

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

+ Crl.Rev. P. No.247/2012

Date of Decision: 07.05.2012

AZIM KHAN

..... Petitioner

Through: Mr. Sunil Kumar & Mr. H.K.
Shekhar, Advs.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Fizani Husain, APP.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

1. The present revision petition has been preferred under Section 401/397 Cr.P.C. assailing the impugned order passed by the learned ASJ on 10.04.2012 whereby the appeal filed by the petitioner under Section 374(3) Cr.P.C. against the judgment dated 02.11.2011 convicting the petitioner under Section 279, 337 and 304A IPC and order on sentence dated 08.11.2011, was dismissed.
2. The case of the prosecution in brief was that on 06.10.2000 at about 4.00 P.M. the petitioner was driving a bus bearing registration No.DL1P 8226 on the Aurobindo Marg near the AIIMS Chowk Crossing. At the relevant time, a two-wheeler scooter bearing registration No.DAI 8333 was driven on the same road by one Raj

Kumar Puri with his wife, Smt. Kanta Puri travelling with him as pillion rider. It was alleged that the petitioner was driving the bus in a rash and negligent manner and after jumping the redlight signal, he hit against the scooter moving ahead the bus which resulted in causing death of Smt. Kanta Puri and grievous injuries to Sh. Raj Kumar. At that time, Constable Suraj Bhan (PW-5) and Constable Rajinder (PW-9) were on duty at the AIIMS Chowk. It was the case of the prosecution that after hitting the scooter, the bus dragged it for a distance of 15 yards before stopping. The petitioner was apprehended at the spot by Constable Suraj Bhan who made a statement before the Investigating Officer (PW-10) regarding the factum of the accident. Accordingly, a site plan was prepared by the Investigating Officer and offending bus and scooter were seized. The autopsy report of Smt. Kanta Puri revealed that her death had occurred due to injuries suffered on the head caused by blunt force which was possible in a road traffic accident. The prosecution examined 17 witnesses to prove the guilt of the petitioner and consequently the petitioner was convicted to undergo SI for a period of 6 months along with fine of Rs.1,000/- under Section 279 IPC and further to undergo SI for a period of 6 months and fine of Rs.500/- under Section 337 IPC and further was sentenced to undergo SI for a period of one year and fine of Rs.2,000/- under Section 304A IPC. The order of the learned MM was upheld by the Appellate Court. Hence the present petition.

3. The impugned judgment and order on sentence have been challenged by the learned counsel for the petitioner on the ground that the Trial Court and the Appellate Court have failed to appreciate the fact that the prosecution has not been able to prove the fact that the petitioner was rash and negligent in driving the offending bus. It has been further submitted that the learned Trial Court has erred in relying upon the testimonies of eye witnesses PW-5 and PW-9 in the absence of any corroboration and hence the impugned judgment is violative of principles of natural justice and fair play and deserves to be set aside. It has been argued that the impugned judgment is bad in law as the injured Raj Kumar was not examined by the prosecution as a witness which casts a shadow on prosecution version. It has been further submitted that the Trial Court has failed to take note of the fact that none of the passengers, conductor or cleaner of the bus were examined by the prosecution to know the real cause behind the alleged incident.
4. On the other hand, the learned APP for the State has submitted that the judgment of the Trial Court as well as the Appellate Court were based on reliable and cogent testimonies of the witnesses as well as documentary evidence regarding the factum of the incidence and required no interference by this Court. It has been further submitted that Constable Suraj Bhan (PW-5) and Constable Rajinder (PW-9) have supported the prosecution case in its entirety and there is no reason to doubt their credible testimonies.

5. I have heard the rival submissions and perused the impugned judgments.
6. There is no doubt regarding the fact that the petitioner was driving the offending bus at the time of the accident and that Sh. Raj Kumar was riding the scooter along with his wife on the same road in front of the offending bus. This fact has not been disputed by the defence at any stage of the proceedings. The MLC report of the injured person confirmed the fact that he received bodily injuries possible in a road accident and the post-mortem report of the deceased proved that she died due to head injury sustained by her due to application of blunt force. The testimonies of eye witnesses Constable Suraj Bhan and Constable Rajinder, who were posted near the AIIMS Chowk at that time, also established the fact that the scooter was hit from behind by the offending bus. It is also a matter of record that the petitioner was apprehended by Constable Suraj Bhan at the spot after the accident.
7. The only question that remains to be considered by this Court is that whether the petitioner was driving the bus in such a rash and negligent manner that resulted in the collision of the bus and the scooter leading to the death of the pillion rider, Smt. Kanta Puri. From the perusal of the statements of PW-5 and PW-9, it is evident that they had narrated the entire sequence of the events that unfolded in a consistent and cogent manner. Being posted at the redlight near which the accident took place, it is presumable that they were in a position to witness the manner in which the bus was

being driven by the petitioner. In their testimonies, they had emphatically stated that the signal was yellow at the time when the bus advanced towards AIIMS Hospital in a dangerous manner and consequently hit the scooter from behind. It had been stated that the impact of the collision was to such an extent that the scooter was dragged for a distance of 15 yards which is also evident from the site plan which showed that there were skid marks on the road. Apart from proving the impact of collision, this fact also signifies that the petitioner was driving the bus so rashly that even after the collision, he did not stop the bus but, instead dragged the scooter for such a distance. The yellow light at the crossing is for alerting the drivers to reduce the speed of the vehicles and not meant for signaling that the speed of the vehicles must be accelerated to cross the signal in a hurry. But, the petitioner instead of slowing the bus, increased its speed to cross the signal which again establishes the fact that he was driving the bus in a rash and negligent manner. Consequently, I am in agreement with the submission of the prosecution that the bus was being driven by the petitioner in a rash and negligent manner as evidenced by the site plan and eye witnesses' testimonies.

8. I find no force in the submission of the counsel for the petitioner that the Trial Court had erred in relying upon the testimonies of eye witnesses PW-5 and PW-9 without any corroboration as it is settled law that when the testimony of an eye witness inspires confidence of the Court and is consistent in every manner, then it is not

required for it to be corroborated. The site plan prepared by the IO also substantiates their testimonies and there is no motive whatsoever for them to falsely implicate the petitioner. Also, it is a matter of record that Sh. Raj Kumar was not in a position to give any statement during the investigation which is quite natural for a person who had suffered grievous injuries due to the accident and also lost his wife. The absence of statement of Sh. Raj Kumar does in no way dilute the prosecution case, especially when it was supported by material witnesses and documentary evidence.

9. The last contention of the counsel for the petitioner that the impugned judgment was bad in law due to non-examination of passengers, conductor or cleaner of the bus is also untenable when the accident was witnessed by Constable Suraj Bhan and Constable Rajinder in person and the petitioner was apprehended from the spot of the accident itself. There was no need to join any other witness in such a situation.
10. In view of the foregoing discussion, I find no perversity or illegality in the judgment of the Trial Court as well as the Appellate Court. Being conscious of the fact that the petitioner was a driver of a commercial vehicle and hence should have been extra cautious while plying a heavy vehicle like bus on the road with dense traffic, but instead was driving the bus in such a reckless manner that caused the death of a person and grievous injuries to other, I am of the view that the order on sentence is just and meets principles of natural justice.

11. The petition being without any merit is hereby dismissed in limini.

M.L. MEHTA, J.

MAY 07, 2012
ss/skw