

\$~8

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

% Judgment delivered on: 12.11.2018  
+ CRL.REV.P. 229/2015

JAI PRAKASH MADAN ..... Petitioner

versus

STATE ..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr. Dinesh Malik, Adv. (DHCLSC) with Mr. Akash Saini and Mr. Jatin Bhardwaj, Advs. with petitioner in person.

For the Respondent : Mr. Hirein Sharma, Addl. PP for the State

**CORAM:**  
**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

% **ORDER**  
**12.11.2018**

**SANJEEV SACHDEVA, J. (ORAL)**

1. petitioner impugns judgment dated 13.03.2015 whereby the appellate court has dismissed the appeal of the petitioner impugning judgment/order on conviction dated 03.11.2014 and order on sentence dated 24.11.2014.

2. petitioner has been convicted of offence punishable under Sections 304-A/279 of the Indian Penal Code, 1860 and sentenced to

undergo Simple Imprisonment for a period of six months and to pay a fine of Rs. 5000/-, in default, to further undergo imprisonment of one day. The fine amount has already been paid.

3. The case of the prosecution is that on 04.08.2008 at 9.41 a.m. at Bhairon Road, near Bhairon Mandir, petitioner was driving an RTV Bus in a rash and negligent manner and while driving the vehicle, he hit against the pedestrian and caused his death.

4. The only eye-witness examined by the prosecution is PW-1 who stated that he along with staff of the office had booked the RTV Bus of the petitioner and they were using the same for over a year for transiting from Indirapuram to Connaught Place (in the morning) and return from Connaught Place to Indirapuram (in the evening). He deposed that on the date of the incident, they were picked up from Indirapuram and were en-route to Connaught Place when the RTV Bus turned to Bhairon Road and its driver was driving the said RTV Bus at a very high speed and in a rash and negligent manner and struck against a pedestrian and said pedestrian fell down and sustained injuries which caused his death.

5. Learned counsel for the petitioner submits that the trial court as well as appellate court have erred in not appreciating that the prosecution has failed to establish that the petitioner was driving the vehicle in a rash and negligent manner and has also failed to establish that the petitioner caused the accident. He submits that the petitioner

in his testimony has specifically stated that there was rush hour and the vehicle was not being driven at a high speed and the pedestrian came and hit on the side of the bus because of which he fell down and sustained injuries.

6. Learned counsel for petitioner further submits that no eye-witness to the incident has been produced by the prosecution and PW1, the alleged eye-witness does not say that he had actually witnessed the accident as it happened. Learned counsel further submits that the vehicle inspection report does not support the case of the prosecution. Learned counsel further submits that PW1 was sitting behind the driver seat and was not in a position to have viewed the accident and even in his testimony he has stated that he could not tell the position of the deceased at the time of the accident and further that there were some vehicles on the left side of the RTV Bus.

7. He further submits that no skid marks or tire marks have been obtained to prove as to at what speed the vehicle was being driving.

8. Learned Addl. PP submits that there is no infirmity in the judgment of the appellate court as well as the trial court. He submits that the prosecution has been able to establish that the petitioner was driving the vehicle in rash and negligent manner and caused the accident and thereby causing death of the victim.

9. PW-1 in his testimony has deposed as under:-

*“.....On 04.08.2008 we were going towards Connaught place on the said RTV to join our duty. When the said RTV turned to Bhairon Road its driver, who was driving the said RTV in very high speed and in a rash and negligent manner and struck against a unknown pedestrian and said pedestrian (boy) fell down on the side of the road and sustained injuries, blood was oozing from his body. I was getting late for my duty, therefore, I took auto and went to my office.....”*

10. PW-1 in his cross-examination has stated as under:-

*“.....At the date of incident I was sitting behind the driver seat in the middle of RTV. I cannot tell the position of deceased on the road at the date of incident. The some vehicles were at the left side of the offending vehicle RTV. The offending vehicle did not collide/struck any of these vehicle. The said RTV did not struck with the divider on that road. At that time there were some pedestrians over the footpath /patri. No pedestrians injured in this case. The width of road is sufficient.....”*

11. Apart from PW-1, prosecution has not produced any other witness of the incident. PW-1 in his testimony has stated that the offending RTV Bus was being driven at a high speed and in a rash and negligent manner. He, in his cross-examination, has stated that he could not tell the position of the deceased on the road at the date of the incident which implies that he did not actually view the accident but became aware of the same after the impact.

12. Petitioner appeared as a witness and in his deposition stated as

under:-

*“When at about 8:20 a.m. my RTV reached at Bhairon Mandir, Tilak Marg, service road. The road was crowded. Then suddenly a boy struacted from the front left side of my RTV and fall on the road. Then I got down from the RTV.”*

13. As per the testimony of the petitioner, the boy struck the RTV on the left side. This testimony of the petitioner is substantiated from the inspection report of the vehicle which has shown that there is fresh damage to the vehicle and the damage that has been noticed *“front body on left side of the RTV had fresh dent”*. There is no damage mentioned to the front of the vehicle and the damage mentioned in the inspection report is to the left side of the front body of the vehicle which led credence to the testimony of the petitioner that the victim hit the left side of the RTV.

14. Admittedly at the time of the accident there were several persons on the road who could have witnessed the accident and also there were other passengers in the RTV Bus of the petitioner who could have witnessed the incident. None were joined by the prosecution as witness.

15. PW-1 admittedly was sitting behind the driver seat which was on the right-hand side of the vehicle and the accident took place on the left-hand side of the vehicle. He, in his cross-examination, has

admitted that he was not in a position to depose about the position of the victim at the time of the impact, which shows that he was not an eye-witness. Prosecution has thus failed to produce any eye-witness to prove beyond reasonable doubt that the accident occurred on account of rash and negligent act of the petitioner.

16. Reference may be had to the judgment of a Coordinate Bench of this Court in *Abdul Subhan vs. State (NCT of Delhi)*: 133 (2006) DLT 562, wherein, this Court has held that to be punished under Section 304A IPC, a point to be established is that the act of the accused was responsible for the death and such act must have been rash and negligent and the prosecution has to prove the commission of a rash and negligent act. The court relied upon the decision of the Orrisa High Court in *Badri Prasad Tiwari Vs. The State*: 1994 Cri L J 389, wherein the Court had held that a bald statement of a witness that the vehicle was being driven at a high speed does not *ipso facto* establish rash and negligence conduct.

17. Coming to the argument of learned counsel for the petitioner that the prosecution has failed to prove beyond reasonable doubt that the petitioner is guilty, one has to see as to whether there is a reasonable doubt in the prosecution theory. *Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response.*

*Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.*<sup>1</sup>

18. In the present case, though prosecution has failed to produce any eye witness of the actual accident, however PW-1 has proved that the accident has happened. Photographs of the site as also the victim have been proved, which establish that the accident did occur with the vehicle of the petitioner.

19. As per the nominal roll of the petitioner dated 29.03.2016, the petitioner, as on 22.05.2015, has already undergone two months and 9 days of incarceration and earned remission of two days. It is pointed out that the petitioner holds a commercial licence since 1999 and apart from the subject incident has never been involved in any accident or any major violation of traffic rules. It is stated that the petitioner is the only earning member of his family and having two children who are studying.

20. Keeping in view the facts of the case and the evidence as

---

<sup>1</sup> *Ramakant Rai v. Madan Rai*, (2003) 12 SCC 395

noticed above and the fact that there appears to be a doubt as to the manner in which the actual accident had taken place. I am of the view that it would be in the interest of justice that the sentence of the petitioner is reduced to the period already undergone.

21. Keeping in view the above, the petition is allowed to the limited extent. While the conviction of the petitioner is upheld, the sentence is reduced to the sentence already undergone by the petitioner. Bail bond and surety bond of the petitioner are discharged.

22. This court appreciates the assistance rendered by learned counsel for the petitioner who represent the petitioner through Delhi High Court Legal Services Committee as also the Learned APP. The petition is disposed of in the above terms.

23. Order *dasti* under signatures of the Court Master.

**NOVEMBER 12, 2018**  
**‘rs’**

**SANJEEV SACHDEVA, J**