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Court : Delhi

Decided On : Nov-09-1989

Reported in : I(1990)ACC383; 1990ACJ773; 40(1990)DLT378

Judge : P.K. Bahri, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279

Appeal No. : Criminal Revision Appeal No. 121 of 1981

Appellant : Onkar Nath

Respondent : State

Judgement :

P.K. Babri, J.

(1) This criminal revision has been brought against judgment dated April 16, 1 981 of an Additional Sessions Judge, Delhi by which he was dismissed the appeal brought by the petitioner against judgment and order of Metropolitan Magistrate dated March 22, 1980 by which petitioner was convicted of offences punishable under Sections 279 and 304A of Indian Penal Code and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 3,000.00 and in default in the payment of fine, to further undergo simple imprisonment for four months with the direction that if the fine was to be realized, Rs. 2,000.00 from the

same will be paid to the legal representatives of the deceased.

(2) The Fir was registered on the statement of Ram Lakhan, Ex PW2/A in which he had mentioned that on October 2, 1976 at about 10.45 A.M. he and the deceased Gurudin with his wife Inderpati and one neighbour Ram Kailash were coming on their cycles on the Shakarpur Road and when they were on the I.T.O. Bridge Gurudin had given a signal for turning on the right side to a path leading to Rajghat side that the Bus No. DLP-6282 being driven by the petitioner came at a high speed and struck against Gurudin's cycle from behind with the result that deceased fell from the cycle and his head after striking the bus, struck against the pavement and thus he received injuries whereas Inderpati had jumped away from the cycle when the accident occurred. Gurudin was taken to the Emergency Ward of the Irwin Hospital in a three-wheeler scooter. The petitioner and the bus conductor also stated to have reached the hospital in a separate scooter. Information was given to the Control Room by one Prem Chand as per D.D. Entry, copy of which is Ex. PW11/A at 10.53 A.M. The Control Van was sent to the spot and message was conveyed to police post Indraprastha where it was recorded at 11 A.M. as per copy of D.D. report Ex. PW14/A. On being deputed to enquire into the matter, Pwi 4, As I Jorawar Singh reached the spot and on learning that the witnesses have taken injured to the Irwin Hospital, he reached the Irwin Hospital and recorded the statement of Ram Lakhan. He took into possession the bus and the cycle, got the place of occurrence duly photographed and prepared the Site Plan and got the bus mechanically examined.

(3) The learned Metropolitan Magistrate had brought home the offence to the petitioner on the statements of the three eye witnesses, namely, PW-2 Ram Lakhan, PW-3, Ram Kailash and PW-5, Inderpati. It was not suggested in their cross-examination that the petitioner was not driving the aforesaid bus at the time of the occurrence. Suggestion was given to PW-2 and PW-3 that accident had not occurred due to any rash or negligent driving of the petitioner but Gurudin had come on his cycle and the road was sloping and he fell from the cycle and hit his head. on the pavement resulting in his death. To PW-2 a suggestion was also given that he was not present at the spot. Memos prepared at the spot bear the signatures of PW-2 and PW-3 by which the bus, cycle and the chappals worn by

Inderpati were taken into possession. Unfortunately the cycle was not exhibited in the trial Court. The cycle was also not got mechanically examined in order to see whether the cycle had any damage on it or not. The bus of course had necessary damages indicating that it had struck against some other object. The mechanical examination report of the bus. Ex. PW4/A prepared by Roshan Lal, Public Witness indicated that left side front mudguard stood dented and damaged and had multiple scratches and so also right side front wheel rim was dented and had some scratches. The Site Plan prepared by the 10, PW14/C indicated that the bus had also struck against a pavement and thereafter had stopped after covering a distance of about 40 feet. or so from the place of the accident. The fact that Gurudin had died on account of having received injuries is evident from title post mortem report Ex. PWIO/A which showed that he had about 13 abrasions on different parts of his body while the death occurred due to his head injuries. Admittedly deceased had struck his head against the pavement after he fell from the bicycle. One of the questions which arises for decision is whether the deceased had fatal injuries on account of the accident caused by the bus driven by the petitioner or not.

(4) I may mention that this case had reached for hearing earlier and no one had appeared for the petitioner. Vide order dated March 6, 1986 notices were required to be issued to the counsel for the petitioner and also to the petitioner but the notices came back unserved as on the addresses available neither the counsel nor the petitioner could be found. So, I had not been able to have the assistance of any counsel and no arguments have been advanced by anyone. I have gone through the record carefully.

(5) It is true that the prosecution has not been able to prove that cycle also stood damaged on account of having received the impact from the bus still the question which arises for consideration is whether the version given by the three witnesses is credible or not that in fact the bus had struck against the bicycle which resulted in fall of the deceased from his cycle and his head was hit against a pavement. The two courts below have believed the three eye witnesses for cogent reasons. Unless and until it is shown that any important piece of evidence has been not examined by the two courts or the statement of the witnesses have not read in

correct perspective, the revisional Court would be reluctant to interfere with concurrent finding of fact arrived at by two courts below that Gurudin had died due to injuries received by him on account of the accident caused by the petitioner by driving the bus rashly and negligently. It is pertinent to mention that testimony of Inderpati was not subjected to any cross-examination with regard to material facts appearing in her testimony as the manner in which title accident occurred. The only question put to her cross-examination was as to whether she had become unconscious and thus did not know whether police had arrived at the spot or not and she answered that question in affirmative but that would not show that she had become unconscious even before the accident occurred or that she was not present at the occurrence and that the accident had not occurred. A few discrepancies have been highlighted in the grounds of revision which have appeared in the statements of the witnesses which were also highlighted before the two courts below and they were found to be of not very consequence. The statements of the three witnesses with regard to the material facts remained unshakened. The petitioner in his statement under Section 313 Cr.P.C. had come up with the new plea that in fact he was not driving the bus at all at the time of the alleged accident. This plea was an afterthought because to none of the prosecution witnesses any suggestion had been given that at the time the accident occurred, the petitioner was not driving the bus rather the conductor of the bus who also appeared as prosecution witness as PW-13 Laxman Singh categorically stated that petitioner was driving the bus on that day. It was even not suggested to him in crossexamination that at the time of the accident some other person was driving the bus. So, no credence has been rightly given by the two courts below to the afterthought plea of the petitioner that he was not driving the bus at the time of the accident. It is also evident from the testimony of PW-14, ASI Jorawar Singh that petitioner was arrested at the spot and his Driving license was also taken into possession at the spot. So, in view of the above discussion it must be held that the two courts below were right in coming to the conclusion that the death of Gurudin had occurred due to rash and negligent driving by the petitioner of the said bus when it struck against the cycle driven by the deceased.

(6) The sentences awarded to the petitioner appear to be appropriate in the present case. I dismiss the petition and direct that the Magistrate concern shall

now take immediate steps to get arrested the petitioner so that the petitioner may undergo the requisite sentence of imprisonment. The Magistrate shall send the report of compliance.

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