reference to the site plan, argument was advanced regarding the falsity of the prosecution version.

15. The essential ingredients of the offence under section 279 of the IPC are that the offending vehicle must be driven on a public way and in such a rash and negligent manner that it could endanger a human life. For the offence of 304A IPC to be established, it is of utmost importance to prove that the accident had taken place with the offending vehicle; the accused was driving the offending vehicle; accident took place because of rash and negligent driving and death was because of the injury suffered as a result of the accident.

16. The testimony of PW2 cannot be discarded or discredited on the ground of PW.2 being a police personnel. In ***Karamjeet Singh vs. State AIR 2003 SC 1311***, the Supreme Court has held as hereunder:

“...The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down....”

17. There are no major contradictions or discrepancies in the testimony of PW2.

18. However, from the records of the case, it appears that the deceased was trying to cross the road when he was hit by the offending vehicle. The identity of the deceased also appears to be doubtful as nobody related to him has identified the dead body. The fact that the IO of the case has not been examined has prevented the petitioner from putting him to certain questions to prove his innocence. But non examination of the IO has not seriously impacted the prosecution version. The credibility of the prosecution version has not been dented by such non examination of the IO.

19. The learned counsel for the petitioner has, in the alternative, argued that the petitioner participated in the trial for 8 long years and during such period, he never misused the privilege of bail or tried to run away from the process of law. It has also been submitted that the petitioner is a young person who is required to maintain his wife, two children and an old mother. He is the sole bread earner of the family.

20. The nominal roll qua the petitioner discloses that he has remained in jail for about 7 months.

21. There is no reason to interfere with the concurrent finding of the two courts regarding the guilt of the petitioner. The conviction of the petitioner under sections 279/304A IPC is thus upheld.

22. However, considering the circumstances enumerated above, namely, participation for the petitioner in the Trial for 8 long years, young age of the petitioner, he being the sole bread earner of a large family and his not having involved himself in offences of similar nature in the meanwhile, the sentence imposed upon the petitioner is required to be interfered with and reduced.

23. For the aforesaid reasons, the interest of justice would be subserved if the sentence imposed upon the petitioner under both the counts namely 279 and 304A IPC is reduced to the period of custody which the petitioner has already undergone.

24. The sentence of the petitioner is therefore reduced to the period of custody he has already undergone.

25. The petitioner is directed to be released from jail forthwith if not required in any other case.

26. The revision petition is partially allowed and disposed of.

27. Two copies of the judgment be transmitted to the Superintendent of the concerned Jail for information, compliance and record.

Crl.M.B No.7790/2015

1. In view of the petition having been partly allowed, no orders are required to be passed in the instant application.

2. Dismissed as infructuous.

DECEMBER 04, 2015
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ASHUTOSH KUMAR, J