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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Order Reserved on: August 19, 2011

Order Pronounced on: September 09, 2011

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Crl. Revision Petition No. 265/2008

RISHI PAL

..... Petitioner

Through: Mr. I.J.S.

Gulati, Advocate

versus

THE STATE

..... Respondent

Through: Mr. Rajesh Mahajan, Additional
Standing Counsel for 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?

SUNIL GAUR, J.

1. Petitioner has been convicted and sentenced for rashly and negligently driving bus no. DEP-6008 at about 5:30 pm on 7th April, 1995 near a temple opposite P.S. Kamla Market, Delhi, resulting in death of Ved Prakash Chaudhary. The sentence of rigorous imprisonment of one year with fine has been imposed upon the petitioner for the offence under Section 304-A of the IPC by the trial Court which has been affirmed in the appeal by the appellate Court vide impugned order of 8th May, 2008.

2. This vehicular fatal accident was witnessed by one Ramjas and Constable Ram Parshad and on the statement of

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Ram Parshad, son of Bundan, the law was set into motion. Upon registration of FIR No. 138 of 1995, under Section 279/304-A of the IPC, registered at Police Station Kamla Market, Delhi, petitioner was arrested from the spot itself and petitioner's bus was seized. The injured was removed to the hospital by one of the eye witnesses- Constable Ram Parshad and by the time injured Ved Parkash reached the hospital he had died. However, he was medically examined and it was found that his head was crushed from the side and there was fracture of his right fore-arm, right thigh. The aforesaid injuries as a result of this vehicular accident were opined to be the cause of death of Ved Prakash, as is evident from the post mortem report of the deceased.

3. Upon framing of the Notice under Section 251 of the Cr.P.C. for the offence under Sections 279/304-A of the IPC, to which the petitioner pleaded not guilty, the trial followed. Evidence of seven witnesses was recorded at trial. The evidence which was adverted to at the hearing was that of the eye witness- Constable Ram Parshad (PW-3) and of the Investigating Officer SI Arjun Lal (PW-6). The manner in which the accident took place, as disclosed by eye witness Constable Ram Parshad (PW-3), is as under:-

On 7.4.95 I was DHG constable at P.S. Kamla Market. At about 5:50 p.m. I was standing at the gate of P.S. Kamla Mkt. along with SI Ram Sahai and were talking to each other. One person was crossing the road in front of Harihar temple who was going towards Harihar Mandir. He had crossed half of the road. A bus No.DEF-6008 came from the side of Minto Road, J.L.N. Marg Chambery, driving the said bus in a rash and negligent manner at a high speed. The accused present in the court was the driver of the said and he hit the said bus

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against the person crossing the road. I along with the said SI took the injured to the hospital. The injured received injuries at his head and other parts of the body. From the hospital came back to P.S. I came to know at the hospital that the injured died as the doctor had declared him dead. The accused present in the Court was apprehended at the spot. The injured was taken to the hospital in a tempo. The name of the injured/ deceased was known later on as Ved Prakash Chaudhary. The accused present in the Court wanted to take the bus after over taking injured/ deceased from his right hand and he hit the said bus against the injured deceased who came under the back wheel of the bus and he received injuries. (sic) at the head. My statement was recorded. The said accident took place due to the fault on the part of the accused present in the Court as he had driven bus in question in a rash and negligent manner at a high speed.

4. The stand taken by the petitioner at trial, in his statement under Section 281 of the Cr.P.C. is as follows:-

"I am innocent and falsely implicated in this case. My vehicle was standing in front of PS and I was talking to one colleague of my. The deceased came out from the PS along with other employees of MCD as there was some quarrel between them. In the meanwhile, I had just started my vehicle when I felt that rear tyre of my vehicle had gone over some object. I stopped the vehicle there and then. When I saw I found the deceased below the rear wheel of my vehicle. I do not know how he came under the vehicle."

5. No evidence in defence was led by the petitioner at trial which ended with the conviction of the petitioner, and it was challenged in appeal by him but without success.

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6. At the hearing, learned counsel for the petitioner has assailed the conviction of the petitioner primarily on the ground that the contents of the FIR of this case have not been proved as Ramjas, on whose statement the FIR of this case was registered, has not stepped into the witness box to prove the prosecution case and so the foundation of the prosecution case got knocked off. It is urged by petitioner's counsel that the evidence of the eye witness Constable Ram Parshad (PW-3) stands demolished from the alleged history given in the MLC which shows that he had not actually witnessed the incident. It was vehemently urged by learned counsel for the petitioner that there was no negligence or rashness on the part of the petitioner, as petitioner's bus was struck up in a traffic jam and when the petitioner started to move his bus, he felt something was crushed under the rear wheel and therefore, the conviction of the petitioner for the alleged offence is unwarranted and deserves to be set aside.

7. On the quantum of sentence, it was urged on behalf of the petitioner that he is now aged 58 years and has faced the agony of the trial of this case for the last 15-16 years and has family responsibilities and has already undergone actual sentence of about five months and therefore, in the facts and circumstances of this case, the substantive sentence imposed upon the petitioner deserves to be reduced to the period already undergone by him. Nothing else has been urged on his behalf.

8. It was pointed out by learned Additional Standing Counsel for the respondent-State that first informant Ramjas could not be got examined at trial as he had expired by then. It is also pointed out that the defence taken by the petitioner has not

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been suggested to the witnesses and is an afterthought. The pertinent submission made is that the evidence of eye witness-PW.3 cannot be discredited in view of the alleged history given by him to the Doctor at the time of medical examination of the injured, without confronting him with it. On the quantum of sentence, it is submitted that the sentence already awarded to the petitioner is just and reasonable and this petition lacks merit.

9. Although, this Court while exercising revisional jurisdiction, is not expected to re-appreciate the evidence, but in order to ensure that there is no miscarriage of justice, the vernacular statement of the eye witness Constable Ram Prasad-PW.3 has been looked into, as it had appeared somewhat strange as to how the deceased could have been hit by the petitioner's bus and thereafter had fallen in such a manner that the head of the deceased got crushed under the rear wheel of the offending bus, as has been deposed by the eye witness-PW.3 before the Trial Court. A true picture emerges from the vernacular statement of eye witness Constable Ram Prasad-PW.3, who has stated in no uncertain terms that bus No.DEP-6008 driven at a high speed tried to pass by a person who was crossing the road and in the process the passer-by had struck against the middle side portion of the bus and had fallen down and rear wheel of said bus had crushed the head of the passer-by.

10. Aforesaid eye version stands substantially corroborated from the site plan Ex.PW.6/B of the spot. The defence of the petitioner of being blissfully unaware as to how the deceased came under the rear wheel of his bus is not only improbable and has been rightly rejected by both the courts as it has not been so put to the eye witness-PW.3 in cross-examination. The

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absence of the evidence of the first informant does not diminish the evidentiary value of the testimony of eye witness-PW.3. It is cardinal principle of appreciation of evidence that the testimony of a witness cannot be discredited without confronting the said witness with the alleged damaging circumstance or document. In the instant case eye witness-PW.3 has not been confronted with the alleged history given by him before the Doctor. Had it been done, then the eye witness-PW.3 would have given some explanation about it. In any case, the presence of the eye witness at the spot is quite natural and it has not been suggested to the eye witness-PW.3 that he was not present at the spot.

11. From the evidence on record, it stands established that the petitioner is guilty of the offence under Section 304A of IPC. However, I find that one vital aspect has escaped the attention of the courts below i.e. the aspect of contributory negligence of the passer-by/deceased. This court is conscious of the legal position that contributory negligence is not a permissible defence and so it has not been urged on behalf of the petitioner, but it is certainly a factor which affects quantum of sentence. In a somewhat similar case of **Lakshmanan Vs. State of Tamilnadu**, JT 2001 (Supple.2) SC 396 a passer-by was fatally injured by the bus, which was moving at a high speed and the passer-by was dragged upto a distance of 22 feet. It was found to be a case of contributory negligence and the sentence of RI for two years for the offence under Section 304A of IPC was reduced to a period of three months already undergone.

12. Undisputedly, merely because a vehicle is driven at a high speed, it would not be *per se* inferred that it was driven

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rashly or recklessly. In the instant case, I find that it has not come in evidence nor has been shown in the site plan that the deceased was dragged after being hit by the offending bus. In fact the actual factual position which has emerged is that the deceased was not hit by the petitioner's bus, but the deceased had struck against the middle side portion of the petitioner's bus, while deceased was trying to cross the road. Certainly, the deceased was negligent in crossing the road in such a manner that he struck against the middle side portion of the offending bus. In these circumstances, it has to be held that there was contributory negligence on the part of the deceased.

13. A perusal of the record reveals that the petitioner has already remained behind bars in this case for about five months and has faced the agony of protracted proceedings of this case for the last about fifteen years and is on the verge of retirement and has family responsibilities to shoulder. In these peculiar circumstances, I am inclined to reduce the substantive sentence to the period already undergone by the petitioner.

14. This petition is disposed of, while maintaining the conviction of the petitioner, but by reducing the substantive sentence to the period already undergone by him.


SUNIL GAUR, J

September 09, 2011

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