

Narender Singh Vs. State

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Court : Delhi

Decided On : Jan-17-2005

Reported in : 2005CriLJ2735; 117(2005)DLT51

Judge : Manju Goel, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 397, 401 and 482; Indian Penal Code (IPC) - Sections 279 and 304A; Motor Vehicles Act - Sections 133; Probation of Offenders Act - Sections 4

Appeal No. : CrI. R. 297/2004

Appellant : Narender Singh

Respondent : State

Advocate for Def. : Sunil Sharma, Adv.

Advocate for Pet/Ap. : R.P. Shukla, Adv

Disposition : Revision petition dismissed

Judgement :

Manju Goel, J.

1. This revision petition is under Sections 397/401 read with Section 482 Cr.P.C. against the order and judgment dated 22nd April, 2004 passed in Criminal Appeal

No. 408/2002 passed by learned Sessions Judge, New Delhi in the case of FIR No. 297/95 under Sections 279/304-A of the Indian Penal Code (in short 'IPC').

2. The facts as they appear from the judgment of Ms. Mamta Sehgal, Additional Sessions Judge is that the bus bearing No.DL-1P-2979 on 15.8.1995 at around 9.00 p.m., plying on route No. 521 came at fast speed and took a sharp turn at Shivaji Stadium and hit the pedestrian on account of which he fell down and when the injured was brought to the hospital he was declared brought dead. The driver of the bus ran away from the spot fearing apprehension of assault by the members of the public. A notice under Section 133 of the Motor Vehicle Act was served upon the owner of the vehicle on which the name of the accused/petitioner-Narender Singh- was given by the owner. A post mortem was done on the body of the deceased and after the completion of other formalities of investigation the challan was filed. The accused was charged under Sections 279/304A IPC and was convicted by the learned Metropolitan Magistrate. He was sentenced to SI for 6 months and fine of Rs. 1,000/- under Section 279 IPC and SI for 1-1/2 years and fine of Rs. 4,000/- for the offence under Section 304A IPC. The conviction and sentence were maintained in appeal before the court of Sessions.

3. Before this Court it is contended on behalf of the learned counsel for the petitioner that the doctor who conducted the post mortem examination has not been produced in court and that the principal witness, namely, conductor of the bus has also not been produced and, therefore, the conviction cannot be sustained. This has led the court to go through the evidence on record. Before the Metropolitan Magistrate, the prosecution produced six witnesses. PW-1 is the Constable who proves the recovery memo dated 17.8.1995 in respect of the seizure of the driving license of the petitioner which is Exh.PW-1/A. PW-2, Shri Baldev Singh, is the eye-witness to the accident. PW-3 is a clerk of the Lady Harding Hospital where the post mortem was conducted. He proved the post mortem report by proving the signatures of Dr. J. Singh who conducted the post mortem but had left the hospital and his whereabouts were not known to the hospital staff. PW-4 is the Sub-Inspector of Police Station Mandir Marg who reached the spot on receipt of the DD entry in respect of the accident on 15.8.1995 and recorded the statement of Baldev Singh, PW-2 who was available at the spot.

He also made the investigation in the case but he was transferred before the challan could be filed. PW-5 is SI Rameshwar Dass who recorded the FIR on the basis of a Ruca from SI Dalip Kumar, PW-4. PW-6 is the person who conducted the mechanical inspection of the bus No.DL-1P-2979 and prepared the report Exh.PW-6/A. PW-7 is SI Ashok Kumar who completed the investigation in the case.

4. The most important witness is the eye-witness Baldev Singh. He has deposed that while he was taking a stroll in the night after his dinner at the relevant place he saw the offending bus coming from the side of Connaught Place at a very high speed of about 90 km. Per hour and as it was turning it struck against a pedestrian and thereafter the driver instead of stopping the bus took it inside the bus terminal and ran away from the spot. Learned counsel for the petitioner has disputed the veracity of this witness by saying that this witness in his cross-examination has stated that he saw the bus coming from a distance of 10 ft. and during this period he could not have assessed the speed of the bus as 90 km. per hour. This, in my opinion, is not a very serious discrepancy. What matters is not the speed of the bus as 90 k.m.per hour.What is important is to prove that the speed of the bus was rather high. It has to be noticed that the bus was taking a turn to enter the terminal and it was all the more essential for the driver to be more cautious than on a straight road.

5. The other objection of the learned counsel for the petitioner is that the doctor who conducted the post mortem examination was not examined. It was not the case of the accused-petitioner anywhere that the pedestrian had collapsed on account of any reason other than the impact of the bus striking him. The post mortem report says that the cause of death was " Hemorrhagic shock consequent upon multiple injuries to internal organs like liver, lung and spleen etc. along with Cerebral Damage due to blunt impact which could be caused by a vehicular accident as alleged. All the injuries were anti-mortem in nature and fresh in duration".

6. Learned counsel for the petitioner refers to the judgment in the case of Suresh Kumar v. State reported as 1998 (3) CHC 52 in which a conviction by the trial

court in an offence under Sections 279/304A IPC was set aside and the accused was acquitted. It was observed in that judgment that the statement of the witnesses had been recorded seven years after the accident and the nature of injuries, time and cause of death had not been proved on record and the post mortem report had also not been proved and, therefore, the conviction could not be sustained. In the present case the post mortem report has been proved and the eye witness has not faulted even once in the witness box. He was examined in court within two years of the accident and it is unlikely that having witnessed such a serious event, he would forget the details of the incident.

7. There being an eye-witness in the case who saw the bus striking the victim and the victim has been declared brought dead on being brought to the hospital from the spot, not much remains to establish that the death was caused by blunt force applied by the bus in striking the pedestrian.

8. So far as the sentence is concerned, the learned counsel for the state relies upon the judgment of the Supreme Court in the case of Dalbir Singh v. State of Haryana and Ors. reported in : 2000 CriLJ2283 in which the Hon'ble Supreme Court has expressed grave concern over the negligence of a professional driver causing death of a pedestrian and over the lenient approach of the court in punishing such offenders.

9. The judgment disapproves the application of Probation of Offenders Act for such offences. In the words of the Supreme Court:-

" 13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, Criminal Courts cannot treat the nature of the offence under S. 304, I.P.C. as attracting the benevolent provisions of S. 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash

driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the Court can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

10. There is absolutely no force in the revision petition and the conviction has to be maintained. The revision petition is accordingly dismissed.

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