

\$~37

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

%

Judgment delivered on: 07.02.2019

+ CRL.REV.P. 1134/2018 & Crl. M. (Bail) 1929/2018

SH. PRAMOD KUMAR YADAV

..... Petitioner

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Amar Nath Saini and Mr. Naman Gambheer,
Advs.

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

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

%

07.02.2019

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 16.05.2018 of the appellate court whereby the appeal of the petitioner impugning judgment on conviction dated 25.07.2017 and order on sentence dated 27.07.2017 was dismissed.
2. Petitioner has been convicted of offence under sections 279/338/304-A IPC of the Indian Penal Code, 1860.
3. Petitioner has been sentenced to undergo Rigorous

Imprisonment for a period of six months along with fine of Rs. 1,000/- for the offences punishable under Sections 279 of the Indian Penal Code, 1860 and Rigorous Imprisonment for a period of six months along with a fine of Rs. 5000/- for the offence punishable under Section 338 of Indian Penal Code, 1860 and Rigorous Imprisonment for a period of two years along with fine of Rs. 5000/- for the offence punishable under Section 304-A Indian Penal Code, 1860 and to further undergo imprisonment for a period of three months in default of payment of fine.

4. In the appeal, the appellate court modified the order on sentence partially and deleted the fine of Rs. 1,000/- each for the offences under Sections 279/338 Indian Penal Code, 1860 and fine of Rs. 5,000/- for the offence under Section 304A Indian Penal Code, 1860 and directed the petitioner to pay a compensation of Rs. 50,000/- to the family of the deceased Neha and Rs. 10,000/- to the injured Rinki.

5. The case against the petitioner is that while he was driving a truck he hit a bicycle which was being ridden by PW-2 along with three children. It is alleged that the petitioner was driving the truck in a rash and negligent manner and accordingly hit the bicycle at a high speed from behind. The deceased came under the rear tyre of the truck and one other child also sustained injuries.

6. The father of the deceased Neha and injured Rinki (PW1) deposed regarding the accident caused by the appellant. The testimony

of PW-1 was corroborated by the statement of PW-2 who was produced as prosecution eye witness. It was further observed that the owner of the subject truck (PW-4) deposed in his testimony that the truck on the date of the incident was driven by the appellant.

7. Learned counsel for the petitioner submits that the trial court as well as appellate court erred in not appreciating that there was no evidence to prove beyond reasonable doubt that the petitioner was driving the truck in rash and negligent manner. Learned counsel further submits that the only testimony with regard to manner of driving the truck was the statement of PW-2. He submits that since PW-2 was riding the bicycle and has is alleged to have been hit from behind, he could not have seen the speed or manner in which the petitioner was driving the truck.

8. Learned counsel for the petitioner submits that the petitioner is the sole bread earner in the family and has already undergone one year of sentence out of the two years sentence awarded. He further submits that petitioner has five school going children, besides wife and old aged parents to take care of and because of his incarceration, his entire family is suffering.

9. Learned counsel further submits that since the date of the accident till date the petitioner has not been involved in any other case of rash and negligent driving and has clean antecedents.

10. I have perused the record of the trial court as well as the appellate court. Further as per the nominal roll the appellant has undergone 9 months and 3 days of imprisonment and earned remission of 2 months and 27 days and thereafter 3 more days have passed.

11. Keeping in view the totality of the facts and circumstances as also the evidence on record and the fact that the petitioner is sole bread earner of the family and has already undergone half of the sentence, I am of the view that it would be in the interest of justice if the conviction of the petitioner is sustained, but, the sentence of the petitioner is reduced to the period undergone.

12. Learned counsel for the petitioner concedes that the compensation amount has not yet been paid.

13. Since the petitioner has not paid the compensation amount in terms of order dated 16.05.2018 and nearly 9 months have passed, I am of the view that interest of justice would further require slight enhancement in the compensation amount.

14. Accordingly, it is directed that the petitioner shall pay a sum of Rs. 65,000/- to the family of the deceased – Neha and a sum of Rs. 15,000/- to the injured Rinki.

15. In view of the above, on petitioner's depositing the said amount of Rs. 80,000/- as mentioned above, petitioner be released forthwith,

if not required in another case. Superintendent (Jail) is directed to ensure, prior to release of the petitioner, that petitioner has deposited said amount with the trial court and furnished the proof of the deposit of the said amount to the Superintendent (Jail).

16. On receipt of the compensation amount, trial court is directed to disburse the same to the family of the deceased – Neha as well as to the injured – Rinki as expeditiously as possible.

17. The petition is disposed of in the above terms. Copy of the order be communicated to the Superintendent (Jail) for compliance.

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

FEBRUARY 07, 2019
‘rs’

SANJEEV SACHDEVA, J

भारतमेव जयते