

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **Crl. Rev. P. 630/2008**

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Reserved on: 18th January, 2012
Decided on: 30th January, 2012

SAUNKI RAM Petitioner
Through: Mr. Anurag Jain, Advocate
versus

STATE (GOVT OF NCT OF DELHI) Respondents
Through: Mr. Manoj Ohri, APP for the State.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the order dated 25th August, 2008 passed by the learned Additional Sessions Judge upholding the order of conviction of the Petitioner passed by the learned Metropolitan Magistrate convicting the Petitioner for offences punishable under Sections 304A and 279 IPC. The learned Metropolitan Magistrate vide order dated 9th April, 2008 had sentenced the Petitioner to undergo Rigorous Imprisonment for 6 months and a fine of Rs. 500/- and in default of payment of fine to undergo Simple Imprisonment for five days for offence punishable under Section 279 IPC. Rigorous Imprisonment for 1 year and a fine of Rs.1,000/- under Section 304A IPC, in default of payment of fine to undergo Simple Imprisonment for twenty days.

2. Briefly the prosecution case is that on 21st November, 1999 at about 12:45 p.m. at Ring Road, Gupta Market Stand, Lajpat Nagar the Petitioner while driving the bus bearing No. DL-1PA-5436 suddenly started the bus

when passenger Ranjit got down from the bus as a result of which he fell on the road and was crushed under the rear wheel. He was removed to Moolchand Hospital by the driver (Petitioner herein) and his friend. SI Karambir Singh received DD No. 6A regarding this accident and he along with Constable Shyam Sunder reached Moolchand Hospital. In the hospital, SI Karambir obtained MLC of injured Ranjit and recorded the statement of Ranjit Ex.PW2/A wherein he stated that he along with his friend Ravinder boarded the bus from Sagarpur and at about 12:45 p.m. when he was getting down from the bus Route No. 711 plying from Janakpuri to Sarai Kalekhan at Ring Road, Gupta Market Bus Stand, the driver all of a sudden negligently started the bus and as a result of which he fell down on the road and was crushed under the rear wheel. He further stated that he was brought to hospital by the driver and his friend Ravinder. He stated that the accident happened due to negligence of the driver who moved the bus ahead. On the basis of the statement, FIR was registered under Sections 279/337 IPC. After the death of Ranjit, Section 304A IPC was added. After completion of investigation, charge sheet was filed. Learned Metropolitan Magistrate after recording the prosecution evidence and statement of the accused, convicted the Petitioner and sentenced him as mentioned above. Aggrieved by the judgment and order on sentence, the Petitioner preferred an appeal. The learned Additional Sessions Judge vide order dated 25th August, 2008 dismissed the appeal and upheld the judgment passed by the learned Metropolitan Magistrate.

3. Learned counsel for the Petitioner contends that the impugned judgments are based on conjectures and surmises. Learned courts below

failed to appreciate the fact that there was no independent witness to corroborate that the Petitioner was responsible for the said accident. PW2 Ravinder in his cross-examination has admitted that he reached the place of incident after 5-10 minutes. Thus, he cannot be the eye-witness of the alleged incident and cannot depose that the accident took place due to the negligence of the Petitioner. It is further stated that the MLC has been proved by PW6 and PW7 which is of no evidentiary value because the doctor who had examined the deceased has not been examined. Learned counsel has further contended that the impugned judgments are erroneous as the statement of the deceased is not admissible under Section 32 of the Evidence Act. Further the doctor who had opined the deceased to be fit for statement has not been examined. PW2 has not been able to prove that the Petitioner was driving the offending vehicle negligently. Hence, the findings of the learned Courts are perverse and based on no evidence. Learned Courts below have failed to take into consideration that in the post mortem report/MLC there is no mention of any crush injuries especially in the circumstances where the prosecution has claimed that the deceased was run over under rear wheel of the offending vehicle. No passenger of the bus has been examined by the prosecution to prove its case though it is stated that there were other passengers present in the bus when the alleged accident took place. Thus, in the absence of any evidence to support the prosecution story and the fact that the injuries sustained by the deceased were because of his own negligence and fault, the impugned judgments are liable to be set aside.

4. Per contra learned APP for the State submits that impugned judgments suffer from no illegality. The Petitioner was present at the hospital and on the statement of the deceased he was arrested by the police. PW2, who was present along with the deceased, has completely supported the prosecution case and has duly identified the Petitioner. There are no contradictions in the testimony of witnesses and evidence placed on record clearly implicates the Petitioner. Further, the Petitioner in his statement under Section 313 Cr.P.C has admitted that he was driving the vehicle. His only defense is that while driving the offending vehicle he was not looking towards the gate thus if someone jumps from the bus the driver is not at the fault. Hence the revision petition is liable to be dismissed.

5. I have heard the learned Counsels for parties and perused the record.

6. PW2 Ravinder has deposed that about three years ago he along with Ranjit who was working with him in the factory went for roaming. They boarded bus route No. 711, when the bus stopped at Moolchand Bus Stand he got down from the bus and the bus went ahead from Moolchand. His friend Ranjit could not get down from the bus because the driver had started the bus after he got down. This witness has stated that he went to the next bus stand to meet his friend. On the way to next bus stand he found his friend Ranjit lying on the road and the said bus was also stationed. He further stated that there were many public persons standing there. The driver was also standing there and he along with the said driver took the injured to Moolchand Hospital. This witness has further stated that there were only three passengers standing for getting down. At the time when he was getting

down from the bus his friend Ranjit was standing behind him and thereafter one female was standing. This witness in his cross-examination has stated that it is incorrect that when his friend Ranjit was getting down the driver of the offending bus sped away the bus and his friend fell down and came under the wheel, and on his raising voice the bus driver stopped the bus. He has further stated that he did not know if the bus number was DL1P-5436. He has also stated that he could not say whether his friend jumped out from the running bus.

7. PW10 SI Karambir Singh in his testimony has deposed that on 21st November, 1999 on receipt of DD No. 6A he went to Moolchand Hospital and found injured Ranjit admitted. He requested the doctors for recording of the statement of the Petitioner and the doctors opined him to be fit for statement. He recorded the statement of injured Ranjit. On the next day, he was informed that the injured had expired. This witness in his cross-examination stated that he did not know the name of the doctor who was attending the injured at Moolchand Hospital. He further stated that he could not say if the injured was attended by CMO, Moolchand.

8. DW1 Rajpal Singh has deposed that on 21st November, 1999 he was going from Janakpuri to Sarai Kale Khan in the bus which was driven by the accused. After Moolchand flyover, there is bus stand of Gupta Market and at about 1:00 PM while the bus was about to stop at Gupta Market Bus Stop and the bus stand was at the distance of 10 mtrs. one passenger jumped from the front door of the bus and the said passenger lost his control and fell down. The passenger was hurt by the rear tyres of the bus by his mistake.

This witness in his cross-examination has deposed that he was sitting near the front gate of the bus and only one passenger was getting down from the bus. There were three four persons standing near the driver seat and no person was in between the passenger who fell down at the place where he was sitting. This witness has further stated that it was correct that if any passenger gets down from the bus it is not possible for the driver to see how many passengers are getting down at the bus stand. This witness has also stated that at the time of incident as the bus was about to stop the speed of the bus was about 8-10 kms.

9. On a perusal of the testimony of PW2, DW1 and the site plan it is clear that PW2 got down at Moolchand bus stand while his friend deceased, Ranjit could not get down. PW2 in his testimony has stated that the deceased could not get down and thus PW2 went towards the next stop when on the way he found Ranjit injured and the bus stopped there. If the incident had taken place immediately after PW2 got down, then he would have witnessed it and there was no need of his going to the next stop and on the way noticing the incident. Hence it is apparent that after the bus had moved a few paces Ranjit tried to jump due to which he fell down and got injured.

10. The statement of the deceased Ex.PW2/A to the police officer on the basis of which FIR was registered is admissible under Section 32 of the Evidence Act. I do not agree with the contention of the learned counsel for the Petitioner that Ex.PW2/A is neither admissible under Section 32 of the Evidence Act nor can be relied upon in view of the fact that the doctor had not certified the deceased to be fit for statement. It may be noted that PW2

was present when the statement of the deceased was recorded. PW2 in his cross-examination has clarified that the deceased was in a fit state to make the statement. Even Ex.PW6/A, the MLC of the deceased records that the deceased was conscious, talking and well oriented. Even as per Ex.PW2/A the deceased was run over while getting down from the bus.

11. The only dispute between the version of the deceased and the Petitioner is whether the deceased jumped after the bus started or the bus started while the deceased was getting down. It may be noted that PW2 has not supported the case of the prosecution on this aspect.

12. The essential ingredients to constitute an offence punishable under Section 279 IPC are that there must be rash and negligent driving or riding on a public way and the act must be so as to endanger human life or be likely to cause hurt or injury to any person. For an offence under Section 304A, the act of accused must be rash and negligent, which should be responsible for the death which does not amount to culpable homicide.

13. As per the site plan, the testimony of PW2 and DW1 the incident did not happen at the bus stop and took place after the bus had travelled some distance. The prosecution in the present case has failed to prove that the Petitioner was aware that the deceased was getting down when the bus started and thus the act of the Petitioner was rash or negligent to bring the same under the purview of Sections 279/304A IPC. Further the conduct of the Petitioner of not fleeing from the spot but taking the deceased to the hospital also shows that it was a case of negligence of the deceased and not the accused/Petitioner.

14. The Hon'ble Supreme Court in *Mohammed Aynuddin vs. State of Andhra Pradesh*, (2000) 7 SCC 72 held that:

“ 5. A passenger might fall down from a moving vehicle due to one of the following causes: It could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking off of the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side.

6. A driver who moves the bus forward can be expected to keep his eyes ahead and possibly on the sides also. A driver can take the reverse motion when that driver assures himself that the vehicle can safely be taken backward.

7. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus no presumption of negligence can be drawn against the driver of the bus.

8. The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence, the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrong doer.

9. A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still, a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.

15. Hence keeping in view the circumstances of the present case, the impugned order convicting the Petitioner is set aside. The Petitioner is acquitted of the charges punishable under Sections 279/304A IPC. The petition is accordingly allowed. The bail bond and surety bond of the Petitioner are discharged.

Petition stands disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 30, 2012
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