

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

CRL.REV.P. 566/2016

Reserved on : 13.11.2019

Date of Decision : 18.11.2019

RANJEET

..... Petitioner

Through: Mr. Kumar Rajesh Singh, Advocate
with Ms. Punam Singh, Advocate

Versus

STATE

..... Respondent

Through: Ms. Radhika Kolluru, APP for State
along with SI Ganga Pal, P.S. Sarai Rohilla,
Delhi

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present revision petition has been filed under Section 397/401 Cr.P.C. against the impugned judgment dated 31.05.2016 passed by the Additional Sessions Judge (Central), Delhi in Criminal Appeal No.18/16.
2. The Metropolitan Magistrate vide judgment dated 28.09.2015 convicted the petitioner for the offence punishable under Section 279 and 304A IPC. Vide order on sentence, the petitioner was sentenced to undergo SI for six months for the offence under Section 279 IPC and SI for two years for the offence under Section 304A IPC. He was also sentenced to pay fine of Rs.10,000/- for the offence under Section 304A IPC, in default whereof to undergo further SI for two months. The sentences were directed to run concurrently.

3. In appeal, the ASJ vide impugned judgment dated 31.05.2016, modified the sentence of the petitioner under Section 304A from SI for 2 years to SI for 1 year while affirming the sentence under Section 279 IPC and the fine imposed by the trial court. It was further held that the compensation of Rs.10,000/- that was awarded to the family of the deceased was not sufficient and the same was raised to Rs.50,000/-.

4. The facts as noted by the trial court are as under:-

“1. That on 27.12.2003 after receiving DD No. 15A, SI Om Prakash and Ct. Satya Prakash reached at the spot of accident i.e. Service Road, Parking Metro Station, Shastri Nagar and found accidental bus bearing registration No. DL-1PB 0063, route No. 108 and dead body was also lying on the road. Complainant Sumer Chand Gupta was also found at the spot who got his statement recored to the I.O. that he is engaged in profession of knob of T.V. And Sh. Vinay Kumar S/o Banwari Lal is in his relation who came to his house in the morning and along with him, complainant went for metro station. While being at Service Road, Metro Parking at Shastri Nagar Metro Station the bus driver of private bus No. DL-1PB0063, route No. 108 came from Inderlok side by driving the bus with high speed and negligence and hit Vinay Kumar. Vinay Kumar fell down and accused driver ran over driver side rear wheel of the bus at head and face of Vinay Kumar. Accused ran his bus towards Shastri Nagar Red Light but due to traffic at red light he had to stop the bus. Bus was being by accused - Ranjeet who fled away from the spot. Injured Vinay died at the spot. This accident caused due to rashness and negligence of accused driver. Complainant can identify the accused driver if produced before him. On the rukka prepared by IO/SI Om Prakash, Ct. Satya Prakash got the FIR registered U/s 279/304A IPC. IO/SI Om Prakash clicked the photographs of the spot with his mobile phone. The offending bus was lying about 30 meters away from the bus. IO prepared site plan, arrested the accused, seized

DL of accused, conducted personal search of the accused, got postmortem done of dead body, got done the mechanical inspection of the bus, seized copy of RC and other documents of the bus vide seizure memo. Report on postmortem opined the death due to accident. After investigation the challan U/s 173 Cr. P.C. was filed in the court.”

5. I have heard learned counsel for the petitioner as well as learned APP for the State and have also gone through the case records.

6. It is contended by the learned counsel for the petitioner that eyewitness, Sumer Chand (PW-3) was a planted eyewitness. He further contended that there is contradiction in the statement of Sumer Chand as well as IO/SI Om Prakash (PW6) on the point of arrest of the petitioner.

7. Sumer Chand, maternal uncle of the deceased, was examined as PW-3. He deposed that on 27.12.2003 i.e., the day of the incident, he went to see off his nephew (*bhanja*), Vinay Kumar (deceased) to Metro Station, Shastri Nagar. While he was crossing the service road of Metro Parking, one bus on route No. 108 came from the side of Inderlok at fast speed and hit against his nephew. The rear tyre of the bus ran over his nephew on account of which he died at the spot. During his deposition, he identified the petitioner as the driver of the offending vehicle. The accident had taken place at about 10.15-10.30 A.M.

8. The first DD entry i.e., DD No. 15A (Ex.PW6/G) was recorded at 11.07 A.M. The *rukka* was made at the statement of the eyewitness at about 12:30 P.M. The seizure memos prepared at the spot were signed by the eyewitness.

9. During trial, the petitioner took up the defence that he was not driving the bus at the time of the accident. He repeated this stand at the time of recording of his statement under Section 313 Cr.P.C. The petitioner also produced defence witness (DW-1) in this regard.

10. The prosecution examined Gurdeep Singh, owner of the bus as PW-8. He deposed that he was the owner of the offending bus bearing registration No. DL-1PB-0063 plying at route No. 108 on STA permit. He deposed that the petitioner was the driver of the offending vehicle on the day of the accident. He also deposed that he received a call from the petitioner informing him of the accident that had taken place.

11. Seizure memo of the bus (Ex.PW3/E) shows that one of the doors of the bus had come off. The photographs of the spot taken on the day of the accident also show door of the bus lying on the road. The offending bus was seized from the spot. Postmortem report of the deceased was proved by Dr. K.N. Sharma (PW-5) who opined that *“the cause of death as Cranio-Cerebral Injuries (head injury) consequent to heavy vehicle run. All the injuries were opined to be antemortem in nature and the head injury was extensively sufficient to cause death immediately following run over”*.

12. In view of the aforesaid discussion, the contradictions as pointed out by the learned counsel for the petitioner are immaterial. I do not find any infirmity, illegality or perversity in the concurrent views taken by the courts below. The appeal is allowed to the above extent.

13. Learned counsel for the petitioner submitted that there are no involvements of the petitioner and prays for lenient view on the point of

sentence. He has referred to the order on sentence dated 08.03.2016 to point out that after the incident, the petitioner was working as a conductor and was living with his family in a rented house. He has further submitted that the petitioner is the sole bread earner and has suffered trial for 13 years.

14. The nominal roll dated 13.11.2019 shows that the petitioner has undergone sentence of 6 months, 23 days along with remission of 27 days. The unexpired portion of sentence is 4 months and 10 days.

15. Considering the fact and circumstances of the case and the period already undergone by the petitioner and the fact that he is the sole bread earner of his family who has to support his dependent and the fact that he is also remorseful of his act to the society, the appeal is allowed and the order of sentence is modified to the period already undergone by the petitioner. The appeal is allowed to the above extent.

16. It is noted that while dismissing the appeal, the ASJ enhanced the compensation awarded to the family of the deceased from Rs. 10,000/- to Rs. 50,000/- and referred the matter to DLSA(Central).

17. In Laxmi Vs. Union of India and Ors. reported as **(2014) 4 SCC 427**, the Supreme Court while emphasizing the need for rehabilitation of the victims or their dependents held as under:-

“12. Section 357A came to be inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31.12.2009. Inter alia, this Section provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents

who have suffered loss or injury as a result of the crime and who require rehabilitation.

13. We are informed that pursuant to this provision, 17 States and 7 Union Territories have prepared "Victim Compensation Scheme" (for short "the Scheme"). As regards the victims of acid attacks, the compensation mentioned in the Scheme framed by these States and Union Territories is un-uniform. While the State of Bihar has provided for compensation of Rs.25,000/- in such scheme, the State of Rajasthan has provided for Rs.2 lakhs of compensation. In our view, the compensation provided in the Scheme by most of the States/Union Territories is inadequate. It cannot be overlooked that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments. Having regard to this problem, learned Solicitor General suggested to us that the compensation by the States/Union Territories for acid attack victims must be enhanced to at least Rs. 3 lakhs as the after care and rehabilitation cost. The suggestion of learned Solicitor General is very fair.

14. We, accordingly, direct that the acid attack victims shall be paid compensation of at least Rs.3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost. Of this amount, a sum of Rs.1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs.2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the above direction.

15. The Chief Secretaries of the States and Administrators of the Union Territories shall take necessary steps in getting this order translated into vernacular and publicise the same appropriately for the information of public at large. List the matter on 3-12-2013."

18. In exercise of powers conferred under Section 357A of CrPC, 1973, the Lieutenant Governor of NCT of Delhi in coordination with the Central Government approved the Delhi Victim Compensation Scheme, 2015 for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

19. The State, through Delhi State Legal Services Authority, is directed to provide the enhanced as well as further compensation to the family of the deceased in accordance with the aforesaid Scheme within a period of two months from the date of passing of this judgment.

20. A copy of this judgment be communicated to the trial court as well as to the Member Secretary, Delhi State Legal Services Authority for information and compliance. A copy of this order be also provided to the petitioner through Jail Superintendent at no cost.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 18, 2019
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