

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

CRL.REV.P. 726/2018 and CrI.M.(Bail)1343/2018

Date of Decision: 24.02.2020

IN THE MATTER OF:

SHYAMBIR (SHYAMVIR)

..... Petitioner

Through: Mr.M.L.Yadav with Mr.Hans Raj,
Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Manjeet Arya, APP for State
with SI Naveen Kumar, P.S.
Keshav Puram, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present proceedings are instituted challenging the order dated 14.08.2018 passed by the Appellate Court whereby the petitioner's conviction under Sections 279/338 IPC and Sections 134/187 of M.V. Act was upheld.

2. Initially, the Trial Court vide judgment dated 24.02.2018 convicted the petitioner for the offences punishable under Sections 279/338 IPC and Sections 134/187 of M.V. Act and vide order on sentence dated 12.04.2018, he was sentenced to undergo RI for one month for the offence punishable under Section 279 IPC, RI for two months for the offence punishable under Section 338 IPC and fine of Rs.1,000/- for the

offence punishable under Sections 134/187 of M.V. Act, in default whereof to undergo SI for one day. The petitioner was also directed to pay a compensation of Rs.25,000/- to the injured, Shiv Om Vats for commission of offence punishable under Section 338 IPC. In default of payment of compensation, the petitioner was directed to undergo SI for one month. All the sentences were directed to run concurrently.

3. Learned counsel for the petitioner has assailed the impugned order passed by the Appellate Court on the ground that the same was passed without appreciating the facts on record. It was contended that since the injured was admitted in the hospital by his son, Sachin, it created a doubt about the presence of his wife, i.e. Pushpa Sharma (PW-1) on the spot. It was also contended that there was a delay in admission of the injured in the hospital which creates a doubt about the accident. Lastly, it was contended that the prosecution did not examine any independent eye witness of the incident.

4. Per contra, learned APP for the State has supported the impugned judgment.

5. I have heard learned counsels for the parties and have gone through the material on record. As per the prosecution case, the incident occurred on 20.04.2013 at about 11 p.m. at Gali No.196, Tri Nagar, Delhi when the applicant, while driving his motor cycle, hit the injured i.e. Shiv Om Vats and caused grievous injuries to him. The prosecution had examined 10 witnesses in support of its case. The wife of the injured, Pushpa Sharma was examined as PW-1 and she gave the number of the offending motor cycle as DL 3S CH 0100. The Investigating Officer served notice under Section 133 of M.V. Act to the registered owner of

the motor cycle, i.e. Shri Satish Kumar, who stated that his brother, Shyambir i.e. the present petitioner was in possession of the motor cycle on the day of the incident. The injured was examined as PW-2. He identified the petitioner as they were residents of the same locality. He deposed that the accident was caused when the petitioner was driving the motor cycle on the wrong side and in a rash and negligent manner and hit the injured when he was walking along with his wife on the roadside. After the accident, the petitioner fled away from the spot. The testimony of his wife, i.e. Pushpa Sharma supports his testimony. The injured suffered fractures in both of his legs. The prosecution examined Dr.K.B. Raj, Orthopaedics Surgeon and Dr. Sharda Prasad Ghatak, Consultant Radiologist as PW-8 & PW-9 to prove the injuries of Shiv Om Vats.

6. The petitioner was identified by both the injured as well as his wife. The motor cycle number was disclosed in the initial statement of the wife of the injured, which led to the arrest of the present petitioner. The injured remained in the hospital from the day of the incident till 24.04.2013. The injuries were opined to be grievous in nature.

7. Having gone through the records of the case, I do not find any infirmity, illegality or perversity in the impugned order passed by the Trial Court. The petitioner's conviction for the offences punishable under Sections 279/338 IPC and Sections 134/187 of M.V. Act is upheld.

8. Learned counsel for the petitioner submits that the petitioner is about 38 years of age and has one minor son aged 7 years and wife to look after. He further submits that the petitioner works as a help in a grocery shop. The compensation amount of Rs.25,000/- has already been deposited by the petitioner. On instructions, it was submitted that

the petitioner will pay additional compensation of Rs.25,000/- to the injured. Learned counsel for the petitioner further submits that the petitioner is not involved in any other case. Learned APP for the State, on instructions, confirmed the same. As per the nominal roll dated 14.02.2020, the petitioner has undergone sentence of 18 days and the fine and the compensation amount has already been paid by him. The jail conduct of the petitioner has been reported to be satisfactory.

9. In State of M.P. v. Babulal reported as **(2008) 1 SCC 234**, it was held as under:-

“26. In B.G. Goswami v. Delhi Administration, this Court stated: (SCC p. 89, para 10)

“10. ... Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being

given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal”.

(emphasis supplied)

[see also Salmond on Jurisprudence, (2004); p.94]

27. Penal laws, by and large, adhere to the doctrine of proportionality in prescribing sentences according to culpability of criminal conduct. Judges in principle agree that sentence ought always to commensurate with the crime. In practice, however, sentences are determined on other relevant and germane considerations. Sometimes it is the correctional need that justifies lesser sentence. Sometimes the circumstances under which the offence is committed play an important role. Sometimes it is the degree of deliberation shown by the offender in committing a crime which is material. Sentencing is thus a delicate task which requires skill, talent and consideration of several factors, such as, the nature of offence, circumstances - extenuating or aggravating- in which it was committed, prior criminal record of the offender, if any, age and background of the criminal with reference to education, home life, social adjustment, emotional and mental condition, prospects of his reformation and rehabilitation, etc. All these and similar other considerations can, hopefully and legitimately, tilt the scale on the propriety of sentence.”

10. In view of the facts and circumstances and considering that the petitioner is willing to pay additional compensation of Rs.25,000/- to the injured and the fact that he is not involved in any other case, I deem it appropriate to release the petitioner on the sentence already undergone

by him, subject to payment of the aforesaid additional compensation to the injured.

11. The additional compensation of Rs.25,000/- awarded shall be deposited by the petitioner before the trial court by way of an FDR within a period of four weeks from passing of this order.

12. The matter is directed to be listed before the Trial Court on 03.04.2020. The I.O. shall inform the injured of the aforesaid additional compensation awarded to him, which shall be released to the injured after due verification.

13. Accordingly, the revision petition is allowed to the aforesaid extent and disposed of along with the pending application.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 24, 2020
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