

Yaqub Ali Vs. State

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Court : Delhi

Decided On : Dec-13-2012

Judge : Pratibha Rani

Appellant : Yaqub Ali

Respondent : State

Advocate for Pet/Ap. : Mr. Govind Srivastava

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Reserved on : November 22, 2012 Pronounced on : December 13 , 2012 CRL.REV.P. 75/2012 YAQUB ALI Through: Petitioner Mr. Govind Srivastava and Mr.Ram Naresh, Advocates. versus STATE Through: Respondent Ms.Rajdipa Behura, APP for State. CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI % PRATIBHA RANI, J.

1. By this revision petition, the petitioner is challenging the judgment dated 30.01.2012 passed by the learned Addl. Sessions Judge whereby the conviction of the petitioner under Section 279/304A IPC awarded to him by the learned M.M vide judgment dated 19.10.2010 and order on sentence dated 20.10.2010, was affirmed.

2. Briefly, as set up, the prosecution case is that on 22.03.2003, an information was received at 7:12 p.m vide DD No.26A at P.S. I.P. Estate about an accident. Copy of DD was handed over to ASI Ramanand, who along with Ct. Kamal visited

the spot. On the basis of statement (Ex.PW- 8/A) made by HC Govind (Ct. at that time), case FIR No.83/2003 was registered against the petitioner for committing the offence punishable under Section 279/304A IPC. On completion of investigation, chargesheet was filed. During course of trial, prosecution examined 10 witnesses to bring home the guilt of the petitioner. After examining the petitioner (who was an accused in the case) under Section 313 Cr.P.C., opportunity was also given to him to lead defence evidence and he produced one Lalit Kumar in his defence. After considering the testimonies of the prosecution witnesses and the defence witness examined by the accused, the petitioner/accused was found guilty for causing death of Mewa Ram due to rash and negligent driving of Bus bearing registration No. DL 1.A 869. and he was sentenced to undergo SI for two months for the offence punishable under Section 279 IPC and SI for one year for the offence punishable under Section 304A IPC and also to pay compensation of Rs.5,000/- to LRs of the deceased and in default of payment of compensation, SI for further three months. Both the sentences were ordered to be run concurrently.

3. Aggrieved by the order dated 30.01.2012 passed by the learned Addl. Sessions Judge vide which the appeal preferred against the judgment of the learned M.M was dismissed, this revision petition has been filed praying for setting aside the order dated 30.01.2012 passed by the learned ASJ and acquittal of the petitioner for the offence complained of.

4. Notice of the revision was given to the State.

5. On behalf of the petitioner, it has been submitted that both the Courts below failed to appreciate that the prosecution failed to prove the rash and negligent act on the part of the petitioner so as to hold him guilty under Section 279/304A IPC. The prosecution witnesses only state that the petitioner was driving the offending vehicle in a rash and negligent manner, but failed to prove the degree of rashness and negligence by strong evidence, as required to be done in view of the judgment of this Court in Abdul Subhan v. State 2006(3) JCC 179. and Vinod Kumar vs. State 2011(4) JCC 2786. It has been further submitted that mere carelessness is not sufficient to convict the petitioner as the prosecution is required to prove the

mens rea or guilty mind.

6. Learned counsel for the petitioner also referred to the contradictions in the statement of PW-8 ASI Ramanand, the Investigating Officer and the Photographer (PW-3) as to where the dead body was lying. While PW-8 stated that the dead body was lying behind the bus, PW-3 stated that it was lying between the front and rear tyre of the bus. There are also contradictions in the registration number of the offending bus which creates suspicion and doubt in the prosecution story. Further, the accident has taken place during peak hours, but no independent public witness has been joined in the case and the prosecution also failed to prove as to how the deceased came before the bus and met with the accident. Thus, there is possibility of contributory negligence. Learned counsel for the petitioner submitted that since case against the petitioner has not been proved beyond reasonable doubt through any satisfactory evidence, the petitioner deserves acquittal in this case.

7. Per contra, Ms.Rajdipa Behura, learned APP for the State submitted that the case is based on the version of eye witness HC Govind (Ct. at that time) who was on duty at that time at the Beat and was also managing that the buses do not stop at the bus stand in a haphazard manner. It is further submitted that the site plan prepared by the I.O at the instance of the eye witness Ct. Govind makes it clear that the view of the eye witness was not obstructed at the time of accident. The mechanical inspection report, postmortem report and the statement of the eye witness prove the case of prosecution beyond reasonable doubt and the learned Addl. Sessions Judge has rightly dismissed the appeal which need not be interfered with by this Court in exercise of revisional jurisdiction for the reason that there is no illegality or infirmity in the impugned judgment and order.

8. I have heard learned counsel for the parties and considered the rival submissions put forth by them as well as the written synopsis filed on behalf of the petitioner.

9. First of all, it is necessary to mention that the contradictions pointed out by learned counsel for the petitioner in the statement of PWs 3 & 8 as to where the dead body was lying need not be attached any significance for the reason that immediately after the occurrence the site was got photographed and the

photographs show the position of the dead body lying between two tyres of the bus. No doubt, there is over writing over the registration number in the Rukka Ex.PW-8/A, but again that has to be ignored for two reasons: (i) the cuttings have been initialed by the I.O; and (ii) the photographs of the bus taken at the time of accident clearly reflect the registration number of the offending bus.

10. The contention of the learned counsel for the petitioner that prosecution is required to prove mens rea or guilty mind has to be negated in view of the situation that Section 304A IPC has application in cases where there is no intention to cause death. Section 304A is attracted only in such cases where rash and negligent act is the direct cause of death of another person.

11. Now the question arises as to whether the petitioner was driving the offending vehicle in a rash and negligent manner and had caused the death of Mewa Ram. Here, suffice it to mention that Ct. Govind is an eye witness and it is on his statement that the FIR had been recorded. He specifically stated that when he was present at the bus stand in front of AGCR Building, at that time he saw a bus coming the side of ITO and one pedestrian who was crossing the road from in front of AGCR office towards the IP Lane, was hit by the bus, as a result of which he came under the front wheel of the bus and was crushed. He raised alarm and with the help of public caught the driver of the bus, whose name was revealed later on as Yaqub. When the local police arrived at the spot, he made his statement Ex.PW-8/A and also handed over the driver to the I.O and pointed out the place of occurrence . Not only that, the vehicle was also seized in his presence vide seizure memo Ex.PW-1/A and the documents pertaining to the bus /bus driver vide memos Ex.PW-1/B to PW-1/D. PW-10 Ct. Govind, has explained about the rash and negligent driving of the petitioner Yaqub and the manner in which the deceased was hit by the bus, driven by the petitioner, while crossing the road from zebra crossing.

12. Mechanical inspection report Ex.PW-5/A established that horn, light, brakes were OK and the bus was OK for road test. Postmortem report shows that cause of death was due to cranio-cerebral damage consequent upon crush injury to the head.

13. No doubt, the eye witness in this case is the constable, but the question arises whether he can be termed as interested witness so as to disbelieve his version. A witness may be called as interested witness only when he or she derives some benefit from the result of litigation; in the decree in a civil case or in seeing an accused person punished. The witness who is a natural eye witness, in the circumstances of the case, cannot be said to be interested. (See: State of Rajasthan v. Smt. Kalki and Anr. (1981) 2 SCC 752.

14. It is not the case of the petitioner that PW-10 was in any way related to the deceased or having any kind of enmity towards him. PW-10 Ct. Govind was present there while performing his duty and his presence at the spot cannot be doubted for the reason that he is not only complainant in this case but is also a witness to the arrest of the accused and seizure of the vehicle and other related documents. So his presence at the spot is not doubtful. Version of the petitioner, as given by him under Section 313 Cr.P.C., is that he was not driving the bus bearing No. DL 1.A 869.on the date of accident and that he has been falsely implicated in this case. The said accident was not caused by his bus.

15. The defence witness examined by the petitioner is DW-1 Lalit Kumar, whose statement needs to be referred in detail. As per DW-1 Lalit Kumar on 22.03.2003 at 7 p.m, he was going to Ghaziabad in Bus bearing registration not DL 1.A 869.(offending vehicle) which was being driven by accused Yaqub Ali. When the bus reached I.P. Estate, in the meantime one person suddenly crossing the road was hit was a three wheeler. There was no Zebra line crossing near the bus stop and iron railing has been fitted on the divider. No accident was caused by vehicle No. DL 1.A 8693. Thereafter, he boarded another bus route No.375 for going to his house. During cross examination by learned APP, he stated that he came to know next day that the accused has been falsely implicated in this case and that he did not know the registration number of the TSR, which as per him, caused this accident. He further stated that he remained at the spot for about 5-7 minutes.

16. Statement of DW-1 Lalit Kumar that he remained at the spot for about 5-7 minutes, makes it clear that he got down there obviously because the bus was unable to move further for the reason that the deceased was crushed under the

wheel of the bus. The photographs depict the situation so clearly that DW-1 could not have imagined some break down of the bus so as to necessitate change of another bus to reach his destination. Statement of PW-10 Ct. Govind that he immediately got the bus stopped and made the driver come down from the bus and when the local police arrived he handed over driver Yaqub to the Investigating Officer proved that all these events took place at the spot. If DW-1 Lalit Kumar was present at the spot he should have immediately informed the Investigating Officer or PW-10 Ct. Govind that the deceased was hit by a three wheeler scooter and not by bus driven by the petitioner. Even it is not the case of the petitioner that after being hit by three wheeler scooter the deceased fell under his bus. The crushed injuries on the head are not attributed to any TSR driver who allegedly, as per DW-1, hit the pedestrian.

17. No doubt, the defence witness has to be treated at par with the prosecution witness, but the question is whether DW-1 Lalit Kumar can be termed as a reliable eye witness who has witnessed the accident while travelling in the bus driven by the petitioner. First of all, there is nothing to suggest that as to how Yaqub Ali, driver of the offending vehicle came to know that one Lalit Kumar has seen the accident, as Lalit Kumar was only a passenger in that bus who got down and boarded another bus and left for his house. Till next day, he was not aware about arrest of petitioner in this case. Till he appeared as defence witness in this case on 06.07.2010, he had not informed either the I.O or any authority/Court that he had witnessed the accident and that accused Yaqub was innocent. There is nothing on record to indicate how petitioner Yaqub came to know about the address of Lalit Kumar so as to examine him in his defence, when there is nothing in his statement under Section 313 Cr.P.C that Lalit Kumar while changing the bus left his address with him so that he could be summoned as defence witness during trial. Further, the petitioner Yaqub himself has nowhere stated in his statement under Section 313 Cr.P.C. or suggested the eye witness PW-10 Ct. Govind that the accident has been caused by a three wheeler. Photograph Exhibit P2 (colly) depicts the head of the deceased crushed under wheel of the bus and his body lying in between front and rear wheel of the bus, thus establishing the involvement of only bus No. DL 1.A 869.in this accident. Site plan Ex. PW-8/C shows that the accident has taken place on Zebra crossing. When any vehicle is approaching towards the Zebra

crossing which is meant for crossing the road by the pedestrians, the driver has to ensure that the pedestrians crossing the road from the zebra crossing or otherwise, are not hit.

18. The involvement of the bus No. DL 1.A 869.in this occurrence is further established from that fact that it was the petitioner who had handed over his documents like insurance and driving license immediately after the accident and the bus as well as documents were seized and the seizure memo bears the signatures of the petitioner. Even the bus has been taken on superdari by him. It is also worthwhile to mention here that the petitioner was released on police bail on the same day. So, it cannot be said that the petitioner had no access to the outside world when he was apprehended and arrested for causing this accident. MLC of the deceased Ex.PW-2/A also shows that unknown person (subsequently identity revealed from identity card as Mewa Ram resident of 2/18, Trilok Puri, Delhi) was brought to Lok Nayak hospital with alleged history of RTA, near I.P. Marg, ITO by Bus not DL 1.8693, patient head was crushed and was declared brought dead.

19. From perusal of the statements of the prosecution witnesses and the photographs as well as the post mortem report, it stands proved that the bus driven by the petitioner had hit the deceased when he was crossing the road from zebra crossing. Further, that the petitioner was driving the bus in a rash and negligent manner and caused his death.

20. The evidence brought by the prosecution is sufficient to prove the guilt of the petitioner beyond reasonable doubt. The learned Addl. Sessions Judge in the impugned judgment has referred to the contradictions as well as the overwriting in the registration number of the bus and has rightly come to the conclusion that the case against the petitioner stands proved beyond reasonable doubt.

21. In Farid vs State 2001 IV AD Delhi 494 it was opined that at the stage of revision, meticulous examination of the material on record need not be undertaken. The submissions made before this Court were also made before the Courts below and have been duly considered in the impugned judgment.

22. In the case *T.N.Dhakkal vs. James Basnett and Another* (2001) 10 SCC 419, the Apex court has laid down the principles as to under what circumstances the revisional jurisdiction should be exercised by the High Court. The relevant paragraphs are extracted as under :7. By virtue of the powers under Section 401 Cr.P.C. the High Court has jurisdiction to examine the proceedings of inferior courts if the necessity for doing so is brought to its notice in any manner. Under Section 397 of Code, the High Court possesses general power of superintendence over actions of the courts subordinate to it and that discretionary power; when administered on the judicial side, is termed as the power of revision.

8. While giving its reasoned judgment in *Janata Dal v. H.S.Chowdhary* a Division Bench of this Court speaking through Pandian, J.(as his Lordship then was) dealt with the object of revisional jurisdiction of the High Court in the following words: (SCC p. 355, para 130).

130. The object of the revisions jurisdiction under Section 401 is to confer power upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or appearance harshness of treatment which has resulted, on the one hand, or on the other hand in some undeserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case. (emphasis supplied) The Bench then went on to say that: (SCC p.355, para

132) 132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The power possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

9. We are in agreement with the above exposition of law. We are of the opinion that though the High Court has revisional jurisdiction under Section 401 of the Code and can exercise its discretionary jurisdiction to correct miscarriage of justice, but whether or not, there is justification for the exercise of that discretionary jurisdiction would depend upon the facts and circumstances of each case. The controlling power of the High Court under Section 401 of the Code being discretionary is required to be exercised only in the interest of justice, having regard to all the facts and circumstances of each particular case and not mechanically.

23. The prosecution has been able to prove the manner of accident and the vehicle involved in the accident as well as the person responsible for rash and negligent driving that cost Mewa Ram his life.

24. This Court concurs with the findings of the learned Addl. Sessions Judge that death of Mewa Ram was caused by the petitioner while driving the bus number DL 1.A 869.in a rash and negligent manner who failed to drive the bus in a responsible manner and hit the pedestrian who was crossing the road from zebra crossing which is especially meant for this purpose.

25. Having carefully perused the impugned judgment and the testimonies of the prosecution witnesses and defence witness as also the record of the case, I am of the view that finding of guilt and sentence awarded to the petitioner do not call for any interference by this Court in exercise of revisional jurisdiction.

26. Revision petition is devoid of any merit and is hereby dismissed. Petitioner is directed to surrender before the concerned Court within a week for undergoing the remaining part of his sentence.

27. If petitioner fails to surrender before the concerned Court within the stipulated time, coercive steps be taken against him by the concerned Court to procure his presence.

28. TCR be sent back alongwith copy of this order for compliance. PRATIBHA RANI, J DECEMBER 1 , 2012 dc/aka

