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Pankaj Bhadana vs.state

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Court : Delhi

Decided On : May-14-2018

Appellant : Pankaj Bhadana

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

21. t MARCH, 2018 DECIDED ON :

14. h MAY, 2018 CRL.REV.P. 606/2012 PANKAJ BHADANA .....

... Petitioner
Through : Mr.Pawan K.Bahl with Mr.Ajay Bidhuri, Advocates. versus STATE Through : Ms.Radhika Kolluru, APP. SI Naveen, PS Contt.Place. ..... Respondent CORAM: HON'BLE MR. JUSTICE S.P.GARG + S.P.GARG, J.

1. Present revision petition has been preferred by the petitioner - Pankaj Bhadana to challenge the legality and correctness of a judgment dated 21.09.2012 of learned Addl. Sessions Judge in Crl.A.No.38/2012 endorsing the findings of the learned Metropolitan Magistrate convicting him for commission of offences punishable under Sections 279/304A IPC by a judgment dated 25.04.2011. By an order dated 18.05.2012, he was sentenced to undergo SI for twelve months with fine `1,000/- under Section 304A IPC and SI for three months under Section 279 IPC. Both the sentences were to operate concurrently. Crl.Rev.P.606/2012 Page 1

of 9 2. The prosecution case as reflected in the charge-sheet was that on 18.02.1995 at around 07.00 p.m. in front of bus stop near Kailash Building, K.G.Marg, the petitioner while driving the vehicle DL1 3590 in a rash and negligent manner inflicted injuries to the victim S.K.Setia who expired subsequently. Daily Diary (DD) No.26A came to be recorded at Police Station Connaught Place on 18.02.1995. The investigation was assigned to SI Jawahar Singh who along with Const.Dhan Singh went to the spot. After recording statement of Const.Laxman Singh, the Investigating Officer lodged First Information Report. The victim was taken to RML Hospital for treatment. On 25.02.1995, the victim was shifted to Ganga Ram Hospital where he expired. Post-mortem examination on the body was conducted. Statements of the witnesses conversant with facts were recorded. Upon completion of investigation, a charge-sheet was filed against the petitioner in the Court for commission of the offences mentioned previously. The trial resulted in conviction. The appeal preferred by him was also dismissed.

3. I have heard the learned counsel for the parties and have examined the file.

... Petitioner
s counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into error in recording conviction on the sole testimony of two police officials whose presence at the spot could not be established. None of these police officials informed the PCR; took the injured to the hospital. No DD entry regarding their being on patrolling duty at the relevant time has been produced on record. It was further urged that the victim had got discharge from RML Hospital against medical Crl.Rev.P.606/2012 Page 2 of 9 advice. Victims cause of death at Ganga Ram Hospital is doubtful. It was further urged that the petitioner has suffered trial for more than 20 years and has remained in custody for certain duration; he deserves leniency. Learned APP urged that no valid or sound reasons exist to disbelieve the testimonies of the police officials who were present at the spot and had witnessed the accident.

4. The accident causing fatal injuries to the victim took place on 18.02.1995 at around 07.00 p.m. The victim was taken to RML Hospital promptly and medically examined vide MLC (Ex.PW- 5/A). The MLC records the arrival time of the patient

as 07.10 p.m.; and the alleged history as RTA. The victim had sustained grievous injuries on various body parts and he remained unfit to make statement. Finally, he was discharged on 25.02.1995 for RML Hospital and was taken to Ganga Ram Hospital where he died that day itself.

5. The FIR was lodged on the statement (Ex.PW-2/A) of HC Laxman Singh. In the statement, the complainant gave detailed account as to how and in what manner, the petitioner while driving the vehicle No.DL1 3590 in rash and negligent manner inflicted injuries to a pedestrian waiting for a bus at the bus stop. The rukka was sent by the Investigating Officer at 07.20 p.m. that day. Since the rukka was dispatched without any delay and the involvement of the petitioner emerged in the statement (Ex.PW-2/A), where he was named and specific role attributed to him, there was least possibility for the investigating agency to concoct a false story in such a short period. Crl.Rev.P.606/2012 Page 3 of 9 6. Presence of the complainant HC Laxman Singh along with Const. Dev Kumar has been suspected by the petitioner without any cogent and credible reasons. Both these officials were on patrolling duty in the area being posted at PS Connaught Place at the relevant time. Their presence at the spot being on patrolling duty cannot be doubted. No ulterior motive was assigned to PW-2 (HC Laxman Singh) and Const.Dev Kumar for falsely implicating the petitioner in the absence of prior animosity. Nothing has come on record to show if the victim was acquainted with the official witnesses to favour him in any manner.

7. In his Court statement as PW-2, HC Laxman Singh reiterated the version given to the police and implicated the petitioner for commission of the crime. He deposed that on 18.02.1995 at about 07.00 p.m. he along with Const.Dev Kumar was present on patrolling duty at K.G.Marg. When they reached in front of Kailash building, a red-line bus bearing No.DL1 3590 on route No.521 came from K.G.Marg side (outer circle) in a rash and negligent manner at a high speed and hit an old man S.K.Setia standing at K.G.Marg bus stop. The said bus was being driven by the accused present before the Court. Due to the impact, S.K.Setia sustained injuries and was taken to hospital. Complaint (Ex.PW-2/A) was lodged by him. In the cross- examination, he informed that he had left the police station for patrolling at around 05.00 p.m. He and Const.Dev Kumar had left together

making a single entry with regard to their departure. Before reaching K.G.Marg they had visited Janpath and Scindia House. They remained at the spot till 08.45 p.m. He further elaborated that the Crl.Rev.P.606/2012 Page 4 of 9 victim was taken to the hospital in a private vehicle by a person whose name was noted by him. He fairly admitted that at the spot there was an erected platform and the passengers used to stand there. He, however, voluntarily stated that some of the passengers used to stand on the road also. He denied the suggestion that the accident was not witnessed by him or that he was not present at the place of incident.

8. On scrutinising the entire testimony of this official witness, it reveals that no material infirmities have been extracted to disbelieve his version. The injuries sustained by the victim by the offending vehicle being driven by the petitioner have not been denied. No plausible reason was attributed as to how the victim had sustained injuries or if there was any contributory negligence on his part. There was no specific suggestion to the witness in the cross-examination that the petitioner was not rash and negligent in driving the vehicle and the speed of the bus was not high when the accident took place. The accident had taken place near the bus stop where it is expected from the driver of the offending vehicle to take reasonable precaution and to slow down the bus to pick passengers. The innocent passenger waiting for the bus at the bus stop sustained injuries due to rash and negligent driving of the petitioner. In the absence of prior animosity, the complainant is not expected to make a false statement to implicate the petitioner. Merely because, the complainant was a police official his testimony per se cannot be discarded particularly when he claims that the accident was witnessed by him. [Tahir vs. State (Delhi); 1996 (3) SCC338 Crl.Rev.P.606/2012 Page 5 of 9 9. PW-4 (also examined as PW-7), Const.Dev Kumar corroborated PW-2s (HC Laxman Singh) version in its entirety. He also deposed that he and HC Laxman Singh were on patrolling duty at the spot where the accused driving the vehicle No.DL1 3590 came at a very high speed from the side of outer circle and hit the passenger waiting at the bus spot. The injured was taken to the hospital. He further claimed that the accident took place due to the rash and negligent driving by the accused. In the cross-examination by the learned APP he further stated that the petitioner was driving the bus at a high speed. In the cross-examination, he too claimed that

he and HC Laxman Singh both had left the Police Station for patrolling and had returned at 09.30 p.m. The departure entry was made by the duty officer. They remained at the spot for an hour. He fairly admitted that he did not accompany the injured to the hospital.

10. Again, the petitioner was unable to elicit any material inconsistency or discrepancy in the statement of the witness to disbelieve him. No extraneous consideration was assigned to the witness for making a false statement. Material facts deposed by the witness remained unchallenged in the cross-examination.

11. Certain discrepancies and inconsistencies highlighted by the petitioners counsel are inconsequential as they do not affect the core of the prosecution case. Non-examination of the Investigating Officer is not fatal as he was not a witness to the accident. Relevant to note is that the Investigating Officer SI Jawahar Singh had earlier appeared as PW-3 and his examination-in-chief was recorded. He too deposed about the presence of the two police officials on duty at the Crl.Rev.P.606/2012 Page 6 of 9 spot. On 31.01.2000, his examination was deferred. Thereafter, he was not produced and his evidence was closed. Apparently, testimony of PW-3 cannot be read in evidence. At the same time, it cannot be inferred that the witness was deliberately withheld by the prosecution for any reason; no adverse inference can be drawn against the prosecution on that score.

12. In 313 Cr.P.C. statement, the petitioner did not give plausible explanation to the incriminating circumstances proved against him. He did not claim if the bus being driven by him was not at a high speed or that he was not rash and negligent in driving the vehicle. He did not offer any explanation as to how and in what manner, the accident had occurred. No witness including the conductor or passenger of the bus was examined in defence despite an opportunity to produce the defence witness.

13. It has come on record that soon after the accident, the victim was taken to RML Hospital where he remained unfit to make statement till 24.02.1995. After getting the victim discharged on 25.02.1995 for better treatment at a private hospital, he was shifted to Ganga Ram Hospital on 25.02.1995. At that hospital

also, the victim had no good luck and he expired that day itself. Since the victim was admitted firstly at RML and from there, he was taken to Ganga Ram Hospital, there are no possibility of the victim to have suffered injuries other than the one received by him in the accident to impact the cause of death. Nothing is on record to show if the victim had left RML Hospital against medical advice. Crl.Rev.P.606/2012 Page 7 of 9 14. From the attendant circumstances, it can be inferred that the petitioner was negligent and rash in driving the offending commercial vehicle. The impact was so forceful that the old man sustained fatal injuries and could not recover despite medical facilities made available to him at the earliest. Apparently, the petitioner was not in a position to control the speed of the vehicle before hitting the waiting passenger.

15. Both the Courts below have returned concurrent findings on facts which are based upon fair appreciation of the evidence. All the contentions of the petitioner have been dealt with by the Courts below. The conviction based upon fair appreciation of the evidence warrants no interference. The petitioners conviction is affirmed.

16. Trial Court has already taken lenient view while awarding sentence under Section 304A for one year only. Perusal of the Trial Court records reveals that the petitioner was earlier challaned on 18.02.1995 for commission of offences under Sections 184/119/177 Motor Vehicles Act. He was to appear before the concerned Court on 22.03.1995. He was arrested under Section 202 Motor Vehicles Act and released on bail. The carbon copy of the challan is on record. Due to the rash and negligent driving by the petitioner, an innocent life was lost. The old man waiting to board a bus did not return to home. The petitioner deserves no further leniency. The delay in disposal of the case is attributable to the petitioner too. On many dates of hearing before the Trial Court, he himself remained absent. Applications for recall of the witnesses were filed and it took time for disposal of the case. Crl.Rev.P.606/2012 Page 8 of 9 17.

18. The revision petition is unmerited and is dismissed. The petitioner shall surrender before the Trial Court on 24th May, 2018 to serve out the remaining sentence.

19. Trial Court record be sent back forthwith with the copy of the order. (S.P.GARG) JUDGE MAY14 2018 / tr Crl.Rev.P.606/2012 Page 9 of 9

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