

(2011) 08 DEL CK 0428

Delhi High Court

Case No: Criminal Rev.P. No. 213 of 2011

Rajesh Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 30, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Motor Vehicles Act, 1988 - Section 133
- Penal Code, 1860 (IPC) - Section 279, 304A
- Probation of Offenders Act, 1958 - Section 4

Citation: (2011) 8 AD 144 : (2011) 4 JCC 2727 : (2012) 1 RCR(Criminal) 344

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Ajay Rai, for the Appellant; Pawan Behl, APP and Ramakant, for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.

By the present Revision Petition, the Petitioner seeks setting aside of the judgment dated 28th February, 2011 passed by the learned Additional Sessions Judge. By the impugned judgment learned Additional Sessions Judge dismissed the appeal preferred by the Petitioner against the judgment dated 17th August, 2011 passed by the learned ACMM convicting the Petitioner and order on sentence dated 20th August, 2010 whereby the Petitioner was sentenced to undergo Rigorous Imprisonment for a period of one year and pay a fine of Rs. 20,000/- for the offences punishable u/s 304A Indian Penal Code, in default of payment of fine to further undergo Simple Imprisonment for one month and to undergo Rigorous Imprisonment for three months and pay a fine of Rs. 500/- for offence punishable u/s 279 Indian Penal Code, in default of payment of fine to further undergo simple

imprisonment for 15 days.

2. Briefly the prosecution's case is that on 2nd April, 2000 at about 9.00 p.m. at Purana Najafgarh Road, Harizan Basti, Palam Village, New Delhi a public way. The accused was driving Bus No. DL1PA-0003 in a rash and negligent manner so as to endanger human life and safety. While driving the said vehicle he struck against one scooter bearing No. DL 1S-5532 resulting in the death of Satish. The Petitioner was arrested and after the investigation a charge-sheet was filed against him for the offence punishable under Sections 279/304-A Indian Penal Code. After recording the prosecution evidence and the statement of the Petitioner u/s 313 Code of Criminal Procedure, the Learned Trial Court held that the Petitioner was driving the truck in a rash and negligent manner which caused death of Satish. The judgment and order on sentence passed by the Learned ACMM was appealed against before the Learned Additional Sessions Judge which was dismissed vide order dated 28th February, 2011. The two judgments i.e. passed by the Learned ACMM and Learned Additional Sessions Judge are impugned in the present petition.

3. Learned Counsel for the Petitioner contends that the learned ACMM and learned Additional Sessions Judge have not appreciated the facts and circumstances of the case and the sentence awarded to the Petitioner is not sustainable in the eyes of law. The alleged eye witnesses to the incident that is PW1 Sat Pal Singh and PW5 Balbir Singh are not the eye witnesses and are planted by the prosecution. PW1 has not identified the Petitioner as he was not related to the deceased in any manner. The Trial Court has failed to appreciate the fact that the alleged spot of incident was a dark place and it was not possible to see the Petitioner, as there was No. independent source of light or street light. No. TIP was conducted as the Petitioner was shown to the witnesses in the Police Station and this version has been admitted by PW 10 in his cross-examination. The testimony of PW5 is full of improvements and embellishment and is liable to be dismissed. It is further contended that the investigating officer was not competent to prove the notice u/s 133 Motor Vehicle Act. Thus the legal requirement of proving the notice has not been complied with. The present case is a case of false implication, thus his conviction is liable to be set aside. In the alternative it is prayed that the Petitioner has No. previous involvement in any case and has faced trial for ten years, thus, he be released on probation.

4. Learned APP on the other hand vehemently opposed the petition. It is contended that there is No. infirmity in the judgments passed by the learned ACMM and the learned Additional Sessions Judge. The testimony of the eye-witnesses is clear and cogent, PW1 has deposed that on 2nd April, 2000 the bus bearing No. DL-1PA-0003 overtook him and it was driven speedily and after overtaking he heard a loud noise. When he reached the spot he saw a man lying in a pool of blood. PW10 the Investigating Officer has also corroborated the version of PW1 that on the spot he found a dead body lying in a pool of blood. Thus, there is sufficient evidence on record to prove the guilt of the accused/Petitioner. Hence the present petition has

No. merit and is liable to be dismissed.

5. I have heard learned Counsel for the parties and perused the record. PW5 Shri Balbir Sharma has deposed that on the date of incident when he reached Pusa Road, Harijan Basti, Palam Gaon near Johar he saw that a bus was coming in a zig zag way on a very fast speed from Palam Gaon side. As he was frightened he took his scooter down on footpath and parked there to see the offending vehicle. One more scooter which was being driven by one Satish was also going ahead of the bus in the same direction. He saw that the said bus bearing No. DL-1PA-0003 hit the scooter from its left side. The said scooter rider came under the wheel of the bus and the bus ran over him. The driver of the bus present in the court stopped the bus 50-100 steps ahead. He has further stated that he could recognize the driver in the natural light as well as in the light of the vehicle passing through the said route. The helmet of the scooter was also crushed. In his cross-examination, he has deposed that the front left of the bus struck against the front as well as the back of the scooterist. The scooter fell down itself underneath the front wheel of the bus. PW1 Shri Satpal Singh had also deposed about the manner in which the bus was being driven. He has stated that the driver of the bus was driving the bus speedily and after the bus overtook him he heard a loud noise under the bus and the bus jumped that time. He was approximately 30-40 meters behind the bus when he reached the spot where the bus had jumped. He saw a scooter and a man lying in a pool of blood. The head of the man was crushed under the bus. PW8 Constable Shyam Lal has deposed that along with SI Balram and Constable Anil Kumar he reached the spot and found a person lying on the road and his head seemed to be crushed by some vehicle under the helmet. Thus, from a perusal of the testimonies of the witnesses, it is clear that the manner in which the vehicle was driven was rash and he was negligent enough to endanger the life of public. The deposition of PW5 that the bus was coming in a zig zag manner on a very high speed frightening him to the extent that he took his scooter down on the footpath and PW1 deposing that the bus was being driven speedily which overtook him and then he heard a loud noise and the bus jumped proves the rash and negligent manner in which the Appellant was driving the vehicle. Therefore, there is sufficient evidence placed on record to prove that the vehicle was being driven rashly and negligently on a public way endangering human life likely to cause hurt or injury to any person not amounting to culpable homicide.

6. The contention of learned Counsel for the Petitioner that the Investigating Officer was not competent to prove the notice u/s 133 Motor Vehicle Act is liable to be dismissed as the Section contemplates that any police officer authorized by the State Government is competent to serve the notice to the owner of a motor vehicle, the driver or conductor of which is accused of any offence under this Act.

7. I do not find any perversity much less any illegality in the impugned judgments on the perusal of the evidence on record. It may be noted that the power of revision

vested in this Court is a kind of supervisory jurisdiction in order to prevent miscarriage of justice arising from the misconception of law or irregularity of procedure committed by the subordinate Courts. The revisional power of this Court is to be exercised to see that justice is done in accordance with the recognized rules of criminal jurisprudence and the subordinate Courts do not exceed their jurisdiction or abuse their powers vested in them under the Code of Criminal Procedure.

8. In [Dalbir Singh Vs. State of Haryana](#), the Hon"ble Supreme Court while dealing with a case punishable u/s 304A Indian Penal Code held as under:

1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence u/s 304-A Indian Penal Code as attracting the benevolent provisions of Section 4 of the PO Act. 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...

9. Hence in view of the law laid down by the Hon"ble Supreme Court, I do not find any merit in the contention of the learned Counsel for the Petitioner to grant him the benefit under the probation of Offender Act and release him on probation.

Petition is dismissed.