

ishwar Singh Vs. State

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Court : Delhi

Decided On : Feb-08-2012

Appellant : ishwar Singh

Respondent : State

Advocate for Def. : Mr. Manoj Ohri

Advocate for Pet/Ap. : Mr. Virendra Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL. REV. P. 675/2009 %
Reserved on: 17th January , 2012 Decided on: 8th February, 2012 ISHWAR
SINGH Petitioner Through: Mr. Virendra Singh, Advocate versus STATE
Respondents Through: Mr. Manoj Ohri, APP for the State with SI Pankaj Saroha,
PS Nangloi. Coram: HON'BLE MS. JUSTICE MUKTA GUPTA.

1. By the present petition the Petitioner seeks setting aside of the order dated 25th November, 2009 passed by the learned Additional Sessions Judge upholding the order of conviction of the Petitioner passed by the learned Metropolitan Magistrate under Sections 304A and 279 IPC. The learned Metropolitan Magistrate vide order dated 4th April, 2009 had sentenced the Petitioner to undergo Simple Imprisonment for 6 months for offence punishable under Section 279 IPC and a fine of Rs. 500/- and in default of payment of fine to undergo Simple Imprisonment for five days and Simple Imprisonment for 18 months and Rs. 5000/- fine under

Section 304A IPC..

2. Briefly the prosecution case is that on 17th February, 1997 at about 6.40 pm at Rohtak Road near Stadium Swarna Park, Nangloi, the Petitioner was driving DTC Bus bearing No.DL1P 9802 in rash and negligent manner so as to endanger human life and safety of others and while doing so the bus Crl. Rev.P.675/2009 *Page 1 of 6* hit stationary tempo No.HR 46 9896 and crashed Naveen Kumar in between both the vehicles who succumbed to injuries. Accordingly FIR was registered under Sections 279/304A IPC. After completion of investigation charge sheet was filed. Learned Metropolitan Magistrate after recording the prosecution evidence and statement of the accused convicted and sentenced him as mentioned above. Aggrieved by the judgment and order on sentence, the Petitioner preferred an appeal. The learned Additional Sessions Judge vide order dated 25th November, 2009 dismissed the appeal and upheld the judgment passed by the learned Metropolitan Magistrate..

3. Learned Counsel for the Petitioner contends that the impugned judgments are based on conjectures and surmises. Learned courts below failed to appreciate the fact that despite examining 13 witnesses including two alleged eye witnesses the prosecution has failed to establish the identity of the accused and also his presence at the spot. Neither during investigation nor during trial it was established that the deceased Naveen Kumar was working as an employee at the air filling station. No independent witness like the proprietor of the air filling station has been made a witness to the case. It is further stated that by merely on the basis of reply to notice under Section 133 M.V. Act, the requirement of law that the accused/Petitioner was driving the offending vehicle and that too in rash or negligent manner does not stand fulfilled. As per the site plan also there is no bus stop where the deceased could have got down. Further, the mechanical inspection report also does not support the case of the prosecution as there are no damages on the offending vehicle. The chain of events in the present case clearly shows that the deceased was himself negligent and sustained injuries by falling Crl. Rev.P.675/2009 *Page 2 of 6* from the bus. Hence, the findings of the learned Courts are perverse and based on no evidence. No passenger of the bus has been examined by the prosecution to prove its case though it is stated that there

were other passengers present in the bus when the alleged accident took place. Thus, in the absence of any evidence to support the Prosecution story and the fact that the injuries sustained by the deceased were because of the negligence of the deceased, the impugned judgments are liable to be set aside..

4. Per contra learned APP for the State submits that impugned judgments suffer from no illegality. PW 10 has stated that from the reply to the notice under Section 133 of the Motor Vehicles Act given to the petitioner it stands proved that the accused/petitioner was driving the offending vehicle at the time of incident. Thus his presence at the spot is clearly proved. Further, PW 11 though has turned hostile but has identified his signatures on the initial statement. Hence the revision petition is liable to be dismissed..

5. I have heard the learned Counsels for parties and perused the record..

6. PW 3/12 Pushpender who is the alleged eye witness of the incident has deposed that on the day of incident at about 6.40 pm he was standing at Swaran Park Kanta near Tempo stand. Mukesh Kumar was getting filled his tempo tyre from a shop from one person. Meanwhile, a DTC Bus bearing No.DL 1P 9802 came from Nangloi side and hit the tempo from behind as a result of which one 18 year old received injuries. They tried to apprehend the driver of the bus but he ran from the spot alongwith bus towards village Mundka. This witness has been cross-examined as PW.

12. In his cross- examination he has stated that while he was standing at the shop of Mukesh one boy alighting from DTC Bus was crushed between the tempo and the Crl. Rev.P.675/2009 *Page 3 of 6* bus. He has further stated that on the day of incident he had not signed any statement but had only signed on a paper which he had not read. He has further stated that he does not know that whether any seizure memo or site plan was prepared or not on that day..

7. PW 11 Mukesh Kumar has deposed that he plies a tempo bearing No. HR 46A 9886. On 27th February, 1997 at about 6.45 pm while he was on Rohtak Road the tyre of his tempo got deflated. He went to a shop in Swarna Park to get the puncture of the tyre repaired. While he was inside the shop he heard some noise

outside and when he came out he saw that an accident had taken place and a DTC Bus was going away. Police had reached the spot and he had not witnessed the accident taking place. This witness has even stated the incorrect date of incident. This witness had been declared hostile by the prosecution and was also re-examined by APP. But nothing material could be elicited from his examination. PW 10 R.B. Chaudhary, Manager of DTC Depot Piragarhi has deposed that on 18th February, 1997 he was posted as Depot Manager at DTC Depot Nangloi and on that day he was served with a notice under Section 133 of M.V.Act. He directed Shri Nand Kishore, Dealing Assistant to reply the same and he replied to the said notice. This witness has further stated that Shri R.Dahiya was authorized by him to take the offending vehicle on superdari and R.Dahiya had also issued duty slip Exhibit PW 10/D on his instructions. The said duty slip issued by the Depot records that the petitioner herein and Conductor Azad Singh (DW-1) were performing their duties in bus no.DL1P 9802 on Route 708 Nangloi to Narela from 14: 15 hours to 22: 35 hours on 17th February, 1997. CrI. Rev.P.675/2009 Page 4 of 6.

8. PW 1 J.S.Pawar, Mechanical Engineer has deposed that on 18 th February, 1997 he had inspected a Tata Tempo bearing No.HR 46 9886. The vehicle was alright and no fresh damages were found on the body of vehicle. This witness had given his report as Ex.PW 1/A..

9. DW 1 Azad Singh has deposed that on the date of incident he was posted as a Conductor with the petitioner as the driver of the alleged offending vehicle. This witness has stated that in his presence neither any accident with the bus had taken place nor it was seized by the police..

10. It may be noted that in the present case none of the witnesses have identified the Petitioner herein as the person by whose negligence the accident took place. The tempo with which the bus is stated to have collided has no marks or any fresh damages on its body as stated by the mechanical inspector who examined the said tempo. Had the bus collided with the tempo and crushed the deceased as alleged by the prosecution there would have been some marks on the body of the stationary tempo. Further, nothing has been placed on record by the prosecution

to prove that the said vehicle was being driven negligently and rashly by the petitioner as no witness has stated anything with regard to the manner in which the offending vehicle was being driven. Neither any passenger of the bus has been examined nor the owner of the air filling station where PW 3 was said to standing and witnessed the accident has been examined by the prosecution..

11. In the present case, the chain of evidence connecting the petitioner to the alleged accident is not complete. The only basis on which the prosecution has tried to implicate the Petitioner is because he was driving the offending vehicle as per the duty slip. Driving the offending vehicle has not *Crl. Rev.P.675/2009 Page 5 of 6* been denied by the Petitioner, however the same does not prove that the accident had taken place due to his negligence or rash driving. The prosecution has not been able to establish its case beyond reasonable doubt against the petitioner..

12. The essential ingredients to constitute an offence punishable under Section 279 IPC are that there must be rash and negligent driving or riding on a public way and the act must be so as to endanger human life or be likely to cause hurt or injury to any person. For an offence under Section 304A, the act of accused must be rash and negligent, which should be responsible for the death which does not amount to culpable homicide. The prosecution in the present case has failed to prove how the act of the Petitioner was rash or negligent to bring the same under the purview of Sections 279/304A IPC..

13. Hence keeping in view the circumstances of the present case, the impugned orders convicting the Petitioner are set aside. The Petitioner is acquitted of the charges punishable under Section 279/304A IPC. The petition is accordingly allowed. The bail bond and surety bond of the Petitioner are discharged..

14. Petition stands disposed of. (MUKTA GUPTA) JUDGE FEBRUARY 8, 2012/dk
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