

(2013) 07 DEL CK 0372

In the Delhi High Court

Case No : Criminal Revision Petition 100 of 2012

Anil Kumar

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 281, 395, 397, 401, 410
Motor Vehicles Act, 1988 — Section 133
Penal Code, 1860 (IPC) — Section 279, 304A
Probation of Offenders Act, 1958 — Section 4

Citation : (2013) 4 JCC 2847

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Kanwal Chaudhary and Petitioner in Person, for the Appellant;

Final Decision : Dismissed

Judgement

Pratibha Rani, J.

CRL. M.A. 13141/2012

1. This application has been moved on behalf of the petitioner seeking permission to address oral arguments. Prayer allowed.

2. Application stands disposed of.

Crl. Rev. P. No. 100/2012

3. Heard.

4. In this revision petition, challenge is to the order dated 18.01.2012 passed in Crl. A. No. 50/2011 whereby the learned Addl. Session Judge affirmed the judgment and order on sentence dated 17.09.2011 and 03.11.2011 respectively by the learned Trial Court vide which petitioner was convicted and sentenced for committing the offence punishable under Sections 279/304-A IPC.

5. In brief, the case of the prosecution is that on 10.04.2000 an information was received at PS Saraswati Vihar from ASI Khazan Singh of PCR regarding an accident in front of Wazir Pur Depot, which was reduced in writing vide DD No. 30-A recorded at 10.25 pm. The DD entry was assigned to SI Surjeet Singh who left for the spot alongwith Ct. Vijay Kumar.

6. On reaching the spot, he found Scooter No. DL-1S-H-8705 involved in accident with a loaded truck No. HR-38-D-7335. Finding no eye witness there and on getting the information vide DD No. 33-A that injured had been taken to Hindu Rao Hospital and was declared to be dead, he left Ct. Vijay Kumar to guard the spot and reached Hindu Rao Hospital where he collected the MLC of the victim named "Unknown", resident of "Unknown". He again returned to the spot and sent the rukka for registration of the case. He also sent a request to summon the photographer to take the photographs of the spot.

7. During investigation, he met one Goldy Narula (PW-4) who claimed himself to be an eye witness of the accident and recorded his statement as well as prepared the site plan at his instance. He sent the dead body for postmortem. He also got both the vehicles involved in the accident, mechanically inspected and after completion of investigation, filed the chargesheet.

8. During trial, twelve witnesses were examined. In his statement, the petitioner/accused stated that he was innocent and falsely implicated in this case and no such accident took place as alleged. He also stated that he was not driving the vehicle in rash and negligent manner and had nothing to do with the said offence. He preferred not to lead any evidence in his defence.

9. Learned Trial Court, after appreciating the testimony of prosecution witnesses and finding the testimony of PW-4 Goldy Narula to be reliable and trustworthy, convicted him for committing the offence punishable under Sections 279 /304-A IPC. Petitioner was sentenced u/s 279 IPC to undergo RI for six months with fine of Rs. 500/- and further u/s 304-A IPC to undergo RI for one year with fine of Rs. 1000/-. Substantive sentences were ordered to be run concurrently.

10. The petitioner filed Criminal Appeal No. 50/2011 before the Court of Session assailing the finding of guilt and the sentence awarded to him by the Trial Court. The learned Addl. Session Judge, concurring with the finding recorded by the Trial Court, dismissed the appeal observing that appellant had not challenged the cause of death. The learned Addl. Session Judge observed that he refused to join the TIP proceedings claiming that he was shown to the witnesses but failed to cross examine PW-4 Goldy Narula on this aspect. The contradictions pointed out in the testimony of prosecution witnesses were considered to be minor and insignificant thereby not affecting the trustworthiness of the prosecutions witnesses.

11. Learned Appellate Court further observed that neither in the appeal nor during the course of arguments, quantum of sentence was challenged by the appellant. Learned Addl. Session Judge was of the view that considering the

gravity and nature of offence, the sentence awarded to the petitioner/accused was just and proper calling for no interference.

12. This criminal revision petition is directed against the said order dated 18.01.2012 passed in Criminal Appeal No. 50/2011.

13. In this criminal revision petition, the impugned order has been challenged mainly on the following grounds :-

(i) The learned Trial Court as well as the Appellate Court based the conviction of the petitioner mainly on the testimony of PW-4 Goldy Narula (eye witness). Though the testimony of PW-4 Goldy Narula is not trustworthy as he was not even able to tell the time of accident, the conviction of the appellant is based on the basis of testimony of wholly unreliable witness.

(ii) From the statement of PW-3 SI Surjeet Singh, it can be inferred that he did not find any eye witness at the spot which is sufficient to bring on record that PW-4 Goldy Narula is a planted witness to solve a blind case.

(iii) During mechanical inspection, the scooter of the deceased was found to be unfit for road test whereas the truck involved in the accident was fit for road test which fact was not taken into consideration by the learned Trial Court and the Appellate Court.

(iv) The contradictions and improvements made by the prosecution witnesses go to the root of the matter, hence the same should have been taken note of and given due weightage by learned Trial court.

(v) Merely because an accident has taken place, in itself is not sufficient to infer negligence on the part of the petitioner. The petitioner is an experienced truck driver and merely because an accident has occurred, is no ground to raise presumption that it was the petitioner only who was negligent in driving his vehicle and in the given circumstances, the impugned order is liable to be set aside.

14. I have considered the submissions made by learned counsel for the petitioner who, in addition to oral submissions, has also placed on record brief written synopsis today.

15. Learned counsel for the petitioner, in his brief written synopsis, submitted that prosecution has miserably failed to prove its case beyond reasonable doubt. A blind case was solved by introducing a false witness namely Goldy Narula later on which fact can be gathered from the fact that though PW-4 Goldy Narula claimed that he informed the PCR but this fact is not corroborated by the PCR officials. Further PW-4 Goldy Narula claimed that he informed the family of the injured though injured was dead and PW-4 Goldy Narula being a stranger, could not have known the family of the deceased. Apart from that, there are other contradictions on the timings of arrival of the PCR at the spot, when he left the spot and whether he had accompanied the injured to the hospital for the reason

that the MLC does not indicate the name of PW-4 Goldy Narula in the column "Brought By".

16. On behalf of petitioner, it has been urged that the petitioner was justified in refusing to take part in TIP proceedings for the reason that his licence was seized on which his photograph was affixed and in that circumstance, when photograph of the petitioner was already with the IO and shown to the witness, there was no justification to get the TIP conducted for identification of the driver of the offending vehicle. Learned counsel for the petitioner urged that in the absence of credible evidence with regard to rash and negligent act attributable to the petitioner, the conviction and sentence being illegal are liable to be set aside and petitioner deserves to be acquitted.

17. Perused the LCR.

18. The point falling for determination is whether in the light of submissions made on behalf of petitioner, the impugned order can be termed as perverse or illegal warranting interference by this Court in exercise of revisional jurisdiction. It is well settled that concurrent findings of fact should not be generally disturbed unless it causes grave injustice. In the case of State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, , it was so held :

22. The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Session Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

23. On this aspect, it is sufficient to refer to and rely on the decision of this court in Duli Chand Vs. Delhi Administration, in which it is observed thus:-

The High Court in revision was exercising, supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned additional Sessions Judge was correct. But even so the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.

19. In the light of above principles, this Court is required to examine the correctness and illegality of the impugned order.

20. PW-4 Goldy Narula has been examined by the prosecution as an eye witness. A doubt has been tried to be created by the petitioner regarding the presence of PW-4 Goldy Narula at the spot and witnessing the accident claiming that there is nothing to corroborate his testimony that it was he who informed the PCR or accompanied the victim to hospital or how he could inform the family of the victim unless the victim was known/related to him. Here it is suffice to note that during cross examination of PW-4 Goldy Narula, the only suggestion that had been given to PW-4 Goldy Narula was that the incident did not take place in his presence and that later on he was introduced by the IO and planted as a witness.

21. The injured was taken to the hospital by the PCR which fact can be inferred from the MLC No. 4288/2000 of the deceased where the name of the injured has been recorded as "Unknown", son of "Unknown", resident of "Unknown" and brought by HC Phool Chand, 1552/PCR C-13 at about 11.00 pm with alleged history of RTA. The patient was declared "brought dead at 11.00 pm". Had it been a case of deceased being known to PW-4 Goldy Narula, he would not have been referred on the MLC No. 4288/200 as "Unknown". Further, since the victim was taken to the hospital by PCR, the doctor was not required to mention the name of all the persons accompanying the victim to the hospital.

22. The contention of the petitioner that PW-4 Goldy Narula was planted by the IO as an eye witness needs to be rejected on the ground that in that case the IO would have sent rukka on the basis of statement made by Goldy Narula.

23. PW-4 Goldy Narula has stated that he informed the PCR. The mere fact that PCR has reached the spot on receiving the information in itself corroborates his statement to that effect. Even otherwise, while informing the PCR about the accident, he was just discharging his duty as a responsible citizen and even if he preferred not to disclose his name or other particulars, it does not become a ground to disbelieve his statement. The information recorded at PCR is not available on record as it is only DD No. 30-A from PCR to PS Saraswati Vihar that has been placed on record. The petitioner could have summoned the record from the PCR in his defence if he wanted to create a doubt about the presence of PW-4 Goldy Narula at the spot, witnessing the accident and as informant to PCR. Further while refusing to take part in TIP proceedings, the petitioner never claimed to have been shown to the eye witness before producing him in muffled face in the Court. While refusing to take part in TIP proceedings, the petitioner did not state about the possibility of his being identified on the basis of his photograph appearing on the driving licence.

24. The petitioner has been duly identified by PW-4 Goldy Narula during trial as driver of the offending truck and how the occurrence has taken place. PW-4 Goldy Narula was not cross examined attributing ill motive for identifying the petitioner as the driver of the offending vehicle. It is not the case of the

petitioner that PW-4 Goldy Narula was in any way known to him or having any enmity of ill-will towards him which could be a reason for him to wrongly identify him as the driver of the offending vehicle.

25. To prove the fact that petitioner was driving the offending vehicle at the relevant time, statement of PW-6 Virender Singh, owner of the offending vehicle i.e. truck No. HR-38-D-7335 assumes significance. In his reply Ex. PW6/A to the notice u/s 133 MV Act, he informed the police about the identity of the driver of the said truck as Anil Kumar, S/o. Sh. Dhyan Singh, R/o. Village Chal, P.O. Guni, Tehsil Nadeed, District Hamir Pur (H.P.) who, on the fateful day, also came to his house and informed him about the incident. Apart from that, in the arrest memo Ex. PW3/A, name of Virender Singh, owner of the truck is mentioned as the person to whom the information of arrest of petitioner/accused was given. PW-6 Virender Singh also stood surety for the petitioner when he was released on police bail.

26. Again no suggestion has been given to PW-6 Virender Singh that petitioner was not employed as driver by him for truck No. HR-38-D-7335 or that the petitioner never visited him to inform about the accident. Otherwise also, the owner of the truck i.e. PW-6 Virender Singh could not have named a stranger as driver of his loaded truck No. HR-38-D-7335 unless it was being driven him. The photographs taken at the spot i.e. Ex. P1 to P10 reveal not only the registration number of the truck but the scooter of the victim is also shown in the photographs which was stated to be hit by the truck driven by the petitioner.

27. The mechanical inspection report of the truck Ex. PW1/A reveals that the engine, steering, clutch, accelerator and brake were found in working order and truck was fit for road test. However, the mechanical inspection report of the scooter Ex. PW1/B reveals that there was damage on the left side portion of the scooter and other parts. The engine and brake of the scooter were found to be in working order but the scooter was found unfit for road test.

28. During his examination u/s 281 CrPC, the petitioner has given his version as under :-

I am innocent and falsely implicated in this case and no such accident took place from me as alleged and I was not driving the vehicle in rash and negligence manner. All the witness have deposed falsely against me. I have nothing to do with the said offence. I do not want to lead the defence evidence

29. The petitioner has taken contradictory stands about the fact whether he was driving the offending truck or not and if so whether the circumstances in which the accident has taken place, are attributable to him or not. While no suggestion has been given to PW-4 Goldy Narula, the eye witness that the petitioner was not driving the truck No. HR-38-D-7335 which caused this accident, PW-6 Virender Singh, owner of the truck No. HR-38-D-7335 has been cross examined only to the following effect :-

It is wrong to suggest that vehicle bearing No. HR-38-D-7335 was not being driven by accused Anil Kumar on 10.11.2004 and I had given the name of accused Anil Kumar just to release my truck on superdari from police station. It is wrong to suggest that I am deposing falsely.

30. Contrary to this, ground (H) taken by the petitioner in the revision petition, reads as :-

H. Because the alleged unfortunate incident occurred with the vehicle of the petitioner undisputedly during the course of his work of the nature of driving a vehicle for transporting goods from place to place and taking place of any unfortunate incident with the vehicle of the petitioner cannot be solely due to alleged negligence of the petitioner rather.

31. Further ground (I) taken by the petitioner contains his admission with the plea of contributory negligence which was not the case of petitioner during trial. Ground (I) reads as :-

I. Because the petitioner himself is also suffering rigorous trial for the last about 13 years and a lenient view must have been taken looking towards the poor petitioner, who has only one source of livelihood by driving the truck and the alleged mis-fortune incident occurred due to the contributory negligence of both sides and no presumption must have been taken that it was the petitioner only who was negligent in driving his vehicle.

32. Thus, the petitioner himself has admitted the factum of driving the offending truck No. HR-38-D-7335 which hit scooter No. DL-1-S-H-8705 driven by the deceased. As per the MLC No. 4288/2000 of the victim, he was brought to Hindu Rao Hospital at 11.00 pm with alleged history of RTA and was declared "brought dead". The postmortem report of the deceased shows the cause of death as due to hemorrhage and shock consequent to multiple injuries which were caused by blunt force impact against hard surface/object and that all the injuries were antemortem and recent in duration.

33. Testimony of PW-4 Goldy Narula to the effect that while he was going on his scooter No. DL-4J-4680 on Ring Road, one truck bearing No. HR-38-D-7335 passed at a very high speed and struck against the scooter going ahead of him and that the scooterist was dragged for a long distance by the truck proved that it was truck No. HR-38-D-7335 driven by the petitioner that hit the scooter of the deceased. The truck driven by the petitioner, which had no mechanical defect and was roadworthy, would not have dashed against the scooter of the deceased and caused his death unless the vehicle had been driven rashly and/or negligently. The factum of the petitioner driving the truck No. HR-38-D-7335 though initially denied, duly stands established during trial and thereafter admitted by him in the grounds (H) and (I) of the revision petition extracted above. He has failed to bring on record either during cross examination of PW-4 Goldy Narula or by leading defence evidence any of the circumstances in which he happened to hit the scooter of the deceased Vinod Malhotra and caused his death. The

postmortem report of the deceased Vinod Malhotra also proves the cause of death as due to hemorrhage and shock consequent to multiple injuries which were caused by blunt force impact against hard surface/object.

34. In the case of Ravi Kapur Vs. State of Rajasthan, the Supreme Court has considered in detail as to what is rash and negligent driving and also held that doctrine of *res ipsa loquitur* is applicable even in criminal cases and can be applied only when the accident is proved or admitted.

35. In the case of State of Karnataka Vs. Appa Balu Ingale and others, it was held that ordinarily it is not open for the High Court to interfere with the concurrent findings of the courts below specially by re-appreciating the evidence in its revisional jurisdiction.

36. In view of the above abundant evidence brought on record, the prosecution has been able to establish all the ingredients required to prove the offence punishable u/s 279 /304-A IPC. The concurrent findings recorded by the Courts below is neither perverse nor illegal warranting any interference.

37. On perusal of the impugned judgment, I find that no jurisdictional error has been committed by the Courts below.

38. The Appellate Court has observed that neither in appeal nor during the course of arguments, the appellant had challenged the quantum of sentence awarded by learned Trial Court. However, while arguing the revision petition, learned counsel for the petitioner prayed for reduction of sentence.

39. In the case of State of Punjab vs. Balwinder Singh & Ors. 2012 I AD (Cri) (SC) 629, the Supreme Court laid down the principles to be considered while dealing with quantum of sentence as discussed in the case of Dalbir Singh Vs. State of Haryana, and B. Nagabhushanam Vs. State of Karnataka, which are reiterated as under :-

8. Even a decade ago, considering the galloping trend in road accidents in India and its devastating consequences, this Court in Dalbir Singh Vs. State of Haryana, held that, 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. The following principles laid down in that decision are very relevant:

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 304A Indian Penal Code as attracting the benevolent provisions of Section 4 of the Probation of Offenders 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. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, 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.

9. The same principles have been reiterated in *B. Nagabhushanam Vs. State of Karnataka*, .

40. Keeping in view the facts and circumstances of the case and the substantive sentence i.e. rigorous imprisonment of one year awarded to the petitioner for committing the offence punishable u/s 304-A IPC, the same cannot be termed as irrational and harsh, thus no interference is called for on this count also.

41. In view of the foregoing reasons, the revision petition is hereby dismissed.

42. The petitioner was released on bail vide order dated 27.02.2012 passed in CrI.M.B. No. 392/2012 till the disposal of this revision petition. Fine has already been deposited by the petitioner. Since the revision petition has been dismissed, the petitioner is directed to surrender before the concerned Court on 15.07.2013 to undergo the remaining part of the sentence. In case the petitioner fails to surrender on the due date, the concerned Court will take necessary steps to procure his presence and commit him to Jail to undergo the remaining sentence. Registry is directed to send back the LCR immediately alongwith copy of this order.