
(2012) 05 DEL CK 0595

In the Delhi High Court

Case No : Criminal Rev. P. No. 116 of 2012 and Criminal M.A. No. 431 of 2012

Om Prakash

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Motor Vehicles Act, 1988 — Section 133

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

Citation : (2012) 3 JCC 2207

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Arunabh C. and Mr. Ashish Jha, for the Appellant; M.N. Dudeja, APP., for the Respondent

Judgement

M.L. Mehta, J.—The present revision petition has been filed u/s 397 Cr.P.C read with Section 401 Cr.P.C. assailing the judgment and order dated 20.1.2012 passed by the learned ASJ whereby the order passed by learned MM on 26.8.2011 convicting the petitioner u/s 279/304A IPC was upheld. The petitioner was charged under the abovementioned sections for causing death of one Ashok Kumar by crushing him under the rear wheels of the bus bearing registration No.DL 1P 0866 which was being driven by the petitioner on 06.08.1998. It was the case of the prosecution that on the relevant day at about 5.15 P.M. the deceased was waiting for a bus at the Nanakpura Gurudwara Bus Stand on Ring Road and boarded the offending bus from the front door, but the petitioner accelerated the bus with a jerk which resulted in the loss of balance by the deceased due to which he fell down from the bus and his legs were crushed by the rear wheels of the bus. The petitioner then fled away from the spot along with the offending bus. The victim was removed to the Safdarjung Hospital by his brother and the information regarding the accident was conveyed to the Nanakpura Police Station vide DD No.28. The Investigating Officer (PW-10) reached the hospital and recorded the statement of the victim which formed part

of the evidence vide Exhibit PW-10/B. The victim passed away on the following day. The Investigating Officer prepared the site plan of the accidental spot with the help of two eye witnesses, Dinesh Kumar (PW-2) and Daya Chand (PW-4) and recorded their statements. After completion of investigation, the charge sheet was filed by the police. Prosecution examined 12 witnesses to prove its case and based on material evidence and testimonies of the eye witnesses, the trial Court as well as Appellate Court found the petitioner guilty under the above mentioned Sections. Hence, the present appeal.

2. The counsel for the petitioner contends that the impugned judgment of the Appellate Court suffers from illegality and is based on assumptions and surmises. It has been contended that the testimony of the eye witnesses have been wrongly relied upon by the trial Court as well as the Appellate Court because they were acquainted with the deceased prior to the incident and were interested witnesses. It has been further submitted by the counsel for the petitioner that the prosecution has not been able to establish the element of negligence and rashness to nail the culpability of the petitioner and hence the impugned judgment deserves to be set aside.

3. Per contra, the learned APP for the State has submitted that the judgment of the trial Court as well as Appellate Court are based on well founded reasons and cogent testimonies of the eye witnesses and the dying declaration of the deceased himself and should not be interfered with.

4. I have heard the rival submissions and perused the impugned judgments.

5. The fact of the deceased's death due to hemorrhagic shock following blunt injuries on legs caused due to road accident has been amply established vide the post mortem report(Ex.PW 5/A). It has been also proved that at the time of the accident the petitioner was on the wheels of the offending bus through the testimonies of the eye witnesses (PW 2 and PW 4) who were standing at the bus stop where the accident took place and identified the petitioner as the driver of the bus in the trial Court. The owner of the bus Rakesh Verma upon receiving a notice u/s 133 of Motor Vehicles Act also confirmed the petitioner to be the driver of the offending bus at the relevant time. In addition to this, the testimony of PW 2 Daya Chand also reveals that the offending bus was followed by another bus and the driver of the other bus also verified the identity of the petitioner as the driver of the offending bus. This fact has also not been contested by the defense at any stage of the proceeding.

6. The only question that now remains to be answered is that whether the petitioner was driving the bus in such a callous fashion that it resulted in the death of the victim or not. For this purpose, it is pertinent to take note of the testimony of the eye witnesses and the dying declaration of the deceased. According to the statement recorded by the police and testimony given in the Court, PW 2 and PW4 have categorically established the sequence of events that unfolded on the fateful day. It has been stated that the deceased had boarded

the bus from the front door and was in the process of moving further inside the bus when the petitioner suddenly started the bus with a jerk which resulted in the loosening of the grip of the deceased on the bar and therefore he fell down. It has been further testified that on witnessing this, the people raised an alarm but instead of stopping the bus, the petitioner continued accelerating its speed and within seconds the deceased's legs were crushed under the rear wheels of the bus. The statement given by the victim to the investigating officer (which was later rightly treated as dying declaration) in the hospital is completely identical to the testimony of the eye witnesses and there is no reason whatsoever to discard it.

7. The petitioner being seated in the driver's seat could easily view the persons boarding the bus from the front door. Had he not been negligent, he would have waited for all the passengers to safely get inside the bus before moving. It is not acceptable that he did not come to know that a person had fallen from the door of the bus in spite of the alarm raised by the people standing at the bus stop. But, he was so negligent and callous that he did not stop the bus and almost immediately advanced the bus and consequently the deceased came under its rear wheels. The fact that the petitioner fled from the spot along with the offending bus after having caused such a tragic accident adds weight to the fact that he threw caution to the winds while driving the bus. These facts further negate the submission of the learned counsel for the petitioner that the rashness and negligence of the petitioner has not been proved by the prosecution.

8. Also the contention of the learned counsel for the petitioner that the testimony of the eye witnesses, as they knew the deceased prior to the accident is untenable as nothing has been brought on record to indicate any malice of the eye witnesses with the petitioner that would prompt them to falsely implicate them. Moreover, the statements of the eye witnesses have been corroborated by the dying declaration of the deceased and other evidence on record.

9. Consequently, I am of the opinion that the trial Court as well as the Appellate Court had rightly arrived at the conclusion that the petitioner was utterly rash and negligent while driving the offending bus and as a result of his such driving, a man in his prime lost his life. However, in view of the mitigating factors such as the petitioner being the sole bread winner of his family and having suffered the agony of a lengthy trial, I am of the opinion that the ends of justice would be met by reducing the sentence to a period of one year u/s 304-A IPC. Thus while maintaining the conviction u/s 304-A IPC, the petitioner is sentenced to SI of one year.