

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

Judgment delivered on : October 18, 2016

+ CRL.REV.P. 384/2016 & CrI. M.B. No.1039/2016

JAGDISH

..... Petitioner

Through: Mr.Abhishek Sharma, Advocate.

versus

THE STATE

..... Respondent

Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 401 of Cr. P.C. read with Section 482 of Cr. P.C. , the petitioner seeks to challenge the order of conviction dated 30.04.2016 passed by learned Additional Sessions Judge, Karkardooma Courts, Delhi whereby the Appeal filed by the petitioner against the order on sentence passed by learned ACMM has been dismissed.

2. Brief facts of the case of the prosecution are that the on 19.08.2000 at about 2.20 PM on main Road Kondli, Opposite Dinkar Public School, Delhi the accused while driving Truck bearing No. DL-1GB-4477 in rash and negligent manner struck it against the motorcycle bearing No. DL-3SD-7400 due to which the pillion rider namely Anil fell down and sustained injuries which resulted into his death. Trial concluded in conviction of the petitioner for the offence punishable under Section 304A vide order dated 09.12.2014 and vide

order on sentence dated 24.12.2014, passed by learned Additional Chief Metropolitan Magistrate, Karkardooma, Delhi, the petitioner was sentenced to undergo simple imprisonment for a period of one year with fine of Rs.1 lac and in default of payment of fine he was ordered to undergo simple imprisonment for a further period of three months.

3. Aggrieved by the conviction order as well as order on sentence passed by learned Additional Chief Metropolitan Magistrate, the petitioner preferred appeal bearing No. 04/2015 before the learned Additional Sessions Judge and vide order dated 30.04.2016, the sentence awarded to the petitioner was reduced to the period of six month with fine of Rs.50,000/-. The petitioner is not satisfied with that order and that's why he is before this Court preferring the instant revision petition against the order dated 30.04.2016.

4. Learned counsel for the petitioner contended that the witnesses were cross-examined but the same was not considered by the trial Court. Even the petitioner had highlighted the improbabilities, contradictions and improvements in the examination-in-chief as well as statement given under Section 161 of Cr.P.C., but the appellate Court did not pay any heed to the defence version and passed the impugned order in a mechanical manner. It is further contended that the arguments advanced on behalf of the petitioner were not mentioned in the appellate order. It is submitted that the orders passed by learned Additional Chief Metropolitan Magistrate as well as learned Additional Sessions Judge are contrary to the admitted facts,

therefore the same are contrary to law.

5. Learned counsel for the petitioner referred section 235(2) of Cr.P.C. and urged that before passing the order on sentence, the economical, social, educational backgrounds of the convict is to be dealt with by the learned Judge. He is also supposed to advert to the law cited before him but the learned Appellate Court did not cite even a single judgment which was cited before the Court. Lastly, it is contended that the petitioner has already suffered 15 years of trial and prayed for release of the petitioner on probation by giving benefit of Section 360 of Cr.P.C. under the Probation of Offenders Act.

6. Learned 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.

7. After hearing the aforesaid submissions and having gone through the contents of the present petition, this Court observes that the order of conviction passed by the learned Additional Chief Metropolitan Magistrate is quite a detailed order. While dealing with the facts, depositions of witnesses, judicial precedents relating to the offence with which the petitioner was charged and after scrutiny of each and every facts of the case, the trial Court had reached to the conclusion of holding the petitioner guilty for the offence under Section 304A IPC and passed the order dated 09.12.2014. Even the order on sentence passed by the trial Court is dealt with by punishment

prescribed by law, arguments advanced by the petitioner and it is only thereafter, the trial Court passed the order on sentence dated 24.12.2014.

8. This Court has also gone through the order dated 30.04.2016 passed by learned Additional Sessions Judge, in the appeal preferred by the petitioner. Para 7 of the impugned order specifically dealt with all the probable reasoning's, facts that the charge sheet was filed in July 2002; petitioner faced proceedings since 28.09.2002 and found the petitioner diligent during the course of appeal proceedings. Apart from the aforesaid, the appellate Court also considered the fact that the petitioner has suffered the proceedings for the last about 14 years and that there is nothing on record to the effect that the petitioner has committed any other offence except the present one. The appellate Court also considered the fact that the petitioner is a truck driver by profession and belongs to a poor family and the entire family is dependent upon him. It is only thereafter, the learned Appellate Court modified the sentence awarded to the petitioner and reduced the same to six months with fine of Rs.50,000/- and in default of payment of fine the petitioner was ordered to further undergo simple imprisonment for 45 days.

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 the Appellate Court as well as learned Additional Chief 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 modifying the order on sentence, this Court observes that the petitioner has not raised any new grounds in the instant revision petition. The order dated 30.04.2016 passed by learned Additional Sessions Judge deals with the grounds raised by the petitioner. To justify the conviction and modifying the sentence imposed upon the petitioner, the learned Additional Sessions Judge has discussed the provisions of section 279 and 304A of IPC.

10. The Trial Court record was called for and the evidence adduced by the prosecution has been perused. This Court finds that it has been clearly and categorically deposed by the eye witness – Manoj Kumar (PW-1) that on 19.08.2000 he alongwith Anil (now deceased) on motor cycle were going towards State Bank of Patiala, Kondli by motor cycle, and when they reached in front of Dinkar School, Kondli at about 2.15 PM, one truck bearing No. DL-1GB-4407 came from Sabzi Mandi side at a very high speed while driving in a rash and negligent manner and hit his bike from behind due to which he and Anil fell down on the road alongwith the bike and Anil received injuries on his head. Anil was sent to hospital with Nikson in TSR. The driver of the offending vehicle ran away from the spot and was apprehended by public persons at the distance of 200 meters. PW-1 called on 100 number and the accused was produced alongwith truck with the help of public persons before the Investigating Officer. Since he had not received any visible injuries and received only scratches, therefore he never visited the hospital for medical examination. 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 another matter that he had taken a different stand that the accident took place because the bike slipped due to rain and they fell down on the road and no accident was caused by his truck. Therefore, the identity of the petitioner is established.

11. Regarding rash and negligent driving by the petitioner, it is observed by the learned appellate Court that it is a case where the bike was hit from backside and as such even if the truck was at the speed of 30-40, if hit motorcycle from backside running at speed of 25-35 kmph, it still amounts to negligence of the driver of truck, as the vehicle on the backside has to slow down its speed as compared to the vehicle ahead of it, unless there is sufficient space and time to overtake the vehicle ahead of it. However, the PW-3 in his cross-examination stated that the truck was at the speed of 60-70 kmph.

12. After considering the facts of the present case and the depositions recorded before the trial Court, this Court observes that while driving a heavy vehicle being truck, it 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. 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 Additional Chief 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 Additional Chief Metropolitan Magistrate convicting the petitioner for the offence punishable under Sections 279 and 304 of IPC and in the order passed by learned Additional Sessions Judge in appeal preferred by the petitioner.

14. On the quantum of sentence, this Court observes that the petitioner was sentenced to undergo simple imprisonment for a period of one year with fine of Rs.1 lac which was reduced by the learned Additional Sessions Judge vide order dated 30.04.2016 to simple imprisonment for a period of six months with fine of Rs.50,000/-, and that too while considering all the aspects of the case and circumstances relating to the petitioner in which the incident occurred.

15. 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.”

16. Nominal roll of the petitioner shows that the petitioner is behind bars since 24.05.2016. In the light of the settled principle, this Court does not find any ground to interfere in the order dated 30.04.2016, passed by learned Additional Sessions Judge in appeal preferred by the petitioner and the same is therefore upheld. Resultantly, the present revision petition filed by the petitioner is dismissed.

17. A copy of this order be sent to Jail Superintendent with direction to convey the fate of the revision to the petitioner herein.

18. With aforesaid directions, the revision petition as well as application, if any, stands disposed of.

P.S.TEJI, J

OCTOBER 18, 2016
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