State Vs. Pratap Singh

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Court : Delhi

Decided On : Apr-28-2015

Judge : Vipin Sanghi

Appellant : State

Respondent : Pratap Singh

Advocate for Def. : Mr. Ashok Singh

Advocate for Pet/Ap. : Mr. Lovkesh Sawhney

Judgement :

$~113 * IN THE HIGH COURT OF DELHI AT NEW DELHI + % Date of Decision:

28. 04.2015 CRL.A. 113/2009 STATE ..... Appellant Through: Mr. Lovkesh Sawhney, Advocate versus PRATAP SINGH ..... Respondent Through: Mr. Ashok Singh, Advocate CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI VIPIN SANGHI, J.

(OPEN COURT) 1. The present appeal is directed against the judgment dated 17.11.2005 passed by the learned Metropolitan Magistrate, Delhi, in the case arising out of FIR No.115/99, P.S. Mandir Marg, under Sections 279/304A IPC, whereby the respondent-accused was acquitted of the charge by giving him the benefit of doubt.

2. The respondent-accused was sent to trial for the offence under Section 279/304A IPC on the allegation that on 28.02.1999 at about 1.30 p.m. at Shanker Road upper Ridge Road, near roundabout, he was found driving the delivery van Vikram bearing registration No.DL1C7000in a rash and negligent manner so as to endanger human life and personal safety of others, and while driving in such a manner, he hit the scooter bearing registration No.DL4D2850and caused the death of Lalit Saxena. The accused pleaded not guilty and claimed trial. The prosecution examined 11 witnesses, of whom PW2-Manish Suneja and PW-10 - Constable Ved Prakash are the material witnesses. The case of the prosecution is that Manish Suneja PW-2 was the pillion rider and the deceased was driving the scooter aforesaid at the time of the accident. PW10-Constable Ved Prakash was posted as traffic constable in Chanakyapuri circle and on the fateful day, he was on duty at Upper Ridge Road, Shankar Road. He had heard the noise of the accident and reached the spot and had taken the deceased to R.M.L. Hospital along with Manish Suneja.

3. The trial court acquitted the accused by disbelieving the testimony of PW2 and doubting his presence at the site of the accident, and his claim that he was a pillion rider on the same scooter with the deceased. It was held that the prosecution had failed to establish beyond all reasonable doubt, that the accused was driving the offending vehicle i.e. the delivery van in a rash and negligent manner so as to endanger human life and personal safety of others.

4. The submission of Mr. Lovkesh Sawhney, learned APP is that the impugned judgment suffers from perversity, since the learned Metropolitan Magistrate has misappreciated and misconstrued the testimony of both PW2 and PW10. He submits that learned Metropolitan Magistrate has proceeded on the basis of conjectures and surmises. He submits that the approach of the learned Magistrate in appreciation of the evidence is fundamentally flawed. Mr. Sawhney has referred to the testimony of PW2, who stated that on 28.02.1999, he and deceased were returning to their home from the Gurdwara. The two had reached the Gurdwara at 12.15 p.m. The scooter was being driven by Lalit Saxena-the deceased. Both deceased and PW2 were wearing helmets and PW2 was the pillion rider. He stated that at about 1.30 p.m., on the way to their home, when they reached at

Chambery, Shanker Road roundabout, Ridge Road, one delivery van make Vikram bearing registration No.DL1C7000which was being driven by the driver in a very rash and negligent manner at a high speed, came from the right side at the Chambery and hit at the right side of the scooter. Due to impact, both - the deceased and PW-2, fell down on the road along with the scooter. Lalit fell on the road, hitting his head to the road, and he received injuries upon his head. On hearing the noise of the accident, traffic constable Ved Prakash (PW10) reached at the spot. The three wheeler was being driven by Pratap Singh, the accused, who was correctly identified in the court by PW2. PW2 stated that he came to know the name of the accused when the accused was interrogated by constable Ved Prakash. Lalit Saxena was removed to RML Hospital by PW2 and constable Ved Prakash PW10 in a red colour Maruti car, which was stopped by the constable. Lalit Saxena was bleeding from his mouth, nose and ear. Lalit Saxena was admitted in hospital and he died in the hospital on the same day within half an hour or so. PW2further stated that it was a routine of PW2 and the deceased to visit Gurdwara Bangla Sahib every Sunday. He further stated that on 28.02.1999, which was a Sunday the accused Pratap Singh had jumped the traffic signal (red signal) and hit his scooter. PW2 further stated that the accident occurred due to the rash and negligent driving of the delivery van by the accused at a high speed. He exhibited the site plan prepared at the site at his instance as Ex.PW2/A. PW2 also exhibited the two vehicles, and the helmets and other documents led in evidence by the prosecution.

5. In his cross-examination, PW2 stated that the right front portion of his scooter came in contact with the three wheeler at the time of the accident. He stated that he and the deceased were going towards Rajinder Nagar Road, and that they were coming from Shankar Road. Traffic was very little at that time, and there was no vehicle in front of the scooter. He stated that Shankar Road was in the straight direction to Rajinder Nagar Road on which they were going. The middle portion of the scooter i.e. between the handle and the engine came into contact with the three wheeler i.e. the delivery van. He stated that the scooter fell down towards the left side and the three wheeler overturned towards right side. PW2 also stated that when Lalits head came in contact with the body of the scooter, he was wearing a helmet, and there was no damage to the helmet of the Lalit. PW2 also

stated that he did not sustain any injury on his body- not even a scratch. He stated that he immediately lifted the injured and took him to the hospital in a red colour Maruti car and admitted him in the hospital. He also stated that he made calls to the residence of Lalit and to his own residence about 20 minutes after the accident, and the family members of the deceased Lalit and his own family members reached the hospital in about half an hour. He stated that he had reported the matter to the constable who was on duty in the hospital. Thereafter, he had gone to PS Mandir Marg at about 7.00/8.00 p.m. in the evening on the same day, and before that he had not come into contact with any policeman of PS Mandir Marg.

6. PW10 Constable Ved Prakash stated that on 28.02.1999, he was posted as in traffic constable in Chanakyapuri circle and on that day, he was on duty at Upper Ridge Road at Shankar Road. At about 1.10 p.m., when he was about to start his lunch, he heard the noise of an accident and he come out and saw that the delivery van was lying in over-turned condition. The number of the delivery van was DL1LC7000 There was one two wheeler scooter No.DL4D2850 also lying on the road. The deceased Lalit and the eye witness PW2 were there. The deceased was bleeding from his mouth. Thereafter, PW10 along with PW2 removed Lalit to RML Hospital. He stated that no other persons sustained injuries. All the three were entangled in that accident, and PW2 asked him (i.e. PW10) to look after Lalit as he sustained grievous injury. The driver of the delivery van was Pratap Singh. He stated that he along with others reached the hospital in a red colour car, which was stopped by him. After leaving Lalit and PW2 at the hospital, he came back and joined his duties. He further stated that PW2 told him that the accident was caused by the delivery van, which had jumped the red light.

7. Mr. Sawhney submits that there is consistency between the statements of PW2 and PW10 and there is no material contradiction between the two. PW10 corroborate the testimonies of PW2 to a great extent, in respect of the situation as it was found to exist immediately after the accident and of the events that unfolded, post the accident.

8. Mr. Sawhney submits that the learned Metropolitan Magistrate has recorded a finding (on the basis of the site plan (Ex.PW11/C)) that the scooterist had a better opportunity to see the moving traffic along the roundabout from a distance, in comparison to the vehicles which were taking the turn around the roundabout. The Magistrate also observed that the scooter driver could have seen the delivery van clearly from a reasonable distance, whereas the driver of the delivery van had little opportunity to see the traffic coming from his back side i.e. from the side of Park Street. Mr. Sawhney submits that these findings are a result of complete misappreciation of the evidence and border on perversity. Mr. Sawhney has taken the Court through the Site Plan (Ex.PW11/C).

9. Mr. Sawhney submits that the point of impact on the scooter was between the handle and the engine on the right side, and the front headlight of the delivery van was damaged, as per the mechanical inspection reports (Ex. PW-4/A pertaining to the three wheeler, and Ex. PW-4/B pertaining to the scooter). He, therefore, submits that the learned Metropolitan Magistrate has not correctly appreciated the evidence while drawing the aforesaid conclusions that the scooterist had a better view of the delivery van. The delivery van had hit the scooter while coming from behind on the roundabout. Therefore, the scooterist could not have seen the delivery van coming on the roundabout from behind. In fact, it was the delivery van which had a clear view of the scooter which was coming straight from Shankar Road and proceeding towards Rajinder Nagar.

10. Mr. Sawhney further submits that merely because PW2 did not suffer any injuries in the accident, learned Metropolitan Magistrate fell in grave error in not believing that he was the pillion rider on the scooter driven by the deceased. The presence of PW2 at the spot has been established by PW2, and his testimony is corroborated by PW10. Mr. Sawhney submits that an accident cannot be explained in the manner sought to be explained by the learned Metropolitan Magistrate, as it cannot be dissected later on and explained, as to why a person involved in the accident has suffered, or not suffered, any injuries. Mr. Sawhney further submits that merely because the MLC of the deceased did not mention the name of PW2, it could not be assumed that he had not taken the deceased, along with PW10, to the hospital. The name of PW10 has been shown in the MLC as the

person who had taken the deceased to the hospital, since he was accompanying the injured. The mention of his name in the MLC was sufficient. Mr. Sawhney submits that there is no hard and fast rule, or laid down procedure, that the doctors at the hospital while drawing up the MLC, have to take note of the names of all the persons who may bring an injured person into the hospital. Similarly, the absence of any damage to the helmets of, either the deceased, or PW2, does not lead to the conclusion that the accident did not take place with great force. Mr. Sawhney submits that PW2 had stated that the accused had jumped the red light, which itself establishes rash and negligent driving. He submits that the accused, who was driving the delivery van, could not control it on the roundabout, leading to collision with the scooter driven by the deceased. This also shows that the delivery van was being driven at an uncontrollable high speed.

11. On the other hand, learned counsel for the accused has firstly argued that the leave petition has not been preferred within the period of limitation. In this regard, he sought to place reliance on Section 378(5) of the Code of Criminal Procedure. He submits that the leave petition should have been preferred within sixty days of the passing of the order of acquittal.

12. This submission is only to be stated to be rejected. Section 378(5) Cr.P.C. applies to an order of acquittal which is passed in a case instituted upon a complaint. The present was not a case instituted on a complaint. In fact, it is a State case, instituted on the basis of the first information report (FIR). The period of limitation prescribes in Article 114 of the Schedule to the Limitation Act is ninety days from the date of the passing of the order appealed from, where an appeal is preferred from an order of acquittal under Section 417(1) or (2) Cr.P.C., 1898, (which corresponds to Section 378 of the Cr.P.C). The judgment of acquittal is dated 17.11.2005; its certified copy was applied for on 30.11.2005 and, was prepared on 05.12.2005. The leave petition was filed on 20.02.2006. Thus, after excluding the time consumed for the preparation of the certified copies, the leave petition was preferred within the period of limitation. Pertinently, no objection was raised either by the Registry of this Court on the issue of limitation, or even by the accused upon being put to notice. The respondent-accused had appeared before the Court on 19.05.2006 and since then no such objection has been raised. I,

therefore, do not find any merit in this objection of the respondent which, in any event, has been raised at a highly belated stage.

13. The next submission of learned counsel for the respondent is that the prosecution has not proved that the accused had jumped the red light, or that he was driving the delivery van in a rash and negligent manner. He supports the finding in the impugned judgment that the presence of PW2 at the site of, and at the time of the accident, is doubtful. He submits that no other eye witness has been examined by the prosecution, and PW10 was not an eye witness to the accident.

14. The yardstick that an appellate court would adopt, while examining a judgment of acquittal had been laid down by the Supreme Court in Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC450 wherein the Supreme Court held:

70. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when: i) The trial court's conclusion with regard to the facts is palpably wrong; ii) The trial court's decision was based on an erroneous view of law; iii) The trial court's judgment is likely to result in "grave miscarriage of justice"; iv) The entire approach of the trial court in dealing with the evidence was patently illegal; v) The trial court's judgment was manifestly unjust and unreasonable; vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc. vii) This list is intended to be illustrative, not exhaustive.

15. Therefore, it needs examination whether the present case falls in any of the categories enumerated in the above extract. A perusal of the site plan read along with the mechanical inspection reports of the two vehicles involved in the accident,

would show that the conclusion drawn with regard to the manner in which the accident took place is palpably wrong. The site plan itself shows that the scooter driven by the deceased had already entered the roundabout and the impact of the accident was between the handle of the scooter and the body, i.e. on the right side front portion of the scooter. The mechanical inspection report pertaining to the scooter Ex PW-4/B states that the front tyre cover had bended. The engine cover was also scratched and bended. The headlights were also broken. The damage to the front tyre corner is indicative of the initial impact of the accident being borne by the front tyre cover at an angle (from the right side) by the scooter. The impact was so great that not only the scooter of the deceased and PW-2 fell on the left side, the offending delivery van also overturned on the right side.

16. A perusal of the site plan shows that the accused had a clear view of the scooter which had already entered the roundabout. The scooter was in front of the delivery van of the accused and, therefore, the accused had a clear view of the scooter. In fact, the deceased (who was driving the scooter), could not have had a clear view of the delivery van, driven by the accused.

17. A perusal of the site plan also shows that on the roundabout the speed of the delivery van was so high that the accused lost control of the same and could not turn the delivery van on the curve along the roundabout in a clockwise direction, so as to avoid collision with the scooter driven by the deceased. Pertinently, as per the mechanical inspection report Ex. PW-4/A, the front left side bidding corner of the three wheeler was found dented and scratched. The left side body, the driver seat was dented and scratched. Even more importantly, the head lights of the three wheeler was broken. This clearly establishes that it is the front portion of the delivery van which had sustained damage. Had it been the case, that the deceased was driving the scooter at a high speed, in a rash & negligent manner, and coming into the roundabout from behind and hitting the delivery van, the front portion of the delivery van - particularly the head light, would not have borne the impact of the accident. Rather the left rear side of the delivery van would have been severely damaged - which is not the case.

18. Thus, the finding returned by the learned Trial Court that the scooter driver had a better opportunity to see the moving traffic along with roundabout from a distance, in comparison to the vehicles which were taking turn on the roundabout contrary to the record, since, in the facts of the present case, the scooter was already on the roundabout and was hit by the delivery van - at an angle. Thus, the finding that the scooterist had a clear view of the delivery van from a reasonable distance, whereas the driver of the delivery van had little opportunity to see the traffic coming from his back side, i.e. park street side, can only be described as bordering on perversity.

19. This Court cannot appreciate the manner in which the learned Magistrate has proceeded to make deductions about the absence of PW-2 as a pillion rider on the two-wheeler along with the deceased, on the basis of the injury suffered/ not suffered by the deceased and PW-2, and the lack of damage to the helmets worn by the deceased and PW-2. When a traffic accident occurs involving two or more moving vehicles, it cannot be explained as to why a person involved in the accident suffers, or does not suffer an injury; why the injury suffered is minor or serious, or; the nature of the injury suffered. It is practically impossible to answer questions like: why the helmet of the deceased did not suffer any damage; why the deceased did not suffer any visible injury; why the helmet of PW-2 did not suffer any damage, or why PW-2 did not suffer any injury. The High Court of Karnataka in B.S. Chandrappa (since deceased) by widow Anusuya & Ors. v. Shobha & Ors., 2003 (2) KCCR1090held as follows:

. . It is difficult, rather impossible, to lay down a general principle in these matters that would apply uniformly to all cases and all situations because no two accidents are alike and without exception an accident differs from another in magnitude and in the manner it takes place that in fixing the cause and the contributory factors, both human and otherwise, it would be totally unwise to rely upon a general principle laid down in one case for apportionment of ratio of negligence between two offending vehicles in another involving a similar accident.

20. It is a fact that the deceased did not suffer any visible severe injury. The impact of the accident, however, caused brain damage, which led to his death, as

it has come on record that he was bleeding from his mouth and nose on account of the accident. The cause of death as per the postmortem report Ex. PW-9/A is:

due to cranio-cerebral injuries as a result of blunt force trauma to head. All the injuries mentioned in postmortem report are antemortem in nature and could have been caused by the alleged manner. A perusal of the said report shows that the injuries suffered by the deceased are primarily on the right side of the head, face, neck and ear region.

21. The point of impact on the scooter was towards the front portion of the scooter. This could be the reason for the lack of injury on the body of PW-2. Whether, or not, the helmet would suffer any damage would depend on the manner in which the person wearing the helmet receives the injury and/or falls to the ground, and the momentum with which his/her head/helmet may hit the ground. It cannot be said that in every such case where the passenger of the vehicle suffers some or the other injury on their person, their belongings or protective gear should also necessarily suffer damage. There is nothing improbable in that, in the accident in question, PW-2 did not suffer even a minor injury.

22. The case of the prosecution is that the deceased was taken to the hospital by Constable (PW-10) and PW-2 the pillion rider in a red Maruti car which was stopped on the road. When the deceased was accompanied by the Constable (PW-10), who was attending to him to get him treated, it was natural that in the MLC his name would be mentioned. It is not necessary that the presence of all persons who took the injured to the hospital for treatment would be noted in the MLC by the treating doctor. After all, on account of the shock and impact of the accident, it is quite possible that PW-2 was also in a state of shock and, therefore, may not have taken a lead in the matter of interacting with the treating doctor. The treating doctor may not have noted the presence of PW-2 for this reason. It could be that with a view to save time, to be able to attend to the patient rather than get busy with paper work, he may not have noted the name of the second person i.e. PW2, accompanying the injured.

23. Both PW-2 and PW-10 have spoken about the presence of PW-2 as the pillion rider on the scooter and of the presence of PW-2 at the site of the accident. In his

cross-examination, PW-2 was given a suggestion that he was not present at the site and that he had subsequently been made to sign the several exhibits relied upon by the prosecution. However, no such suggestion was given to PW-10. PW-2 has given a detailed account of the manner in which the accident had taken place and there is absolutely no reason to doubt his testimony. Consequently, the finding of the trial court that the defence has raised sufficient doubt regarding the presence of PW-2 as a pillion rider on the scooter, or about his presence at the site, is completely unsustainable and is set aside.

24. Not only PW-2 has spoken of the fact that the accused was driving the three wheeler in a rash and negligent manner, inasmuch, as, he jumped the red light and was driving on high speed, the fact that the three wheeler was driven at a high speed is also evident from the fact that the accused could not control the movement of the three wheeler as it approached the scooter being driven by the deceased on the roundabout, and hit the scooter from the right side. The body of the scooter appears to have impacted the head and neck region of the deceased despite his wearing a helmet, and the scooter turned and fell on the left side. The impact was so severe that even the three wheeler overturned towards its right side, even though it had three occupants. These factors clearly establish the fact that the accused was driving the three wheeler in a rash and negligent manner so as to endanger the life and personal safety of others at the relevant time and place. In the light of the evidence brought on record, the conclusion drawn by the trial court are palpably wrong, and if the impugned judgment is sustained, it would certainly lead to grave miscarriage of justice. The approach of the trial court in dealing with the evidence was patently illegal, and the impugned judgment can only be described as manifestly unjust and unreasonable. The trial court has ignored and misread the evidence, namely, the site plan as well as the mechanical inspection report of the vehicles involved in the accident. Consequently, the impugned judgment is set aside. The respondent/accused is convicted of the offence under Section 379/304A I.P.C. VIPIN SANGHI, J.

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