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

+ CRL.REV.P. 768/2010 & CrI.M.A. 1673/2010

VEER PAL

..... Petitioner

Through Mr. Anirudh Yadav, Adv.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through Mr. Pawan Bahl, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

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ORDER
06.05.2011

1. By this revision the appellant lays a challenge to the judgment passed by the Metropolitan Magistrate in case FIR No. 257/2003 under Section 279/304A IPC, registered at P.S. Welcome convicting the petitioner for offences punishable under Sections 304A and 279 IPC and order on sentence directing him to undergo R.I. for a period of one year with fine of ₹ 7,500/- for offence punishable under Section 304A IPC and R.I. for a

CRL.REV.P. 768/2010

page 1 of 5

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period of three months and a fine of Rs. 2,500/- for offence punishable under Section 279 IPC and the order dismissing the appeal by the Learned Additional Sessions Judge.

2. Briefly the case of the prosecution is that on 12.07.2003 the complainant Shailesh Jain was going to his residence Chajju Puri Colony, Babar Pur after giving tuitions to the children. At around 3.00 PM he was waiting to cross the 100 feet road, he saw one bus bearing No. DL 1 PA 2606, Blueline, driven in a rash and negligent manner by its driver which hit a child name Abheek Parasher who was crossing the road. The child got entangled in the bus and was dragged for about 10-12 steps towards Shiv Mandir. An FIR was registered on the statement of the complainant and a charge sheet filed after investigation. On examination of prosecution witnesses and the accused, the Trial Court convicted the Petitioner as above.

3. The two contentions raised by the learned counsel for the Petitioner seeking to set aside the two impugned judgments are that the Trial Court and the Appellate Court erroneously held that the complainant had witnessed the accident whereas the complainant had identified the Petitioner only in the Police Station and was not an eye witness as he came only after hearing the Dhamaka. Secondly, that probation has also been declined to him for the

64

simple reason that the Petitioner was driving a Blueline bus. He, thus, prays that the impugned judgment be set aside and the appellant be acquitted of the charges he is convicted for.

4. As regards the identity of the Petitioner is concerned, PW3 Shailesh Jain has identified the Petitioner as the accused driving the bus in the Court. PW3 in his cross-examination has clarified that the confusion that has arisen in his testimony was due to lapse of time. In his testimony PW3 has stated:

“I can identify the driver of the offending bus, and he is the accused who is today present in the Court pointed out and correctly identified by the witness. My statement is Ex.PW3/A bears my signature at point A. I do not know what proceeding were conducted by the police regarding the offending bus, as I left from the spot.

The Police had called me in the P.S. And I had identified the accused in the police station. I do not recollect whether I was called on the same day or later on. I did not sign any documents except my statement to the police on the day of accident. I do not recollect if the police had called the owner of the bus at the spot, or prepare any documents. I can identify my signature. Documents Ex.PW3/B and PW3/C, Ex.PW3/D, Ex.PW3/E, Ex.PW3/F bears my signature at point A respectively.

At this stage, Ld. APP seeks permission to cross-examine the witness with certain facts. Heard. Allowed.

At this stage, statement u/s 161 Cr.P.C. is read out to the witness, and the witness also gone through the statement dated on 12.07.2003.

After going through the statement, the witness replied that he had identified the accused and pointed out to the police and it may be possible that due to lapse of time or due to confusion I had stated that I had identified the accused in Police

(13)

Station. Witness further submitted that the contents of statement u/s 161 Cr.P.C. are correct and the memos Ex.PW3/B to PW3/F were signed by him at the spot during the investigation. It is correct that the Police had called the owner of the bus and seized the documents of the bus and also arrested the accused Vir Pal at the spot. I mean to say that I did not visit the hospital since I did not lift the child and his father took the child to the hospital while I had followed him another TSR. I could not tell the aforesaid facts properly due to lapse of time, but now I had recollect the whole facts which just put to me, and the same are correct.

5. Moreover, the vehicle was seized at the spot. Further, the owner of the bus Karam Chand Arora has also been examined as PW2 who has stated that on the date of incident the petitioner was driving the bus. Thus, the identity of the Petitioner as the accused who committed the offence is proved beyond reasonable doubt.

6. The second contention of the learned counsel for the Petitioner that he has been denied the benefit of Probation of Offenders Act merely because he was driving a Blueline bus also deserves to be rejected. I have perused the order on sentence. The Learned Trial Court has followed the decision of the Hon'ble Supreme Court in Dalbir Singh Vs. State of Haryana (2000) 5 SCC 82 wherein it has been held that keeping in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and

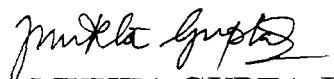
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their family, Criminal Courts cannot treat the nature of offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. It was further held that while considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime consideration should be deterrence.

7. I do not find any perversity much less any illegality in the impugned judgments on the perusal of the evidence on record. It may be noted that the power of revision vested in this Court is a kind of supervisory jurisdiction in order to prevent miscarriage of justice arising from the misconception of law or irregularity of procedure committed by the subordinate Courts. It does not confer unfettered jurisdiction on this Court for re-appraisal of evidence. The revisional power of this Court is to be exercised to see that justice is done in accordance with the recognized rules of criminal jurisprudence and the subordinate Courts do not exceed their jurisdiction or abuse their powers vested in them under the Code of Criminal Procedure.

8. Petition and application are dismissed.

9. Trial Court record be sent back.


MUKTA GUPTA, J

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CRL.REV.P. 768/2010

page 5 of 5