

Delhi High Court

Gaurav Dhawan vs The State on 17 March, 2006

Equivalent citations: 133 (2006) DLT 231

Author: J Malik

Bench: J Malik

JUDGMENT J.M. Malik, J.

1. The petitioner has filed the present revision petition under Sections 397, 401 read with Section 482 Cr.P.C. for setting aside the respective judgments of Additional Sessions Judge dated 10.01.2003 and Metropolitan Magistrate dated 25.07.2002 and 09.08.2002 and also seeks acquittal. In terms of the judgment of the Metropolitan Magistrate, the accused was sentenced to undergo rigorous imprisonment for one year and to pay a fine in the sum of Rs. 5000/-, in default simple imprisonment for three months under Section 304A IPC, to pay a fine in the sum of Rs. 500/-, in default simple imprisonment for one month for the offence under Section 337 IPC and a fine of Rs. 1000/-, in default simple imprisonment for one month for the offence under Section 279 IPC. The accused/appellant preferred an appeal against this judgment. However, the learned Additional Session Judge dismissed the appeal and upheld the conviction. The petitioner being aggrieved filed the present revision petition.

2. The facts explained by Satya Narain Yadav, the only eye witness in this case before the investigating officer Ram Lal, Sub Inspector, in his complaint PW-6/A are as follows. On 19.11.1996, Satya Narain Yadav, an employee of PNT Department was going on his two wheeler scooter bearing No. DIJ 8443. His elder brother Bichan Ram Yadav, the deceased was sitting on the pillion seat. They were proceeding to Sarojini Nagar from Yamuna Bazar. At about 9.00 PM, they crossed the Bhagwan Das Crossing and arrived at Tilak Marg Road. One car bearing No. DL3C4298 came from his right hand side from the opposite side. It was going from India Gate to ITO. The car went out of control, rammed the divider, crossed it, went to the other side of the road, the car turned turtle and knocked the scooter. Consequently Satya Narain Yadav and his brother Bichan Ram Yadav came underneath the car. Crowd collected there and brought them out from underneath the car. It transpired that car driver was Gaurav Dhawan. Satya Narain Yadav and Bichan Ram Yadav were brought to the hospital by the people. Bichan Ram Yadav was declared to be dead. Satya Narain Yadav also received injuries. Ram Lal Yadav, Sub Inspector and Ajay Kumar, Head Constable visited the spot. They were informed that the injured had been taken to the hospital. He went to Ram Manohar Hospital and recorded the above statement of Satya Narain. SI Ram Lal prepared the site plan Ex. PW-8/B. The accused was arrested on 10th December, 1996. He was booked for offences under Sections 279, 337, 304A IPC.

3. The defense set up by the accused/revisionist under Section 281 Cr.P.C. is this. He was going in the above said car along with Ms. Sakshi, DW-1, from Tilak Bridge to India Gate. When he crossed the red light near Supreme Court one scooter driven by the injured struck against the rear left side of his car which diverted his attention. Consequently he looked back in order to see as to how the above said impact had taken place. It came to light that one scooter on which two persons were sitting had fallen on the road after the above said impact. Since he was looking back, the right front wheel of his car struck against the middle pavement due to which his car turned turtle. The

accused/revisionist and Ms. Sakshi DW-1 became unconscious. The public took them to Ram Manohar Lohia Hospital in unconscious condition. Subsequently they came to know that the pillion rider had succumbed to his injuries. He alleged that he has been falsely framed in this case.

4. The prosecution have examined eight PWs in all, out of whom Satya Narain Yadav, PW-6 is the only eye witness. A bare look on his evidence clearly goes to show that he has gone the whole hog with the prosecution. Nand Lal Dua, Mechanical Inspector, PW-2 is another important witness. He proved Ex. PW 2/A & PW2/B, which are reproduced as hereunder. He found the following fresh damages on the car vide Ex.PW-2/B :

1. Front wind screen glass with channel broken.
2. Rear wind screen glass broken.
3. Front Bumper right side bent.
4. Front wheel Axle bent right tyre punctured.
5. Front parking indicator glasses broken (Rt. Side).
6. Rear left side light assembly broken.
7. Scratch on left side rear bumper.
8. Front door right side set out.

5. He also found fresh damages to the scooter vide report Ex. PW 2/A. It reads :

1. Front shield right side bent.
2. Front handle turned & its chimta bent inside.
3. Right side engine cover bent.

6. Ram Lal, Sub Inspector, PW-8, the Investigating Officer is another important and significant witness.

7. Ms. Sakshi, DW-1 has supported the prosecution case fully. In her cross-examination she deposed that she got married to the accused subsequently on 27.02.2001. She deposed that the car was going at a low speed at the time of impact, which may be approx. 40 to 60 km per hour, but the scooter was going at a fast speed. She could not tell the speed of the scooter.

8. Puran Mal, Record Clerk of Ram Manohar Lohia hospital, DW-2 said that Sakshi was admitted in the hospital on 29.11.1996 at 9.50 PM. In his cross-examination, he stated that injured Sakshi had

thereafter absconded.

9. I have heard learned Counsel for the parties. The argument urged by the counsel for the revisionist has the following five prongs. The principal argument urged by learned Counsel for the revisionist was that photographs of the place of incident were not taken deliberately. The second submission made by him was that the scooter hit the car from behind. It was stressed that the reports given by the Mechanical Inspector lend support to this conclusion. My attention was drawn towards the cross-examination of PW-2. He submitted that damages at points 6 & 7, in respect of report Ex. PW-2/B are possible if some object had struck against the car from the back side. Again DW-1, who, is a natural witness and whose presence at the spot was not disputed by anybody supports the defense story down the line. Moreover my attention was drawn towards the site plan. The investigating officer Ram Lal admitted that he had not shown in the site plan the broken pavement nor he had seized the malba from the said spot. He testified that when he reached the spot for the first time he noticed the car on the pavement (middle) and its front portion was towards India Gate. He explained that left side of the car was touching the road and the scooter was lying in the middle of the road. He also testified that the distance between the tip of the middle pavement and the place where the car had been entangled on the middle pavement was about 42 to 50 yards. He, however, denied that circumstances appearing on the spot were clear that the car was going from ITO side towards India Gate side and not the car was coming from India Gate towards ITO. The Investigating Officer admitted that the accused had also received injuries in this accident and had been admitted in Ram Manohar Lohia Hospital along with the deceased and the injured. He deposed that he had not taken into possession the MLC of the accused nor he had placed the same on record. The last submission made by learned Counsel for the revisionist was that at the time of commission of this accident the revisionist was aged about eighteen and a half years and as such he should be granted the benefit of probation. It was also pointed out that revisionist has already paid compensation in the sum of Rs. 4,00,000/- to the heirs of the victim and and the injured and accused remained in jail custody for five days.

10. These pleas are mere palliative and do not delve deep to the roots of the malady. At the very outset, it may be mentioned here that the two Courts have decided the case against the revisionist. No illegality or impropriety in their orders was pointed out. It is trite saying that the scope of revision under the circumstances is very limited. However, even on merits the revisionist does not have any case.

11. To top it all, Smt. Sakshi is pitted against Satya Narain Yadav. Satya Narain Yadav appears to be a guileless witness. There is not even an iota of evidence that he harboured enmity with the accused. He immediately made the statement before the Investigating Officer on the same day explaining all these facts and circumstances. There is no ground to view his statement with distrust. His deposition has an aroma of confidence. Moreover he was not fazed during his cross-examination.

12. On the other hand, the statement of Ms. Sakshi goes to show that she is an interested witness. This is an admitted fact that she was the fiancée of accused at the time of incident. In her cross-examination she admitted that they were engaged about five years back. Her statement was recorded on 11.12.2001. Immediately after the accident and their treatment in the hospital Ms.

Sakshi and Gaurav Dhawan absconded. They did not report the matter to the Police. Although, their car had turned turtle and was lying on the spot, yet, they did not go and confront the Police Officer to claim it. Again, the accused was named in the FIR but he was arrested on 10.12.1996 i.e. 11 days after the incident. Had they been law abiding citizens, they should have reported the matter to the Police immediately. They chose to bury their heads in the sand. Their bizarre conduct creates a doubt about their bonafides. It appears that they have minted a false story in order to save their skin.

13. Now I turn to the site plan. Site Plan Ex.PW-8/B is a document of utmost importance. It brings the cat out of the bag. It clearly, specifically and unequivocally goes to show that the car was lying on the road with its face towards the Tilak Marg red light and back towards India Gate. It is well said that men may tell lies but the documents cannot. It clearly means that the Investigating Officer was telling untruth in the Court. His deposition given in the Court is in conflict with his document Ex. PW-8/B. It appears that he has tried to help the accused out of the way. Otherwise too, the investigation conducted by him is not up to the mark. He did not take the trouble to get the spot photographed. The site plan corroborates the version given by Satya Narain Yadav, PW-6. It puts the prosecution case in an impregnable condition.

14. Now I turn to the report of the Mechanical Inspector. It is well settled that the deposition of a witness is not to be read in bits and pieces. The statement of the witness cannot be read in vacua but as a whole composite testimony. His entire report is to be taken into consideration. His report clearly goes to show that the car did not receive damages merely on its back side but on the front side as well. If for arguments' sake the case of the revisionist is taken as true, it is difficult to fathom as to how the car received damages on its front side. It was only possible if the car crossed the divider and jumped over the scooter. In that eventuality, it is very likely that it would get damages on its all sides including its back side. This is apparent that the revisionist is trying to make bricks without straw. This piece of evidence evinces the hollowness of revisionist's argument. The defense stands fizzled out faster than the morning fist.

15. The above said facts have a crystalline clarity. The facts of this case speak for themselves. It is apparent that while driving the car accused was not keeping his eyes on the road. His abscondence from the spot and hospital further supports the prosecution case. There is not even a scintilla of doubt about rash and negligent driving of car by the revisionist/accused. All the doubts about the revisionist have been proved to be purile and baseless. The case against him stands proved.

16. Now I turn to the question of sentence. The learned Metropolitan Magistrate has passed the detailed order. He placed reliance on two authorities which are reported in Dalbeer Singh v. State of Haryana 2002 JCC Supreme Court 493 and Gulshan Kumar v. State (NCT of Delhi) 2000 (2) JCC Delhi 324, where benefit of probation was not given to the accused. I also follow the same authorities and hold that the sentence awarded by the lower courts does not call for any interference. Revision Petition is without merit and the same is therefore dismissed. The SHO of the area concerned is directed to arrest the accused and to hand over him to jail authorities.

17. It is directed that the DCP of the area concerned would make an inquiry and take appropriate departmental action against the Investigating Officer for making a conflicting statement against his own site plan Ex. PW-8/B. DCP is further directed to submit his report before the Court within a period of three months after receipt of this order.

18. List before Court for compliance on 21st July, 2006.

19. Lower Court records be sent back to the trial court.