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* **HIGH COURT OF DELHI : NEW DELHI**
Crl.Rev.Pet.No. 615 of 2007

% Judgment reserved on: 7th December, 2007
Judgment delivered on: 18th January, 2008

Dharamvir Singh,
S/o Shri Azad Singh
R/o V & P.O. Jhatal,
P.S. Sampla,
Distt. Rohtak (Haryana)

Presently at:

H. No. 2/1, Ishwar Colony,
Bawana, Delhi

....Petitioner

Through: Mr. S.C. Phogat, Advocate

Vs.

The State (NCT of Delhi)

..... Respondents

Through: Mr. R.N. Vats, Advocate

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

V.B. GUPTA, J.

The present criminal revision petition under Section 397 to 401 CrPC has been filed by the petitioner against the order dated 10th August, 2007 passed by Dr. Kamini Lau, Addl. Sessions Judge, Delhi vide which she has

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dismissed the appeal of the petitioner upholding the judgment dated 2.7.2007 and the order of sentence dated 10th July, 2007 passed by the court of Shri Devender Kumar Jangala, Metropolitan Magistrate, Delhi.

2. The present case was registered on the statement of one Balwan Singh, driver of Maruti car No. DL-2C-B-8638. As per his statement, on 22nd October, 1993, he was driving this car and was coming from Jind (Haryana) along with one Shri Prem Chand, his wife Vidya Devi, his daughter Ms. Poonam Devi and son Mukul Kumar, and were going to Pashchim Vihar via Rohtak Road, Delhi. At 11:30 am, when they reached near village Mundka, Delhi, a bus No. DL-1P-3182, came from Nangloi side at very fast speed and the bus driver in a rash and negligent manner, without blowing any horn and without giving any signal, all of a sudden, took a turn towards village Rani Khera and hit the car, with the result that their car got turtled and all the passengers of the car sustained injuries. The bus driver after stopping the bus ran away. All the injured were removed to the hospital, where in the hospital, Ms. Poonam Devi expired.

3. Notice under Section 133 of the Motor Vehicles Act

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was served upon the owner of the bus who in its reply stated that the petitioner was driving the bus in question and produced the petitioner before the police along with driving licence of the petitioner. The petitioner was arrested and investigation was completed.

4. The trial court vide its judgment dated 2.7.2007 convicted the petitioner under Section 279/337/304A IPC and sentenced him to undergo RI for one year and to pay a fine of Rs.1,000/- for offence punishable under Sec. 304A IPC, in default SI for 10 days. For offence punishable under Sec. 337, RI for three months and a fine of Rs. 500/- has been awarded, in default five days' simple imprisonment and for offence punishable under Sec. 279 RI for one month and a fine of Rs.500/-, in default SI of five days have been awarded.

5. The petitioner filed appeal in the Court of Session and vide impugned judgment dated 10th August, 2007, the appeal was dismissed and the judgment and order on sentence passed by learned Magistrate was upheld.

6. It has been argued by learned counsel for the petitioner that no incriminating evidence under Section

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313 CrPC was put to the petitioner and under these circumstances conviction of the petitioner is bad and on this point, learned counsel for the petitioner cited decision of Apex Court in **Lallu Manjhi & Anr vs. State of Jharkhand** 2003 (1) JCC 137.

7. Another contention raised by the learned counsel for the petitioner is that the courts below have failed to appreciate the fact that the postmortem of deceased Ms. Poonam Devi has not been proved and the trial court wrongly relied upon the postmortem of the deceased. Further, it was the driver of the car who had stuck against the bus and this accident took place due to rash and negligent driving by the car driver. Moreover, the site plan in this case has not been proved nor the IO has been examined and as such it is fatal for the prosecution and under these circumstances the judgment passed by the courts below are liable to be set aside.

8. On the other hand, it has been contended by the learned PP that as per evidence on record, it was the petitioner who was driving the bus in question in rash and negligent manner and the impact of accident was so severe

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that a lady who was sitting in the Maruti Car died in this accident and all the incriminating evidence was put to the petitioner in his statement recorded under Sec. 313 CrPC.

9. The first question which arises for consideration is as to whether the petitioner was driving the bus at the time of accident or not. In his statement recorded under Sec. 313 CrPC, the petitioner has made total denial. He has denied that he was driving the bus or any accident was caused with his bus.

10. Shri Prem Chand (PW2) who is one of the injured and was traveling in the car at the time of accident, in his statement, has stated that the bus in question came at a fast speed and it took a turn in a rash and negligent manner and hit against their Maruti car with the result the Maruti car over turned. In his cross examination, it was put to this witness that the bus was being driven at the normal speed and the bus driver was driving the bus following all the traffic rules and the accident took place due to rash and negligent act on the part of the car driver. So, the petitioner by way of the suggestions put to this witness, has admitted this fact that the petitioner was

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driving the bus, though the bus was being driven at a normal speed and as per traffic rules and regulations.

11. PW9 Shri Balwan Singh, who is the the car driver though turned hostile, has stated that the bus was being driven in a rash and negligent manner and the bus driver has taken a turn all of a sudden and has hit his car.

12. In the present case, a notice under Section 133 of the Motor Vehicle Act was given to the owner of the bus and the owner of the bus in his reply to the notice, has stated that it was the petitioner who was the driver of his bus.

13. There is nothing on record to show that any of the prosecution witness had any enmity with the petitioner so as to falsely implicate him in this case. As per the statement of PW2, it was the petitioner who was driving the bus in question and the factum of accident with the bus in question, has been admitted by the driver of the car.

14. Further, as per mechanical inspection reports with regard to both the vehicles proved on record, it stands clearly established that the bus in question was involved in the accident and from the photographs of the vehicles, which have also been placed on record, it goes on to show

that the impact of the accident was so severe that the Maruti car was almost completely crushed and one lady Smt. Poonam Devi had died while sitting as passenger inside the car and this itself speaks for the impact of the accident.

15. This contention of learned counsel for the petitioner that incriminating evidence under Sec. 313 CrPC has not been put to the petitioner, is against the record. As per statement of the petitioner recorded under Sec. 313 CrPC, entire incriminating evidence was put to the petitioner. The petitioner, in his statement, has denied the accident in toto. Under these circumstances, case law cited by learned counsel for the petitioner is not applicable to the facts of the present case.

16. As far as the postmortem report is concerned, PW8 (Sh. Rajiv Singh) Record Clerk has appeared and he has stated that the doctor who has prepared MLC, has left the services of the hospital. The Record Clerk has identified the signatures and hand writing of the doctor, on the respective documents. It is not the case of the petitioner that Smt. Poonam Devi did not die of this accident or she

was not sitting in the car.

17. Lastly, the mere fact that the investigating officer has not appeared, will not prove fatal to the case of the prosecution because, the investigating Officer is not an eye witness in this case. The eye witness has fully corroborated the prosecution story and there is no reason to disbelieve the testimony of PW2 the eye witness and who is also one of the passengers in the car. PW 9, the driver of the car has also stated that the accident was caused due to rash and negligent driving by the bus driver.

18. Under these circumstance, I do not find any illegality or infirmity in the impugned orders passed by the courts below.

19. As far as the sentence awarded in this case is concerned, the trial court has already taken a very lenient view and has awarded sentence of only one year RI to the petitioner, for causing death of a lady.

20. Road accidents by heavy vehicles, especially Blue line buses are on increase and the drivers of these buses do not care for the safety of the other road users. The photographs and the mechanical inspection reports of the

car goes on to show that the impact of the accident was so severe that the Maruti car in question was almost fully smashed and crushed and one passenger sitting in the car died, as a result of the accident while other persons sustained injuries.

21. Too lenient a sentence passed by the courts leads to miscarriage of justice. In the capital city of India, number of vehicles have increased manifold since the time when Indian Penal Code was enacted. Along with it, the number of road accidents have also increased by leaps and bounds. However, there has been no corresponding improvement in the enforcement of traffic laws. The same punishment and fine continues which was prescribed more than 150 years ago. Now the time has come when the Legislature should have a relook at the offences committed by heavy vehicles in causing the road accidents and stringent punishment should be provided under the various Acts.

22. The worst sufferer in the present scenario are the road victims. Firstly, the Ambulance Service for road victims or for any kind of patients, is horrible. It is next to impossible to get any ambulance for any type of patient at

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any given time. These ambulance services in the Government Hospitals and Dispensaries are available for all other purposes, except for the patients. It is not that there is any dearth of Ambulances with the Government Hospitals or Dispensaries.

23. In case a road victim dies in an accident, the plight of his family members is worse. The culprit/accused is bailed out then and there and he happily goes back to his family, have his meals and have sound sleep whereas, the family members of the deceased undergo trauma and torture at the hands of police and hospital authorities and they run from pillar to post for getting the postmortem done. It takes hours and sometimes days to conduct postmortem of a dead person. In the hour of grief, little solace can be provided to the family of the deceased by the concerned authorities by ensuring that at least postmortem is conducted, as early as possible and the Ambulance Service is provided to the victim or injured, free of cost. It is hoped that the respective Governments would take necessary steps in this regard.

24. Since the courts below have already taken a lenient

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view, no interference is called for in the sentence awarded in this case.

25. Accordingly, the present petition filed on behalf of the petitioner is hereby dismissed.

26. Trial court record be sent back forthwith.

January 18, 2008
raj


V.B.GUPTA, J.