

(2015) 03 DEL CK 0360
In the Delhi High Court
Case No : Criminal Rev. P. No. 765 of 2006

Hem Singh

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 313
Penal Code, 1860 (IPC) — Section 279, 304-A, 337

Citation : (2015) 2 JCC 1201 : (2015) 3 RCR(Criminal) 1008

Hon'ble Judges : P.S. Teji, J

Bench : Single Bench

Advocate : Mohinder Madan, for the Appellant; P.K. Mishra, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.S. Teji, J.—Aggrieved by the order on conviction dated 14.10.2004 and the order on sentence dated 18.04.2006 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for a period of three months and fine of Rs. 500/- under Section 279 IPC, in default of payment of fine to further undergo simple imprisonment for a period of five days; to undergo rigorous imprisonment for a period of four months and fine of Rs. 500/- under Section 337 IPC, in default to further undergo simple imprisonment for a period of five days; to undergo rigorous imprisonment for a period of four months and fine of Rs. 500/- under Section 304-A IPC, in default to further undergo simple imprisonment for a period of five days and upholding the same by the learned Additional Sessions Judge vide judgment dated 16.09.2006, the present revision petition has been filed by the petitioner. Factual matrix, as emerges from the record, is that on the fateful day of 07.10.1992 at about 11.30 p.m., an accident had taken place on the red light at Shanti Van Chowk. The vehicle involved in the accident was a matador bearing registration No. HR-05 A-4823. In the accident, one Satish, the scooterist sustained simple injuries and one Smt. Sudesh, the pillion rider, died. The case of

the prosecution was that at the time of accident, the petitioner was driving the matador rashly and negligently which resulted into accident and snatched a life apart from causing injuries to Satish. An FIR of the case was recorded. On completion of investigation, charge-sheet was filed.

2. Notice under Section 251 Cr.P.C. was served upon the petitioner for commission of offence punishable under Section 279, 337 and 304-A IPC. The petitioner pleaded not guilty to the notice served.

3. To prove its case, the prosecution examined 12 witnesses. After conclusion of prosecution evidence, the statement of the petitioner was recorded under Section 313 Cr.P.C. in which he had claimed innocence. The petitioner did not opt to lead any evidence in his defence. The learned Metropolitan Magistrate vide judgment dated 14.10.2004 held the petitioner guilty for the offence punishable under Section 279, 337 and 304-A IPC and convicted him for the said offences. The order on sentence was passed on 18.04.2006.

4. Thereafter, the petitioner filed an appeal bearing Criminal Appeal No. 09/2006. The learned Additional Sessions Judge vide order dated 16.09.2006 confirmed the conviction of the petitioner as well as sentence of imprisonment awarded to him.

5. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the orders rendered by the Courts below and claiming acquittal.

6. Argument advanced by the learned counsel for the petitioner is that rash and negligent driving has not been established. At the time of incident, petitioner was crossing Shanti Van Chowk when the traffic signal was green, whereas the scooterist was crossing the Chowk on red signal and collided with the tempo. The prosecution case is based on sole testimony of PW 1 Satish Sharma and there is no independent witness to prove the prosecution case.

7. There is no basis in this contention of the learned counsel for the petitioner inasmuch as injured/eye witness Satish Sharma (PW 1) had specifically stated that on 07.10.1992, while coming from Krishna Nagar, at about 11.30 p.m., reached Shanti Van Chowk; it was green light and took turn to the side of Darya Ganj; the offending vehicle driven by the petitioner came from Raj Ghat side at a high speed and hit the scooter of the injured, who suffered injuries and his wife sustained grievous injury succumbing to her injuries on 11.10.1992 at LNJP Hospital.

8. Hon"ble Apex Court is of the considered view in case of *Mano Dutt and Another Vs. State of U.P.*, (2012) 2 RCR(Criminal) 798 : (2012) 3 SCALE 219 : (2012) 4 SCC 79 that the evidence of a injured witness is generally considered to be very reliable as he is the witness to the occurrence and himself received injuries in the incident. Relevant portion from the judgment reads as under:

".....Normally, an injured witness would enjoy greater credibility because he is

the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal jurisprudence is no more *res Integra*, as has been consistently stated by this Court in uniform language."

9. The trial Court record does not give any reason to disbelieve the testimony of PW 1 Satish Sharma in view of the aforesaid judgment in case of *Mano Dutt* (*supra*).

10. Apart from the unimpeached and credible testimony of PW 1 Satish Sharma passing the test of cross-examination, the other corroborative evidence is the MLC of injured (PW 1), post mortem report Ex. PW 12/A and mechanical inspection reports Ex. PW 10/H and Ex. PW 10/J of scooter and matador respectively. There is enough evidence against the petitioner in the form of testimony of the injured eye witness Satish Sharma (PW 1) that the tempo driven by the petitioner hit the scooter on which he along with his deceased wife was riding. He identified the petitioner as driver of the offending tempo and categorically stated the petitioner was driving the tempo at a high speed and hit the scooter. The petitioner has not even disputed the presence of this witness at the spot at the time of incident but claimed that he was not rash and negligent. There is no reason to disbelieve the testimony of injured eye witness (PW 1) which established the rash and negligent driving of the petitioner causing the death of his wife. PW 4 Satish Hans, owner of the offending tempo bearing No. HR 05A 4823 further corroborated the prosecution case that he was owner of the tempo; tempo was the case property; same was got released on superdari and further corroborated the driving of the offending vehicle by the that the petitioner at the time of incident.

11. The judgment relied upon by the petitioner in case of *Devender Vs. State*, (2011) 10 AD 113 : (2011) 185 DLT 655 : (2012) 1 ILR Delhi 299 shows the essential ingredients to constitute an offence punishable under Section 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 under Section 304-A IPC, the act of accused must be rash and negligent which should be responsible for the death. The judgments in the case of *Mohd Hanif and Anr. v. Himachal Pradesh Road Transport Corporation, Bilaspur* and Ors. 20001 AD (Delhi) 101 and *Mohammed Aynuddin @ Miyam Vs. State of Andhra Pradesh*, (2000) 2 ACC 360 : (2001) ACJ 13 : AIR 2000 SC 2511 : (2000) CriLJ 3508 : (2000) 8 JT 317 : (2000) 5 SCALE 311 : (2000) 7 SCC 72 : (2000) 2 SCR 15 Supp : (2000) 2 UJ 1152 : (2000) AIRSCW 2679 : (2000) 5 Supreme 308 are also on the similar proposition of law. In the present case, it has been established by the prosecution that on the fateful day, Satish Sharma (PW 1) along with his wife was coming on his scooter from Krishna Nagar and at about 11.30 p.m. when they reached Shanti Van Chowk, a

tempo came from Raj Ghat side at a high speed and hit the scooter. The tempo was being driven by the petitioner on the fateful day. Witness Satish Hans (PW 4), owner of the offending tempo bearing No. HR 05A 4823 further corroborated the prosecution case that he was owner of the tempo and the same was the case property which was got released on superdari. It was also corroborated from the testimony of PW 4 that the petitioner was driving the tempo on the day of incident. The testimony of the injured eye witness found to be reliable and trustworthy. In the above mentioned set of evidence, the circumstances were sufficient enough to establish that the petitioner had been driving the tempo No. HR 05A 4823 in a rash and negligent manner.

12. The argument advanced by the learned counsel for the petitioner that the rash and negligent driving has not been established by any independent witness and reliance on the judgments Devender (supra), Mohd. Hanif (supra) and Mohammed Aynuddin (supra) are without any basis.

13. In view of discussion made above, the conviction of the petitioner under Section 279, 337 and 304-A IPC is upheld.

14. The submission made by the learned counsel for the petitioner on the quantum of sentence in the present case is that the incident had taken place on 07.10.1992; charge sheet was filed on 27.01.1993; judgment of conviction was passed by learned MM on 14.10.2004; order on sentence was passed on 18.04.2006; learned Additional Sessions Judge passed the judgment on 16.09.2006 and presently we are in the year 2015; the petitioner has suffered the agony of the proceedings for about 23 years and is the only bread earner of the family.

15. The sentence awarded would be excessive in the facts and circumstances and the principle of natural justice demands the modification of the sentence awarded by the Courts below as after the period of 23 years, sending back the petitioner behind the bar would not serve any purpose. Accordingly, the sentence of imprisonment is modified to the period already undergone by the petitioner, subject to enhancement of fine from Rs. 500/- to Rs. 20,000/- for offence under Section 304-A IPC, in default the petitioner shall undergo simple imprisonment for four months and the adjustment of fine already paid. Fine realised be paid to the victim Satish Sharma, happened to be husband of the deceased.

16. The petitioner shall appear before the Chief Metropolitan Magistrate (North) within the period of one month from the date of order to pay the remaining fine, failing to which surrender to serve the sentence in default of payment of fine. The present revision petition is disposed of accordingly. File of the trial court be sent back.