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Ram Bharose Vs. State

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Court : Delhi

Decided On : Sep-06-2011

Judge : Mukta Gupta, J.

Acts : Indian Penal Code (IPC) - Sections 279, 304A; Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Crl. Rev. P. No. 248/2011 & Crl. M.B. No. 895/2011

Appellant : Ram Bharose

Respondent : State

Advocate for Def. : Mr. Mukesh Gupta, Adv.

Advocate for Pet/Ap. : Mr. Sanjeev Singh; Mr. Ayub Khan, Advs.

Judgement :

1. By way of the present revision petition the Petitioner challenges the Judgement dated 6th May, 2011 passed by the learned Additional Session Judge upholding the Judgement dated 16th January, 2008 by learned Trial Court convicting the Petitioner for offences under Sections 279 and 304A IPC and order dated 25th January, 2008 sentencing him to undergo one year Rigorous Imprisonment and a fine of Rs.1,000/- in default of payment of fine further Rigorous Imprisonment of one month under Section 304A IPC and Rigorous Imprisonment of one month and a fine of Rs. 500/- in default of payment of fine to further undergo Rigorous

Imprisonment for ten days under Section 279 IPC. Vide the impugned judgment learned Additional Session Judge reduced the sentence to six months Rigorous Imprisonment and a fine of Rs.1,000/- in default of payment of fine further Rigorous Imprisonment of one month under Section 304A IPC and Rigorous Imprisonment of one month and a fine of Rs. 500/- in default of payment of fine to further undergo Rigorous Imprisonment for ten days under Section 279 IPC.

2. Briefly the facts of the prosecution case are that on 27th March, 1998 on receipt of DD No. 18A at police station Kalyanpuri regarding an accident, SI Rakesh Kumar and Constable Sailender reached the spot in front of Ghazipur Kattha, National Highway No. 24, Delhi where they found a cycle in an accidental condition. One Shri Vijay Kumar was found who made a statement to the police stating that after closing his shop he along with his friends namely Dharmender and deceased Meghraj were going to their houses on their respective cycles via National Highway towards Mandawali. At about 7:15 PM when they were infront of Gazipur Khatta acused came driving truck bearing number HR 29 D 1616 in a rash and negligent manner and suddenly took a turn towards the khatta and struck the deceased causing his death as he got crushed under the wheel of the truck. The Petitioner then stopped the truck near the gate, got down and came near the injured but since people had gathered there, due to fear he ran away from the spot.

3. Learned counsel for the Petitioner contends that the statements of the two alleged eye witnesses PW12 Dharmender and PW13 Vijay Kumar made before the police and given in Court are completely contradictory. According to the complaint (rukka) the Petitioner was said to have fled from the spot however before the learned trial court PW 12 Dharmender stated that the Petitioner stopped the truck in front of the gate of the khatta and came down. It was also pointed out that the name of the deceased was initially written in the MLC as unknown and later on the name was incorporated, had any eye witnesses been present the deceased's name would have been recorded from the very beginning.

4. The testimony of PW 12 Dharmender shows the accident to have occurred at 7:15 AM and not 7:15 PM and the learned Trial Court ought to have considered

the same but this fact has been ignored by both the Learned Trial Court and the Appellate Court. Learned Counsel states that on a perusal of the Ex.PW9/B, site plan and Ex.PW11/A, report of mechanical expert it is clear that the vehicle in question could not have caused the accident as alleged by the prosecution as there would have been blood marks on the tyres/ body of the truck as well as on the spot of the incident whereas nothing in this regard has been stated by any of the witnesses.

5. It is further contended that the learned Trial Court has failed to appreciate the facts and there was no evidence placed on record to prove rash and negligent driving by the Petitioner except the testimony of one witness that driving was at a high speed. That only on the basis of high speed alone no case of rash and negligent driving can be made out. Reliance is place upon Abdul Subhan v. State (NCT of Delhi) 2006 (4) LRC 472 (Del).

6. Learned Counsel also makes a compassionate plea that the Petitioner is a first time offender with no prior history and was driving the truck without any sort of intoxication. It is further stated that the Petitioner is a widower and has two school going minor children aged about 16 and 15 years respectively, the Petitioner has no other family member to take care of the children and he is the sole bread earner of the family. Further it is contended that the Petitioner has already undergone 4 months imprisonment and thus, a lenient view should be taken and the benefit of probation be granted to him.

7. Learned APP for the State on the other hand contends that in his statement under section 313 Cr. P.C. the Petitioner admits having committed the said offence and during trial no evidence was to led before the learned Trial Court to support his statement of not driving the vehicle in a rash or negligent manner. On examination of site plan Ex.PW-9/B it can be clearly seen that the accident could only have occurred if the driver was driving in a rash and negligent manner.

8. I have heard counsels for the parties and perused the record. Reliance placed by the Petitioner on Abdul Subhan (supra) is misconceived. In the said case the witness had stated nothing more than the fact that the vehicle was being driven at a high speed. Even the site plan had not been exhibited and there was no other

evidence available on record leading to the conclusion that the Petitioner therein was driving the vehicle in a rash and negligent manner.

9. However in the present case on a perusal of the statements of PW 12 Dharmender and PW 13 Vijay Kumar it is evident that the Petitioner was driving the truck at a very high speed and suddenly took a sharp right turn striking the deceased. The testimony of PW 12 Dharmender and PW 13 Vijay Kumar is corroborated by site plan Ex. PW9/B which shows that the truck was coming from the left side and took a sudden turn to the right side going towards the gate of the khatta thereby striking the cycle of the deceased Meghraj who was coming from the opposite direction.

10. The post-mortem report prepared by PW2 Dr. Sarvesh Tandon shows the cause of death to be cranio cerebral damage and associated thoracic injuries ante- mortem due to blunt force impact sustained during road traffic accident.

11. The Petitioner in his statement under Section 313 Cr.P.C. has taken the plea that he was falsely implicated for no fault of his. According to him, on the day of incident he was driving the truck at the relevant time and place but the deceased had not died because of being hit by his truck. He has further stated that he was going to pick the garbage from Ghazipur Khatta and when he turned the truck from NH 24 on the kachha track leading towards Ghazipur Khatta one cyclist had fallen on the road along with his cycle after being hit by another cyclist coming behind the deceased from Ghazipur Khatta side. According to the Petitioner, the accident occurred due to the cyclist coming behind the deceased and not because of his negligence. However this explanation of the Petitioner had not been put to the witnesses in their cross-examination and therefore, is clearly an afterthought. Moreover this explanation is also not borne out from the post-mortem of the deceased in view of the ante-mortem injuries received by him. Also the testimony of PW12 and PW13 is clear and cogent in regard to the manner of driving the said vehicle. Both the witnesses have deposed that the truck was coming in a very high speed and suddenly took a sharp turn and hit the deceased due to which he succumbed to death. Thus, it is clear that the said vehicle was being driven rashly and negligently by the Petitioner.

12. Thus, I find no infirmity in the impugned judgment. The sentence of the Petitioner has already been reduced by the learned Additional session Judge and I find no reason to reduce it further.

13. The petition and application are accordingly dismissed.

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