

20

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

% Order Reserved on: September 30, 2011
Order Pronounced on: October 24, 2011

+ **Crl.Rev.(P) No.238/2008**

RAJINDER Petitioner

Through: Mr.Avtar Singh, Advocate

versus

STATE Respondent

Through: Mr.Pawan Narang, Additional Public
Prosecutor for Respondent – State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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?
- No.

SUNIL GAUR, J.

1. For the offence under Section 304-A of Indian Penal Code, the substantive sentence awarded by the Appellate Court in the impugned Order of 28th March, 2008 is of six months while taking into consideration the fact of deceased alighting from the rear door of the petitioner's bus as mitigating circumstance.

2. The challenge to the impugned conviction of the petitioner for the aforesaid offence in this revision petition

is on merits as well but what was solely urged at the hearing by petitioner's counsel was that petitioner has already remained behind bars for about 2 months, to be precise for 70 days and he has no previous conviction to his discredit and that he is aged 46 years and has old parents and a family comprising of three minor children and a wife to support and having faced the agony of this proceedings for the last about 16 years, lenient view on point of sentence be taken.

3. No doubt, this incident relates back to the year 1995. On 28th September, 1995, at about 10 am, petitioner had stopped his bus No.DL 1P 4667 at bus stop on Ratia Marg, M.B.Road, Delhi to enable the passengers to alight from the bus and while not noticing that one passenger Ram Kishan (PW-6) had alighted from petitioner's bus from the rear door and another passenger Panchi was in the process of alighting when petitioner drove his bus and thereby Panchi had sustained injuries which had proved fatal.

4. Pertaining to this fatal vehicular accident, FIR No.636/95 under Section 279/304-A of Indian Penal Code was registered at P.S.Ambedkar Nagar, New Delhi against the petitioner and in the trial which had followed, deposition of nine witnesses was recorded but the material deposition is of the eye witness – Ram Kishan (PW-6), who is brother of the deceased. Trial Court while relying upon the evidence recorded, convicted the petitioner to rigorous imprisonment for one year for the offence under Section 304-A of Indian Penal Code which in appeal, was modified to the extent of reducing the substantive sentence to six months while maintaining the conviction of the petitioner.

5. Being conscious of the legal position, that the scope for interference by the Revisional Court is circumscribed and in view of the fact that the deposition of the eye witness – Ram Kishan (PW-6) cannot be faulted with, learned counsel for the petitioner had rightly not contested the conviction of the petitioner on merits and had asserted that in view of the antecedents of the petitioner, the substantive sentence imposed upon the petitioner deserves to be scaled down to the period already undergone by him.

6. There is one prominent feature of this case, which deserves attention. It is that the Appellate Court has tried to justify the conduct of the eye witness – Ram Kishan (PW-6) and the deceased of getting down from the bus from the rear door. What has been said in the impugned Order, in this regard, is as under:-

*“The fact that the deceased Panchi was alighting from the bus from the rear door though shows that he was getting down from the bus not from the front door as is done normally and was guilty from making a departure from this normal practice followed by the bus passengers. **There may be** variety of reasons for it. **It may be** that the bus was over crowded and the deceased Panchi who was at the rear of the bus could not conveniently go to front door to get down from the bus. **It may also be** that he deliberately avoided going to front door and has chosen to get out of the bus from back door. However, there is no convincing evidence showing the*

reason why deceased did not get down from the front door. But at the same time the appellant was negligent by moving the bus forward without ensuring that all passengers have got down." (emphasis supplied)

7. When the aforesaid observations of the Appellate Court are viewed in the context of the deposition of the eye witness – Ram Kishan (PW-6), it becomes apparent that the aforesaid observations are mere conjectures as the evidence on record does not justify the conduct of the injured and the deceased of alighting from the petitioner's bus from the rear door, which apparently depicts their contributory negligence.

8. Though, contributory negligence of the deceased is not a permissible defence, but certainly it is a factor which affects the quantum of sentence awarded for the offence under Section 304-A of IPC. It has been so held by the Apex Court in Lakshmanan Vs. State of Tamilnadu, JT 2001 (Suppl.2) SC 396 and upon finding it to be a case of contributory negligence, the sentence was reduced to the period already undergone by the offender. On this aspect, learned additional standing counsel for the Respondent-State had not cited any decision to the contrary.

9. In the aforesaid perspective, while maintaining the conviction of the petitioner the substantive sentence imposed upon the petitioner is reduced to the period already undergone by him, while enhancing the fine to Rs.10,000/-. Petitioner to deposit the fine within 4 weeks. Trial Court to ensure compliance of this Order.

24

10. With modification, as aforesaid, this petition stands disposed of.


(SUNIL GAUR)
JUDGE

October 24, 2011

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