(2008) 12 DEL CK 0162

Delhi High Court

Case No: Criminal Appeal No. 39 of 2002

State of Delhi		APPELLANT
	Vs	
Thakur Dass		RESPONDENT

Date of Decision: Dec. 15, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2008) 12 DEL CK 0162

Hon'ble Judges: P.K. Bhasin, J

Bench: Single Bench

Advocate: Sunil Sharma, for the Appellant; None, for the Respondent

Judgement

P.K. Bhasin, J.
This appeal has been filed by the State assailing the judgement dated 08.09.98 passed by the learned Metropolitan Magistrate acquitting the respondent-accused of the charges under Sections 279/304A IPC.

2. It is the case of the prosecution that on 3.12.90 the respondent was driving a mini bus no. DBP 2162 near Laxmi Nagar Crossing sometime between 4 and 5 p.m. at a very fast speed and in a rash and negligent manner and while so driving his bus hit one two wheel scooter no. DBL-7286, being driven by PW-3, from behind because of which the pillion rider of that scooter, who happened to be the wife of the scooter driver, fell down and got injured. She was removed to Ganga Ram Hospital where, however, she succumbed to the injuries sustained by her around 8.15 p.m. As per the further prosecution case the police had recorded the statement of the scooter driver, PW-3 Dr. B.S. Seth after the death of his wife. In that statement he had claimed that on the day of accident he was going with his wife on scooter no. DBL-7286 from Pusa Road to Laxmi Nagar and when they reached the "T" point, Laxmi Nagar, Vikas Marg the traffic signal was showing red light. There was one private bus standing at the red light and when he overtook that bus from his right side his wife was hit by the back side of the bus and she fell down. When he

heard her shriek he stopped his scooter and saw his wife lying down on the road near the left side tyre of the bus whose number he did not recollect. He then lifted his wife and took her to Walia Nursing home in a maruti van which was coming from behind and from there he took her to Ganga Ram Hospital on the advice of the doctors but she died in Ganga Ram Hospital in the night.

3. The respondent had fled away from the place of accident in his bus and when the investigating officer recorded the statement of the scooter driver, PW-3 Dr. B.S. Seth he could not tell the number of the private bus, which is now being claimed by the prosecution to be bus number DBP 2162 belonging to the acquitted accused. The police could not get the number of the bus involved in the accident till April, 1991 and then it filed an "untraced case" report in the concerned Court to the effect that the vehicle which had caused the accident could not be ascertained and so the case was being closed but could be reopened if the police would come to know of the offending vehicle. That report is a part of the trial Court"s record and it has the endorsement of the Magistrate as "Cancelled". It appears from the trial Court record that the husband of the deceased, Dr. B.S. Seth informed the police vide his letter dated 24.4.91 wherein he wrote that his wife had fallen from his scooter on 3.12.90 and was run over by mini bus No. DBP 2162. He further stated that FIR was registered on 4.12.90 on which date he was too shocked to recollect the number of the bus and further that one Mr. S.N. Mittal, resident of 244-A/24, Shivaji Gali, Pandit Park, Delhi-51 had seen the whole incident. That that Mr. S.N. Mittal had met him later on and had informed him as to how the accident had taken place and his wife was run over by the mini bus no. DBP 2162. After about 15 days he alongwith Mr. Mittal had gone to the police station three times but could not meet the investigating officer and thereafter he himself remained sick for 93 days followed by some tragedy in the house of Mr. S.N. Mittal due to which Mr. Mittal was preoccupied for one month. On receipt of this information from Dr. B.S. Seth, it appears, that the police reached upto the respondent herein and he admitted before the police official that he was driving bus No. DBP 2162 on 4.12.90 at about 6.30 p.m. Thereafter the police seized bus No. DBP 2162 on 11.5.91 and on the same day it was released to Thakur Dass on the same day on superdari.

4. After completing the investigation of the case the police charge-sheeted the respondent. Charges under Sections 279/304A IPC were framed by the trial Court. The respondent pleaded not guilty and claimed trial. In support of its case the prosecution examined only three witnesses out of whom one was the scooter driver whose wife became the victim of the accident and the other two were police witnesses.

5. The prosecution had sought to establish its case mainly on the testimony of PW-3 Dr. B.S. Seth, husband of the deceased. In his examination-in-chief Dr. B.S. Seth deposed about the occurrence as under:

On 3.12.1990 in the evening I was coming on my scooter No. DDM 7280 with my wife from Punkuai Road to Vikas Marg. When we reached near T point, Laxmi Nagar, Red

light I had stopped my scooter there. In the meanwhile one mini bus no. DEP 2162 hit against my scooter from behind and my wife fell down from the scooter. Immediately I saw her lying under the right front wheel of mini bus. By that time he had retracted back his vehicle and I picked her and noted down the number....

The learned trial Judge, however, did not feel convinced with the testimony of this sole eye-witness and so acquitted the respondent-accused since there was no other evidence showing the involvement of the respondent-accused in the accident. It was held by the trial Court that since PW-3 had not alleged that the driver of the mini bus was driving in a rash and negligent manner the accused could not be held guilty for the offences for which he was tried and also that there was no circumstantial evidence on record so as to implicate the accused with regard to the offence for which he was charged. The State considered the judgment of the trial Court to be not sustainable at all and so sought leave of this Court to challenge the same which was granted.

6. At the time of hearing of this appeal today none appeared from the side of the acquitted accused, respondent herein and since this is an old appeal I did not consider it appropriate to defer the hearing. Accordingly, I heard the Additional Public Prosecutor Shri Sunil Sharma who took me through the prosecution evidence while submitting that the decision of the learned trial Court is perverse, palpably unreasonable and unjustified and not sustainable at all. Mr. Sharma argued that there is no doubt that PW-3 did not specifically state in his evidence that the driver of the mini bus was driving rashly and negligently, as has been observed by the learned trial Court, but since he had deposed that the mini bus had hit his scooter from behind it is clear that the bus driver must have been driving the bus rashly and negligently and at a high speed as otherwise the deceased would not have sustained such serious injuries which ultimately proved fatal only after some hours of the accident. Mr. Sharma sought to bring this case within the principle of res ipsa loquitur.

7. In my view, the decision of the learned trial Court to the effect that the prosecution could not be said to have established the charges against the accused beyond reasonable doubt, cannot be said to be perverse or unreasonable at all as has been submitted by the learned APP. PW-3 has neither claimed that the mini bus which caused the accident was being driven rashly and negligently nor that it was being driven at a fast speed by the respondent-accused. So, it cannot be presumed that just because there was an accident between the bus and the scooter the bus must have been driven at the time of the accident by its driver rashly and negligently or at a fast speed, as was the submission of the learned APP. When the learned APP was asked to show from the record as to how he was taking shelter under the principle of res ipsa loquitur and to point out the circumstances from which it could be inferred that the death of the deceased could not have been caused unless the mini bus driver was driving the bus rashly, negligently and at a fast speed the learned APP on going through the trial Court record submitted that he could not point out any such circumstance since the prosecution had not examined the person who had inspected the two vehicles involved in the accident and

so nothing could be said regarding the extent of damage caused to the scooter because of the mini bus striking against it from behind. Learned APP also submitted that the prosecution had also not examined the doctor who had medically examined the deceased when she was rushed to the hospital and so he could not even point out the nature of injuries sustained by her. When asked as to the cause of death of the deceased, the learned APP submitted that even the autopsy surgeon had not been examined by the prosecution and the post mortem report had remained unproved. Faced with this situation, learned APP very fairly submitted that in the absence of examination of these material witnesses the prosecution cannot take the advantage of the principle of res ipsa loquitur.

8. In view of the aforesaid serious flaws in the prosecution case the charges against the respondent-accused cannot be said to have been established and there is no reason whatsoever for reversing the judgment of acquittal passed by the learned Metropolitan Magistrate. Consequently this appeal filed by the State is dismissed.