

Brahm Prakash Vs State

Court: Delhi High Court

Date of Decision: Feb. 22, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Motor Vehicles Act, 1988 â€” Section 133

Penal Code, 1860 (IPC) â€” Section 279, 304A

Citation: (2012) 3 AD 33

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Sukhbir Singh and Mr. Ajay Raghav, for the Appellant; Manoj Ohri, APP for the State with SI Prakash Roy, PS DBG Road, for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.

By the present petition the Petitioner seeks setting aside of the order dated 1st September, 2010 passed by the learned

Additional Sessions Judge upholding the order of conviction of the Petitioner passed by the learned Metropolitan Magistrate under Sections

304A/279 IPC. The learned Metropolitan Magistrate vide order dated 27th January, 2010 sentenced the Petitioner to undergo Rigorous

Imprisonment for a period of six months for offence punishable u/s 279 IPC and a fine of Rs. 1000/- and in default of payment of fine to undergo

Simple Imprisonment for 15 days and Imprisonment for two years and Rs. 1000/-fine u/s 304A IPC, in default of payment of fine to undergo

Simple Imprisonment for 15 days. Briefly the prosecution case is that on 23rd April, 1994 at around 9 p.m. at Faiz Road Crossing, D.B.G. Road,

the Petitioner was driving Truck bearing No. UP 15B 3642 in rash and negligent manner so as to endanger human life and personal safety of

others and while doing so he struck against a moped bearing No. DL 1SC 4565 and caused death of rider. FIR No. 127/1994 under Sections

279/304-A IPC was registered at PS DBG Road against the Petitioner. The investigation was conducted and charge sheet was filed for offences

punishable u/s 279/304A IPC against the Petitioner. After recording the statement of the prosecution witnesses and the accused u/s 313 Cr.P.C.

learned trial court convicted and sentenced the Petitioner as mentioned above. Aggrieved by the judgment of conviction and order on sentence, the

Petitioner preferred an appeal. Learned Additional Sessions Judge vide order dated 1st September, 2010 dismissed the said appeal.

2. Learned Counsel for the Petitioner contends that the impugned judgments are based on conjectures and surmises. Learned Courts below failed

to appreciate that there was no site plan drawn to show the direction of movement of the truck and the Heropuch or the side of traffic that was to

stop and that was allowed to move because the spot of accident was a crossing. Further there is no proof that the Petitioner was driving the

offending vehicle in a rash and negligent manner. PW4 has deposed that the truck was at a very high speed, however, in his cross-examination he

has stated the speed of the truck was around 30-40 kmph, which is not a very high speed. Further this witness has deposed that he was not called

for TIP of the accused nor did he remember that at what time he had identified the accused. It is further stated that both the alleged eyewitnesses

are planted and their testimonies are full of contradictions and improvements, which cannot be relied upon to sustain the conviction of the

Petitioner. The MIX of the deceased records that the patient had two cardiac arrests and the doctor who had conducted the examination of the

deceased has also not been produced as a witness. Further in the statement of the Petitioner recorded u/s 313 Cr.P.C. the time of incident is

mentioned to be 9:00 a.m. There is no witness of the seizure memo and no arrest memo was recorded, though the Petitioner was arrested on the

basis of the statement of PW6. It is further stated that the moped rider struck against his truck while his truck was stationary at the red light due to

which the accident took place. Thus, the negligence on the part of deceased cannot be attributed to the Petitioner. The impugned judgments are

erroneous on facts as well as on law and liable to be set aside.

3. Per contra, learned APP for the State submits that impugned judgments suffer from no illegality. PW4 and PW6 are the eye witnesses of the

incident and have supported the prosecution case. PW6 has deposed that he was riding his scooter and the offending vehicle overtook his scooter

at a fast speed. Thus rash and negligent driving of the vehicle stands proved. The minor contradictions in the testimony of the witnesses do not go

to the root of the matter. The presence of the Petitioner and his driving the vehicle at the time of incident are also not in dispute. Hence the revision

petition is liable to be dismissed.

4. I have heard the learned Counsels for parties and perused the record.

5. PW4, Sanjay Kaushik has deposed that in the intervening night of 24th and 25th April, 1994 at about 9:00 p.m. he was going towards Faiz

Road from the side of Karol Bagh. When he reached near DBG Road, Faiz Road crossing, he saw a truck bearing No. UP 15B 3642 coming

from the side of Pahar Ganj at a very fast speed. A Heropuch motorcycle bearing No. DL 1SC 4565 was coming from the side of New Rohtak

Road and was crossing the square. The truck took a sudden right turn at a very fast speed and hit against the Heropuch, It was apparent by seeing

the truck when it was coming that the same was at very fast speed. After the accident, the truck driver tried to escape but public persons

apprehended him after chasing him for 200 yards. This witness in his cross examination has stated that it was correct that at the time of incident it

was dark and he was at a distance of about 400-500 yards from the place of accident. He further stated that it was correct that the accused was

not arrested his presence however, he was taken into custody by the police. He has further stated that the truck was running at a speed of 30 to 50

KMPH and it was further correct that all the vehicles run slow on a turn, if they run speedily then there are chances of its turning. He has deposed

that he could not tell the whereabouts of the driver who was apprehended at the spot nor was he called for TIP of the driver but was called for

investigation.

6. PW6, Naveen Sharma, has deposed that on 23rd April, 1994 at about 9:00 p.m. he was coming from the side of Pahar Ganj. A truck came

from the side of Pahar Ganj and overtook his scooter very rashly and at very fast speed from his left side. As there was traffic he slowed his

scooter but the driver of the truck took a sudden right turn at a very fast speed and hit against a moped due to which the moped driver sustained

injuries. The number of the truck was UP 3642. The driver of the truck tried to escape but he was apprehended by the public persons after chasing

about 200 yards.

7. PW8 SI Bhoj Raj has stated that on 23rd April, 1994 he received DD No. 15A and he along with Const. Miter Dev reached at Faiz Road,

D.B.G. Road Crossing where he found Vicky No. DL 1 SC 4565 Heropuch and half body truck No. UP 15B 3642 in accidental condition. The

driver of the truck Braham Prakash was there. He thereafter reached JPN Hospital and obtained the MLC of Jagdish Chander Shrivastava. He

has stated that no eye-witness met him in the hospital. He again went back to the place of incident where he prepared site plan Ex. PW8/B and the

other contemporaneous documents. It is stated that eye-witness Naveen Sharma, PW6 arrived at the spot and on the basis of the statement of this

witness FIR was registered against the accused. This witness in his cross-examination has accepted that he did not get the judicial TIP of the

accused conducted and had also not served any notice u/s 133 Motor Vehicles Act.

8. The accused/Petitioner in his statement u/s 313 Cr.P.C. has deposed that he was driving the truck No. UP 15B 3642 on the date of incident.

He stated that the moped struck against his truck while the truck was stationary at the red light. He has denied that he was driving the said truck

rashly and negligently.

9. A perusal of the testimony of PW4, PW6 and PW8 show that there are no inconsistencies, contradictions and material improvements, which

would discredit the prosecution case. PW4 and PW6 have consistently deposed that the Petitioner was driving the offending vehicle at a very high

speed in a rash and negligent manner. PW6 has further stated that the Petitioner very rashly overtook his scooter as well.

10. It is relevant to note that negligence on the part of the Petitioner has been sufficiently proved in the present case. There is clear evidence placed

on record by the prosecution to prove the manner of driving the offending vehicle. PW4 has stated that the truck was being driven at a fast speed

and at the same time this witness has in his cross-examination stated that the truck was being driven at the speed of 30-50KMPH which on a turn

is a high speed being a heavy vehicle turning at a speed of 30-50 KMPH is dangerous. I find no merit in the contention of the learned counsel that

the truck was stationary at the time of accident as the site place Ex.PW8/B clearly shows that the offending vehicle was not standing at the Zebra

crossing as stated by the Petitioner and the accident took place on the crossing after the Petitioner's truck took a turn. Further there was no need

of judicial TIP as the Petitioner was apprehended at the spot.

11. The essential ingredients to constitute an offence punishable u/s 279 IPC are that there must be rash and negligent driving or riding on a public

way and the act must be so as to endanger human life or be likely to cause hurt or injury to any person. For an offence u/s 304A, the act of

accused must be rash and negligent, which should be responsible for the death which does not amount to culpable homicide. The prosecution in the

present case has sufficiently proved that the act of the Petitioner was rash and negligent to bring the same under the purview of Sections 279/304A

IPC. Hence keeping in view the circumstances of the present case, the impugned judgment convicting the Petitioner is upheld. The petition and

application are accordingly dismissed. The petitioner is in custody, he will undergo the remaining sentence.