State(Nct Of Delhi) vs Jagbir Singh on 10 April, 2019

Author: Sangita Dhingra Sehgal

Bench: Sangita Dhingra Sehgal

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*    IN THE HIGH COURT OF DELHI AT NEW DELHI
                        Judgment Reserved on: 02nd April, 2019
                      Judgment Pronounced on: 10th April, 2019


+     CRL.LP. 200/2018

      STATE(NCT OF DELHI)                             ...Appellant
                    Through:         Mr. Taranag Srivastava, APP for
                                     State with SI Devender, PS New
                                     Friends Colony

                            Versus

      JAGBIR SINGH                                    ...Respondent
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Through: Mr. Kuldeep Rai, Mr. Emamuddin Azmi and Mr. Varun Mishra, Advs CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J CRL.M.A. 5806/2018 (Delay in filing) This is an application under Section 5 of the Limitation Act, 1963 read with Section 482 Cr.PC seeking condonation of 15 days delay in filing the leave to appeal.

Heard.

For the reasons stated in the application, the delay in filing the leave to appeal is condoned.

Application stands disposed of.

1. By the present Leave Petition filed under Section 378 (3) of the Code of Criminal Procedure (hereinafter referred as 'Cr.P.C.') the State seeks leave to appeal against the judgment dated 24.11.2017 passed by the learned Additional Sessions Judge-02, South East District, Saket Courts, New Delhi whereby the respondent (accused before the Trial Court) was acquitted of the charge punishable under Sections 279/304-A of the Indian Penal Code, 1860 (hereinafter as 'IPC').

2. Brief facts of the case are as under:-

> "(i) That DD No. 16A was registered at Police Station New Friends Colony on receipt of the information that one boy has been injured by the rear tyre/wheel of the bus bearing no. DL1PA 7976, while he was deboarding the aforesaid bus. The said DD was

marked to SI Hira Lal(PW-6), and accordingly SI Hira Lal arrived at the spot i.e. Bus Stand, Taimoor Nagar, CV Raman Marg. The injured was shifted to the AIIMS Hospital and was declared brought dead by the doctors.

(ii) Based on the aforesaid facts and circumstances, FIR No. 68/2005 under Section 279/304A IPC was registered at Police Station New Friends Colony.

(iii) After the completion of investigation, the charge sheet was filed and after committal, arguments on the point of charge were heard and charges U/s Section 279/304A IPC, were framed against the accused, to which he pleaded not guilty and claimed trial."

3. To bring home the guilt of the respondent, the prosecution has examined 6 witnesses in all. Statement of the respondent was recorded under Section 313 of Cr.P.C. wherein he denied the charges framed against him and claimed to be falsely implicated in the case and did not lead any evidence in his defence.

4. After hearing the counsels for both sides and on appreciation of entire evidence available on record, the learned Additional Sessions Judge, set aside the order of conviction passed by Ld. ACMM and acquitted the accused for the charged offences.

5. Assailing the impugned judgment, Mr. Taranag Srivastava learned counsel appearing for the State contended that judgment of acquittal by the Learned Additional Sessions Judge is not sustainable and deserves to be quashed and set-aside as it is not based on correct appreciation of evidence available on record. Learned counsel for the State contended that the Learned Additional Sessions Judge has failed to appreciate the fact, that the accused in his Statement recorded U/s 313 Cr.P.C, has admitted that he was driving the bus at the time of the alleged incident and the said factum is further corroborated by the testimony of Ct. Pawan Kumar. He further contended that the learned Additional Sessions Judge has erred in not relying on the testimony of the eyewitness PW-2(Ct. Pawan Kumar) wherein he has categorically deposed that the accident had occurred due to the rash and negligent driving of the respondent. Counsel for the State has lastly urged that the trial court has not correctly appreciated the facts and circumstances of the case; hence the impugned judgment is liable to be set aside.

6. Per contra, learned counsel for the respondent refuting the arguments advanced on behalf of the learned APP for the State, vehemently opposed the present petition and contended that the impugned judgment passed by the Learned Additional Sessions Judge does not call for any interference by this Court. He further contended that the testimony of PW-2 Ct. Pawan Kumar, who claims to have seen the accident, is highly doubtful as the story of the prosecution is not corroborated with the testimony of witnesses. He further contended that the prosecution has failed to bring on record any substantial evidence, which would prove that the respondent was driving the aforesaid bus in rash and negligent manner and the death has been caused due to the act of the respondent.

7. I have given my anxious consideration to the submissions advanced on behalf of learned counsel for the parties and also perused the material available on record.

8. At the outset, before delving into merits of the submissions made by learned counsel for the parties, I find it appropriate to discuss the relevant Section involved in the instant case. Section 279 IPC deals with rash and negligent driving, which reads as under:

> "S. 279. Rash driving or riding on a public way- Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both"

9. To constitute an offence under Section 279 IPC, it must be shown that the person was driving the vehicle in a rash or negligent manner because criminal negligence or criminal rashness is an important element for the offence under Section 279 IPC.

10. Section 304A reads as under:

> "304A. Causing death by negligence-- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

11. In a road accident case, to convict a person for the offence punishable under Section 304-A IPC, the prosecution is required to bring on record the basic requirement of the said Section i.e. "Rash or Negligent Act" with following conditions:

> 1) there must be death of the person in question;
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> 2) that the accused must have caused such death; and
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> 3) that such act of the accused was rash or negligent and that it did not amount to culpable homicide.

12. In Rathnashalvan vs. State of Karnataka : AIR 2007 SC 1064, the Apex Court observed that:

> "5. Section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of

> each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.
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> 6. As noted above, "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.

13. Section 304A exclusively deals with unintentional death caused by doing any rash or negligent act by the offender. The applicability of this Section is limited to rash or negligent acts which cause death but fall short on culpable homicide amounting to murder or culpable homicide not amounting to murder. To bring an offence within the ambit of Section 304A, the prosecution is required to bring on record that the death was caused due to rash and negligent act of the accused.

14. Rashness consists in hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences, whereas criminal negligence on the other hand, is the gross and culpable neglect or the failure to exercise the reasonable and proper care. The distinction has been very aptly pointed out by Holloway J. in these words:

> "Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The immutability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The immutability arises from the negligence of the civic duty of circumspection"

15. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it may cause injury but done without any intention to cause injury that it would probably cause injury. The criminality lies in such an act or indifference to the consequences.

16. The question whether the conduct of the accused amounted to culpable rashness or negligence depends directly on the question as to what amount of care and circumspection which is prudent and reasonable man considered to be seen considering all the circumstances of the case. It is necessary to avoid being influenced by the prejudice arising out of the loss of a life which is a dominant factor in cases of accident.

17. Returning to the facts of the present case, the moot question which is to be decided whether the death has caused due to the rashness and negligence of the respondent/accused person or the death has been caused due to negligent act of the deceased. Admittedly the death has been caused from the offending vehicle driven by the accused. To ascertain the cause of death, it is relevant to examine the evidence adduced by the prosecution before the trial court. The case of the prosecution rests upon the testimony of Ct. Pawan Kumar who was an eye witness to the alleged incident. He stepped into the witness box as PW-2 and deposed that:-

> "On 14..02.2005 I was posted at PS new Friends Colony. On that day I was on vehicle checking duty at beat no.4, Taimur Nagar. At about 07:30 p.m., one bus bearing no. DL-1PA-7976 Route no. 473 came from Badarpur side and stopped after our barricades. The vehicles were boarding and deboarding. However, the driver of the said bus started running the bus suddenly in fast speed. One boy came under the rear tyre of the bus. The bus did not stop there. However the bus was stopped at a distance and the driver of the said bus ran away from the spot. Someone called the police and PCR took the injured to hospital. IO SI Hira Lal reached the spot."

18. During his cross examination he deposed as under:

> "I was checking vehicles by erupting barricades on C.V. Raman Marg. The bus was going towards ring road. I was also present on the same side of the road going towards ring road. The distance between the barricades and bus stop is going towards ring road. The distance between the barricaded and bus stop is about 100 meters. The passengers boarded and de-boarded at the bus stop. The boy came under the bus within a distance of 2-3 paces from the place from where the bus started running. The bus stopped immediately after crossing our barricades. The boy was crushed under the rear tyre of the bus. The bus did not stop after the incident and it stopped at a distance of around 100 metre."

19. A close reading of testimony of PW-2 cast a serious doubt that he had witnessed the accident. Ct. Pawan Kumar in his testimony is silent on the fact that whether the deceased was boarding or deboarding the bus. PW-2 deposed that the driver of the bus started its ignition and accerlerated in a fast speed after the same had crossed their barricade, consequently one boy was injured and was crushed under the rear tyre/wheel of the bus. He further deposed that the distance where the bus stopped and the barricade was around 100 meters and the boy came under the rear/tyre wheel of the bus within a distance of 2-3 paces from where the bus started its ignition.

20. As per the testimony of PW-2, the offending vehicle stopped at the barricade and thereafter crossed the barricade. PW-2 while performing his duty would be watching the vehicles which are moving towards the barricade instead of watching the vehicle which has already crossed the barricade. Hence PW-2 witnessing the alleged incident is doubtful and the site plan Ex.PW6/D is also of no help as it does not project the place of incident and the positioning of PW-2.

21. Further, the accident took place at about 07:30 p.m. in the evening with numerous passengers in the bus bearing no. DL-1PA-7976 but none of the passengers of the bus no. DL-1PA-7976 were introduced as a witness by the prosecution and nothing has emerged on record to say that any effort has been made by the prosecution to cite any of the co-passengers as witnesses who were present at the place of the incident.

22. Undoubtedly, in the present case, the accident, death of an innocent and identity of driver of offending vehicle, are not in dispute. Accordingly as per the ocular evidence, the deceased was injured under the rear tyre of the bus, but the same facts is not supported by the medical evidence because as per the postmortem report it was opined that '(i) multiple abrasion over the dorsal aspect of left foot,

(ii) gazed abrasion on the left back side of the body and (iii) grazed abrasion over the left buttock'. Whereas it is significant to emphasize that no doctor was examined by the prosecution to prove the post mortem report of the deceased. Hence, the prosecution failed to bring on record that the death of the deceased, was due to the rash and negligent act of the respondent.

23. The prosecution had to prove that the respondent had acted with recklessness and therefore a failure to exercise reasonable and proper care in person, but in the instant case the mere fact that an innocent died in a road accident, the presumption of rashness and negligence against the respondent cannot be drawn. In order to impose criminal liability on the respondent, it must be found as a fact that the accident was entirely or at least mainly due to the rashness or negligence on the part of the person who was driving the vehicle. Rashness and negligence being the crux of an offence under Section 279/304A IPC, the prosecution has to prove that the act by which the accident had occurred was rash and negligent because any admission on causing death by driving a vehicle cannot attract the offences punishable under Section 279/304A IPC.

24. In the present case, on a cumulative reading and appreciation of the entire evidence on record, I am of the considered view that the evidences on record have been held to be unworthy of acceptance because the same is found to be replete with infirmities. There are considerable inconsistencies and discrepancies in the statement of the witnesses, which consequently makes the version of the prosecution fabricated and unreliable. Therefore, the prosecution has failed to disclose the true genesis of the crime and establish the charges against the respondent punishable under Section 279/304A IPC.

25. It is a settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast there to in an appeal filed against acquittal. Upon re-appraisal of

evidence and relevant material placed on record, in case, the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favor's the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.

26. Having regard to the principles laid down by the Apex Court in the case of Ghurey Lal vs. State of U.P., reported at 2008 (10) SCC 450, I do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully analyzed the evidence of all the witnesses. Accordingly, no ground to interfere with the impugned judgment is made out and the leave petition is dismissed.

SANGITA DHINGRA SEHGAL, J APRIL 10, 2019 SU