

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

Judgment delivered on : March 11, 2016

+ CRL.REV.P. 148/2015
PAPENDER KUMAR

..... Petitioner

Through: Mr. S.P. Rana and Mr. Abhishek,
Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State with Sub-
Inspector Vikram, Police Station
Punjabi Bagh, Delhi

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 397/401 of Cr. P.C. read with Section 482 of Cr. P.C. , the petitioner seeks to challenge the order of conviction dated 24.12.2014 passed by learned Additional Sessions Judge 02 (West) whereby the Criminal Appeal No.273/4/2014, filed by the petitioner has been dismissed. The petitioner also challenges the judgment and order on sentence dated 23.02.2013 and 25.02.2013 respectively, passed by learned Metropolitan Magistrate, West 01, Tis Hazari, Delhi, whereby the

petitioner was sentenced to undergo simple imprisonment for a period of one month for the offence punishable under Section 279 of IPC and simple imprisonment for three months for the offence under Section 304A and fine of Rs.300/-.

2. Brief facts of the case of the prosecution are that the Accused Papender was driving a blue line bus bearing Registration No. DL 1P 5412 in a rash and negligent manner on 16.05.1998 at about 8.30 AM on T Point Club Road, Ring Road, Punjabi Bagh, New Delhi and had hit a scooter bearing Regn No. DIL 1237 and driver of the scooter Ranbir Sharma was taken to ESI Hospital where his statement was recorded and a case under Section 279/338 IPC was got registered. Vide DD No.37B dated 16.05.1998 information was received regarding death of injured Ranbir Sharma and accordingly Section 304A was added. Postmortem of the dead body of Ranbir Sharma was conducted. Necessary documentation was effected. Offending vehicle as also the vehicle of deceased were taken into police possession. Accused was arrested and then released on bail. Statement of witnesses were recorded. After conclusion of investigation, charge sheet was prepared and filed in Court. Cognizance was taken of the offence by the Court on 29.09.1999. Accused was summoned, appearance proceedings were completed and a notice under Section 279/304A IPC was framed against the petitioner vide order dated 29.02.2000 by the learned Trial Court to which the petitioner pleaded not guilty and claimed trial.

3. Prosecution had examined 8 witnesses and statement of accused

under Section 313 of Cr. P.C. was recorded and vide judgment dated 23.02.2013, the petitioner was convicted for the offence under Section 279/304A IPC and vide order on sentence dated 25.02.2014, the petitioner was sentenced as indicated above. Thereafter the petitioner had preferred an appeal before the learned Additional Sessions Judge, which was dismissed vide order dated 24.12.2014, and the petitioner was directed to surrender before the Trial Court for serving the sentence on 7th January 2015.

4. The petitioner had filed the present revision petition alongwith application for suspension of sentence, which came up for hearing before this Court on 13th March, 2015 when the State was directed to file status report. On 25th March, 2015, the State had filed the status report and this Court observed that the petitioner had not surrendered before the Trial Court in compliance of order dated 24th December 2014 passed by learned Additional Sessions Judge and accordingly the petitioner was directed to surrender before Trial Court on or before 30th March, 2015. When the matter again came up for hearing on 7th May 2015, it was observed that the petitioner had surrendered before the Trial Court on 10th April, 2015 and since then, he is in custody.

5. On 21st May 2015, this Court allowed the application filed by the petitioner and suspended the sentence of the petitioner during pendency of the main revision petition. On the last date, i.e., 19th January 2016, the revision petition was heard finally and reserved for orders.

6. Mr. S.P. Rana, learned counsel for the petitioner contended that the petitioner categorically stated in his statement recorded under Section 313 of Cr. P.C. that he was not driving the Bus in negligent manner as the traffic light turned yellow from green, the scooterist stopped his scooter and he also tried to stop the bus but the brake pedal of the bus did not work properly. Counsel for the petitioner further contended that the petitioner cannot be convicted on the evidence available on record. It is further contended that there was no blood stain or dent found on any side of vehicle.

7. Counsel for the petitioner contended that it is a duty of the prosecution to prove the case against the petitioner beyond reasonable doubt and the prosecution cannot be dissolved of his duty in proving the case against the petitioner. It is further contended that the petitioner did not cross-examine PW-1 to PW7, which was relevant to prove the innocence of the petitioner.

8. Mr. Amit Chadha, Additional Public Prosecutor appearing for the State submitted that the judgment and order passed by learned Metropolitan Magistrate as well as appellate Court are well reasoned order and do not call for any interference by this Court.

9. This Court observes that the petitioner has already availed the remedy of appeal against the order of conviction and sentence and now he has preferred to file revision against the order passed by Appellate Court as well as learned Metropolitan Magistrate. After careful scrutiny of the evidence and material placed on record and

going through the observations made by learned Additional Sessions Judge while dismissing the appeal filed by the petitioner, this Court observes that the petitioner has raised the same grounds as were raised in appeal. The order dated 24.12.2014 passed by learned Additional Sessions Judge deals with the grounds raised by the petitioner. To justify the conviction and sentence imposed upon the petitioner, the learned Additional Sessions Judge has elaborately discussed the provision of section 279 and 304A of IPC and discussed about the ingredients thereof to prove a person guilty under the said provisions. The extracts of the same are reproduced hereunder:-

“First and foremost, the necessary ingredients of Section 279 IPC are:-

- i) Rash or negligent driving by the accused;
- ii) The same shall be so as to in danger human life or likely to cause hurt or injury to any other person;

Similarly, the necessary ingredients of Section 304A IPC are:-

- i) There should be a death of a person;
- ii) Such death should have been caused by way of rash or negligent act of the accused and;
- iii) Such act should not amount to culpable homicide.”

10. The learned Appellate Court also went on to say that:

“...for proving the offence under Section 279/304A IPC, the prosecution is required to prove the following:-

- i) Identity of the accused, being the person who has caused death due to rash and negligent driving.
- ii) Death of a person being the result of act of the accused.
- iii) The driving by the accused should be rash or negligent.”

11. The Trial Court record was called for and the evidence adduced by the prosecution has been perused and this Court finds that it has been clearly and categorically deposed by SI Sunil Kumar (PW-8) that when he went to the spot, the petitioner was the person who was apprehended by the public persons. Apart from the said deposition, the petitioner himself has admitted in his statement under Section 313 of Cr. P.C. that he was driving the offending vehicle at the time of accident. However, it is an other matter that he had taken a different stand that the accident took place because of fault in brake pedal of the bus. Therefore the identity of the petitioner is established.

12. Regarding rash and negligent driving by the petitioner, SI Sunil Kumar (PW-8) deposed that the offending vehicle was driven by the

petitioner in rash and negligent manner, as told by the public. No doubt, he was not an eye witness but the same was told by the public at the time when the petitioner was apprehended by the public. The statement of PW-8 also find corroboration from the testimony of Surinder Kumar Sharma (PW-3), who is the son of the deceased, who had identified the signatures of his father on the statement in which the deceased Ranbir Sharma clearly stated that it was the petitioner who was driving the blue line bus at the relevant time and had hit the scooter resulting into the crash injury on the left thighs of the deceased. Testimony of Dr. Sarvesh (PW-1) in his report (Ex. PW-1/A) specifically mentioned the cause of death of deceased Ranbir Sharma was due to haemorrhage and shock which were ante mortem in nature caused by the application of blunt force from blunt object likely on a road traffic accident. This Court also observes that the petitioner is driving a public carrier, namely a blue line bus and is expected to demonstrate care and caution more than any other motorist on road for the reason of the responsibility which is put on his shoulders, which the petitioner has failed to exercise. The petitioner has failed to exercise the caution incumbent upon him and has clearly neglected the civic duty of circumspection. It is therefore established that the death of the victim was caused due to road accident caused by driving the vehicle in rash or negligent manner.

13. The petitioner has taken a stand that the mechanical inspection of the offending vehicle showed that there was no blood stain or dent found on any side of vehicle. To deal with this issue, as this Court

finds an Inspection Report (Ex.PW-6/B) on record which clearly indicates that the brake system of the offending bus was 'OK' and the bus was 'Fit for Road test'. The mechanical inspection report (Ex. PW-6/B) in respect of the scooter shows that the scooter was damaged in road accident and the diggi cover and damages are shown in one side. The mechanical report of the offending vehicle also shows that the offending vehicle was also damaged by the scooter. However, it is not necessary to have dent on the offending vehicle or blood stain on the tyre.

14. This Court is conscious of the view that the purpose of deciding the present revision petition for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, - recorded or passed by the Appellate Court or the learned Metropolitan Magistrate while convicting and sentencing the petitioner. For the foregoing discussions and observations, this Court does not find any illegality or infirmity in the order passed by learned Metropolitan Magistrate convicting the petitioner for the offence punishable under Section 279 and 304 of IPC and in the order passed by learned Additional Sessions Judge in appeal preferred by the petitioner.

15. On the quantum of sentence, this Court observes that the petitioner is sentenced to undergo simple imprisonment for a period of one for the offence punishable under Section 279 of IPC and simple imprisonment for three months for the offence under Section 304A and fine of Rs.300/-.

16. In State of Punjab vs. Balwinder Singh and Others, (2012) 2 SCC 182, the Hon'ble Supreme Court has held as under:-

“While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the Court. For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt.”

17. In the light of the settled principle, this Court does not find any ground to interfere in the order on sentence dated 25.02.2013, passed by learned Metropolitan Magistrate. Consequently, the order of conviction dated 23.02.2013 and order on sentence dated 25.02.2013 passed by learned Metropolitan Magistrate, as well as order dated 24.12.2014 passed by learned Additional Sessions Judge in appeal preferred by the petitioner are upheld. Resultantly, the present revision petition filed by the petitioner is dismissed.

18. Nominal roll of the petitioner shows that the petitioner has

remained behind bars for 23 days and that the sentence was suspended during pendency of the present revision petition. Accordingly, the petitioner is directed to surrender before the Trial Court to serve out the remainder of the sentence as imposed by learned Metropolitan Magistrate.

19. A copy of this order be sent to Trial Court for compliance.

20. With aforesaid directions, the revision petition stands disposed of.

MARCH 11, 2016
pkb

P.S.TEJI, J

