

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

+ CRL.REV.P. 624/2009

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Reserved on: 24th April, 2012

Decided on: 17th July, 2012

RAJENDER SINGH

..... Petitioner

Through: Mr. R.N. Sharma, Advocate.

versus

STATE GOVT. NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Gupta, 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 13th November, 2009 passed by the learned Additional Sessions Judge upholding the order of conviction of the Petitioner passed by the learned Metropolitan Magistrate on 29th August, 2009 under Sections 279/304A IPC and order on sentence dated 4th September, 2009 sentencing the Petitioner to undergo Simple Imprisonment for one year for offence punishable under Section 304A IPC and a fine of Rs. 1,000/- and for offence punishable under Section 279 IPC to undergo Simple Imprisonment for one month and a fine of Rs. 500/- in default of payment of fine to undergo simple Imprisonment for ten days and one week respectively.

2. Briefly the prosecution case is that on 10th September, 1999 at about 4.15 p.m. at BSZ Marg, Near Pyare Lal Bhawan, the Petitioner was driving bus No. DL 1IP-3701 in a rash and negligent manner so as to endanger human life and safety of others and while doing so he caused death of one lady who was crossing the road. Accordingly FIR was registered under

Sections 279/304A IPC. After completion of investigation, charge sheet was filed. Learned Metropolitan Magistrate after recording the prosecution evidence and statement of the accused, convicted and sentenced him as mentioned above. Aggrieved by the judgment and order on sentence, the Petitioner preferred an appeal. The learned Additional Standing Judge vide order dated 13th September, 2009 dismissed the appeal and upheld the judgment and order on sentence 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 despite examining nine witnesses including one alleged eye witness there is no evidence on record against the Petitioner. There are contradictions in the statement of PW6 which discredits his testimony. Further this witness has only stated that the bus was driven at a high speed and not in a rash and negligent manner. Reliance is placed on *Abdul Subhan vs. State (NCT of Delhi), 2006 (3) JCC 1797* to contend that in the case of sole eyewitness, the witness must describe the manner in which the accused was negligent. There is no evidence placed on record to prove that the offending vehicle was being driven in a rash and negligent manner. It is contended that the first DD entry (DD No. 21A) does not contain the name of the eyewitness or the driver or the bus number. There is no evidence placed on record to show that PW6 was assigned the picket duty at the spot. Learned counsel further states that there was a foot over bridge on the road and despite the same, the deceased was crossing the road. Thus it is a case of contributory negligence on the part of the Petitioner. In view of the discrepancies in the prosecution version and uncorroborated testimony of the

alleged eyewitness PW6, the prosecution has not been able to prove its case. Thus, in the absence of any evidence to support the prosecution case and the fact that the Petitioner was driving the offending vehicle in a rash and negligent manner has not been proved, the impugned judgments are liable to be set aside.

4. Per contra learned APP for the State submits that the impugned judgments suffer from no illegality. PW6 HC Babu Ram has fully supported the prosecution case and deposed that the offending vehicle was being driven by the Petitioner in a rash and negligent manner. The Petitioner in his statement under Section 313 Cr.P.C. has admitted that at the time of incident he was driving the offending vehicle and his defence is that the accident had not taken place from his bus. It is stated that PW9 SI Jaipal Singh has deposed that they tried to join the public persons but none agreed. The contradictions as pointed out by the learned counsel for the Petitioner are minor contradictions, which do not go to the root of the matter. Hence the revision petition is liable to be dismissed.

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

6. PW6, HC Babu Ram has deposed that on 10th September, 1999 he was posted in PS IP Estate and was on picket duty from 8.00 a.m. to 8.00 p.m. at A point ITO. At about 4.15 p.m. he was standing at Pyarelal Bhawan bus stand when one blue line bus bearing NO. DL 1P 3701, going from Morigate to Badarpur came from Morigate side which was being driven at a very high speed and overtook other buses and hit one lady. The lady was 45-50 years of age. From the conductor side the wheel of the bus ran over the head of the said lady who was crossing the road and after hitting her, the driver of the bus ran away from there, due to the green signal of traffic light. It is

stated that he with the help of public persons stopped the bus and apprehended whose name he came to know as Rajinder Singh. He further stated that he sent a wireless message to Police Station. The Investigating Officer Jaipal Singh came at the spot and he handed over the accused and bus to him. Thereafter contemporaneous documents were prepared. In his cross-examination this witness has stated that the bus was standing at Pyarelal Bhawan Bus Stop. The distance between A point and bus stand was about 300-400 yards. He has stated that there were 3-4 buses stationed at the bus stand. When the bus left the bus stand, it was green light. He has further admitted that he had not asked any public person to apprehend the accused after the accident took place as there was no time.

7. PW9 SI Jaipal Singh has deposed that on 10th September, 1999 he was posted at PS I.P. Estate. On that day he received DD No. 21A regarding accident at about 4.25 p.m. After receiving the DD he along with Constable Sukh Lal reached at the spot i.e. A point BSZ Marg, Near Pyare Lal Bhawan and found one injured woman whose head was crushed and had expired lying on the spot. He came to know that HC Babu Lal was following the offending vehicle, i.e. the bus and went towards Tilak Bridge. He reached at W point, Tilak Bridge. He found the offending vehicle stationed there. HC Babu Lal along with accused Rajender Singh was found there. Thereafter the contemporaneous documents were recorded. In his cross-examination the witness has admitted that the place where dead body was lying is a bus stop of various routes and passengers remain standing while waiting for their buses. It is also admitted that there were several shops near the spot of accident. He has further stated that he did not take statement of any

independent witness. It is admitted that there was crowd where the dead body was lying.

8. The accused/Petitioner in his statement under Section 313 Cr.P.C. has stated that no accident had been caused by his bus. A Gypsy of police was coming from behind and he was apprehended at Appu Ghar. About 50 passengers of his bus gave in writing to the investigating officer that no accident had taken place with his bus but despite that he was falsely implicated in the present case. He has stated that no accident had taken place with his bus and the accident was caused by another vehicle.

9. It may be noted that in the present case there is no evidence placed on record to show that the Petitioner was driving the offending vehicle in a rash and negligent manner. The only witness to this aspect is PW6 who has only made a bald statement that the Petitioner was driving the bus at a high speed. This statement of PW6 finds no corroboration by any other witness. It is well settled that driving the vehicle at a high speed need not necessarily be rash and negligent. In a criminal case burden is on prosecution to prove that the accident was caused due to the rash and negligent act of the Petitioner.

10. Furthermore, it may be noted that PW6 in his testimony has stated that the bus driver hit the lady while she was crossing the road and the driver ran away due to the green light. Thus there is a very strong possibility of the lady crossing the road negligently when the traffic signal was green due to which the accident occurred. Site plan Ex. PW6/B shows that there is a foot over bridge and despite the same the deceased was crossing the road and not using the bridge made for pedestrians to cross the road, while signal is green or during heavy vehicular traffic on the road. PW6 has also deposed that he

noted the bus number after the accident had taken place and that he was at about 300-400 yards away from the bus stop when the accident took place.

11. It is not the case of prosecution that the deceased was standing at the bus stop and the Petitioner driving his bus rashly and negligently ran over a lady standing at bus stop. The place of accident is a busy road where the traffic movement is very high and the deceased was crossing the road when there was green light for the vehicles and not using the foot over bridge is an essential aspect which needs to be looked into. No doubt the driver of a heavy or any vehicle has to be very careful and diligent while driving the vehicle on roads. But in case a person crosses the road when the traffic signal is green for vehicles to move the negligence on the part of pedestrian cannot make the driver/accused person wholly liable for the accident. The deceased or the injured is also liable for the negligence. In such circumstances the offence/criminal negligence under Sections 279/304A cannot be attributed to the driver of the vehicle.

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 IPC, the act of accused must be rash and negligent, which should be responsible for the death which does not amount to culpable homicide.

13. In the present case there is no clear evidence placed on record by the prosecution to prove the manner of driving the offending vehicle. The only statement in this regard is the testimony of PW6 who has stated that the bus was being driven at a fast speed. This is a bald statement and finds no corroboration from any other document or testimony of any witness. Thus,

the prosecution in the present case has failed to prove beyond reasonable doubt that the Petitioner was driving the offending vehicle in a rash or negligent manner causing the death of deceased.

14. Keeping in view the facts of the present case, the impugned judgments convicting the Petitioner are set aside. The Petitioner is acquitted of the charges for offences punishable under Sections 279/304A IPC. The bail bond and surety bond of the Petitioner are discharged.

15. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

JULY 17, 2012
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