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Court : Delhi

Decided On : Nov-19-2015

Judge : Ashutosh Kumar

Appeal No. : CRL.REV.P. 45 of 2009

Appellant : Nanak Chand

Respondent : The State

Judgement :

Oral:

1. Nanak Chand was convicted by the learned Trial court in connection with FIR No.84/1995 for the offences under Sections 279/304-A of the IPC and was sentenced to undergo RI for 6 months for the offence under Section 279 IPC and RI for 1 years for offence under Section 304-A IPC. Both the sentences were directed to run concurrently vide judgment and order dated 11.03.2005.

2. Nanak Chand preferred an appeal against the aforesaid judgment and order of conviction and sentence before the Court of the learned District Judge, New Delhi, in Criminal Appeal No.42/2005. The Appellate Court, while maintaining the conviction under both the counts, modified the sentence imposed for the offence under Section 304-A IPC to 1 year from 1 years. The sentence imposed for offence under section 279 of the IPC was not interfered with.

3. Hence, the revision petition.

4. An accident had taken place on 24.02.1995 wherein one Uma Shankar was hit by a half truck bearing registration no.HR-26-4302 which was being driven by the petitioner. It is the case of the prosecution that while Uma Shankar along with his cousin Neeraj Kumar (PW.4) was coming from Okhala, Uma Shankar was hit near red light by the offending vehicle which was being driven in a rash and negligent manner by the petitioner.

5. On the information regarding the accident on the road, DD No.10 was recorded. Thereafter Head Constable Jagat Singh (PW.8) along with Constable Maninder (PW.5) reached the place of accident. At the place where the accident took place, the half body of the truck was found parked. It was learnt by the police personnel that the injured was taken to Holy Family Hospital for treatment. In the meantime, DD No.12 was also received regarding admission of the injured at the hospital.

6. On such information, HC Jagat Singh (PW.8) proceeded to the hospital and obtained the MLC (Ex.PW.8/B) of Uma Shankar. The MLC disclosed that Uma Shankar was declared brought dead'.

7. On the statement of Neeraj Kumar (PW.4) (Ex.PW.4/A), First Information Report namely FIR No.84/1995 (PS Badar pur) was registered for offences under Sections 279/304A of the IPC against the petitioner.

8. The prosecution has examined 9 witnesses on its behalf to bring home charges of rash and negligent driving against the petitioner which led to the accident and consequent death of the deceased.

9. Neeraj Kumar, a cousin of the deceased (PW.4), is the only eye-witness to the occurrence. He has deposed before the Trial Court that on 24.02.1995, while he along with the deceased was coming from Okhala, the deceased was hit by the offending truck. He himself claims to have been thrown away by the impact and became unconscious. The deceased was also hit by the vehicle and he was dragged to a long distance before the vehicle slowed down and stopped. After regaining consciousness, PW.4 took the injured to the Holy Family Hospital for

treatment on a Three-wheeler scooter. The police had met him for the first time in the hospital. He has stated in categorical terms that he saw that the offending truck hit his brother from the left side and his brother was dragged to some distance.

10. Dr.P. Mileo (PW.9), Senior Resident in the Department of Forensic Medicine, AIIMS, has deposed before the Court that the post-mortem report of the deceased was prepared by Dr.Vishwanath Yadav who has left the hospital and his whereabouts are not known. PW.9 has identified the signature of Dr.Vishwanath Yadav. The post-mortem report is Ex.PW.9/A. The cause of death, according to the post-mortem report, is haemorrhagic shock resulting from internal haemorrhage produced by hard blunt force which is possible in a road accident.

11. From the deposition of PW.4 and PW.9, it stands established that the deceased died because of the accident and that the death was the result of the injuries suffered by the deceased on account of the accident. The deposition of PW.4 further establishes the fact that the offending vehicle was being driven in a rash and negligent manner. The very fact that deceased was dragged to some distance before the vehicle slowed down is an evidence to suggest that the vehicle was being driven rashly.

12. Constable Maninder (PW.5) has deposed that on 24.02.1996, on receiving a call regarding the accident at Noida turning, Mathura Road crossing, he went to Okhala tank and handed over the DD to HC Jagat Singh (PW.8) who was present there. Thereafter, he and PW.8, both, went to the spot. They found a truck bearing registration no. HR 26 4302 parked there. A crowd had also collected at the place of occurrence. It was only at that place that he and PW.8 came to learn about the injured having been shifted to Holy Family Hospital. The aforesaid witness has testified to the fact that the petitioner was arrested at the spot and his driving license was seized (seizure memo Ex.PW.5/A). The offending vehicle was also seized at the spot. (seizure memo Ex.PW.5/B).

13. HC Jagat Singh (PW.8) is the IO of the case. He has deposed that he met PW.4 at the hospital and recorded his statement. After making an endorsement over the statement made by PW.4, he handed it over to Ct. Maninder (PW.5) for

taking it to the police for registration of the case. Site plan (Ex.PW.8/B) was prepared by him with the assistance of Neeraj Kumar (PW.4). He has also confirmed the fact that the petitioner was arrested at the spot and his personal search was conducted. The vehicle was seized. The driving license of the petitioner was also seized.

14. The petitioner was arrested from the spot, which fact stands proved by the deposition of Neeraj Kumar (PW.4), Ct. Maninder (PW.5) and IO of the case, Jagat Singh (PW.8).

15. The petitioner, in his statement under section 313 Cr.P.C. has also admitted that he was driving the truck at the time of the accident.

16. It has been submitted on behalf of the petitioner that his conviction is solely based on the testimony of PW.4, the lone eye-witness to the occurrence. The deposition of PW.4, it has been argued, is replete with material inconsistencies which only prove the fact that either he has falsely deposed before the court or has not seen the accident. It has further been argued that the statement of PW.4 is not worth accepting as he has stated that the offending vehicle hit him as well but there does not appear to be any injury report regarding him on record. PW.4 has also stated that after the vehicle hit him, he became unconscious for some time. He could regain consciousness only when some passersby sprinkled water on his face.17. The aforesaid submissions on behalf of the petitioner has been noted only to be rejected. There was a long time gap between the examination-in-chief and the cross-examination of PW.4. There does not appear to be any serious anomaly or contradiction in the statement of PW.4. The record of the Holy Family Hospital as well as DD no.12, both, demonstrate that the deceased was brought to the hospital by PW.4. The DD was recorded at 12:25 p.m. whereas the accident took place at 11:50 a.m.

18. It has, next been contended by the petitioner that there is nothing on record to suggest that the petitioner was driving the offending vehicle in a rash and negligent manner. The statement of PW.4 has been read out in detail during the course of the arguments and it was pointed out that but for a bald statement that the vehicle was being driven rashly, nothing else has been stated to lend credence

to such an allegation.

19. Learned counsel for the State, on the other hand, pointed to the site plan (Ex.PW.8/B) which clearly reveals that the accident took place at the corner of the road, way behind the crossing. The situs of the accident makes it very obvious that the vehicle had swerved to the left flank of the road leading to the accident. The fact that the deceased was dragged to some distance is further indicative of the fact that the vehicle was being driven in a rash manner and at a high speed.

20. On a careful consideration of the rival submissions, it becomes very clear that Uma Shankar, the deceased, died out of the accident caused by offending vehicle which was being driven in a rash and negligent manner by the petitioner.

21. Thus, the conviction of the petitioner under Sections 279/304-A of the IPC is justified.

22. However, considering the fact that the accident took place in the year 1995 i.e. 20 years ago, this Court finds it difficult to maintain the sentence imposed upon the petitioner. Though a court of law ought not to be only guided by the fact as to what would happen to the family of a convicted person if he is sent to jail but it should also not be over zealous in imparting heavy sentence in order to demonstrate that wrongdoer cannot be allowed to go off lightly.

23. Sentencing a convict is a serious business and there can be no cavil on the proposition that the sentence has to be in proportion to the crime and the circumstance in which it was committed. The reformative approach, while undertaking the sentencing process, has more often than not, been adopted in cases of this kind. This is not only in tune with social/humane considerations and requirements but is also aimed at making a convict an important adjunct of society, who is to render useful service to particularly members of his family and society at large.

24. A just punishment is the collective cry of the society. However, the principle of proportionality between crime and punishment and the principle of just punishment can also not be overlooked and brushed aside lightly.

25. A very important consideration in the present case is whether the petitioner should be sent to jail after 20 years of the occurrence. The conduct of the petitioner in the intervening period namely his participation in the trial and his not involving himself in any other crime would be relevant considerations for deciding about the quantum of sentence to be imposed upon the petitioner.

26. From the nominal roll, it appears that the petitioner has remained in jail for less than a month.

27. However, for the aforesaid reasons, this Court is of the opinion that instead of sending the petitioner to jail now after 20 years, it would be more fruitful if the petitioner is made to pay a fine of Rs.25,000/- to the next kith and kin of the deceased. The quantum of fine has been assessed by this Court on the statement of the petitioner that he is 60 years of age, has a large family to maintain and presently he is without any job.

28. Thus, while maintaining the conviction, the sentence imposed upon the petitioner is reduced and modified to the period of custody which he has already undergone and a fine of Rs.25,000/-. For the purposes of realisation of the fine, the case would be listed before the learned Trial Court in the first week of January, 2016. The Trial Court shall issue notice to the PW.4, the informant and cousin of the deceased to know about surviving heirs of the deceased. After the heir or next kith and kin of the deceased is identified, the petitioner would be directed to pay the amount of Rs.25,000/- to such surviving heirs of the deceased.

29. The revision petition is partially allowed and disposed of in terms of the above.

30. Let copies of the judgment be transmitted to the Superintendant of the concerned jail and the Trial Court for information, record and compliance.

31. TCR be also sent back forthwith.

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