

Balwan Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/924450

Court : Delhi

Decided On : Feb-07-2012

Appellant : Balwan Singh

Respondent : State

Advocate for Def. : Mr. Manoj Ohri

Advocate for Pet/Ap. : Mr. Pushpender Singh Dahiya

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL. REV. P. 422/2009 %
Reserved on: 24th January , 2012 Decided on: 7th February, 2012 BALWAN
SINGH Petitioner Through: Mr. Pushpender Singh Dahiya, Advocate versus
STATE Respondents Through: Mr. Manoj Ohri, APP for the State Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA.

1. By the present petition the Petitioner seeks setting aside of the order dated 13th March, 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, 279 and 338 IPC. The learned Metropolitan Magistrate vide order dated 29th November, 2007 had sentenced the Petitioner to undergo Rigorous Imprisonment for a period of six months for offence punishable under Section 279 IPC and a fine of Rs. 1000/- and in default of payment of fine to undergo Simple Imprisonment for two months and Rigorous Imprisonment for two years and Rs.

5000/- fine under Section 304A IPC, in default of payment of fine to undergo Simple Imprisonment for six months. The Petitioner was further sentenced to undergo Rigorous Imprisonment for a period of two years and a fine of Rs.1000/- for offences punishable under Section 338 IPC, in default of fine to further undergo Simple Imprisonment for six months. *Crl.Rev.P.422/2009 Page 1 of 6.*

2. Briefly the prosecution case is that on 10th July, 1997 at around 9:30 a.m. at Sector-3, Pappan Kalan, Main Road Delhi, the Petitioner was driving Truck bearing No. DL1CB 1034 in rash and negligent manner so as to endanger human life and personal safety of others and while doing so he struck against a motorcycle bearing No. RNA 1510, caused death of its pillion rider Hari Chand and grievous injuries on the person of its rider Pawan Kumar. FIR No. 724/1997 was registered against the Petitioner. The investigation was conducted and charge sheet was filed for offences punishable under Section 279/304A/338 IPC against the Petitioner. After recording the statement of the prosecution witnesses and the accused under Section 313 Cr.P.C. learned trial court convicted and sentenced the Petitioner as mentioned above. Aggrieved by the judgment of conviction and order on sentence, the Petitioner preferred an appeal. Learned Additional Sessions Judge vide order dated 13th March, 2009 dismissed the said appeal..

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 Palam Village and Matiala Village are opposite in direction and the motorcyclist PW1 Pawan Kumar was coming towards Palam and the truck while coming from Matiala Villaget had taken a turn to approach the main road. The site of this accident is hardly 50 mtrs away from the turn and at that time the road was slippery due to rain water. Thus, it was very difficult for the truck to attain a high speed on this turn. It is further stated that there are inherent contradictions in the testimony of PW1 and the same have been ignored by the learned courts. Learned counsel for the Petitioner further contends that the alleged eye-witness PW4 Rajesh Balan has not supported the prosecution version and stated that he *Crl.Rev.P.422/2009 Page 2 of 6* had not seen the accident taking place but when he reached the spot the accident had already happened. It is stated that the testimonies of PW 4 and PW1 are contradictory which show that the Petitioner

was not at fault for the alleged accident. It is further stated that the road on which the motorcyclist PW1 was coming with the pillion rider was a double road at that time and PW1 was coming on the wrong side due to which the accident took place. Thus, the negligence on the part of PW1 cannot be attributed to the Petitioner. The Petitioner suffered injuries because of his own negligence and fault. Thus, the impugned judgments are erroneous on fact as well as on law and liable to be set aside..

4. Per contra learned APP for the State submits that impugned judgments suffer from no illegality. It is stated that PW1 is the injured witness who was riding the motorcycle which struck offending vehicle driven by the Petitioner. PW1 has supported the prosecution case and minor contradictions here and there do not go to the root of the matter. It is further stated that the testimony of the I.O. has gone unrebutted and unchallenged. PW4 though has stated that he has not seen the accident but has accepted that he had seen the motorcycle and the injured lying on the ground. Hence the revision petition is liable to be dismissed..

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

6. PW1 Pawan Kumar has deposed that on 10th July, 1997 around 9:00- 9.30 a.m. he was riding motorcycle no. RNA 1510 and Hari Chand was the pillion rider. He was going towards Palam when one Truck No. DL-1CB- 1034 was coming from village Matiala at a very high speed and on seeing the truck he tried to save his vehicle but the driver of the truck hit against his Crl.Rev.P.422/2009 *Page 3 of 6* motorcycle and after hitting the motorcycle the driver ran away along with the truck. This witness has further stated that he fell on the road and received injuries. His friend Hari Chand also received several injuries due to this accident. He has further stated that one auto driver removed them to Sunil Nursing Home from where they were shifted to DDU Hospital. The witness in his testimony has also deposed that the driver of the truck hit them, thereafter he took back turn and fled from the spot. He has further stated that he had seen the face of the driver of the offending truck. This witness has further stated that the place of incident is a Tiraha and the spot is called Matiala Tiraha Road. The driver of the truck was coming from the Matiala Side, while he was coming from his home and going

towards his shop situated in Palam area. This witness has further stated that while he was taken to Sunil Nursing Home from the spot and thereafter referred to DDU Hospital, he was in semi-conscious condition because of the injuries. First of all police officers met him at Sunil Nursing Home but he was not in full conscious. He stated that it is correct that he was in such a position that he could not tell the number of the truck. This witness has voluntarily stated that the number plate of the truck got entangled with his motorcycle. He came to know about this fact at the spot itself because he had seen the number plate which remained entangled with his motorcycle. This witness has further admitted in the cross-examination that the number of the truck was written on his palm and it is correct that he did not notice the truck when it was coming from Matiala Road. It is further correct that the truck is visible when a person is coming from Kakrola Road and going towards Palam when the truck comes from village Matiala. Crl.Rev.P.422/2009 Page 4 of 6.

7. PW4 Sh. Rajesh Balan has stated that in June or July, 1997 he was going on his scooter to Palam Village. At about 10:00 - 10:30 A.M. while he was on the main Palam Road he saw one motorcycle lying on the road whose number, colour and make he did not remember. Two persons were also lying on the road. He further stated that he did not know how the accident had taken place as it had taken place before he reached the spot. This witness has been declared hostile by the learned Additional Public Prosecutor. PW9 H.C. Jagdish has stated that on the day of incident he reached at the spot and found one motorcycle and one truck in accidental condition. He came to know that the injured have been removed to Sunil Nursing Home. He reached at the said nursing home and recorded the statement of Complainant and collected other contemporaneous documents..

8. A perusal of the testimony of PW1 shows inconsistencies, contradictions and material improvements which completely discredit his testimony. PW4 the alleged eye witness has deposed that he reached at the spot after the accident had taken place and did not see how the accident had taken place. There is no clear evidence placed on record by the prosecution to prove the manner of driving the offending vehicle. The only statement in this regard is the testimony of PW1 who has stated that the truck was being driven at a fast speed. This statement finds no corroboration from any other document or testimony of any witness..

9. As per the site plan Ex.PW-9/B the motorcyclist was riding on the right side of the road while going towards village Palam when the accident took place. It is essential to be taken into consideration that while going towards village Palam the motorcyclist was required to be riding his Crl.Rev.P.422/2009 Page 5 of 6 motorcycle on the extreme left as per the normal traffic rules whereas the motorcyclist PW-1 in the present case was riding on the right side i.e. the wrong side of the road and truck had taken the turn rightly from his right side to go towards village Kakrola..

10. 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/338 IPC..

11. Hence keeping in view the circumstances of the present case, the impugned judgment convicting the Petitioner is set aside. The Petitioner is acquitted of the charges punishable under Section 279/338/304A IPC. The petition is accordingly allowed. The Petitioner is in custody. Superintendent Tihar Jail is directed to release the Petitioner forthwith, if not required in any other case..

12. Petition stands disposed of. (MUKTA GUPTA) JUDGE FEBRUARY 07, 2012
dk Crl.Rev.P.422/2009 Page 6 of 6