
(2012) 10 DEL CK 0307
In the Delhi High Court
Case No : Criminal Rev. P. 535 of 2012

Shahid Khan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

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

Citation : (2013) 1 JCC 189

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

Bench : Single Bench

Advocate : Gaurav Malhotra, for the Appellant; M.N. Dudeja, APP for the State, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—With the consent of the counsel for the petitioner and Additional Public Prosecutor this revision petition has been heard finally today itself. This revision petition has been filed by the petitioner-convict against the judgment dated 10th September, 2012 passed by the learned Additional Sessions Judge whereby he has affirmed the judgment of the learned Metropolitan Magistrate convicting him under Sections 279 /304-A IPC as also the sentence awarded to him.

2. The petitioner-convict is alleged to have caused the death of one R.B.L. Saxena on 25th March, 2001 by causing an accident while driving Maruti car no. DL-4C-N-0636, owned by PW-3, in a rash and negligent manner. It was alleged against him by the prosecution that he had hit the car which he was driving against the scooter no. DL-4S-D-3652 driven by the deceased R.B.L. Saxena, who died due to the injury suffered by him in that accident.

3. Before the trial Court the petitioner-convict had denied that he was driving the above referred car on the date of incident. The prosecution had sought to establish his identity as a driver of the Maruti car on the basis of statement made

by its owner PW-3, Rajvinder Singh, who had claimed that on the date of incident his aforesaid car was in possession of the petitioner-convict. Though there was an eye-witness also of the accident, PW-10 ASI Balbir but he had only deposed about the accident and not about the identity of the petitioner-convict as the driver of the Maruti car which had caused the accident. The learned trial Court, however, convicted the petitioner on the basis of the statement of owner of the car to the effect that on the date of accident his car was in possession of the petitioner.

4. The Appellate Court also accepted the findings of the learned trial Court and maintained the petitioner's conviction.

5. The only point urged before this Court by the Learned Counsel for the petitioner was that since there was no direct evidence against the petitioner adduced by the prosecution to show that he was driving the Maruti car involved in the accident he should not have been convicted merely on the statement made by the owner of the car that his car was in possession of the petitioner on the date of accident. In support of this argument Learned Counsel for the petitioner has placed reliance on a decision of this Court in Sh. Jagdish Prasad Vs. State (Govt. of NCT of Delhi), .

6. Learned Additional Public Prosecutor very fairly submitted that the sole eye witness of the accident did not claim the petitioner to be driver of the car involved in the accident and there was no other direct evidence to establish his identity.

7. In the judgment cited by the counsel for the petitioner almost under similar circumstances this Court had acquitted the accused who had been convicted under Sections 279 /304-A IPC only on the basis of a similar statement made by the owner of the offending vehicle to the effect that at the time of accident the offending vehicle was being driven by the accused. this Court had held that only on the basis of the said claim of the owner of the offending vehicle the accused could not have been convicted and further that the possibility of the vehicle owner himself being involved in the accident and to avoid his own prosecution his naming the accused as the driver could not be ruled out.

8. In my view, the said decision of this Court applies squarely to the facts of the present case. Merely on the basis of the statement of the owner of the offending car that on the date of the accident his car was with the petitioner he could not be held guilty. As far as the sole eye witness of the accident is concerned he clearly had claimed that he could not see the driver of the car as he had fled away with the car.

9. This revision petition, therefore, deserves to be allowed and it is allowed. The judgment of the trial Court as well as of learned Additional Sessions Judge holding the petitioner-convict guilty of the offences under Sections 279 /304-A IPC are set aside and the petitioner is acquitted. Presently he is stated to be lodged in jail serving out sentence of imprisonment after dismissal of his appeal.

He is now ordered to be released from there forthwith. With the acquittal of the petitioner Crl. M.B. 1730/2012 filed by the petitioner for the suspension of his sentence has become infructuous and so it stands disposed of accordingly.