

Bhagwan Dass Vs. State

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Court : Delhi

Decided On : Jul-22-1998

Reported in : 1998VAD(Delhi)325; 74(1998)DLT583; 1998(46)DRJ776

Judge : J.B. Goel, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Secstions 279 and 304-A

Appeal No. : Crl. R. No. 173/98

Appellant : Bhagwan Dass

Respondent : State

Advocate for Def. : Ms. Mukta Gupta, Adv.

Advocate for Pet/Ap. : Mr. S.D. Singh, Adv

Judgement :

J.B. Goel, J.

1. This Criminal Revision challenges the correctness of the judgment dated 4th May, 1998 of learned Addl. Sessions Judge confirming the judgment of conviction dated 15.3.1996 of the learned Metropolitan Magistrate convicting him under Sections 279 and 304-A IPC, but reducing the sentence of imprisonment from RI of one year to six months and maintaining the sentence of fine.

2. The petitioner was charged under Section 279 and 304A IPC that he was driving truck No. DEG-239 on 18.6.1989 at about 5.35 p.m. near A-26, Rohit Kunj, Saraswati Vihar, Delhi in a rash or negligent manner he had struck against a cyclist causing his death.

3. The prosecution had inter alias examined two witnesses PW-3 Khacheru and PW-4 Shri Jai Prakash who had deposed as eye witnesses who supported the prosecution case. The learned Trial Court believed them, found the petitioner guilty and convicted him. The finding of the trial court has been upheld in appeal.

4. Learned counsel for the petitioner has contended that it is not proved on record that rash or negligent driving of the accused was the proximate cause of death of the deceased or the accident was caused due to rash or negligent driving of the petitioner inasmuch as the deceased was not crushed under the wheel of the truck, he had fallen on stones lying near the road and obviously medical aid was not given to him in time. The learned counsel for the State disputes this and supports the judgment of the two courts, and according to him, there is no infirmity or illegality in them.

5. PW-4 Jai Prakash has deposed that deceased Subhash was driving a cycle on which he was a pillion rider at the time of the accident; that the truck in question which was coming at a high speed hit the cycle from behind as a result of which he (PW) and the deceased fell down on the road; Subhash had profusely bled from his nose and died at spot. PW-3 has also deposed that at that time he was also coming home on a cycle which was driven by one Braham Dev and he was the pillion rider and in their front Jai Prakash and Subhash were also going on another cycle. He has corroborated PW-4. He has also stated that the deceased on falling on the ground had bled profusely and had died at the spot. They have been believed by the two courts below. PW-9 Dr. L.T. Ramani had conducted the post-mortem vide his report Ex. PW-9/1. He has found multiple external and internal injuries and has opined that the injuries were ante-mortem caused by vehicular accident. Obviously the deceased had died an instant death and in the circumstances, there was no occasion to provide any medical aid to him. The death of the deceased was thus accidental caused due to the fact that

his cycle was hit by the offending truck of the petitioner and he had died instant death.

6. The two courts below have believed PW3 & PW4 that the offending truck driven by the accused had hit the deceased cyclist while coming from behind and have given a finding that the accident was due to rash and negligent driving of the petitioner.

A motorist while driving a vehicle is under a duty to exercise that vigilance and care so as to eliminate to the extent possible danger and peril to others who have a similar right to use a highway. The truck after hitting the cyclist had not stopped immediately but had stopped at a distance of 10 to 15 yards as deposed by the IO. It was not the case of the accused that the cyclist was in any way negligent or careless in driving his cycle. Obviously, either he was unmindful of the safety of the cyclist or was otherwise driving the truck in a rash manner. The finding given by the two courts below about the rash and negligent driving is based on material on record and is reasonable and justified. This court in revision has no power to review the evidence. In these circumstances it cannot be said that rash and negligent act of the accused was not the direct proximate cause of the death of the accused-petitioner. There is no illegality or impropriety in the judgments of the two courts below and do not call for any interference. This contention has no merit and is thus rejected.

7. Learned counsel for the petitioner has then contended that the accused should have been given the benefit of Probation of Offenders Act which may be given even now or he should be let off with the sentence of over three months already undergone by him as the petitioner has been facing trial for over 9 years. Reliance has been placed on some case law.

8. Every case has to be seen on its own facts and circumstances. It cannot be ignored that accidental deaths have increased to an enormous limits. Too much leniency will not be in the interest of the public. Loss of human life entails misery and hardship to his dependants. Unless there is some sort of deterrence the faith of the public in the administration of criminal justice is likely to be shaken.

9. However, in the present case the occurrence had taken place on 18.6.1989. The petitioner is in custody after his appeal was dismissed on 4.5.1998 i.e. he has undergone imprisonment for over 3-1/2 months besides the fine of Rs. 5000/-. It will meet the ends of justice if the sentence of imprisonment is reduced to the sentence already undergone by him and maintaining the sentence of fine of Rs. 5000/-.

10. This petition is accordingly partly allowed. The sentence of imprisonment is reduced to the period of sentence already undergone and maintaining the sentence of fine of Rs. 5000/- imposed with the default clause and the other conditions about payment of compensation of Rs. 4000/- to the widow of the deceased. The jail authorities be informed accordingly forthwith.

11. This revision petition is partly allowed to this extent.