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

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RESERVED ON: 11.07.2012  
PRONOUNCED ON : 17.07.2012

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CRL.REV.P. 101/2012

RAKESH SHARMA ..... Petitioner  
Through: Mr.Ravi Mehta, Advocate.

versus

STATE ..... Respondent  
Through: Mr.Navin Sharma, APP

**CORAM:**  
**HON'BLE MS. JUSTICE PRATIBHA RANI**

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**MS. JUSTICE PRATIBHA RANI**

1. The present revision petition has been preferred by the petitioner under Section 401/397 Cr.P.C. impugning the order passed by the learned Addl. Sessions Judge, Delhi on 29.09.2011 whereby the appeal filed by him against his conviction and sentence awarded by the learned M.M. was dismissed.

2. In brief the prosecution case is that on 18.04.1996 at about 9:15 a.m the petitioner was driving Bus No.UP 4D P 2853 in a rash and negligent manner so as to endanger human life and personal safety and while driving so, hit the Scooter bearing registration No.DL 2S B 2816 as a result of which Rehmat Khan driving the scooter and the pillion rider Mohd. Asif both suffered injuries. One passerby lady namely Tara also suffered injuries due

to the impact. All the three injured Rehmat Khan, Mohd. Asif and Tara were removed to GTB Hospital by the PCR Van. Mohd. Asif succumbed to the injuries. On the basis of statement made by Rehmat Khan, case FIR No.206/1996 was registered at P.S. Seema Puri, Delhi and after completion of investigation, the petitioner was sent to face the trial.

3. The prosecution examined 13 witnesses in order to prove its case. In his statement recorded under Section 313 Cr.P.C., the petitioner denied the evidence adduced by the prosecution. He has not led any evidence in his defence.

4. Believing the testimonies of PW-1 Rehmat Khan, the complainant/injured and eye witness and another public witness PW-7 Pappi Singh, the petitioner was convicted under Sections 279/337/304-A IPC and sentenced to undergo simple imprisonment for a period of three months under Section 279 IPC and simple imprisonment for one month for offence punishable under Section 337 IPC. The petitioner was also sentenced to undergo simple imprisonment for one year for offence punishable under Section 304-A IPC. The conviction and sentence awarded to the petitioner were affirmed by the Appellate Court.

5. The impugned judgment and order on sentence have been challenged by the petitioner before this Court on the ground that the learned trial court and the appellate court have failed to appreciate that PW-1 Rehmat Khan during his cross-examination before the Court could not even give the registration number of the offending Bus and rather in his cross-examination he stated that the scooter was hit by a truck. It has been contended that if the scooter was hit from behind then there was no occasion for

the scooterist to observe as to in what manner the Bus was being driven by the petitioner. Further, another injured namely Tara remained unexamined which is also fatal to the case of the prosecution. It is submitted that there was no fresh damage on the Bus which also rules out the scooter being hit by the Bus being driven by the petitioner. It has been further submitted that presence of PW-7 Pappi Singh in the Bus could not be established by seizing the travelling ticket from him and in absence of the same, he being passenger in the offending bus, is doubtful. It is also submitted that when the Investigating Officer of the case visited the spot he did not meet any eye-witness. It is contended that the place of accident is thickly populated area but no independent witness was joined by the I.O. and the writing work was done by him in the comfort of Police Station. It has been submitted that there is contradiction in the statements of PW-1 Rehmat Khan and PW-7 Pappi Singh as to whether the offending vehicle hit the left side of the scooter or right side and because of this material contradiction the learned Trial Court and the Appellate Court both committed grave error in convicting the petitioner under Sections 279/304A/337 IPC. He further submits that PW-7 Pappi Singh is a planted witness and neighbour of the injured/complainant and hence his testimony cannot be believed.

6. Lastly, it is submitted that if this Court does not find force in the above contentions, then the petitioner may be either given benefit of probation or he may be released on the sentence already undergone by him, as the incident pertains to the year 1996 and he has faced the agony of trial for more than 16 years. It is further submitted that barring this accident, he has no

criminal record. During his entire professional career as driver he has not caused any other accident. On the date of accident he had not fled from the spot and during trial also he regularly appeared.

7. On behalf of State, it has been submitted that the conviction of the petitioner is based on the testimonies of PW-1 Rehmat Khan and PW-7 Pappi Singh who are the eye-witnesses of the incident and they have absolutely no enmity towards the petitioner. PW-1 Rehmat Khan is the injured and driver of the scooter at the time when the scooter was hit from behind by the Bus driven by the petitioner, who deposed about the manner in which the accident had taken place resulting in injuries to him and fatal injuries to the pillion rider Mohd. Asif. PW-7 Pappi Singh was travelling in the Bus driven by the petitioner and in his statement he has stated that he asked the driver of the bus to drive slowly as he was driving the bus at a very high speed which is sufficient to bring home the guilt of the petitioner. He submits that a precious life has been lost due to the rash and negligent act on the part of the petitioner and the testimonies of PW-1 & PW-7 are fully supported by the documentary evidence. Thus, there is no reason for this Court to interfere with the impugned judgment and order on sentence passed by the learned Trial Court.

8. First of all, it is necessary to mention that in his statement under Section 313 Cr.P.C., the petitioner has denied the incident and claimed that he was arrested by the police from behind the Depot. Another plea taken by the petitioner is that the scooterist fell on the road and suffered injuries after the scooter hit against

the wooden plank (phatta) which were meant for weekly bazaar. Contention of the petitioner that PW-7 Pappi Singh is a planted witness is falsified from the record as he is a witness not only to the personal search memo of the petitioner (Ex.PW-4/C) but also to the seizure memo Ex.PW-4/A vide which the scooter was seized, Ex.PW-4/B vide which the offending bus was seized and Ex.PW-4/D vide which the license of the injured PW-1 Rehmat Khan was seized by the I.O. Not only that the documents pertaining to the offending bus No.UP 14 D 2853 i.e. photocopies of insurance, permit, pollution certificate, RC Book were also seized in his presence. Personal search memo Ex.PW-4/C bears signatures of the petitioner and nowhere suggestion has been given to PW-7 that he was not present at the time of arrest and seizure.

9. As per the prosecution case, I.O HC Bhim Singh along with Ct. Hira Lal visited the spot on receiving DD No.10A recorded at 9:30 a.m vide which information was received regarding the incident at Seema Puri Bus Stand Depot. The endorsement Ex.PW-11/A made by the I.O is to the effect that on receipt of DD No.10A when he along with Ct. Hira Lal reached the spot, he found the Bus and the Scooter as well as the Bus driver and PCR staff at the spot. The injured had already been removed by PCR Van to GTB hospital. After leaving Ct. Hira Lal to guard the spot, he reached GTB Hospital and obtained the MLCs of Tara, Mohd. Asif and Rehmat Khan, who were admitted in the hospital due to injuries received in a road side accident. He recorded statement of the injured Rehmat Khan PW-1 and thereafter returned to the spot where he found PW-7 Pappi Singh present and he sent the

rukka for registration of FIR. The time for sending the rukka to police station is at 11:10 a.m.. This endorsement which has been recorded by the I.O on reaching the spot on return from the hospital established beyond reasonable doubt that the accident had taken place between the Bus No.UP 4D P 2853 and Scooter No.DL 2S B 2816. Statement of PW1 proves that he was travelling in the Bus driven by the petitioner present there and arrested from the spot.

10. So far as testimony of PW-1 Rehmat Khan is concerned, he has specifically stated that on 18.04.1996 at about 9:15 a.m. when he was going on Scooter No.DL 2S B 2816 along with Mohd. Asif from Seema Puri to Patparganj and had reached at Shahdara, his scooter was hit from behind. No doubt, the scooterist moving ahead could not have seen the driver at that time or the manner in which the Bus was being driven by him, but at the same time the manner in which the scooter moving ahead has been hit by the Bus driven by the petitioner, is sufficient to prove that the Bus was being driven in a rash and negligent manner by the petitioner. This statement of the injured stands fully corroborated by PW-7 Pappi Singh who was travelling in the Bus at the relevant time and stated that as the petitioner was driving the bus at a very high speed, he asked the petitioner to drive slowly.

11. The site plan prepared by the I.O proves that the accident has taken place on the road and not on pavement where the wooden planks (phattas) might have been put by the vendors of weekly Bazar and even otherwise it has come on record that the weekly Bazar used to start in the evening whereas the time of accident is in the morning.

12. The learned Trial Court has considered the submissions of learned counsel for the petitioner as to in what circumstances instead of Bus the 'truck' finds mention in the cross-examination of PW1. The reasoning given in this regard is correct. The place of accident has been immediately visited by the I.O and the vehicles involved in the accident were found to be the offending bus and the scooter. It is nowhere case of the prosecution or of the defence that any truck was involved in the accident nor any such suggestion has been given to any of the material prosecution witnesses or to the I.O during the course of their cross-examination.

13. The plea of the petitioner that he was apprehended from behind the Bus Depot is nothing but an after-thought for the simple reason that while seizing the documents of the Bus, photocopy of his driving license was also seized and even though he has denied in his statement that he was driving the offending bus, the documentary evidence and the oral testimonies of PW-1 & PW-7 establish beyond reasonable doubt that the petitioner was the driver of the offending bus, who hit the scooter from behind resulting injuries to Tara and PW-1 Rehmat Khan and fatal injuries to Mohd. Asif. Post mortem report of Mohf. Asif also proved that he succumbed to the injuries suffered in this accident.

14. Merely because injured Tara could not be examined is not sufficient to draw any adverse inference against the prosecution, as the MLCs of the three injured i.e. Rehmat Khan, Asif and Tara were prepared at the same time in GTB Hospital and all the three were removed to the hospital in the PCR Van. It was subsequently

on the incomplete address mentioned by her as Tara, wife of Majij, r/o Jhuggi, Kalanda Colony, Dilshad Garden, Delhi she was not traceable, for which prosecution cannot be blamed.

15. The petitioner was driving a private bus. It was his duty to drive the bus carefully and cautiously so as to care not only for the safety of the passengers travelling in the bus but also for the safety of other road users. The manner in which he had hit the scooter from behind resulting in injuries to Rehmat Khan and Tara and fatal injuries to Asif, is sufficient to hold him guilty for the offences punishable under Sections 279/337/304A IPC.

16. Having glanced through the evidence and the reasoning given by the courts below, I do not find any reason to interfere with the impugned judgment convicting the petitioner under Sections 279/337/304A IPC. Accordingly, I am of the opinion that there is no perversity or illegality in the impugned judgment passed by the courts below.

17. The prayer for setting aside the conviction is accordingly declined and the impugned judgment convicting the petitioner is maintained.

18. Counsel for the petitioner has also prayed for leniency on the point of sentence. He submits that the petitioner is the only bread earner of his family and he is facing the agony of trial for more than 16 years and had never absented during the trial. Except the present case, the petitioner is not involved in any other criminal case.

19. I have considered the submissions made by counsel for the petitioner on the point of sentence.

20. The prayer for release of the petitioner on probation cannot be acceded to in view of the judgment of the Apex Court in *Dalbir Singh vs. State of Haryana II* (2000) ACC 65, wherein it was observed as under:-

*“13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”*

21. In ***Manish Jalan vs. State of Karnataka JT 2008 (7) Sc 643***, while considering the plea of the appellant for reduction of sentence, the Apex Court observed as under:-

*“15. True that in the instant case the appellant has been found to be guilty of offences punishable under Sections*

*279 and 304-A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of a precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simplicitor and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment."*

22. This Court in the case of *Abdul Rashid vs. The State (NCT of Delhi) Crl. Revision Petition No.708/2010* in a similar situation wherein the appellant had undergone the protracted trial for almost 17 years, placing reliance on the decision of the Apex Court in *B.G.Goswami vs. Delhi Administration AIR 1973 Sc 1457*, observed as under:-

*"11. In 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 Addl. Sessions Judge."*

23. In this case also, petitioner was not found to be in inebriated condition at the time of commission of this offence. He was facing protracted trial for almost more than 16 years.

24. In these circumstances, while maintaining the conviction of the petitioner, his substantive sentence awarded by the Trial Court is reduced to six months. However, the fine as imposed by the Trial Court is maintained.

25. The petitioner is directed to surrender before the concerned Court immediately to undergo the remainder of his sentence. Thereafter, the concerned Court shall send information to the Registry to this effect and in case of failure of the petitioner to surrender before the concerned Court, the Court shall take necessary steps to secure his presence and send him to jail to undergo the sentence. Trial Court Records be send back forthwith to the learned Trial Court along with a copy of this order for compliance.

26. CRL.REV.P. 101/2012 stands disposed of in the above terms.

**(PRATIBHA RANI)**  
**JUDGE**

**JULY 17, 2012**  
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