
(2008) 102 DRJ 697

Delhi High Court

Case No: Criminal Rev. P. 193 of 2008, Criminal M.A. No. 473 of 2008 and Criminal M.A (Bail)
No. 474 of 2008

Ramesh Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision: April 3, 2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 401#Penal Code, 1860 (IPC) " Section
279, 304A

Citation: (2008) 102 DRJ 697

Hon'ble Judges: Sanjay Kishan Kaul, J

Bench: Single Bench

Advocate: Manish Kumar Khanna, for the Appellant; Pawan Sharma, Assistant Public
Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Kishan Kaul, J.

Notice, which is accepted by the learned Counsel for the State.

2. On 03-06-1998, a water tanker being driven at a very fast speed by the
accused/petitioner in a rash and negligent manner knocked down the

pedestrian/deceased from behind who was walking on the left side of the road as a result
of which the deceased received crushed head injuries.

The deceased thereafter was removed to a hospital by the public gathered at the spot
where he was declared brought dead by the doctor. An FIR

was registered vide FIR No. 270/98 and charges were framed against the petitioner for
offences u/s 279/304A IPC.

3. The prosecution examined eight witnesses but the case of the prosecution is based on the testimony of PW 1, Ct. Raj Kumar, who was on

patrol duty and is a crucial witness to this case being an eye witness. The petitioner preferred to claim trial and lead defense evidence by way of

examining DW 1 and got his statement recorded. After the conclusion of the trial, the Ld. MM found against the petitioner and convicted him for

the aforesaid offences vide order dated 27-11-2006 and sentenced him to undergo RI for one year and to pay fine of Rs. 5,000/- and in default of

payment of fine to undergo SI for one month vide order dated 30-11-2006. The petitioner assailed the said order in appeal wherein the Ld. ASJ

dismissed the appeal and affirmed the order of conviction and sentence of the trial court by an order dated 07-03-2008. The present revision

petition is directed against the aforesaid orders passed by the trial courts below.

4. The learned Counsel for the petitioner submitted that the petitioner was not the driver but posted as a baildar as also the fact that the identity of

the petitioner as the driver of the offending vehicle has not been proved by the prosecution. The plea raised by the petitioner was that he was not

apprehended at the spot but he went himself to the police station with some chowkidars after about three hours from the alleged incident to enquire

about the same. It was further pointed out that there are no other eye witnesses to the present case and the case of the prosecution solely revolves

around the testimony of a police official being PW 1. It is also stated that the depositions made by the prosecution witnesses suffer from grave

infirmities on account of there being contradictions and improvements in their statements and thus do not pass the test of reliability.

5. It is submitted that the foundation of conviction against the accused/petitioner is that he was driving at a $\tilde{\hat{\wedge}}^{\frac{1}{2}}$ very fast speed $\tilde{\hat{\wedge}}^{\frac{1}{2}}$ but the same is

not supported by evidence. The learned Counsel has argued that the site plan prepared by the IO is doubtful since it does not furnish any details.

The attention of this Court was also drawn to the decision of Raj Kumar v. State (NCT of Delhi) 2007 X AD (Del) 94 wherein this Court in

revision had reversed the concurrent findings of the trial courts below and observed that non-examination of the investigating officer and the other

injured person coupled with fact that the prosecution had failed to bring on record any material to establish the "high speed" of offending

vehicle had worked out to the prejudice of the accused and Therefore the sole testimony of one witness could not be relied upon to convict the

petitioner. In Lakshmanan v. State of Tamil Nadu JT 2001 (Supp. 2) SC 396, it was held that speed of the offending vehicle is not the criteria but

the evidence on record showed that the speed was high and the accused had lost control over the vehicle. It was also observed that contributory

negligence is not a permissible defense but a factor which affects the quantum of sentence.

6. I have given my thoughtful consideration to the matter. A scrutiny of the impugned orders show that the Ld. MM and the Ld. ASJ while

rejecting the submissions made by the learned Counsel for the petitioner have examined and assessed the evidence and the material placed on

record in depth in reaching to the aforesaid conclusion. The testimony of PW 1 corroborated by the depositions of other witnesses has brought to

light the fact that the petitioner was driving the offending vehicle in a rash and negligent manner which resulted in the aforesaid incident costing the

life of the deceased who succumbed to the injuries. PW 1 who was on a patrol duty witnessed the incident and apprehended the accused. In the

meantime, the deceased was taken to the hospital where he was declared brought dead when the IO of the case came at the spot and found the

offending tanker at the site. A site plan was prepared in the presence of PW 1. The offending tanker was seized and the seizure memo is proved

on record. The person who had conducted the mechanical inspection of the tanker was also examined who has supported the case of the

prosecution. A post mortem was conducted and the nature of the injuries and the cause of death have been proved to be anti mortem caused by a

heavy vehicle.

7. The trial courts below have opined that though there are contradictions in the depositions of prosecution witnesses but since such inconsistencies

are minor in nature thus cannot be rejected at the threshold. It has also been noted that the petitioner chose not to cross examine the IO despite

opportunity being granted.

8. The averment made by the petitioner that he was just a baildar and not posted as a driver in MCD is not supported by his evidence led in

defense. DW 1 in his cross examination has merely stated that baildars are class IV employees whose duties can be changed as per MCD's

requirement and thus the testimony of defense is of no assistance to the petitioner. There is nothing on record to prove the alibi of the petitioner

whereas it has come on record that PW 1 had seen the petitioner driving the offending vehicle and was apprehended at the spot with the offending

tanker. The driving license of the petitioner was also seized which shows that he knew how to drive.

9. In my considered view, there is nothing as such on record to doubt the credibility of the testimony of PW 1 being a police officer especially in

the light of the decision of the Apex Court in Karamjit Singh Vs. State (Delhi Administration), wherein it was held that the testimony of police

personnel should be treated in the same manner as the testimony of any other witness. Their testimony could be relied upon without being

corroborated by the testimony of independent witnesses. The presumption that a person acts honestly applies as much as in favor of a police

personnel as of other persons and it is not a proper judicial approach to distrust them and suspect them without good grounds. PW 1, the most

crucial witness to this case has fully supported the prosecution version and has withstood the rigours of cross examination, thus, in my opinion it

was not necessary for the prosecution to multiply the witnesses on the same point as rightly held by the trial courts below.

10. There is no material or evidence on record to show that the prosecution witnesses had any reason to falsely implicate the petitioner.

11. The legal position of speed alone being not the criterion is not disputed but in the present case, from the examination of the witnesses and

material produced on record, it would not be wrong to suggest that the petitioner was driving the offending vehicle in a rash and negligent manner.

In *M. Shafi Goroo v. State* (2000) 1 Del 531, the concept of negligence as analysed in Halsbury's Laws of England, (4th Edition) Vol. 34

para 1 (pg. 3) and *R. v. Caldwell* (1981) 1 All ER 961 was discussed which is as follows:

Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to

negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something

which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no

legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably

foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding

circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of

care is owed only to those persons who are in the area of foreseeable danger, the fact that the act of the defendant violated his duty of care to a

third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The

same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so.

The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and

damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two.

...Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention

of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section

which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary

prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting recklessly if,

before doing the act he either fails to give any thought to the possibility of there being any such risk or, having recognized that there was such risk,

he nevertheless goes on to do it.

12. The discussion of the aforesaid shows that where negligence is attributed as an essential ingredient of the offence, the negligence to be

established by the prosecution must be culpable or gross and not negligence merely based upon an error of judgment. In the present case, it cannot

be lost sight of that the deceased was walking in the direction of the moving traffic and the offending vehicle driven by the petitioner hit the

deceased from behind which means that the deceased in such circumstances was not expected to see the vehicle which was coming from behind.

Thus, it was petitioner who owed a duty to take care especially being in the capacity of a driver who could have foreseen the danger resulting in

such eventuality. In my considered view, in the given facts and circumstances, the petitioner omitted to act in a diligent manner causing the death of

an innocent person. In Rattan Singh Vs. State of Punjab, , the Apex Court observed that rashness and negligence are relative concepts, not

absolute abstractions. In our current conditions, the law u/s 304-A IPC and under the rubric of negligence, must have due regard to the fatal

frequency of rash driving of heavy duty vehicles and of speeding menaces.

13. The position as stated in Raj Kumar's case (supra) cannot be doubted but the facts in that case can be distinguished from the present case.

The rationale behind the court taking such view in the aforesaid decision was the non-examination of the investigating officer and the other injured

person who were material witnesses to the case coupled with fact that the prosecution had failed to establish the "high speed" of offending

vehicle. This is not so in the present case. All the witnesses material for the case have been examined and rashness and negligence on the part of

the petitioner while driving has also been proved beyond reasonable doubt.

14. The learned Counsel for the petitioner conscious of the limited scope of power of revision of the High Court and the powers sanctioned u/s

401 CrPC conferring powers of an appellate court pleads that the present case is one where re-appreciation of evidence is required since the

evidence is not of the quality that a prudent man would come to a finding which would lead to conviction of the petitioner. I am unable to accept

the plea raised by the Ld. Counsel for the petitioner to re-appreciate evidence and in my considered view, the concurrent findings reached by the

Ld. MM and the Ld. ASJ are correct and do not suffer from any infirmity, illegality or impropriety.

15. The case of Lakshmanan's case (supra) is not of much relevance to the present case since the factum of contributory negligence has not

been proved against the deceased. Even if the converse was taken to be true, I do not deem it fit and proper to reduce/modify the sentence of the

petitioner in the light of the judgment of the Supreme Court in Dalbir Singh Vs. State of Haryana, where was held as under:

While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the

prime considerations should be deterrence. A professional driver should not take a chance thinking that even if he is convicted he would be dealt

with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being

due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of

trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

16. The present case is one where death has been caused of an innocent person due to the negligence of the petitioner.

17. In view of the aforesaid, the petition and the applications are dismissed.