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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 8th May, 2019

+ Crl. Appeal No. 774/2002

RAMINDER

..... Petitioner

Through: Mr. I.A. Alvi, Mr. S. Sachar &
Mr. Arslan Bairkha, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP
for the State with SI Rambhaj
Singh, PS J.P. Kalan.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT(ORAL)

1. This appeal challenges the conviction on charge for offence of culpable homicide not amounting to murder and the punishment awarded therefor.

2. On 10.09.1991, at about 12 'O' clock noon time, an incident occurred in the vicinity of Girls Primary School, Colony Road turning on Jafarpur Road within the jurisdiction of police station Jafarpur Kalan (the police station). It involved two motor vehicles one described as two wheeler scooter bearing no. DL 4SC 0754 (hereinafter "the scooter") and, the other, a whole body truck bearing registration no. DL-1G -5988 (hereinafter "the truck"). The scooter was being driven by Ashok Kumar, son of Laxman Singh, resident of

village Khera Dabar. The truck is stated to have been driven at the relevant point of time by the appellant herein. It is the prosecution case that the appellant, accompanied by two young persons with him, had driven the truck in a rash manner and, while taking a turn, the truck had hit against the scooter causing its rider (Ashok Kumar) to fall down. It is alleged that the truck came to a halt at some distance and its driver got down, saw the fallen scooterist and thereafter reversed the truck, crushing in that process the head of the scooterist under its rear wheel and thereafter fled away in the direction of Samas Pur village. Ashok Kumar concededly died on the spot due to the injuries suffered.

3. On the statement (Ex.PW-2/A) of Jagbir Singh (PW-2), recorded sometime before 1.30 p.m. on 10.09.1991, first information report (FIR) no. 72/1991 (Ex.PW-4/A) was registered in the police station at 12.35 p.m. on the same date. Upon conclusion of investigation into the said FIR, final report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was laid in the court of Metropolitan Magistrate seeking trial of the appellant as accused on the charge for offences under Sections 302 and 201 of Indian Penal Code, 1860 (IPC). The case was committed, in due course, to the court of Sessions where the appellant stood trial (in sessions case 60/1991) on the charge under Section 302 IPC. The trial culminated in judgment dated 23.08.2002 whereby the Additional Sessions Judge held the appellant guilty for offence under Section 304, Part II IPC. He was accordingly convicted and, by subsequent

order dated 29.08.2002, rigorous imprisonment for three and half years with fine of Rs. 50,000/-, in default simple imprisonment for six months was awarded as punishment. The trial judge directed that from the fine, if realized, an amount of Rs. 45,000/- shall be paid to the parents of the deceased (as compensation).

4. Feeling aggrieved by the above-mentioned judgment, and the order on sentence, the present appeal was filed in October, 2002. The appeal was admitted and directed to come up in due course by order dated 14.07.2003 whereby, on his application, the appellant was released on bail, the sentence having been suspended. The turn of the appeal for hearing has come up almost sixteen years thereafter.

5. In order to bring home its case before the trial court, the prosecution had examined twenty two witnesses. They included Lajwanti (PW-1), an eye witness; Jagbir Singh (PW-2), the first informant; Omwati (PW-3), another eye witness; ASI Kartar Singh (PW-4), duty officer who had recorded the first input vide DD no. 8A, and thereafter registered FIR no.72/1991; Ram Niwas (PW-5), a photographer engaged by the investigating officer (IO) for exposing the scene of incident to photography; Madan Pal (PW-6), draftsman who prepared the scaled site plan; Jagmal Singh (PW-7), another person described as eye witness; Rattan Singh (PW-8), a witness through whom the prosecution intended to attribute motive to the appellant for intentionally causing the incident and bring about the death of Ashok Kumar; Daya Nand (PW-9), an uncle of the deceased who had identified the dead body before post-mortem examination;

Dr. L.K. Barua (PW-10), who had carried out post-mortem examination on the dead body; Surat Singh (PW-11), nursing orderly of Rao Tula Ram Hospital (“the hospital”), an incident statedly occurred there having a bearing on the case for the prosecution; Head Constable Madan Lal (PW-12), *Moharrar Malkhana*, who had received the case property and sent certain exhibits to Central Forensic Science Laboratory (CFSL); Head Constable Vinod Bhardwaj (PW-13); who was with the investigating officer during initial stages of investigation; SI Bhim Singh (PW-14 - also examined as PW-14-A), who had carried out mechanical inspection of the two vehicles, and was also witness to seizure of medical prescription slip of the deceased; SI Ajayab Singh (PW-15), the first investigating officer (IO); Ramphal (PW-16), the registered owner of the truck; Inspector Rohtash Singh Yadav (PW-17), the station house officer (SHO) of the police station, who had taken over the investigation; Constable Dharambir (PW-18) who had taken copies of the FIR as special report to the various authorities; ASI Ganga Prakash (PW-19), who had taken certain exhibits to CFSL; Mr. J.K. Pali, Metropolitan Magistrate (PW-20), who had presided over test identification proceedings (TIP) wherein the appellant had refused to join on the plea that he had been shown to the witnesses; SI Ram Kishan (PW-21), who had carried out further investigation; and Mahadev (PW-22), an official of the transport department who had certified the ownership of the truck during the investigation.

6. The appellant's statement was recorded under Section 313 Cr.P.C. on 01.04.2002, wherein he had denied any involvement in the incident on his part. He denied the evidence that he was the driver of the truck at the relevant point of time, though conceding, by implication, that the truck was owned by his father at the relevant point of time. He took the defence that it was driven by one Rohtash Singh who had been employed by his father for such purposes.

7. The appellant examined two witnesses in defence, they including his father Krishan (DW-1), the other witness being Sharda (DW-2). It may be mentioned here that DW-2 Sharda was one of the witnesses cited by the prosecution in the charge-sheet, it being attributed to her that she was present at the time of incident, she having seen it with her own eyes and having affirmed the prosecution case in her statement under Section 161 Cr.P.C. It is noted that Sharda though referred to as an eye witness at the instance of the prosecution was given up and discharged, without being examined by the public prosecutor. She was eventually called to the witness box at the instance of the appellant, she confirming his version of the sequence of events.

8. From perusal of the evidence on record, as indeed from the submissions which have been made, certain facts have emerged as indisputable. The same may be noted at this stage.

9. Ashok Kumar (the victim) was a young person aged eighteen years on the relevant date. There is sufficient evidence available on record that he had gone to the hospital, a short distance away from his

village, in the morning of 10.09.1991, for medical advice or assistance. The evidence adduced through PW-11, the nursing orderly of the hospital, confirms that he had attended out-patient department (OPD) services in the said hospital, the medical prescription in his regard having been taken over for corroboration during the course of investigation. There is sufficient evidence to show that the victim was returning to his village, driving his own scooter. There is also ample evidence available to confirm that, midway the said journey, the scooter came to be involved in a motor vehicular collision, which resulted in he (Ashok Kumar) falling down from the scooter and suffering injuries that included crushed head. The dead body had been shifted from the place of occurrence soon after the police had arrived, within a few minutes post the occurrence, the first input having been received from PW-2 who had rushed to the police station to lodge daily diary entry no. 8-A recorded at 12.05 p.m. (vide Ex.PW-4/DA). As per the said initial input given by PW-2, the scooter had been hit by the truck (particulars of truck having been fully described) and thereafter having fled away from the scene.

10. When PW-15, to whom the matter was entrusted, arrived at the scene, he found the dead body along with the scooter lying in accidental state at the spot. He got the scene photographed through PW-5, the result of his effort being in the form of eight photographs (Ex.PW-5/1 to 8). It may be mentioned here that the photographs do show the dead body lying at the spot, besides the scooter in accidental state, the crushed head with bleeding injury being clearly visible.

11. After necessary proceedings at the spot including inquest papers being prepared, the dead body was sent for post-mortem examination to the mortuary of Deen Dayal Upadhyay Hospital where autopsy was conducted by PW-10, he having issued report (Ex.PW-10/A) confirming the injuries to have been caused by friction / impact against hard / rough surfaces, crushing wound over the head having caused deformation, possibly on account of the victim having been run over by a heavy motor vehicle, the death being due to cranio-cerebral damage.

12. The truck was registered at the relevant point of time in the name of PW-16. He had been served with a notice (under Section 133 of Motor Vehicles Act, 1988) by the SHO on 10.09.1991, in response to which he gave a reply (Ex.PW-16/B) offering to hand over the relevant documents by 14.09.1991. It is clear from the further evidence that the version of PW-16, the registered owner of the truck, was that he had sold the vehicle to Krishan (DW-1), the father of the appellant herein, prior to the incident. This led to another notice under Section 133 of Motor Vehicles Act being issued (vide Ex.PW-17/C) and served on DW-1 who gave a reply (Ex.PW-17/D) on 11.09.1991 stating that the truck was driven on the relevant date by his son i.e. the appellant.

13. The evidence of the prosecution to above effect confirming the case that the truck was driven at the relevant point of time by the appellant has remained unimpeached. Though some effort was made by the appellant, particularly by the evidence of his father Krishan

(DW-1), and through the suggestions given to the investigating officer during his cross-examination, to support his plea that the truck was driven at the time of occurrence not by him but by a person named Rohtash, such claim has remained unproved and unestablished. The prosecution's version that the truck was driven by the appellant at the time of occurrence is found to have been rightly accepted by the court below and the said finding must be affirmed.

14. From out of the above-mentioned witnesses of the prosecution, the testimonies of Lajwanti (PW-1), Jagbir Singh (PW-2), Omwati (PW-3), Jagmal Singh (PW-7) and Rattan Singh (PW-8) were most crucial. PW-8 was brought in to prove that the appellant had also attended the OPD services earlier in the morning on the same date and there had been some altercation between him on one hand and Ashok Kumar (the victim) on the other, the appellant having left the place extending threats, the later events revealing that the incident had been intentionally caused. The first four said witnesses were presented as eye witnesses to the occurrence. As mentioned earlier, the prosecution had also referred to the eye-witness account of Sharda (DW-2), who was given up but came to the witness box at the instance of the appellant to bring on record a version contrary to that of the prosecution story.

15. The story of altercation between the deceased and the appellant, as brought out through PW-8, was rejected by the trial court. The relevant observations in that regard in the impugned judgment read thus:-

“12. “The prosecution has tried to show that there was an earlier incident during the day in the premises at Rao Tula Ram Hospital involving the accused and the deceased. It was the case of the prosecution that an altercation had taken place between the two of them and the accused had threatened the deceased with dire consequences once he came out of the premises of the hospital. The prosecution had produced PW8 Rattan Singh to prove the aforesaid fact. However, I am not inclined to believe the statement of PW Rattan Singh in this regard. Rattan Singh had not made a statement to the police on the day of incident and had apparently given a statement after three days of the occurrence. He could not remember as to for what purpose he had visited Rao Tula Ram Hospital and has not given any explanation as to why he did not make such a statement to the police at the earliest. Likewise, I am not willing to believe the testimony of PW7 Jagmal Singh who according to the prosecution has also witnessed the crime. This witness also had not made a prompt statement to the police and had made a statement on 12.9.91. There is no reasonable explanation on record as to why he had made a belated statement to the police.”

16. Having heard arguments on both sides and having carefully gone through the record, this Court finds that the reasons set out by the trial judge to discard the evidence of PW-8 are appropriate. PW-8, by his own account, was closely acquainted with the family of the deceased. He was native of the same village. He had learnt about the fatal occurrence soon after the event took place. He even attended the cremation of the dead body. Yet, he did not come forward with the story about altercation even though it had a direct bearing on the issue that was being raised right from the beginning. The evidence clearly

shows that a large crowd of local villagers had gathered in numbers put by some witnesses in the region of 700-800 and by others at 400-500. A lot of hue and cry was being raised. The theory of it being an incident intentionally caused with design, by crushing the head of the deceased, was being floated. If those were the circumstances then prevailing, there is no reason why PW-8, a crucial witness to the motive, should have chosen to remain silent or be away for more than two days before offering his version. His claim that he was in the OPD of the hospital on the same morning is belied by the official records of OPD produced through PW-11. In these circumstances, this court endorses the view taken by the trial court for treating the evidence of PW-8 as one not worthy of reliance.

17. As mentioned earlier, the FIR was registered on the basis of version of PW-2. In the said version, the names of PW-1, PW-3 and DW-2 had been mentioned, their presence at the spot having been indicated. Noticeably, there was no reference to the presence of Jagmal Singh (PW-7) in the accounts of PW-1, PW-2, PW-3 and DW-2. Jagmal Singh is a witness placed similarly as PW-8. If he was an eye witness, there is no reason why he should not have come forward to offer his own evidence immediately after the police had started investigation in all seriousness. After all, tempers were running high, the villagers were crying foul, the evidence showing that they had persuaded the police authorities to place PW-15, the first investigating officer, under suspension on the spot, investigation thereafter having been taken up by PW-17, the SHO. PW-7, just as PW-8, came up to

offer his testimony after an inexplicable gap of two days. For same reasons, as have been set out in the context of PW-8, it is found not safe to rely on his version as well.

18. PW-1, PW-2, PW-3 and DW-2, thus, are the crucial witnesses on the touchstone of whose version the case will have to be tested. It appears from their evidence that the two vehicles had collided against each other when they were moving, each taking a right turn at the T-point, as depicted in the site plan (Ex.PW-6/A). Their evidence clearly shows that the truck had struck against the scooter with its right front side. This is confirmed by the mechanical inspection report of the truck (Ex.PW-14/B). Though some witnesses speak about the scooterist trying to overtake the truck from wrong side, given the nature of the two vehicles and the place where the incident took place, particularly the fact that both vehicles were taking a right turn at the T-point, it is unbelievable that the scooter, a lighter vehicle, would have been able to pick up speed higher than of the truck to attempt overtaking. Even if that were the sequence, the impact against the truck would not have come *vis-à-vis* the right front wheel. Instead, there would be some tell-tale signs on the left side of the body of the truck.

19. In the given facts and circumstances, there is no doubt that the truck was at rash speed and had collided against the scooter hitting it with its right front wheel, this clearly showing that the scooter, before the impact, was moving ahead of the truck. Since the incident occurred at noon time, in the month of September, assumably in broad

day light, it not being the case of any side that there was reason for darkness at that point of time, the act of rash driving of the truck on the part of the appellant has been duly established. The collision which consequently occurred resulted in the scooterist falling down and suffering injuries.

20. It is the second part of the incident, as alleged in the prosecution story, which has given rise to the charge of murder being brought against the appellant, the trial judge having instead concluded that it was a case of culpable homicide not amounting to murder. This finding is based on the evidence of PW-1 and PW-3 that the appellant had stopped the truck after the collision and had come down to see the scooterist lying injured on the road and thereafter reversed the truck crushing the head of the victim, before fleeing away. The evidence of PW-2 and DW-2 brings out facts to the contrary. They are categorical in their respective statements that such part of the incident, as is stated by PW-1 and PW-3, wherein intentional crushing of the victim is attributed to the appellant, never happened. PW-2 disowned his official version in FIR, attributing it to pressure that had been built by the large number of local villagers that had gathered at the scene. The fact that the local residents were infuriated on account of the fatal incident is brought out not only in the evidence of PW-2 but also in the testimony of the SHO and PW-15. It is PW-15 against whom, for some inexplicable reasons, the wrath of the villagers was directed. The evidence shows that PW-15 was placed under suspension on the spot. It is not clear as to what was the misconduct indulged in by him

to invite such disciplinary action. Be that as it may, the testimony of PW-2 that the allegations about intentional crushing of the head of the victim by reversing of the truck was introduced under pressure from the local public, is confirmed by PW-15 in his testimony.

21. In the above circumstances, one is left with two versions, one presented by PW-1 and PW-3 and the other by PW-2. The fact that Sharda (DW-2) was also cited as a witness for the prosecution but given up, she having eventually been brought in by the appellant as a witness in his defence and confirming the rival version of PW-2 about the sequence of events adds credence to the possibility that certain false accusations may have been added so as to present the case in an aggravated form. The fact that in the first input (DD No.8-A) there is no mention of reversing of the truck after the collision only strengthens this possibility.

22. It appears that the trial court was also not fully convinced with the theory of culpable homicide. There is no elaborate discussion in the impugned judgment as to why the charge under Section 302 IPC was being rejected and instead conviction was being returned for offence under Section 304, Part II IPC. The trial judge cryptically observed that intention had not been proved because motive had not been brought home and consequently he was “inclined” to convict the accused on the charge of culpable homicide not amounting to murder. It is trite that if the evidence of PW-1 and PW-3 were to be accepted, the question of motive would have failed into insignificance.

23. There is an added reason which renders the credibility of PW-1 suspect. She claims to be present at the scene, by chance, on way back to her village after attending OPD services at the hospital, the same institution where the victim had gone for medical reasons. She was unable to produce any document in support. The fact of she having gone to the OPD of the said hospital is not confirmed even by the record produced by PW-11. In these circumstances, her word that she was present at the scene on way back from the hospital is of doubtful origin.

24. There is no clarity in the evidence as to when the head of the victim was actually crushed. One set of evidence shows the possibility of this occurring by the intentional reverse driving of the truck with design to run him over. Another set of evidence throws up the possibility that this could have happened at the time of the collision between the truck and the scooter. The extensive damage that was suffered by the scooter, as shown in the mechanical inspection report (Ex.PW-14/A), could not have been caused only by the scooter falling on the side. Instead, the possibility that the scooter had come beneath the truck at the time of first impact is too strong to be discarded. In fact, this is how PW-1 herself describes the sequence of events in her testimony stating the front wheel of the truck had come over the scooterist. It has to be borne in mind that the truck, a full body vehicle, was negotiating a right turn. If its front right side had hit against the scooterist, making him and the scooter fall down and come beneath the body of the truck, the movement of the truck while turning

could have possibly brought the scooterist under its left rear wheel. This would explain as to why the rear wheel of the truck was found to be bearing blood stains, as shown by the report (Ex.PW-14/B).

25. In view of the above, this court finds it difficult to accept the version of PW-1 and PW-3 about the intentional reversing of the truck by the appellant so as to crush the head of the victim with the objective of killing him on the spot. The evidence of PW-2, as reinforced by the version of DW-2, shows that the fatality occurred on account of injuries suffered due to the collision itself, such collision being on account of rash driving of the truck by the appellant. This Court finds PW-1 and PW-3 to be not wholly reliable. In the given facts and circumstances, it is inadvisable to confirm the conviction under Section 304, Part II IPC.

26. The acts which have been established, beyond all reasonable doubts, constitute the offence of rash driving of the truck, it having resulted in the death of Ashok Kumar, this bringing home the case within the four corners of the offence punishable under Section 304-A IPC.

27. This court is conscious that no separate charge under Section 304-A IPC was framed. But since the said offence is minor in relation to the offence for which the appellant was put on trial, the conviction for the lesser offence is permissible.

28. For the foregoing reasons, the conviction of the appellant is modified from one for the offence under Section 304, Part II IPC to one under Section 304-A IPC.

29. The offence under Section 304-A IPC can be visited with punishment which may be in the form of imprisonment of either description for a term which may extend to two years or with fine or with both. In these circumstances, it is necessary that the order on sentence be also re-visited and appropriately modified.

30. The incident occurred in September, 1991, almost twenty eight years ago. The trial court record shows that the appellant was eighteen years old youth at that point of time. The nominal roll indicates that prior to the suspension of sentence, he had undergone incarceration for one year, one month and twenty three days, he having earned remission for two months and twenty days. The trial took almost eleven years to conclude. As noted earlier, the appeal has come up for hearing sixteen long years after it was presented.

31. The victim's parents, in the meanwhile, had taken out a civil suit for damages against the appellant, and his father, in addition to the registered owner, who, however, was subsequently dropped from the array. The civil case eventually resulted in an amicable settlement, in terms of which the appellant paid, to the father of the victim, compensation in the sum of rupees six lakh fifty thousand only (Rs. 6,50,000/-). Certified copies of the proceedings confirming such settlement, and satisfaction, before the civil court, in execution case 24/2011, have been submitted by the appellant and taken on record.

32. The fine imposed by the trial court is stated to have already been deposited, this being also indicated in the order dated 14.07.2003 whereby the substantive sentence was suspended pending hearing on

the appeal. It is not the case of the prosecution that the appellant had any past criminal record or that he has been involved in any other criminal case after this incident.

33. In the given facts and circumstances, this Court is of the opinion that ends of justice would be met if the appellant is sentenced to imprisonment for the period of incarceration already undergone along with fine, as imposed by the trial court. Ordered accordingly. Modifying further the order of the trial court, it is directed that the entire fine amount as above shall be released, as additional compensation, to the parents of the victim. The trial court will take appropriate steps in this regard.

34. With the above modification in the conclusion, result and order on sentence, the appeal is disposed of.

R.K.GAUBA, J.

MAY 08, 2019

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