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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 794/2017 & CRL. M. (BAIL) 1852/2017, CRL. M.A.
17232/2017

RAM PUKAR PODDAR

..... Petitioner

Through: Ms. Chanan Parwani, Advocate and
Mr. Samar Singh Kachwaha, Advocate.

versus

STATE

..... Respondent

Through: Mr. Tarang Srivastava, APP with SI
Bansilal, P.S. Mehrouli.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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31.10.2017

The petitioner was convicted under Section 279 and 304A of the Indian Penal Code for having caused the death of a cyclist in an accident while driving a motor vehicle rashly and negligently. He was punished for six months and one year respectively. The sentences were to run concurrently. The appeal against the conviction and sentence was dismissed by the Ld. Special Judge, CBI, Saket Courts, New Delhi. Both the orders have been challenged in this petition on the ground that they are erroneous because; (i) it was the prosecution's case that the truck bearing Registration No. HR 38D2030 was involved in an accident as shown in the photograph filed by the Investigating Officer, whereas, the appellant was neither the driver of the said vehicle nor has anything to do with it. Hence, there was a doubt regarding the identity of the offending vehicle; (ii) It was never proven that the petitioner/accused was apprehended from the spot of the said incident as the driver of the offending vehicle because no public witness had

come forward to depose the same; (iii) The site report/Naksha Nazari Mauka too, is erroneous and could not be relied upon as incriminating evidence against the petitioner because it did not mark the precise spot where the accident happened or where the witness was standing at the time of the accident. According to the petitioner, the distance between the two would be necessary to be determined in order to ascertain whether the witness could have actually seen anything as the accident happened in the evening, i.e., after sunset.

The facts of the case are such that on 23.03.2007, the Mehrauli Police Station was informed by a person that he and his brother Nafees had been involved in an accident while returning from DLF Gurgaon to Sangam Vihar at about 7.00 pm on their respective bicycles. A motor vehicle-Mahindra Pick up bearing no. DL 1LD 6202 being driven at a very fast speed overtook him and hit his brother from behind, who was on his bicycle, ahead of him. The cyclist was fatally wounded and died on the spot. While the motor vehicle driver tried to escape, he was apprehended by public. His identity was revealed as Ram Pukar Poddar (the present appellant), s/o Bhajju Poddar R/o H. No. 256, Krishi Kunj, Inderpuri, Delhi.

The offending vehicle and its driver were identified by the complainant-Nafees, and an FIR was registered and investigation was initiated. Later the case was put to trial, the accused pleaded not guilty but chose not to lead any evidence. The Trial Court found the accused guilty of rash and negligent driving not amounting to culpable homicide, hence, he was convicted as aforementioned.

The grounds raised in the appeal before the Appellate Court were similar to the ones raised in this petition i.e. (i) the accused was driving a

jeep and not a truck as shown in the photographs taken by the Investigating Officer; (ii) the photograph was not taken by the Investigating Officer, therefore, it could not be relied upon since the truck is shown to have been the offending vehicle in the photograph, therefore the accused/appellant could not be involved in the alleged accident; (iii) there is no evidence about the rash and negligent driving by the appellant for having caused any injury to the deceased by the vehicle driven by him. In the site plan, the bicycle and the offending vehicle are not shown.

The Appellate Court dealt with each of the issues and rejected them for good reason. It examined that in an offence under section 279 IPC, what needs to be seen is whether the accused was driving the vehicle, on a public way, in a rash and negligent manner, that caused the injury to the deceased. The evidence of PW1, namely, Raisuddin, the brother of the deceased went unreported to the extent that the accused was driving the offending vehicle and when he tried to escape from the spot after the accident, he was apprehended by the public. The said accused was identified in the Court. PW1 further stated that the offending vehicle was driven in a rash and negligent manner at a very high speed by the accused. He first overtook him and then ended up hitting hit his brother, who was ahead of him. The latter fell down due to the force, and after a few minutes breathed his last on the spot.

The Court considered that the speed of a vehicle would be considered rash, depending upon the width of the road, the traffic, the vehicle and human traffic on it, the degree of collision, etc. The Court examined Exhibit-3, which showed that an accident took place on the road which was narrow and congested, with a bend. The offending motor vehicle hit the

deceased cyclist from behind, and this led to the observation of the Court that such a fatal impact could only be created by a vehicle moving at a very high speed. However, it was noted that it could not be termed as negligent, hence it was found that the necessary ingredients of section 279 IPC have been proven against the petitioner. Apropos the truck shown in the photograph, the Appellate Court reasoned that it was never the case of the prosecution that the truck was the offending vehicle or had caused the accident, perhaps many photographs were taken at the site which include the truck bearing no. HR 38D2030. It was always the case of the prosecution that the offending vehicle was the one being driven by the accused. It is quite possible that the truck was parked on the road near the site of accident and its photograph may have been taken by the Investigating Officer inadvertently.

The Appellate Court also noted that the appellant has not disputed the photographs which shows the body of the deceased lying on the road in a pool of blood nor has he disputed the photographs of the offending jeep/motor vehicle, since the photograph of the truck had nothing to do with the incident. It can only be deemed as superfluous and not a contradiction to the prosecution's case.

A perusal of the site plan Exhibit PW3/B reveals that place where the body of the deceased was lying and the place where his cycle lying. The offending vehicle was shown in the photographs produced by the prosecution. Keeping this in mind, the Court found that it was not necessary to show the spot of the second cyclist vis-a-vis the offending vehicle in the site plan. The testimony of the eye-witness was neither shaken nor contradicted and therefore, the Court found that there was no reason to

interfere with the conviction and sentencing. The Court relied upon the dictum of the Hon'ble Supreme Court in **State of Punjab v. Bawa Singh** (2015) 3 SCC 441 which held as under:

“ We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing 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. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.”

The Court also relied upon the judgment in **Rattan Singh v. State of Punjab** AIR 1980 SC 84, which held as under:-

“This, however, does not excuse the accused from his rash driving of a 'blind Leviathan in berserk locomotion'. If we may adapt the words of Lord Green M.R.: 'It scarcely lies in the mouth of the truck driver who plays with fire to complain of burnt fingers'. Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under sec. 304-A IPC and under the rubric of Negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces. Thus viewed, it is fair to apply the rule of res ipsa loquitur, of course, with care. Conventional defences, except under compelling evidence, must break down before the pragmatic Court and must be given short shrift. Looked at from this angle, we are convinced that the present case deserves no consideration on the question of conviction.

Counsel for petitioner has contended that a sentence of 2 years' R.I. is excessive, especially having regard to the fact that the petitioner has a large family to maintain and the

proprietor of the truck has left his family in the cold. When a life has been lost and the circumstances of driving are harsh, no compassion can be shown. We do not interfere with the sentence, although the owner is often not morally innocent”.

On the issue of conviction, the Appellate Court reasoned as under:-

“For the discussion aforementioned, I am of the clear view that eye witness is reliable and minor contradictions regarding case are not fatal in such case. All these factors very clearly indicated that the vehicle was being driven by the accused in a rash and negligent manner and the injury that have occurred are directly attributable to that fact”.

From the above, it is clear that each of the arguments mentioned in the appeal was raised before the Appellate Court. They were duly considered and rejected for the reasons aforementioned. The Court found no basis to disagree with the reasoning and the conclusion arrived at. With respect to the sentencing, it is clear that the conviction under section 279 IPC could have been for a period of 6 months along with fine of Rs. 1,000/- but he was punished only for 6 months without any additional fine. For the above, under section 304A IPC, the punishment could have been for 2 years along with fine. However, he was punished only for a year.

Evidently, the Trial Court has balanced the rights of the victim of the crime as well as of the society at large in considering an appropriate punishment. This Court found no reason to interfere with the same, especially when the life of an innocent person has been lost.

There is no merit in the petition. Accordingly, it is dismissed.

NAJMI WAZIRI, J

OCTOBER 31, 2017

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