

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

Judgment delivered on: February 01, 2011

+ **CRIMINAL REVISION PETITION NO. 708/2010**

ABDUL RASHID

....REVISIONIST

Through: Mr.Sunil Kumar Bhatt, Advocate with Ms.
Manju Datt, Advocate.

Versus

THE STATE (NCT OF DELHI)

....RESPONDENT

Through: Ms. Fizani Husain, 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. This revision petition is directed against the impugned judgment dated 06th October, 2010 of the Appellate Court whereby the learned Additional Sessions Judge partly accepted the appeal against the judgment of conviction and order on sentence passed by the learned Metropolitan Magistrate and set aside the conviction of the petitioner under Section 279 IPC while maintaining his conviction under Section

304A IPC and the sentence of SI for one year besides the fine of Rs. 3000/- awarded to the petitioner.

2. Briefly stated, case of the prosecution is that on 19th July, 1995 at about 6.15 p.m. at Sanjay Gandhi Transport Nagar, near railway crossing, Samaypur Badli, Abdul Rashid, the revisionist herein, was driving truck No. JK-01-A-3620 in a manner so rash and negligent as to endanger human life and public safety, and which driving so caused an accident resulting in fatal injury to Ram Dass, a young boy.

3. Learned Metropolitan Magistrate charged the revisionist for offences punishable under Section 279/304A IPC to which he pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the revision petitioner, prosecution examined seven witnesses, including eye witness Ram Karan (PW1).

5. The revision petitioner, when examined under Section 281 Cr.P.C. denied the prosecution evidence and claimed himself to be innocent. He examined one Salim S/o Sardari Khan, who testified that the accident was actually caused by a Maruti Car and the accused has been falsely implicated.

6. Learned Metropolitan Magistrate, on consideration of evidence found the testimony of eye witness Ram Karan worthy of credence and on consideration of his testimony as well as other evidence, convicted the revision petitioner under Section 279 IPC as well as 304A IPC and sentenced him to undergo SI for a period of one year and also to pay fine of Rs. 3000/- for the offence under Section 304A IPC and for the offence under Section 279 IPC, he sentenced the revision petitioner to undergo SI for three months and also to pay fine of Rs. 1000/-.

7. The learned Additional Sessions Judge, in appeal, set aside the conviction and sentence of the revision petitioner under Section 279 IPC but maintained his conviction and sentence of imprisonment as well as fine for the offence under Section 304A IPC.

8. Learned counsel for the revisionist submits, on instruction from the revisionist that he admits his guilt under Section 304A IPC so far as factual merits of the case is concerned. Learned counsel, however has confined his submission against the sentence awarded by the learned Additional Sessions Judge. Learned counsel has urged for reduction of substantive sentence on the ground that revisionist is a first offender. He is aged 45 years and he is sole earning member of his family. It is submitted that the revisionist has realized his mistake and he shall not indulge in rash driving in future. It is also contended that the learned

Additional Sessions Judge has failed to appreciate that incident pertains to the year 1995 and the revisionist has already undergone the agony and trauma of a protracted trial for almost 15 years and for this reason also, he deserves to be treated leniently. In conclusion, learned counsel for the revisionist has urged for reduction of substantive sentence.

9. Learned APP, on the contrary, has opposed the prayer. She has submitted that because of rash and negligent act on the part of the revision petitioner, a young boy has died, therefore, the sentence awarded to the revision petitioner is commensurate to the nature of offence committed by him.

10. I have considered the rival contentions in the matter of **B.G. Goswami Vs. Delhi Administration**, AIR 1973 SC 1457. The Supreme Court, while dealing with the case of a public servant guilty of corruption who was convicted after a long trial of 17 years, inter alia, observed thus:-

“10. As already observed, the appellant’s conviction under Section 161 IPC, was rightly upheld by the High Court and there is no cogent ground made out for our interference with that conviction. The sentence of imprisonment imposed by the High Court for both these offences is one year and this sentence is to run concurrently. The only question which arises is that under Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act the minimum sentence prescribed is rigorous imprisonment for one year and there

must also be imposition of fine. The sentence of imprisonment can be for a lesser period but in that event the court has to assign special reasons which must be recorded in writing. In considering the special reasons the judicial discretion of the court is as wide as the demand of the cause of substantial justice. Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate, thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs 200 to Rs 400. Period of imprisonment in case of default will remain the same”.

11. In the above referred case, the Supreme Court, after taking into account that the appellant of that case had suffered a protracted trial of almost 17 years, reduced the sentence of imprisonment awarded to the appellant and awarded him imprisonment for a period of less than

one year, as prescribed under law, giving the delay as a special reason. In the instant case, undisputedly the revisionist has undergone a protracted trial for almost 15 years. He has suffered the agony and trauma of a protracted trial. Besides that, he is the sole earning member of his family comprising of his wife and three children. Therefore, in my view, the learned Additional Sessions Judge, while awarding sentence, ought to have taken the delay in trial as a ground to quantify the sentence of imprisonment.

12. Thus, taking into account the overall circumstances of this case, particularly the delay caused in trial, I partly accept the revision and reduce the sentence of imprisonment awarded to the appellant from one year to six months S.I., while maintaining the fine imposed by the learned Additional Sessions Judge.

13. Revision petition is disposed of accordingly.

14. Copy of the judgment be sent to the concerned Jail Superintendent for information to the revisionist.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 01, 2011

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