

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

+ **Crl. Rev. P. No. 131/2010**

% Reserved on: 29th September , 2011

Decided on: 13th October, 2011

VINOD KUMAR

..... Petitioner

Through: Mr. R.S. Juneja, Adv. & Mr. A.S.
 Juneja, Adv.

versus

STATE

..... Respondents

Through: Mr. Mukesh Gupta, APP for State with
 SI Manoj.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. By the present petition the Petitioner seeks setting aside of the order dated 18th February, 2010 passed by the learned Additional Session Judge upholding the order of conviction of the Petitioner passed by the learned Metropolitan Magistrate under Sections 304A and 279 IPC. Learned

Metropolitan Magistrate vide order dated 19th September, 2007 sentenced the Petitioner to undergo Rigorous Imprisonment for 6 months for offence punishable under Section 279 IPC and a fine of Rs 500/- and to undergo Rigorous Imprisonment for 1 year and Rs. 1000/- fine under Section 304A IPC, in default of payment of fine to undergo Simple Imprisonment for one month.

2. The brief facts of the Prosecution case are that on 25th November, 1999, while Jitender Sharma was standing in front of Sunny Selection, Babarpur Road, Delhi, a school bus bearing registration No. DL 1P 1690 was going towards Shahadra from Maujpur via Babarpur Road. At about 1:15 pm, one boy was going towards West Gorakh Park from Babarpur Road. The bus driver was driving the bus at a high speed in a rash and negligent manner which struck the boy and as a result the boy fell down at the spot. The bus driver tried to flee after leaving the bus but was apprehended by Jitender Sharma with the help of public persons. The bus driver disclosed his name as Vinod. On this statement of Jitender Sharma, FIR was registered against the Petitioner under Section 279/304A IPC. After completion of the investigation, chargesheet was filed. Learned Metropolitan Magistrate after recording the prosecution evidence and statement of the accused under Section 313 Cr.P.C. convicted and sentenced him as mentioned above. Aggrieved by the judgment and order on sentence, the Petitioner preferred an

appeal which was dismissed by the learned Addl. Sessions Judge vide order dated 18th February, 2009. These judgments of learned Metropolitan Magistrate and learned Addl. Sessions Judge are impugned in the present petition.

3. Learned Counsel for the Petitioner contends that the impugned judgments are based upon conjectures and surmises. Learned courts below have failed to appreciate the fact that the prosecution case is based on the testimony of PW10 the sole eye witness to the alleged incident, there are material contradictions in his testimony and therefore the same is not reliable. It is contended that no public person who apprehended the accused has been examined by the prosecution. Also the seizure memo, driving license, arrest memo and jamatalashi had not been signed by PW-10 or any other eye witness. It is contended that the site plan is hit by Section 162 Cr. P.C. as the same was not prepared on the statement of any witness and hence is not admissible in evidence. Further no document has been produced nor any other witness has been examined to prove the presence of PW10 at the spot. Learned Counsel contended that no negligence or rashness has been proved by the prosecution. Admittedly the Petitioner was driving the bus at a slow speed. Moreover, PW10 in his cross examination has admitted that there was heavy traffic on the road. Thus, in the absence of any evidence to support the Prosecution story, the impugned judgments are liable to be set aside.

4. Per contra learned APP for the State submits that impugned judgments suffer from no illegality. The Petitioner was arrested from the spot of the incident by the police. PW10 is an independent witness who was present at the spot of the incident and has duly identified the Petitioner. Even the post mortem report has confirmed that the deceased died due to cranio cerebral injury caused by blunt force impact, which occurred as the deceased was hit by the bus. The contradictions as pointed out by the learned counsel for the Petitioner are not material and do not go to the root of the prosecution case.

5. I have heard the learned Counsels for parties and perused the record.

6. PW10 Jitender Sharma the alleged eye-witness of the incident has deposed that on 25th November, 1999 at about 1:00/1:15 p.m. he was standing in front of Sunny Selection, Babarpur Road and he saw that one bus bearing No. 1690 was coming from Maujpur side towards Babarpur via Shahdara at the time of accident and the driver of the said bus was driving the bus in a very rash and negligent manner and hit the boy. He immediately chased the bus and parked his scooter in front of the bus and the bus driver stopped the bus. He has further deposed that in the meantime, police PCR came at the spot and he apprehended the bus driver with the help of public and handed over to the police. This witness in his cross-examination admitted that he cannot tell how the accident occurred. According to PW10 his house is on the

left side from the side the bus was coming. He has stated that he was smoking after having meals on his scooter outside his house. According to PW10 his statement was recorded in the hospital whereas PW12 SI NR Lamba has deposed that when he reached the spot one Jitender met him at the spot whose statement was recorded by him thereafter he went to GTB Hospital. PW 7 ASI Sugvir Singh in his testimony has deposed that on the relevant date he was on patrolling in the area of PS Babarpur. Some persons informed him regarding accident of one child with a bus so he immediately reached the spot and took the injured boy to GTB Hospital. This witness has further deposed that no one had accompanied the injured to the hospital. Thus, the version of PW10 stating that he went to GTB Hospital along with mother of injured is not reliable. PW10 has stated that he along with various public persons had apprehended the Petitioner but no other public person present at the spot at the relevant time has been examined by the prosecution. There are no signatures of PW10 or any other witness on the contemporaneous documents that is the seizure memo, driving license, arrest memo and jamatalshi which casts a doubt on the presence of PW10 at the spot when the alleged incident took place, more so because he admits that he does not know how the accident took place.

7. No evidence or any other material was placed on record by the prosecution to show the manner in which the Petitioner was driving the said

vehicle to prove the rashness and negligence of the Petitioner. No photographs of the spot or the bus have been taken. PW10 the alleged eye witness to the incident has also not deposed anything in regard to the accident or manner in which the vehicle was being driven by the Petitioner, except making a bald statement that the driver of the bus was driving the bus in a rash and negligent manner which does not prove the guilt of the Petitioner. There is no evidence placed on record to show the speed of the vehicle or the manner in which it was being driven to show rashness and negligence on the part of the Petitioner, especially when the area was a crowded one.

8. The essential ingredients to constitute an offence punishable under Section 279 IPC are that there must be rash and negligent driving or riding on a public way and the act must be so as to endanger human life or be likely to cause hurt or injury to any person. For an offence under Section 304A, the act of accused must be rash and negligent, which should be responsible for the death which does not amount to culpable homicide. The prosecution in the present case has failed to prove how the act of the Petitioner was rash or negligent to bring the same under the purview of Sections 279/304A IPC.

9. The impugned order convicting the Petitioner is set aside. The Petitioner is acquitted of the charges punishable under Section 279/304A IPC.

The petition is accordingly allowed. The bail bond and surety bond of the Petitioner are discharged.

10. Petition stands disposed of.

(MUKTA GUPTA)
JUDGE

OCTOBER 13, 2011
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