

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Rev. No. 631/2001**

Judgment reserved on: 20.10.2008

% Judgment delivered on: 23.03.2009

Sh. Bhairav Singh Petitioner

Through: Mr. S.P. Pandey, Advocate

versus

State Respondent

Through: Mr. Pawan Sharma, APP

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. By way of this petition filed under section 397 read with
Sections 401 and 482 of the CrPC the revisionist seeks revision of
Crl. Rev. No. 631/2001

the impugned order dated 2/11/2001 passed by the Ld. Addl. Sessions Judge, whereby the appeal of the present revisionist was dismissed and the judgment/order dated 27/2/2001 passed by Ld. Trial court convicting the petitioner for committing offence under Section 279/304-A IPC and sentencing him to undergo 2 years R.I. & to pay fine of Rs.5000/- was upheld.

2. The brief facts of the case relevant for deciding the present petition are that on 1/10/1991 at about 12:30 pm, the deceased Sh. Sanjay along with his friend Vimal Kaushal, PW1 were going on the motor cycle bearing registration no. DL 3SC 496 to their college from Gole Market to know about their result. While passing through Connaught Place when they reached in front of Super Bazaar on the outer circle, a DTC bus bearing registration no. DEP 9486 came from behind at a very fast speed and struck against the said motor cycle from behind, due to which the motor cyclist, Vimal Kaushal and the pillion rider Sanjay fell down on the road. While Vimal Kaushal escaped with minor injuries, the pelvis of the pillion rider Sanjay was fractured in the said accident, as a result of which he succumbed to his injuries in the hospital. As per the prosecution the revisionist was the driver of the DTC bus and he was driving the bus

at a fast speed and also in a rash and negligent manner and after the accident he fled away from the site of the accident. Upon receiving information about the said accident, DD No. 8-A was recorded at the Connaught Place Police Station and S.I. Ajit Singh, PW7 was entrusted the matter for enquiry. When S.I. Ajit Singh reached the accident site, he found motor cycle bearing registration no. DL 4 SC 4196 lying there and he came to know that the injured had been removed to LNJP Hospital. He then went to the hospital and there he found the injured Sanjay but he was unfit for giving statement. Thereafter, he met Vimal Kaushal, who gave his statement, Ex. PW1/A, wherein he alleged that the accident took place due to rash and negligent driving of the bus being driven by Sh. Bhairav Singh, Revisionist in the instant case. Upon statement of Vimal Kaushal, the police registered a case under Section 279/337 IPC on 1/10/1991 at 2:00pm. Initially the deceased Sanjay was taken to LNJP hospital and from there he was shifted to Batra Hospital, where he died on 25/10/1991, whereafter, the case was converted from one under Section 279/337 IPC to Section 304-A IPC. During investigation the motor cycle and the bus involved in the accident were seized by the police and were mechanically

examined and Sh. Bhairav Singh, the petitioner herein was arrested on 28/10/1991.

3. Mr. S.P. Pandey counsel for the petitioner assailing the impugned order contended that the impugned order is against the evidence on record and the settled law and is liable to be set aside. Strengthening his argument counsel for the petitioner submitted that there is no connection between the alleged commission of offence and the evidence of the alleged eye witness and the entire evidence on record is based on hearsay. The counsel urged that the Ld. ASJ erred in not giving due weightage to the testimony of the conductor Babu Ram who deposed as DW1 and also that of ATI Ram Prasad who deposed as DW 5, wherein they stated that the offending vehicle started from Mayur Vihar Depot after 12:15 PM and there are 17 stops in between the Depot and Plaza Cinema and that the said offending vehicle must have taken at least 1 hour to reach the accident spot. Mr. Pandey, counsel for the petitioner thus contended that it is highly improbable that the bus could reach at the place of the occurrence just within 15 minutes after having crossed a long distance from Mayur Vihar Depot and that too after stopping at 17 bus stops. The counsel also

contended that the learned appellate court erred in not appreciating that In the M.L.C. originally the bus number was recorded as 9786, which was overwritten and changed to 9486; this itself casts enough suspicion on the case set up by the prosecution. The counsel also urged that the testimony of Mr. Vimal Kaushal PW1 was demolished during cross examination, therefore, same cannot be relied upon. Elaborating his arguments, the counsel further maintained that as per the deposition of the I.O PW 7, he appeared on the accident spot at 1.15 P.M. and found no injured person at the accident site, but as per the statement of PW1 Vimal Kaushal the accident took place at 12:30 pm and he remained at the accident spot for about 20 minutes till he and the deceased were transferred to LNJP Hospital. Counsel for the petitioner thus submitted that the theory of the prosecution is based merely on "EITHER" or "OR" and therefore, merely on presumptions, the petitioner cannot be held liable for the commission of the said offence. The counsel further contended that merely because the bus was being driven at high speed does not mean that the accused was rash and negligent. The counsel also urged that as per the testimony of PW-2 Dr. Jain, the deceased Sanjay was alive and

talking at the time when he was brought to the hospital, therefore, he did not die due to the accident and thus, there is no nexus between the death of the deceased and the accident, thus, accused cannot be held liable for offence under Section 304-A IPC. The counsel further submitted that the I.O. started the investigation without sending rukka for registration of FIR thus, the entire investigation was conducted mindlessly and in ignorance of the procedural formalities. The counsel further contended that refusal of the petitioner to join TIP cannot go against him when the PW1, who was the only public witness and also the victim himself stated that he could not identify the accused person as the bus after hitting the motorcycle did not stop and continued moving. The counsel further submitted that the appellate court erred in basing the entire order in appeal on the testimony of PW1, whose testimony cannot be relied upon as the same was demolished in the cross-examination. Counsel for the petitioner also submitted that the entire conduct of the PW-1 Mr. Vimal Kaushal did not inspire confidence as his conduct remained totally unnatural and unusual. He did not meet his so called friend, the deceased Sanjay, after the occurrence of the accident. He also did not attend his

Teharavi or Uthala ceremony. He did not note down the number of the bus on any paper. He got himself treated privately from some Dawakhana near his house. Can a person who claimed himself to be a friend of the deceased for the past five years from the date of the accident would behave in the above fashion, the counsel contended. Counsel thus submitted that no weightage could be given to the deposition of such a witness who was not truthful. Counsel for the petitioner also submitted that no damage to the alleged offending bus was found after mechanical inspection of the said bus, which is another circumstance to show that the said bus being driven by the petitioner was not involved in the accident. Counsel for the petitioner further submitted that the only independent eye witness of the accident was one Mr. Praveen Dua who was not produced by the prosecution and therefore, adverse inference was required to be drawn against the prosecution for withholding the said material witness. Counsel for the petitioner also justified refusal on the part of the petitioner to join the TIP proceedings as PW-1 Vimal Kaushal himself told the police that he did not see the driver of the offending vehicle. Counsel for the petitioner also submitted that the accident had

occurred during the day time and as per his own deposition of PW-7 in cross-examination, the bazaar on that day was open and therefore, there was lot of hustle and bustle on the road. The contention of the counsel for the petitioner is that when there was so much activity at the place of occurrence then why no efforts were made by the prosecution to produce an independent witnesses in whose presence the accident might have occurred. As far as the identification of the petitioner is concerned, no independent witness was produced by the prosecution to point out that the petitioner was driving the offending vehicle at the time of the accident, counsel contended. Counsel for the petitioner thus urged that the entire investigation is tainted, unreliable and unrealistic and therefore, the benefit of doubt should go to the accused. The counsel relied on following judgments in support of his contentions:

1. Pradeep Kumar vs. State of Haryana - 2000 CRLJ 3394;(P & H)

2. Duli Chand Vs. Delhi Admn-(1997) 4 SCC 122;

- 3. Mohanta Lal Saha vs. State of W. Bengal – 1968 ACJ 124 (SC);**
- 4. Anandasing Neggi Vs. State- AIR 1969 49;**
- 5. Kurban Hussain Vs. State – AIR 1965 SC 1916;**
- 6. B.C. Goswami vs. Delhi Admn. – AIR 1973 SC 1457;**
- 7. Krisan Vs. State of Haryana – 2003(2) CC cases 354 (P&H);**
- 8. Dhan Bahadur & Ors. Vs. State – 2008 (VI) AD (Delhi) 225;**
- 9. Syad Akbar Vs. State of Karnataka –(1980) 1 SCC 30**

5. Refuting the contentions of counsel for the petitioner, Mr. Pawan Sharma submitted that in the revision there is very limited scope to interfere with the findings of the fact and for reappraisal of the evidence as power of the revisional court cannot be equated with the powers to be exercised by the appellate court. Counsel for the respondent further submitted that the petitioner has not been able to point out any glaring feature of illegality or perversity in the findings arrived at by the trial

court or the reasoning given by the appellate court, and therefore this court while exercising revisional jurisdiction will not take another possible view contrary to the concurrent view taken by both the courts below. Counsel for the respondent further submitted that the time of incident was reported by the driver of the motor cycle Mr. Vimal Kaushal at 12.30 P.M. and thereafter, the I.O. immediately visited the spot, wherefrom he went to the hospital where the victim was rushed after sustaining injuries in the accident. Counsel for the respondent further submitted that no explanation has come forth from the side of the petitioner as to why the petitioner had refused to join the TIP proceedings and therefore, adverse inference necessarily has to be drawn against him. Counsel for the respondent also submitted that much weightage cannot be given to Ex.DW-5/A as the same was merely a loose sheet and which is also not carrying any entry of the offending bus to exclusively show as to when the said bus reached back after its return from Plaza Cinema. Such loose time sheet could always be manipulated so as to suit the petitioner with the help of his own colleagues. Counsel for the respondent further submitted that the testimony of eye witness Mr. Vimal Kaushal PW-

1 remained totally unimpeached and un rebutted and therefore, the trial court and the appellate court rightly reached to the conclusion that the petitioner alone was responsible to cause the said accident. The counsel relied on the judgment of **Duli Chand Vs.Delhi Admn.-1975 SCC (Cri) 663** in support of his contentions.

6. I have heard learned counsel for the parties and perused the record.

7. It is well settled that revisional jurisdiction is of the supervisory nature exercised by this Court for correcting miscarriage of justice and the revisional power cannot be equated with the power of an appellate court. In this regard in **State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri-AIR 1999 SC 981**, the Hon'ble Apex Court observed as under:

“5. Having examined the impugned Judgment of the High Court and bearing in mind the contentions raised by the learned Counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate

Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned Judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter the impugned Judgment of the High Court is wholly unsustainable in law and we, accordingly set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.”

8. As would be seen from the above observation of Supreme Court a court of revision would not normally reassess evidence and interfere merely because the view taken by the trial court based on the available evidence could not be the possible view. In other words, revision would not lie on the mere ground of mis-appreciation of evidence unless any glaring feature is brought to the notice of the revisional court which would otherwise tantamount to flagrant miscarriage of justice. In this regard in **Satyendra Nath Dutta and Another Vs. Ram Narain - (1975) 3 SCC 398**, the Apex Court observed as under:

“4. In *D. Stephens v. Nosibolla* [1951] SCR 284 it was held by this Court that the revisional jurisdiction conferred by Section [439](#) of the Code ought not to be exercised lightly when it is invoked by a private complainant against an order of acquittal which could have been appealed against by the Government under Section 417. "It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice." In other words, the revisional jurisdiction of the High Court cannot be invoked merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record. In *Logendranath Jha and Ors. v. Polailal Biswas* [1951] S.C.R. 676 the High Court, at the instance of private complainant, set aside the order of acquittal passed by the Sessions Court and directed that the accused be retried. This Court held that the provision contained in Section [439\(4\)](#) of the Code cannot be construed to mean that in dealing with a revision petition by a private party against an order of acquittal the High Court could, in the absence of any error on a point of law, re-appraise the evidence and reverse the findings of facts, provided only it stops short of finding the accused guilty and passing sentence on him. The order of re-trial based on a re-appraisal of evidence was characterized by this Court as a formal compliance with the requirements of Section [439\(4\)](#). In *K. Chinnaswamy Reddy v. State of Andhra Pradesh* [MANU/SC/0133/1962](#) the Court while emphasising that the revisional jurisdiction should be exercised by the High Court in exceptional cases only when there is some glaring defect in the procedure or a manifest error on a point of law resulting in a flagrant miscarriage of justice observed that it was not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. The Court, however, indicated, in order to illustrate, a few of the cases in which the revisional jurisdiction could properly be used. An 'acquittal by a court lacking jurisdiction or excluding evidence which was admissible or relying on inadmissible evidence or where material evidence has been overlooked are some of the cases indicated by this Court as justifying the exercise of revisional powers. In *Mahendra Pratap Singh v. Sarju Singh and Anr.* [MANU/SC/0398/1967](#) where the High Court in exercise of its revisional powers had, at the instance of a private party, directed re-trial of the accused, this Court on a review of the previous decisions re-affirmed that the High Court was wrong in entering into minute details of evidence, while examining the decision of the Sessions Court under Section [439\(4\)](#) of the Code. The last decision to which reference may be made is *Khetrabasi Samal etc. v. State of Orissa etc.* [MANU/SC/0113/1969](#). The High Court while exercising its revisional

jurisdiction had set aside the order of acquittal on the ground that the Magistrate should not have disbelieved the three eye-witnesses. The High Court sought justification for the course it adopted by observing that the Magistrate had not taken the trouble of sifting the grain from the chaff. The order of the High Court was set aside by this Court.”

9. It is also well settled that concurrent findings of fact should not be generally disturbed unless it causes grave injustice. In this regard in **State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand,(2004) 7 SCC 659**; the relevant paragraphs are reproduced as under:

22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* 2 in which it is observed thus: (SCC p. 651, para 5)

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned

Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

10 . Keeping these well settled principles of law in mind, the correctness of the order of the appellate court needs to be examined.

11 . Before dealing with the contentions of the counsel for the parties, it would be relevant to discuss the conduct of the petitioner driver. The driver of the bus Shri Bhairav Singh gave statement before M.M. on 17.4.1997, where he in unequivocal terms denied that the bus bearing registration no. DEP 9486 met with an accident on 1.10.91. He further stated that he started from Mayur Vihar terminal at about 12.15 p.m. and reached Plaza at about 1.10 P.M. and restarted after 5 to 10 minutes for Mayur Vihar and reached there at about 2.15 P.M. Toeing his line DW-1, Shri Babu Ram, conductor of the said bus on the date of the accident also narrated the same story and denied that the said bus met with an accident. DW-5 Ram Prashad, ATI Service(DTC) brought on record the time sheet Ex.DW/5A according to which the said bus departed from the Mayur Vihar Bus Terminal after 12.15

P.M. for Plaza. Petitioner also examined two independent witnesses DW-2 Diwan Singh and DW-4 Mohan Singh who also conformed the version of the petitioner. But it is manifest from the testimony of the prosecution witnesses especially PW-1 Vimal Kaushal, who was also the victim to the accident and PW-7, Shri Ajit Singh, which will be discussed later, that the driver had been lying from the beginning and he not only took the alibi that the bus did not meet with an accident but also procured two witnesses, DW-2 and DW-4, and also made DW-1 and DW-5 to toe his line to make his cock and bull story appear like a reality. It has come on record that the bus hit the motorcycle from behind as per the mechanical inspection report of the motorcycle and testimony of PW-1 that the pillion rider died in the said accident. It is obvious that that bike driver was hit with such a force from behind by the bus driver due to which pillion rider and bike driver both fell down resulting into causing serious injuries to the pillion rider. The impact and the force with which the accident had occurred proves the testimony of PW 1 who in his deposition stated that the bus was being driven by the petitioner at a very high speed. No doubt in the given circumstances where the bike was hit from

behind, the bus driver could have been the best witness but he instead tried to dupe the court through his false alibi and by examining witnesses who toed his line and therefore the trial and the appellate court correctly gave weightage to the testimony of PW 1 and other circumstantial evidence to hold the petitioner guilty of the said offence.

11. The appellate court has already gone into all the issues as have been canvassed by the petitioner in the present revision petition and counsel for the petitioner has not pointed out any glaring error in the reasoning given by the appellate court. It is not a case of the petitioner that on the fateful day the petitioner was not on duty or did not drive down the bus from Mayur Vihar and on his way back he did not cross the Super Bazar area where the accident had taken place. The main emphasis counsel for the petitioner had laid on the fact that PW-1 Vimal Kaushal disclosed the time of occurrence of the accident at 12.30 P.M. and by no stretch of imagination the offending bus could reach at that point of time after beginning its journey from Mayur Vihar Bus Depot at 12.15 P.M. as per the time sheet produced on record by the DW-5 and exhibited as DW-5/A. This issue has been discussed in detail

not only by the trial court but also by the appellate court. It is an admitted fact that the accused was driving the offending vehicle on the date of the accident. PW1 in his deposition stated that the accident took place at 12:30 pm. As per the MLC, Ex. PW2/A the victims including PW1 were brought to the hospital at about 1:10 p.m. and as per the deposition of PW 7 Sh. Ajit Singh, I.O., PW7 reached the accident spot at 1:15 p.m. upon receiving information about the accident at 1.00 p.m. and as per the time sheet Ex. DW 5/A maintained at the Mayur Vihar II Bus Terminal, the bus moved out of the Depot at 12:15 p.m. Considering these evidences there remains no doubt that the said bus met with an accident sometimes between 12:30pm and 1:10 pm near Plaza Cinema. The trial court and the appellate court rightly came to the conclusion that it was not the case of the petitioner that he was not on his duty as a driver on the said fateful day or was not driving on the said route from Mayur Vihar to Plaza and from Plaza to Mayur Vihar or did not move out his bus from Mayur Vihar Depot around the said period of time or some other bus on the same route also left the depot around the same time. The contention of the counsel for the petitioner that the bus could not reach the accident spot just within 15 minutes

that too after passing through 17 bus stops is without any substance and force as the bus definitely left the depot after 12.15 p.m. and met with an accident within a period of one hour and as per the testimony of PW 1, the driver was driving the bus at a very high speed and therefore in the year 1991 when the population of vehicles in Delhi was comparatively on a much lower side and bus driven at a high speed could certainly reach from Mayur Vihar to the place of accident within a period of less than one hour. The exit of the said bus as per the time sheet Ex. DW 5/A at 12.15 p.m. thus fully corroborates the prosecution case coupled with the fact that the petitioner had fled away from the spot with the bus. It would be thus apparent that the time of 12.30 p.m. as stated by PW 1 to be the time of accident would not be of much significance as the accident in any case by the petitioner driving the bus No. DEP-9486 on the said route had taken place and the time sheet proved on record as Ex. DW 5/A limited to the extent of proving exit of the said bus after 12.15 a.m. proves the prosecution story than that of the defence.

12. Be that as it may, it is a matter of common knowledge that any common and prudent man would know that a person who is

met with an accident would not check the time in the watch as to when the accident took place. Obviously PW1 disclosed an approximate time of the accident. Trivial inconsistencies regarding time cannot be termed as loopholes in the prosecution story. Thus, I do not find any infirmity in the impugned judgment on this count and the decision in **Ashok Kumar (Supra)** in this regard would not apply to the facts and circumstances of the present case, therefore, the same is of no assistance to the petitioner.

13. As regards the issue of non-reliability of the witness PW1, I am of the view that a person who is met with an accident cannot be expected to tell everything with a great precision, thus, trivial inconsistencies can be ignored if the broad picture confirms and points at the culpability of the accused. Be that as it may, except some minor inconsistencies, it is clear that the testimony of PW-1 and PW 7 remained unimpeached. Furthermore, considering the conduct of the petitioner and the false alibi taken by him, as discussed above, makes the court to draw adverse inference against the petitioner. As regards the conduct of the PW-1 and the fact that he did not meet his friend and did not go for his Kriya, it has come in the cross-examination of PW-1 that he did attend

Chautha or Kriya of the deceased and did not meet him as he himself had met with the accident. Thus, I do not find any substance in the contention of the counsel for the petitioner on this count as well.

14. As regards the issue that Mr. Praveen Dua who had taken the deceased and PW1 to the hospital from the accident spot was not called as a witness and therefore, the prosecution story cannot be relied, I do not find any merit in the said contention. It is the totality of the circumstances and not merely a solitary circumstance which has to be taken into consideration while deciding a matter. In the instant case, even without the testimony of the said Mr. Praveen Dua, there is sufficient evidence to prove the culpability of the petitioner. Therefore, no interference is made in the order on this count.

15. As regards the overwriting carried out on the M.L.C., wherein as per the counsel for the petitioner, originally the bus no. was recorded as 9786 which was later overwritten and changed to 9486. Had there been any suspicion in this regard, then the defence could have cross-examined the person, PW2 who made the

MLC but the same was not done, thus, this contention of the counsel for the petitioner also falls face down.

16. As regards the issue of negligence, it is no more res integra that the High Court while exercising revisional jurisdiction cannot go into the question as to whether the accused was guilty of negligence as the same is a question of fact and concurrent findings of fact cannot be interfered with by the revisional court. The judgment in **Duli Chand's case (Supra)** is an authority on this issue. As already discussed above, since the petitioner could have been the best witness as regards the issue of negligence is concerned especially when the pillion rider died in the accident and the offending vehicle had hit the motor cycle from behind, but he under the guise of false alibi that the accident did not happen with the bus made the court to draw adverse inference against him. Therefore, this contention of the counsel for the petitioner also falls face down.

17. As regards the issue that no independent witness was examined to prove that the petitioner was behind the steering wheel at the time of the accident, I do not find any force in the same also. As already discussed, petitioner was himself the best

witness but due to his false alibi an adverse inference needs to be drawn. Furthermore, the very fact that the petitioner did not join TIP proceedings coupled with other circumstances propels the court to draw adverse inference. There can be no doubt that testimony of an independent witness would have turned the table if such witness would have explained the exact sequence of events leading to the said accident. But since in the present case, the driver, conductor or passengers could have been the best witnesses to prove rash and negligence on the part of the driver of the motorcycle and not on the part of the petitioner but false stand of the bus driver of denying the accident itself totally exposed the petitioner that by such denial he tried in vain to hoodwink the prosecution to escape from the clutches of law. Also, the petitioner did not deny having crossed the spot of accident. Therefore, the said contention of the counsel for petitioner has no merit and the decision in **Rattan Baxi (Supra)**, **George & Ors. (Supra)** and **Rajinder Kumar (Supra)** are of no assistance to the petitioner

18. As regards the other contention of the counsel that the death of the deceased Sanjay has no nexus with the accident has no merits. Merely because even after the accident the victim was

speaking in the hospital does not mean that he did not die a little later due to the accident. It has come in the testimony of PW-3, Dr. S.K. Khanna that as per the post mortem conducted by him, the deceased Sanjay died due to accidental death and the said testimony remains unrebutted and further strengthens prosecution case. While dealing with offence under Section 304-A IPC what should be considered is that proximate cause of the death should be accident and, which should not be confused with proximity of time. Therefore, the judgment in **Anand Singh Neggi's case (Supra)**, **Kurban Singh's case (Supra)** and **Krishna's case (Supra)** are of no assistance to the petitioner.

19. Indisputably, it is well settled that merely because the evidence regarding the offending vehicle being driven at a high speed at the time of accident had come on record would not saddle the accused with guilt of rashness and negligence, but high speed coupled with other circumstances if points towards culpability of the accused, then this piece of evidence cannot be ignored. In the instant case, it has come in the testimony of PW1 that the bus hit his motorcycle from the left side and he fell on the right side and this testimony of PW 1 remains unrebutted. Therefore, clearly the

bus driver was driving the vehicle in a rash and negligent manner and against the traffic rules. This further shows that, the vehicle was being driven at a high speed and it had hit the bike from the left side, which clearly shows rashness on the part of the petitioner. Following portion of the deposition of PW 1 clearly proves that the petitioner was rash and negligent in driving the bus:-

“On 1.10.1991 I along with my friend Sanjay Gupta was going on a motor cycle No. DL-4SC-496 which I was driving. When we had reached near Super Bazar Outer circle and at about 12.30 p.m. a DTC bus came on a very high speed from behind and hit us. The DTC bus was at fault as it was being driven at a fast speed and it hit us on the left side as a result thereof we fell down. The number of the bus was DEP-9486 and the bus went away I did not see the driver of the bus and so I cannot identify him today. I received minor injuries on my left arm and the other received fracture pelvis. Parveena Dua removed us to JPN Hospital. Sanjay expired there afterwards I gave statement to the police which is Ex. PW 1/A. the same bears my signature.”

The judgments relied upon by the counsel for the petitioner in this regard in **Pradeep Kumar (Supra)** and **Mohanta Lal Saha (Supra)** are of no assistance to the petitioner. Considering the totality of the facts and circumstances of the case, there appears to be no ground to allow the revision petition.

20. As regards the contention of the counsel that both, the trial court and the appellate court, have convicted the petitioner on mere conjectures and surmises, I do not feel that this contention of the counsel has any merit. It is well settled that when a party approaches court for justice, then it must come with clean hands. Herein, the conduct of the petitioner has been dubious from the very beginning. First, he denied that the offending vehicle, which he drove on the fateful day of the accident met with the accident. Second, he procured two witnesses DW2 and DW4. Third he made the conductor of the said bus on the date of the accident toe his line and further brought DW5, who brought the time log which cannot be believed as it is a mere photo copy and a loose sheet, not even a part of a log book. Considering such demeanour of the petitioner, adverse inference needs to be drawn against him. Therefore, the decisions in **Syed Akbar (Supra)**, **Des Raj(Supra)** and **Dhan Bahadur (Surpa)** relied upon by the counsel in this regard are of no assistance to the petitioner.

21. As regards the issue of sentence of the petitioner, after considering the demeanour of the petitioner, his cock and bull story and the false alibi taken by him, I do not feel inclined to

interfere with the order on sentence. Therefore, the decision in **B.C. Goswami (Supra)** relied upon by the counsel is of no assistance to the petitioner.

22. In view of the foregoing discussion, I do not find that there is any manifest miscarriage of justice. Therefore, the revision petition is dismissed and the impugned order dated 2/11/2001 passed by the Ld. ASJ, the judgment/order dated 27/2/2001 passed by Ld. Trial court wherein, the petitioner was sentenced to undergo R.I. of 2 years along with fine of Rs. 5,000/- are not interfered with and are upheld.

23. Dismissed.

23rd March, 2009

KAILASH GAMBHIR, J.