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Court : Delhi

Decided On : Apr-30-1991

Reported in : 1991(2)Crimes416; 45(1991)DLT206

Judge : S.C. Jain, J.

Acts : Indian Penal code, 1860 - Sections 30

Appeal No. : Criminal Revision Appeal No. 101 of 1979

Appellant : Rajinder Singh

Respondent : State

Advocate for Pet/Ap. : Mr. Nawal Kishore

Judgement :

S.C. Jain, J.

(1) The facts giving rise to this petition are that on 16.1.77,at about 9.30 p.m. a military truck bearing No. T 730 14082E came from the side of Tilak Bridge and was proceeding towards India Gate. When it had crossed three-fourth of the crossing at Bhagwan Dass Marg and Tilak Marg,a mini bus No Dip 6200, which was being driven by the present petitioner Rajinder Singh came at a very fast speed from Mathura Road on Bhagwan Dass Marg crossing and struck against the military truck with the result that the truck turned turtle by falling at a distance

of 23 paces from the place ofimpact. The petitioner could manage and control the mini bus with great difficulty and could stop it only at a distance of 66 paces by turning towards left side of the road at Tilak marg and received some injuries.

(2) As a result of this accident five passengers traveling in the truck died and 17 persons received injuries, out of whom injury on Panna Lal was found to be grievous in nature.

(3) The petitioner was challenged and sent for trial under Section 304A Indian Penal Code as well as under Sections 337/333/279 IPC. After appreciating the evidence and law, both the Courts below found the petitioner guilty of an offence punishable under Section 304A Indian Penal Code as well as under sections 337/338/279 IPC.

(4) The conclusion of the trial magistrate, that the petitioner was driving the bus at fast speed and he acted in rash and negligent manner and discarding the traffic rules entered the crossing at a very fast speed and hit the truck causing death of five parsons and injuries to 17 persons traveling the truck, was confirmed by the appellate Court.

(5) The sentence awarded by the trial Court of rigorous imprisonment for 18 months under Section 304A Indian Penal Code and rigorous imprisonment for 3 months under Section 279 Indian Penal Code was also confirmed by the appellate Court. Both the sentences were ordered to run concurrently. The sentence of fine was, however,set aside by the appellate Court.

(6) Aggrieved, this revision petition has been filed.

(7) Mr. Nawal Kishore, learned counsel for the petitioner, argued that both the Courts ignored the most important and crucial point that it was the driver of the truck who was negligent and rash while driving the truck and on account of his rashness and negligence this accident occurred resulting in the death of five persons and injuries to others. The mini bus was already on the crossing of Bhagwan Dass Marg and Tilak Marg, when the truck came with fast speed and struck on the right side of the mini bus. According to the learned counsel, at the

crossing both the drivers were under obligation to take proper care and caution while driving the vehicles. When the mini bus had reached the crossing prior to the reaching of the truck, it was the duty of the truck driver to take all reasonable care in order to avoid the unfortunateaccident, but he failed, whereas the petitioner made all the possible attempts to avoid the accident. According to the learned counsel, from the evidence onrecord, it cannot be held that the injuries caused to the passengers of the truck were direct, immediate, natural and proximate consequence, as a result of rash and negligence driving on the part of the petitioner. The truck hit the minibus and thereafter tried to cross the patri and turned turtle resulting in the death of five passengers and injuries to 17 persons. Mere fact that five deaths have taken place and 17 persons have received injuries, is in itself not sufficient to hold the petitioner guilty of this offence. Learned counsel further submitted that even if it is presumed, though not admitted, that this accident took place on account of rash and negligent act on the part of the petitioner, it cannot be said to be direct, imoaediate, natural and proximate consequence of the rash and negligent driving on the part of the petitioner. The conviction of the petitioner is bad in law and is liable to be set aside.

(8) On the point of sentence, counsel submitted that the petitioner atthe time of his conviction was a youngman of 23 years of age, not a previous convict and had two children and old parents to support. The trial Court ought to have accepted his request for releasing him on probation under the provisions of Probation of Offenders Act.

(9) It is the duty of the driver to drive his vehicle at a speed which will not imperil the safety of others using the road. In order to impose criminal liability on the accused it must be found as a fact that collision was entirely or at least mainly due to rashness or negligence on the part of the accused who was driving the vehicle at that time. It is not sufficient, if it is only found that the accused was driving at a fast speed. Relationship between speed and rashness depends upon the place and time. The important criteria for deciding whether driving which led to the accident was rash or negligent would include not only the speed of the vehicle but also the width of the road,density of the traffic and attempt, if any, to overtake other vehicles resulting incoming to the wrong side of the road being responsible

for the accident. Death should have the direct result of a rash and negligent act of the accused and that act must have been proximate and efficient cause without the intervention of an others negligence.

(10) Keeping in view this proposition of law, it has to be seen in the present circumstances of the case whether death of five persons and injuries to17 persons is a direct result of rash and negligent act of the petitioner and that it is proximate and efficient cause without the intervention of other's negligence.Persons can speak lie but circumstances cannot. Besides the oral testimony ofPW1 Kuldip Kumar, and Public Witness 25 Laxman Ram driver of the truck who have supported the prosecution version on all material particulars, the site planEx. PW28/E clearly indicates that the truck had crossed about 3/4th of the crossing when this impact took place, whereas mini bus had hardly crossed 1/4thof the crossing. Mini bus was coming from the Mathura Road side on Bhagwan Dass Road which was not the main road, whereas the truck was going on the main road from Tilak Bridge. It was the duty of the mini bus driver who was coming from the side road to be very careful while entering the main road.Mini bus had entered the crossing completely ignoring the fact that the truck was already on the road and had crossed most of the part of the crossing and in that process front portion of the mini bus struck against the body of the truck. The photographs Ex. Public Witness 4/1 to Public Witness 4/17 as well as the inspection report of the mini bus Ex. PW14/B confirm this fact that the front portion of the mini bus had struck against the truck and that is why the truck turned towards its right side and turned turtle falling at a distance of 23 paces.Had the speed of the truck been high, the truck would not have stopped at a distance of 23 paces. On the contrary, the mini bus after striking against the truck turned towards left side on Tilak Marg and did not stop until it crossed the Patri, lane and eventually stopped at a distance of 66 paces, which indicates that it was coming at high speed. As per the inspection report damage to the mini bus was to the front portion towards the driver's seat. The Courts below have rightly come to the conclusion that it was the mini bus that struck against the truck with its front side and that could have been when the bus entered the crossing when the truck was already there. The damage on the body of the truck by mechanical inspection cannot be the determining factor because it hadoverturned. Damage to the mini bus gives the clear picture that it had struck

against the truck turning it turtle resulting in the death of five persons and causing injuries to 17 poisons. It is the direct result of rash and negligent act of the petitioner and that it is proximate and efficient cause without the intervention of other's negligence. I do not find any infirmity or illegality in the order of conviction passed by both of the Courts below and I confirm the same.

(11) On the point of sentence also, it is very unfortunate case of accident which resulted in the death of 5 passengers and caused injuries to 17passengers. Such type of offences cannot be viewed lightly and the offenders deserve severe punishment. Anyhow, the appellate Court has already taken a lenient view while giving him relief by setting aside the sentence of imposition of fine of Rs. 2000/. The sentence awarded is already on the lower side.

(12) I do not find that any further leniency is required in this case.Revision petition is dismissed. The petitioner is already on bail. He be taken into custody by the concerned Court for serving the sentence awarded.

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