

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

Judgment delivered on: September 23, 2010

+ **CRL. REV. P. 181/2010**

BHAJAN SINGH**REVISIONIST/PETITIONER**

Through: Mr.M.K.Sinha, Advocate.

Versus

THE STATE (GOVT. OF NCT OF DELHI)**RESPONDENT**

Through: Mr. Pawan Bahl, APP.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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 Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Bhajan Singh, the revisionist herein feeling aggrieved by his conviction for the offence punishable under Section 279/304A IPC by the learned Magistrate and the dismissal of his appeal against conviction and order on sentence by the learned District Judge-IV vide judgment dated 12th April, 2010 has preferred the instant revision petition seeking quashing of the order of conviction and the consequent order on sentence.

2. Briefly stated, case of the prosecution is that on 08th January, 1996 at about 7.30 p.m., the revisionist was driving bus No. DL-1P-6836 Route No. 505 in a rash and negligent manner so as to endanger human life and safety of the road users and in the process, he hit from behind a Kinetic Honda Scooter No. DL-2S-5051 at traffic point Marina Hotel, Connaught Place, New Delhi. As a result, the pillion rider of the scooter Veer Singh fell down and met his end on being crushed under the bus.
3. The revisionist was charged for the offence punishable under Section 279 and 304A IPC to which, he pleaded not guilty and claimed trial.
4. Prosecution examined nine witnesses including the scooter driver PW1 Dinesh Kumar and one eye-witness Omi (PW2), who supported the case of the prosecution.
5. The revisionist in his statement under Section 313 Cr.P.C. admitted that he was the driver of the bus at the relevant time but he denied that his bus struck against the scooter. Revisionist claimed that actually, the scooter driver lost balance and struck against the pavement, as a result of which, the deceased fell down and sustained injury. The revisionist also examined two witnesses in defence namely Suraj Pratap (DW1) and Raju (DW2).

6. Learned Trial Magistrate, on appreciation of evidence placed reliance on the testimony of PW1 Dinesh Kumar and PW2 Omi and found the revisionist guilty of rash and negligent driving resulting in the death of Veer Singh. Thus, he convicted the revisionist on charges under Section 279 and 304A IPC vide judgment dated 07th October, 2009 and sentenced him for the said offence in terms of the order on sentence dated 23rd January, 2010.
7. The revisionist, feeling aggrieved by his conviction and order on sentence preferred the appeal, which was heard by learned Additional Sessions Judge, New Delhi and he did not find any reason to interfere either with the judgment of conviction or the order on sentence.
8. Feeling aggrieved by the dismissal of appeal and order on sentence, the revisionist has preferred the instant revision.
9. Learned counsel for the revisionist has contended that the impugned judgments of conviction dated 07th October, 2009 and the order of Appellate Court dated 12th April, 2010 dismissing the appeal are perverse and based upon wrong appreciation of evidence. He has submitted that both the Trial Court as well as the Appellate Court, while appreciating the evidence have failed to take into account the cross-examination of PW1 Dinesh Kumar, which was recorded on 20th

March, 2006. According to learned counsel for the revisionist, from the version of PW1 in his cross-examination, it is apparent that the bus of the revisionist did not hit the scooter and the accident took place as the scooter driver i.e. PW1 lost control over it.

10. I have considered the rival contentions. The first question which crops up for determination is as to what is the scope of revisional jurisdiction of the High Court in a petition filed against the order of dismissal of appeal against conviction and sentence by the learned Additional Sessions Judge. In the matter of **State of Kerala vs. Puttumana Illath Jathavedan Namboodiri**, (1999) 2 SCC 452 the Supreme Court has examined this question and observed thus:

“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 reappreciate 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 standpoint, 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 reappreciating 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."

11. From the above enunciated proposition of law, it is clear that the High Court in its revisional jurisdiction, can call for and examine the record of proceedings, only for the purpose of satisfying itself as to the correctness, legality or propriety on any finding, sentence or order. The jurisdiction, however, is supervisory in nature for correcting miscarriage of justice but the revisional power of the High Court cannot be equated with the power of appellate Court nor it can be treated as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion, when there is concurrent finding of facts, unless any glaring feature is brought to the notice of the High Court, which would otherwise tantamount to gross miscarriage of justice.

12. Applying the aforesaid proposition of law to the facts of this case, I am of the view that the revisionist in this petition has only raised question of facts and he has tried to dig holes in the prosecution evidence which has been appreciated by the

learned Metropolitan Magistrate, while returning finding of conviction and the same was re-appreciated by the learned Additional Sessions Judge. On perusal of record, I do not find any infirmity in the impugned judgment and I find no justifiable reasons to interfere with the concurrent finding of facts returned by the learned Metropolitan Magistrate and the learned Additional Sessions Judge so far as the conviction and sentence of the revisionist Bhajan Singh is concerned. Revision petition must fail on this count only.

13. Otherwise also, the petitioner has no case on merits. In order to appreciate the submission of learned counsel for the revisionist, it would be appropriate to have a look upon the cross-examination of PW1 Dinesh Kumar, which reads thus:

“Traffic was running at the spot. No other vehicle was present except the offending bus at the time of accident. It is correct that the person who was on pillion seat was handicapped. Deceased was working with me for the last 7-8 years prior to incident. The distance between the bus and the scooter was 2-3 meters. Scooter did not fell down after hitting by the bus and deceased crushed under the bus. The bus was at slow speed. PW2 Omi is my friend and he was also passing from there at that time on his cycle. The bus was driven by accused in a rash and negligent manner. It is wrong to suggest that due to handicapped the pillion driver could not keep his balance and fell down from the scooter automatically (volunteered). The deceased disbalanced due to hitting of the bus. It is wrong to suggest that I am deposing falsely”.

Above testimony of PW1 in cross-examination does not help the cause of the petitioner. Above version by no means

suggest that bus being driven by the petitioner was not involved in the accident. Witness in above statement has categorically stated that the deceased lost balance because the scooter was hit by the bus. PW1 in his examination-in-chief is categorical that as soon as he proceeded ahead on green signal, scooter was hit from behind by the bus which was being driven by the petitioner in rash and negligent manner. Therefore, I do not find any merit in the contention that the Trial Court or the Appellate Court has failed to appreciate that from the testimony of PW1 Dinesh Kumar the factum of accident caused by the bus is not established.

14. Learned counsel for the revisionist also submitted that neither the Trial Court nor the Appellate Court has given due weightage to the testimony of DW1 and DW2, according to whom, they were travelling in the aforesaid bus and when the bus proceeded forward on green signal at traffic point near Marina Hotel, the scooter came from behind and the scooter driver lost balance, as a result of which, the pillion rider sustained injuries. There is no merit in this contention also, in view of the fact that bus No. DL-1P-6836 was seized during investigation and as per the Mechanical Inspection Report Ex.PW7/B, scratch marks were found on the left side (extreme)

of the front bumper of the bus, which is sufficient evidence to indicate that the bus did strike against the scooter.

15. In view of the discussions above, I find no infirmity in the impugned judgment which may call for interference by this Court in revisional jurisdiction. Revision Petition is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 23, 2010

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