

IN THE COURT OF SHRI GIRISH KATHPALIA,
DISTRICT & SESSIONS JUDGE (HQ)
TIS HAZARI COURTS, DELHI.

CR. APPEAL NO. 265/2019

YAMANDEEP ROHILLA,
S/O SH. JOGINDER SINGH
R/O G-2, MCD FLATS,
GULABI BAGH, DELHI-110007

.....APPELLANT

vs

STATE

.....RESPONDENT

Date of filing : 29.05.2019

First date before this court : 30.05.2019

Date of completion of Arguments: 29.02.2020

Date of Decision : 12.05.2020

Reason for delay in pronouncement of Judgment : Covid19 Lockdown

APPEARANCE : *Sh. Sh. Bhopal Singh, Counsel for appellant.*
Sh. MA Khan, Additional Public Prosecutor

JUDGMENT

1. By way of this Criminal Appeal, the appellant has challenged judgment and order dated 17.05.2019 of the learned trial Magistrate, whereby the appellant was convicted for offence under Section 279/337 IPC and was sentenced to payment of fine of Rs.1000/- for offence under Section 279 IPC and to payment of compensation of Rs.1,50,000/- jointly to both injured persons for offence under section 337 IPC. The fine amount of Rs.1000/- was deposited by the appellant before the trial Magistrate on 17.05.2019 itself.

2. Notice of the appeal was issued to prosecution side and on information, husband of one of the injured persons appeared in this Court on 19.09.2019 and submitted that his wife, who had suffered injuries in the accident in question, has passed away on account of those injuries. In the course of hearing, learned counsel for appellant submitted that having gone through the entire trial court record, he could not find any infirmity in the judgment dated 17.05.2019 to the extent of conviction, so the appellant decided to confine his appeal to the order dated 17.05.2019 on sentence. To that extent, statement of the appellant was recorded on 29.02.2020. Since scope of the appeal was narrowed down to sentencing, which consisted only of fine and compensation, in view of allegation of husband of one of the injured persons that she succumbed to the injuries caused in the accident in question, he was permitted to place on record medical documents of the injured also. I heard learned counsel for appellant as well as learned prosecutor for State and also husband of the deceased injured.

3. Learned counsel for appellant argued that since conviction for the offence under Section 279/337 IPC is not being challenged by the appellant, the offence being a minor one, lenient view ought to be taken while awarding sentence. It was argued on behalf of appellant that the appellant took the injured to the hospital, paid a sum of Rs.63,000/- in the hospital and even donated blood to the injured, so the sentence awarded by the impugned order is excessive.

4. On the other hand, learned prosecutor argued that the learned trial Magistrate has already taken a lenient view by not sending the appellant to jail, though, he had spent only five days in pretrial custody. It was also argued by learned prosecutor that rash and negligent driving of the

appellant caused injuries to two ladies, one of whom remained hospitalised for long, so the sentence in the form of compensation is not excessive at all.

5. As reflected from trial court record, on 07.11.2013, at about 6:30 pm, the appellant while driving his two wheeler scooter bearing registration no.HR 13H 2360 in a rash and negligent manner at the red light of Gulabi Bagh, Delhi hit the said vehicle against Smt. Rakhi and Ms. Shweta, causing simple injuries to both of them. In order to prove its case, prosecution examined 12 witnesses including the injured persons Smt. Rakhi and Ms. Shweta, who supported the prosecution case and their testimonies could not be shaken in cross examination.

6. As further reflected from the trial court record, the appellant paid a sum of Rs.63,000/- in Action Balaji Hospital for treatment of Smt. Rakhi, whom the appellant had voluntarily taken there for treatment. It is also not a dispute that the appellant even donated blood for the injured Smt. Rakhi. This conduct on the part of appellant does establish his remorse and fairness, but the enquiry must proceed further in accordance with the tenets of purposive and recuperative sentencing.

7. In the backdrop of above factual matrix, what is to be examined is as to whether the amount of Rs.1,50,000/- directed by way of the impugned sentencing order to be paid by the appellant to both injured persons jointly is excessive.

8. According to MLC, Ex. PW6/A, Smt. Rakhi and according to MLC Ex.PW6/A, Ms. Shweta were found to have suffered respectively a head

injury and a left knee injury on 07.11.2013 in the road side accident in question. The medical record of Smt. Rakhi, filed in this Court by her husband reflects that she suffered a severe head injury with bifrontal contusion for which she remained hospitalised for one month and continued to be under treatment for much longer. Even on 17.05.2019, when arguments on sentence were heard by the learned trial court, Smt. Rakhi had not fully recovered.

9. As mentioned above, by the time the present appeal came to be heard, Smt. Rakhi passed away. Although, there is no evidence connecting the unfortunate death of Smt. Rakhi with the accident in question, the fact remains not challenged that on account of injuries suffered in the accident in question, Smt. Rakhi remained hospitalised for one month and remained under treatment for much longer period. Obviously, she would have suffered tremendous pain and agony during that period. Even if the amount of Rs.63,000/- paid by the appellant in the hospital and blood donated by him are taken into consideration, the compensation amount of Rs.1,50,000/- awarded by the learned trial Magistrate in the impugned sentencing order, that too payable jointly to both injured ladies cannot be held to be excessive.

10. Merely because now Smt. Rakhi has passed away, the appellant cannot be absolved of his liability to compensate. For, when the impugned sentence was awarded, Smt. Rakhi was alive and the appellant ought to have paid the awarded compensation. Besides, the compensation amount was directed to be paid jointly to both injured persons Smt. Rakhi and Ms. Shweta.

11. I am unable to find any infirmity in the impugned order on sentence, though now Smt. Rakhi having passed away, the compensation in its entirety should be paid to the other injured Ms. Shweta.

12. Therefore, the impugned judgment dated 17.05.2019 of conviction and the impugned order dated 17.05.2019 of sentence are upheld. The appeal is dismissed, directing the appellant to pay a compensation of Rs.1,50,000/- to Ms. Shweta within one month from today before the learned trial Magistrate, in default whereof, the appellant shall undergo simple imprisonment for a period of three months.

13. A copy of this judgment be sent to the learned trial court along with trial court record and appeal file be consigned to record room.

Announced in the open court on
12th May, 2020 (through VC.)



(GIRISH KATHPALIA)
District & Sessions Judge (HQ)
Tis Hazari Courts,
Delhi.