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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV. P. 624/2015**

Date of decision: 13.10.2015

BIKRAM SINGH Petitioner
Through: Mr.M.K. Arora, Adv.

versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Through: Ms.Alpana Pandey, APP for the State
SI Roshan Lal, P.S. Nangloi

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CrI.M.A.14467/2015

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

CRL.REV. P. 624/2015

1. Bikram Singh has challenged the judgment and order of conviction dated 17.12.2012/22.12.2012 passed by the Metropolitan Magistrate, Delhi in connection with FIR No.759/1999 whereby he has been convicted for the offences under Sections 279 and 304A of the IPC and has been sentenced to undergo simple imprisonment for 4 months and fine of Rs.1,000/-, in default of payment of fine simple imprisonment for 10 days and simple imprisonment for 1 ½ years, fine of Rs.5,000/- and in default of payment of fine simple imprisonment for 15 days respectively. The sentences have been ordered to run

concurrently.

2. The revisionist has also challenged the judgment and order dated 18.9.2015 passed by the Additional Sessions Judge-02 (West), Delhi in Criminal Appeal No.231/4/2013 whereby the judgment of conviction and sentence by the Trial Court has been upheld.

3. The petitioner is alleged to have driven a truck, bearing registration No.HR-38B-1138, in such a rash and negligent manner on 21.7.1999, that he hit a scooter from behind leading to the death of Smt. Vijay Kumari, the pillion rider. The petitioner was, therefore, prosecuted for offences under Sections 279 and 304A of the IPC.

4. The Trial Court has examined 13 witnesses to bring home charges as aforesaid against the petitioner.

5. Praveen Kumar (PW1) stated before the Court that on 21.7.1999, he along with the deceased was going on a scooter to State Bank of India, Tikri Kalan branch when a truck hit the scooter from behind, near Jai Mata Dharamkanta. As a result of the collision, Vijay Kumari, the pillion rider, fell down. PW1 also claims to have fallen down from his scooter. The offending vehicle is then said to have been driven in such a way that the left side wheels of the vehicle ran over Vijay Kumari, the deceased.

6. Vijay Kumari was taken to DDU Hospital. At the Hospital, the statement of Praveen Kumar (PW1) was recorded (Ex.PW1/A). It has been categorically asserted by PW1 that the incident took place because of rash and negligent driving of the petitioner. He had identified the petitioner as the driver of the offending vehicle.

7. The dead body of late Vijay Kumari was identified by Devender

Singh (PW2). Yogender Singh (PW3) is the brother of the husband of the deceased who received the dead body after post-mortem.

8. It has been argued that the Mechanical Inspector, J.S. Pawar (PW4) inspected the offending vehicle and during trial identified the copy of the mechanical inspection report (Ex.PW4/A). PW4 also mechanically inspected the scooter which was hit by the offending vehicle and the copy of the mechanical inspection report (Ex.PW4/B) of the scooter was also identified by him. HC Bhagwati Prasad (PW5), HC Shesdhar (PW6), Ct. Sukhbir Singh (PW7) and ASI Bhagwat (PW9) have all supported the factum of the accident and the death of Vijay Kumari as a result of such accident.

9. The post-mortem of the dead body of Vijay Kumari was conducted by Dr. L.K. Baruah (PW10) who has identified the post-mortem report (Ex.PW10/A) which bore his signature. The MLC has been identified by Dr. Yograj (PW11) who has identified the signature of Dr. Barun Nata, who conducted the MLC on the injured.

10. The judgment and order of conviction by the Trial Court was assailed by the petitioner on various grounds namely (i) material contradictions in the statements of witnesses recorded under Section 161 Cr.P.C. and the evidence tendered before the Court; (ii) attempt of PW1 in improving the prosecution version by asserting that even though he was driving the scooter, which was hit by the offending truck, but he did not fall down from the scooter; (iii) the mechanical inspection reports (Ex/PW4/A and Ex.PW4/B) not disclosing any fresh damage either to the offending vehicle or the scooter which was hit in the accident; (iv) contradictions in the statements of HC

Shesdhar (PW6) and Ct.Sukhbir Singh (PW7) as compared to the deposition of ASI Bhagwat (PW9) with respect to the place of occurrence, the condition of the scooter and the presence of blood on the spot.

11. The conviction and sentence have also been challenged on the ground that Dr. L.K. Baruah (PW10) in his report had opined that the victim had died because of excessive bleeding. A defence was initially put up that on the same day there were two accidents but the petitioner was not present at the spot and his identity could not be established beyond the shadow of reasonable doubt. In order to appreciate the contentions of the parties, it is necessary to first examine the provisions of Section 279 and Section 304A of the IPC.

“Section 279. Rash driving or riding on a public way:-
Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

12. For the offence under Section 279 of the IPC, the important ingredients are that there should be rash and negligent driving by the accused and such rash and negligent driving should be of such a kind so as to endanger any human life or likely to cause hurt or injury to any person.

13. For an offence to be proved under Section 304A of the IPC there ought to be death of a person; such death should have been

caused because of rash and negligent act of the accused and such act should not have amounted to culpable homicide.

“304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

14. For convicting a person under Sections 279 and 304A of the IPC, it is of utmost importance that the identity of the accused being the person who caused death because of rash and negligent driving, is required to be established. The further requirement is of proving that the death of the deceased was caused as a result of the negligent driving of the accused.

15. From the evidence on record, it becomes very clear that Praveen Kumar (PW1), who was driving the scooter with the deceased sitting behind him, was hit by the offending truck. During trial PW1 has not dithered in any manner in narrating the incident. He has categorically stated that because of the scooter being hit, Vijay Kumari fell down on the road and thereafter she was trampled by the offending/speeding vehicle. The petitioner was identified as a turbaned person in the Court.

16. Jitender Singh (PW13) has deposed before the Trial Court that he is the registered owner of the offending vehicle and in his reply to the notice under Section 133 of the M.V. Act (Ex. PW13/A), he had clearly stated that on the day of the occurrence, the offending vehicle was being driven by the petitioner, who was under his permanent

employment as a driver.

17. Thus, from the deposition of PW1 and PW13 it becomes very clear that the vehicle, which belonged to PW13, was being driven by the petitioner on the relevant date and time in such a rash and negligent manner that it hit the scooter from behind which was being driven by PW1, leading to the death of Vijay Kumari.

18. The death by accident has been duly proved through the deposition of Dr.L.K. Baruah (PW 10), who in his post-mortem report (Ex. PW10/A), has opined the cause of death to be haemorrhagic shock resulting from ante mortem injuries caused by application of blunt object/impact which is possible in a vehicular accident.

19. The mechanical inspection report (Ex. PW4/A) confirms the fact that the vehicle was in good condition and the brake system and the clutch was in perfect shape. If any accident has taken place, it was not because of any mechanical defect of the vehicle but only because of rash and negligent driving by the petitioner.

20. True it is that the mechanical inspection reports of the offending vehicle and the scooter (Ex. PW4/A and Ex. PW4/B respectively) do not indicate any fresh damage to both the vehicles, but that by itself would not disprove the fact that the scooter was hit by the offending truck, which was being driven negligently and rashly. Even a mild brush with a big vehicle, there is every likelihood of a lighter vehicle like scooter or motorcycle losing balance leading to fall of the riders. The offending vehicle or the vehicle which has been hit may not show any sign of damage; nonetheless it cannot be said, in the absence of any such indication in the mechanical inspection report, that no

accident had taken place or that the vehicle was not being driven in a rash or negligent manner.

21. Be it noted that the deceased did not die of falling on the ground because of the accident but the death was because of the vehicle trampling over her after she fell down on the road. Thus, all the requirements for bringing home charges under Sections 279 and 304A of the IPC have been successfully met and fulfilled by the prosecution.

22. It is relevant here in this context to state that during the pendency of the appeal against the judgement and order of conviction, the present case was sent to Lok Adalat. In the Pre Lok Adalat sittings, the matter was settled between the parties but it was only later in point of time that it was discerned that the offence under Section 304A of the IPC was non-compoundable and, hence, the case was referred to the Appellate Court again for the decision.

23. Now to the question of sentence.

24. Admittedly, the occurrence took place in the year 1999 i.e. about 15 years ago. The petitioner, it has been submitted, has faced trial for about 10 years. He is the sole bread earner of his family and, as submitted by learned counsel for the petitioner, he has many mouths to feed. Despite the petitioner coming from a poor background and earning his livelihood by driving vehicles of others, he has agreed to and has paid Rs.80,000/- to the husband of the deceased (PW2) as compensation and which amount has been accepted by him towards full and final settlement of the dispute between them.

25. No doubt Section 304A of the IPC is not compoundable but in a

case of rash negligent driving, which unfortunately led to the death of a person about a decade and a half ago, it would not be in the interest of justice to send the accused to jail again to serve out the sentence.

26. While imposing sentence, a court is required to consider its impact on the social order and the society in general and in many cases imposition of stringent punishment would only do harm and would be advantageous to none. In the present case, the social impact is almost negligible and the husband of the victim has been satisfactorily compensated. It is almost trite that while awarding sentence, a court of law keeps in mind an element of proportionality in prescribing liability.

27. A lenient view may be taken while imposing sentence when it would appear to the court that a punishment of imprisonment may not be of any advantage to even the family of victim when they have chosen to compound the case or condone the wrong doing. At times, the correctional need of the perpetrator of crime also forms a major part of the decision making process of imposing a sentence. Where a good amount of compensation, considering the financial viability of the perpetrator has been paid, it only reflects an element of expiation on the part of the wrong doer. Maintaining proportionality between crime and punishment has been the watch word for courts of law and there have been many instances when any departure from the principle of proportionality has not served the society in general, in a better way.

28. After having given due consideration to the facts and circumstances of the present case, keeping in mind the aggravating

and mitigating circumstances and balancing the same on the basis of considerations and circumstances seen in a dispassionate manner, I am of the opinion that interest of justice would be subserved if the petitioner is sentenced to the period of custody which he has already undergone. While deciding as such, this Court has taken into account the fact that a good amount of compensation has been paid by the petitioner to the husband of the victim of his own volition.

29. Thus while maintaining, the conviction, the sentence of the petitioner is modified to the extent that he has sentenced to the period which he has already undergone in the custody.

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

31. The revision petition is partially allowed.

Crl.M.(BAIL) 7854/2015

1. In view of the aforesaid order, no order is required to be passed in the instant application.

2. Dismissed as infructuous.

A copy of this order be communicated to the Superintendent of the concerned Jail for record and compliance.

ASHUTOSH KUMAR, J

OCTOBER 13, 2015

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