

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

+ **CRIMINAL REVISION PETITION NO.611 OF 2012**

Decided on : 2nd November, 2012

MOHD. HAMID KHAN Petitioner

Through: Mr. V.K. Vats, Advocate.

Versus

THE STATE (NCT) OF DELHI Respondent

Through: Mr. Sunil Sharma, APP for the State with
SI Birender Singh, P.S. Patel Nagar.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

Crl. M.A. No.18354/2012 (for exemption)

Exemption allowed, subject to the deficiency being rectified.

The application stands disposed of.

Crl. Rev. P. No.611/2012 & Crl. M.B. No.1940/2012

1. This is a criminal revision petition filed under Section 397/401 Cr.P.C. read with section 482 Cr.P.C. against the order dated 3.10.2012 passed by Ms. Kaveri Baweja, Additional Sessions Judge dismissing the appeal of the petitioner in case FIR No.726/1997, under Sections 279/337/304-A IPC, registered at Police Station Patel Nagar.

2. Briefly stated the facts of the case are that the petitioner was sent for trial for the aforesaid offences by Police Station Patel Nagar on account of having caused death of a pillion rider, namely, Ram Dayal by rash and negligent driving. The facts of the prosecution case were that on 29.8.1997, complainant Dinesh Kumar was driving his motorcycle while as Ram Dayal was the pillion rider. Two buses bearing Nos.DL-1P-1358 and DL-1P-6766 were being driven by the appellant Mohd. Hamid Khan and one Harphool, respectively. Both the buses were being driven in a rash and negligent manner so as to compete with each other as to who will be ahead of the other. It is alleged that bus No.DL-1P-6766, which was being driven by Harphool, overtook the motorcycle while as the other bus No. DL-1P-1358, being driven by the petitioner, hit the motorcyclist from the back due to which Ram Dayal fell down and sustained injuries. Ram Dayal succumbed to the said injuries later on. After trial, the petitioner was convicted for offences under Sections 279/337/304-A IPC. For offence under Sections 279 and 337 IPC, the petitioner was sentenced to undergo simple imprisonment for three months with a fine of ₹500/- and for offence under Section 304-A IPC, he

was sentenced to undergo simple imprisonment for six months with fine of ₹1,000/-.

3. Feeling aggrieved by the said conviction and sentence, the petitioner preferred an appeal before the learned Additional Sessions Judge which came to be decided by the impugned order. Ms. Kaveri Baweja, the learned Additional Sessions Judge, after hearing the learned counsel for the petitioner, dismissed the appeal. In the appeal, the petitioner had taken two grounds. Firstly, that there was hardly any occasion for the sole eye-witness, Dinesh Kumar (PW-6) to testify that the buses were being driven rashly and negligently inasmuch as he had stated that buses were coming from the back. This was not accepted by the learned Additional Sessions Judge on the ground that one bus had overtaken while as the other had hit the motorcycle from the rear side. The second submission made by the learned counsel for the petitioner that the mechanical inspection did not show any damage to the bus on the front side and consequently this belied the theory of the bus having hit the motorcycle. This was also not accepted by the Appellate Court. The Appellate Court had observed that the question of rash and negligent

driving also loses significance because PW-6, who had made a statement to that effect, was not cross-examined at all.

4. I have heard the learned counsel for the petitioner and have gone through the impugned judgment. These arguments which were urged before the learned Appellate Court have been urged afresh before this court. At the outset, I must say that it is well-settled by now that the *doctrine of res ipsa loquitur* is a doctrine which is applicable in cases of accidents also. It is not in dispute that the petitioner was driving one of the buses which is purported to have hit or touched the motorcycle because of which the deceased/victim/pillion rider had fallen and suffered injuries resulting in his death. The death is also not in dispute. The only question, therefore, remains that whether the bus was being driven rashly and negligently. There is a specific statement made by the petitioner that the two buses were being driven by the petitioner and his so-called colleague Harphool who were competing with each other so far as speeding vehicle on the road is concerned. This clearly shows that both these persons were having scant regard for the other users of the road and were driving their buses in a rash and negligent manner. Curiously, the witness has not been cross-examined on this score and, therefore, the

testimony of PW-6 cannot be disbelieved. The question of the bus not having suffered any mechanical damage from the front is inconsequential because the impact may be very minor or it may be only due to touching of the bus to the body of the deceased but it may be sufficient enough to result in imbalance and cause the fall of any person driving or walking on the road. That is why in such cases, the *doctrine of res ipsa loquitur*, i.e. the facts speaks for themselves, is taken help of. It was for the accused/petitioner to have adduced evidence to establish as to how the accident had taken place which he has failed to do in the instant case.

5. For the aforesaid reasons, I do not find any infirmity, impropriety or illegality in the order of conviction or sentence passed by the learned Magistrate or in the impugned order dated 3.10.2012 passed by the learned Additional Sessions Judge. As a matter of fact, the petitioner was driving a lethal vehicle on the road and he has been visited with a very light punishment of only six months. There is no denial of the fact that of late there has been a steady increase in the accidents being caused by the heavy vehicles being driven rashly and negligently on the roads and majority of these accidents pertain to either the pedestrians or two-wheeler drivers. Therefore, these reckless law breakers do not deserve

any sympathies from the court. The petition is without any merit and accordingly, the same is dismissed.

NOVEMBER 02, 2012/‘AA’

V.K. SHALI, J.