

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

+ **CRIMINAL REVISION P NO. 161 OF 2009**

% **Date of Decision: 4th February, 2010**

JITENDER KUMAR Petitioner

! **Through: Mr. K.B. Andley, Sr. Advocate with**

Mr.M.Shamikh,Advocates

versus

\$ **STATE OF DELHI** Respondent

^ **Through: Mr. Pawan Behl, APP**

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

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

JUDGMENT

P.K.BHASIN, J(ORAL)

The petitioner stands convicted for the offences under Sections 279/304-A IPC. This petition under Section 397 of the Code of Criminal Procedure has been filed by the petitioner challenging the propriety, legality and correctness of judgment dated 6th July, 2007 and order on sentence dated 9th July, 2007 passed by learned Metropolitan Magistrate as also the judgment dated 19th March,2009 passed by the learned Additional Sessions Judge who while affirming the conviction of the petitioner modified the order on sentence to some extent. The trial Court had awarded sentence of rigorous imprisonment for a period of two years for his conviction

under Section 304-A IPC and rigorous imprisonment for a period of six months and fine of Rs.1,000/-, in default of payment to undergo SI for 15 days, for his conviction under Section 279 IPC. Additionally, the trial Court also directed the petitioner to pay compensation of Rs.75,000/- to the LRs of the deceased which was to recoverable as land revenue in case of default in payment. The appellate Court set aside the fine imposed upon the petitioner but maintained the compensation awarded to the LRs of the deceased and further directed that in case of non-payment of the compensation the appellant(petitioner herein) shall have to suffer additional simple imprisonment for six months.

2. The relevant facts leading to the prosecution and trial of the petitioner-accused have been noticed by the learned trial Court in para 2 of the judgment and the same is re-produced below:-

“On 22/10/1997 deceased had boarded blue line bus no. DL 1P-2339 which was being driven by the accused Jitender Kumar. At about 11:00 a.m. the bus reached at J.L.N. Marg-Ranjit Singh Road Red light and after crossing the red light the bus stopped on zebra crossing due to traffic. Shokat Ali started getting down from the bus from the front gate and before he could completely alight from the bus, the accused moved his bus all of a sudden and the said person fell down on the road from the bus and the left rear wheel of the bus rolled over him. On noise being raised by the passengers, the bus was stopped and the driver ran away from the spot. The injured was removed to the hospital. On the complaint of Chander Pal Singh who was on duty as ASI in traffic police, FIR was registered and accused was arrested. The accused was arrested next day after being produced by the owner of the bus.”

3. The learned trial Court after examining the evidence of two eye witnesses namely PW-4 Constable Bhoop Singh and PW-5 Constable

Yash Kumar and accepting the same to be fully trustworthy held the petitioner guilty for having caused the death of the deceased Shokat Ali. In the appeal filed by the petitioner, the Appellate Court after re-appraisal of the prosecution evidence also accepted the evidence of these two eye witnesses to be reliable and after rejecting the grounds of challenge put forth on behalf of the appellant affirmed the conviction of the petitioner but order for payment of fine by the petitioner for his conviction under Section 279 IPC was set aside since compensation had been awarded.

4. On behalf of the petitioner, Mr. K.B. Andley, learned senior counsel has submitted that the case really being one of no evidence regarding rash and negligent driving of the bus by the petitioner, this Court would be justified in exercising the revisional jurisdiction and interfering with the decisions of the Courts below. He also submitted that merely on the basis of evidence of the so-called two eye witnesses it does not stand established that the accused was driving the bus involved in the accident, much less in a rash and negligent manner. It was further submitted by him that, in fact, the deceased had died because of his own fault inasmuch as he had alighted from the bus at a place where there was no bus stop and the bus was stopped only because of heavy traffic. In any event, bus could not be started at a fast speed due to heavy traffic. Another submission was that both the eye-witnesses are police officials and that makes the

prosecution case highly doubtful because if at all the petitioner had driven the bus at a fast speed, as has been deposed by PW-4 and PW-5, some passengers at least travelling in the bus would have complained about that to the police and subsequently would have appeared in Court also as witnesses but the prosecution has chosen not to examine any public person. Mr. Andley also contended, as alternative submissions, that in case this Court is not inclined to disagree with the Courts below as far as the conviction of the petitioner is concerned, the order on sentence at least deserves to be modified and considering the fact that the petitioner has already remained in custody for about one year out of the total sentence of imprisonment of two years awarded to him his sentence of imprisonment may be reduced to the period already undergone by him in jail. Another submission was that the appellate Court was not justified in ordering that the petitioner shall have to undergo SI for six months in case of default in payment of compensation since Section 357(3) Cr.P.C., under which compensation can be awarded, does not provide any such consequence in case of non-payment of compensation.

5. On the other hand, Mr. Pawan Behl, learned APP for the State has fully supported the judgments of both the Courts below and submitted that this court may not interfere with the findings of facts resulting from a proper appreciation of evidence.

6. A revisional court does not re-appreciate the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the Courts below is to be accepted by this Court as final unless, of course, the appreciation of evidence and finding is vitiated by an error of law, misreading of the evidence, or where the conclusions of the courts below are manifestly perverse and unsupportable from the evidence on record. Further, the revisional jurisdiction is not to be confused with an ordinary statutory appellate jurisdiction. The Supreme Court in “State of Kerala vs Puttumana Illath” , AIR 1999 SC 981 had considered the scope of revisional jurisdiction of the High Courts and observed as under:

“5..... 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.....”

7. Keeping in mind this legal position, I have gone through the judgments of the trial Court and the appellate Court. The learned

Magistrate's observations in para nos. 10, 13 and 14 of his judgment are as under:

"10. Accused has also no where disputed the fact that on the fateful day he was driving the offending bus. Even otherwise, from the testimony of PW-4 Ct. Bhoop Singh and PW-5 Ct. Yash Kumar and also from the reply to the notice u/sec. 133 M.V. Act it is established conclusively that accused was driving the offending bus and that an accident was caused by the bus which was driven by the accused. Although, in the statement of accused recorded under section 313 Cr.P.C. the accused has denied the fact that he was driving the offending vehicle and that he has been falsely implicated in the case in collusion with the owner of the bus, but this defence taken by the accused does not have any merits in it and is liable to be dismissed as an afterthought. The accused has raised no objection when he was arrested by the I.O. after being produced by the owner of the bus. He has not even taken this defence at the stage of framing of notice against him. The accused has also not put this defence to the witnesses particularly PW-8 and PW-9 during their cross-examination. The accused has also not examined any witness in his defence to prove that he was not driving the offending bus at the time of accident. This defence has not been put by accused to any of the witness during their cross-examination and for the first time the same has been raised by the accused during his statement recorded under section 313 Cr.P.C. Hon'ble Supreme Court in AIR 1968 S.C. 147 has held that defence not suggested to PWs in cross-examination. Defence version may be rejected as after-thought.

13. A careful perusal testimony of PW-3 ASI Chander Pal shows that he has deposed that the accident took place due to the rash and negligent driving of the driver of the bus. He has testified "at about 11 a.m. a blue line bus no. DL 1P 2339 driven by its driver at a very fast speed and crossed the chauraha and due to traffic the bus stopped near Zebra crossing at JLN Marg. At that time one old man tried to alight from the front gate of the bus and the driver of the bus suddenly started the bus and due to that the old man fell down and came under the rear wheels and the bus ran over him. Driver stopped the bus and fled away from the stop....."

14. The defence raised by the Defence counsel that the accident had taken place due to the fault of deceased as he had tried to get down from the bus when there was no bus stop and the bus had stopped in the middle of the road due to rush of traffic and that the accused had been looking in front and did not notice the deceased trying to get down from the bus also appears to be devoid of any merits in it. The accused being a professional driver, was supposed to be more careful in discharge of his professional duties. No doubt, the deceased was trying to alight the bus near the zebra crossing when the bus had stopped due to traffic in front of it, in such circumstances, it was the duty of the accused to have prevented the deceased from getting down from the bus in the middle of the road or else he should have given sufficient time to the deceased to properly get down from the bus and thereafter he should have moved his bus

forward. The plea of the accused that he did not notice the deceased getting down the bus as he was looking in front itself shows his negligent conduct. The front gate of the bus is exactly opposite the driver's seat, and it is impossible to believe that accused was not able to notice the deceased getting down the bus.”

And the appellate Court while referring to the evidence of the eye witnesses and the defence of the accused had observed in para no. 24 of its judgment has under:

“24. Whether there was any negligence on the part of the appellant is now to be ascertained. In this regard PWs 3, 4 and 5 have categorically deposed that the bus had stopped at zebra crossing when an old man had tried to alight from the front gate of the bus. The driver had started the bus suddenly due to which the old man fell down and came under the rear wheel of the bus. PWs 4 and 5 have also deposed that when the bus had come to stop at the zebra crossing which was being driven at a very fast speed and in negligent manner and had stopped because there was a heavy traffic in front of the bus. The argument that the driver's focus is in front of the bus and he could not have seen that the old man was trying to alight from the bus is not tenable as the front gate of the bus is adjacent to the driver seat and if someone (an old man in this case) is trying to alight from the bus, he is clearly visible from the driver's seat, more so when the bus was not moving due to a traffic rush from front of it. Even otherwise, it is not possible that the driver could see only what was in front of him bus he could have also seen what was happening on his left hand side where the front gate is located when a man is trying to alight from the bus more so an aged man. The driver, if starts the bus suddenly, it indeed is a very negligent manner of driving especially when a passenger is alighting from it from the front gate which is clearly visible from his seat. In the present case, the death of an old man has been caused due to the driver of the bus driving the same in a rash and negligent manner as is very clear from the evidence of PWs 3, 4 and 5. The appellant has failed to cross-examine any witness or lead his own defence evidence to show that he was not the driver of the bus but it was being driven by some other person, (Mohd. Habib as suggested by him to the IO) or that he was not driving the vehicle in a rash and negligent manner or that the death of Mr. Shaukat Ali is not the result of rash and negligent act of the appellant. Starting of a vehicle all of sudden when a passenger is alighting is indeed a rash and negligent act of the driver of the bus. The fact that the bus was not stopped despite the old man falling down from the bus due to its sudden starting and stopping it only when the old man had come under the rear wheel of the bus is most definitely rash and negligent manner of driving a bus which comes within the ambit of section 304-A IPC.”

7. In view of these findings of the two Courts below it cannot be said that there was no evidence whatsoever adduced by the prosecution based on which the accused could be convicted. There is evidence of two eye witnesses both of whom had deposed the circumstances in which the bus in question ran over the deceased and their evidence had remained unchallenged. I find no error or infirmity in the judgments of the two Courts below justifying interference in the present revision as far as conviction of the petitioner is concerned.

8. As far as the compensation part is concerned, the same could be awarded in terms of Section 357(3) Cr.P.C. and considering the fact that a human life has been lost the amount of Rs.75,000/- fixed by the learned trial Court cannot be said to be in any way excessive. It was also the submission of Mr. Andley that in the event of non-payment of compensation amount the petitioner cannot be sent to jail and it has been wrongly directed by the appellate Court while setting aside the fine imposed by the trial Court. This submission also is liable to be rejected in view of the decisions of the Supreme Court in "Vijayan vs. Sadanandan K. and Anr.", (2009) 6 SCC 652 and "Suganthi Suresh Kumar vs. Jagdeeshan", (2002) 2 SCC 420 wherein the Supreme Court has clearly held, following its earlier decision given way back in the year 1988 in "Hari Singh vs Sukhbir Singh", (1988) 4 SCC 55 ,that to enforce the payment of compensation awarded u/s

357(3) Cr.P.C. the Courts can give a direction for the accused being sent to jail in the event of default in payment of compensation.

9. However, considering all the facts and circumstances of the case and the fact that the petitioner has already remained in jail since 19th March, 2009, the order on sentence passed by the learned trial Court is modified to the extent that the substantive sentence of imprisonment awarded to the petitioner in respect of his conviction under Section 304-A IPC is reduced to one year to run concurrently with the substantive sentence of imprisonment in respect of conviction under Section 279 IPC. The revision petition stands disposed of accordingly.

February 04, 2010
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P.K.BHASIN, J