

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

% **CRL. REV. P.NO. 642/2009**

+ **Date of Decision: 11th October, 2012**

VISHNU KUMAR **....Petitioner**

! Through: Ms. Rachna Joshi Issar, Advocate

Versus

\$ **STATE** **...Respondent**

! Through: Mr. M.N. Dudeja, APP

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

This revision petition has been filed against the judgment and order dated 11th November, 2009 passed by the learned Additional Sessions Judge whereby the conviction of the petitioner under Section 304-A IPC as well as the sentence awarded by the learned Metropolitan Magistrate vide his judgment dated 15th September, 2004 was upheld while his conviction under Section 279 IPC was set aside.

2. The prosecution case may be noticed in brief at the outset. On 30.10.1997 at about 6.45 a.m. one Ram Narayan Yadav(PW-4) alongwith his relative Arun Yadav(the deceased) and PW-5 boarded a bus from Okhla which was plying on route no. 433 for going to Jantar Mantar and was being driven by the petitioner in a rash and negligent manner. The deceased was to get down at East of Kailash where he was working at A-71 and when the bus reached East of Kailash at about 7.10.a.m. the

deceased got the bus stopped for getting down at A-71 and as per the further prosecution case while he was getting down from the bus the petitioner-accused started the bus at a fast speed due to which the deceased fell down and came under the rear wheel of the bus and died at the spot itself. This was the complaint made by PW-4 to the police based on which FIR was registered and in due course the petitioner came to be charge-sheeted for the commission of offences punishable under sections 279/304-A IPC.

3. The prosecution had examined seven witnesses to prove its case including two eye witnesses of the incident.

4. The explanation coming from the petitioner accused in his statement under Section 313 Cr.P.C. was as:

“I stopped my bus at the bus stand. The passengers got down from the bus. I started moving the bus when the bus had moved for 60 to 70 steps ahead, the deceased jumped and fell down from the bus in front of the shop where he had been working. Passengers raised voice “Gir Gaya Aadmi” I stopped the bus and found the deceased under the rear wheel of the bus. I am innocent. The accident took place due to the fault of the deceased.”

5. The trial Court after examining the evidence adduced by the prosecution convicted the petitioner under sections 279/304-A IPC after accepting the evidence of PWs-4 and PW-5 to be trustworthy. In the appeal filed by the petitioner, the Appellate Court also after re-appraisal of the prosecution evidence accepted the evidence of these two eye witnesses to be reliable and after rejecting the grounds of challenge put forth on behalf of the petitioner herein affirmed his conviction under Section 304-A IPC as well as the sentence of imprisonment of one year

and fine but his conviction under Section 279 IPC was set aside since he stood convicted of the major offence under section 304-A IPC.

6. The petitioner then filed the present revision petition seeking his acquittal.

7. The relevant portions from the judgment of the trial Court where trial Court discussed the evidence of the eye-witnesses and gave its findings are re-produced below:-

“.....PW4 stated that deceased Arun Yadav was his relative. On 30.10.97, he alongwith him boarded the bus no. DLIPA 0160, from Okhla who had to get down at A-71, East of Kailash, Captain Gaur Marg. He stated that at 7.10 am, when the bus reached near A Block, Arun Kumar asked the driver that he was to get down from the bus, requested him to stop the bus and when Arun Kumar was getting down, the accused suddenly started moving the bus due to which Arun fell down and he came under the wheel of the bus who expired on the spot.....

.....PW5 Sh. Ram Chander Rai stated that he alongwith Arun Yadav and Ram Narayan Yadav boarded the bus on route no. 433, from Okhla Phase-I which was going to jantar manter. When the bus reached at East of Kailash, Garhi where Arun Yadav was to get down, he was getting down from the bus, but the bus driver suddenly started the bus due to which Arun Yadav came under the bus and his head came under the rear wheel of the bus who died on the spot. He stated that the bus driver was apprehended by them and the accident occurred due to negligence of the accused who all of a sudden started driving the bus at a high speed and due to his reason Arun Yadav lost his balance. When he was Court questioned, he became confused and stated that the bus had not completely stopped and it slowed down and the deceased should not have got down until the bus completely stopped. He stated that driver only slowed down the bus, the passengers got down, the driver again started the bus, increased the speed and the bus was never completely stopped. He stated that the accused started the bus at a high speed after the deceased was getting down.....

.....It is not in dispute that at time and at that place accused was driving the bus bearing No. DLIPA 0160 at A Block, east of Kailash,

New Delhi and one Arun Yadav who was getting down from the bus came under the rear wheel of the bus and died on the spot. In this case both the eye witnesses categorically stated that Arun Yadav was getting down from the bus, the accused all of a sudden drove the bus, accelerated its speed as a result of which he fell down and his head came under the rear wheel of the bus who died on the spot.

Though PW4(here PW-4 appears to have been typed by mistake in place of pw-5, as was stated by counsel from both the sides) stated that the bus had not fully stopped and some passengers got down and when Arun Yadav was getting down from the bus accused all of a sudden drove the bus at a fast speed as a result of which he fell down died on the spot. Even if it is presumed what PW4 has stated is correct, still it was incumbent upon the bus driver/accused to take reasonable care and not to allow the passenger to get down from the running bus as evident from the testimony of PW4 that some of the passengers got down when the bus was slowed down in that manner PW4 was getting down, but he accelerated the speed. All these facts show that accused did not take reasonable care and did not wait for the last passenger to get down from the bus and he drove the bus all of a sudden which resulted into fall of Arun Yadav who was in the process of getting down from the bus as a result of which his head was crushed under the rear wheel of the bus.”

8. The relevant portions from the judgment of the Appellate Court are also being reproduced below:-

“....In the instant case, the appellant admitted in his S. 313 Cr. PC statement that he was plying the bus under rear tyre of which the deceased was crushed PW4 Ram Narain Yadav and PW5 Ram Chander Rai, who were co-passengers in the same bus with the deceased deposed before the Court that the deceased asked the driver of the bus to stop the bus as he wanted to alight the bus and the driver slowed down the bus did not stop it completely and when the deceased was stepping down from the slowing bus, the driver suddenly accelerated the bus, resulting in the falling of the deceased on the road and the rear tyre of the bus ran over the head of the deceased, causing his instantaneous death. These witnesses also stated that the appellant was driving the vehicle in a rash and a negligent manner, which caused instantaneous death of the deceased.”

9. I have heard the counsel for the petitioner and the Additional Public Prosecutor for the State and also perused the records of the trial Court and have also gone through the judgment of the appellate court.

10. As noticed already, the prosecution case as per the FIR was that the deceased had got the bus stopped when it had reached East of Kailash and while he was getting down from the bus the petitioner-accused had suddenly started the bus at a fast speed due to which the deceased fell down and came under the rear wheel of the bus. This was the case which was sought to be proved by the prosecution through the evidence of two eye-witnesses. However, during the evidence PW-5, one of the two eye witnesses, stated, and as had been noticed by the trial Court also in its judgment, that the deceased had in fact got down from the bus while it was still moving and further that he should not have got down from the moving bus.

11. Thus, during the prosecution evidence two versions came before the trial court about the cause of the deceased falling from the bus. One version, which was given by the complainant PW-4, was that when the bus reached East of Kailash the deceased had told the petitioner that he was to get down from the bus and requested him to stop the bus and when the deceased was getting down from the bus the petitioner had suddenly started moving the bus due to which the deceased fell down. Thus, according to this witness the bus was stopped by the petitioner on the request of the deceased but before he could get down the bus was started by the petitioner. This witness however did not say that the bus was started at a high speed. The other version, given by PW-5 in reply to

the court question, and which had been noticed by the trial Court also and the relevant part of its judgment has already been extracted and underlined by me, was that the deceased had got down from the bus while the bus was still moving and had not come to a complete halt and that he should not have got down until the bus had completely stopped. According to this witness, therefore, there was negligence on the part of the deceased himself as he did a wrong thing in getting down from a moving bus. And in cities like Delhi it is not an uncommon sight that the passengers travelling in public transport do get down from moving buses as they are in a hurry to reach to their work places and they have no patience to even wait for the bus to stop before getting down. In these circumstances it becomes difficult to blame the driver if some tragedy takes place and so the defence taken by the petitioner that the deceased had fallen because he had got down from the moving bus can be accepted as a probable defence.

12. The learned trial Court, however, brushed aside this version of PW-5 on the ground that even if the deceased was getting down from the moving bus the driver should have been vigilant and should not have allowed the deceased to get down from the moving bus. The learned appellate court also did not attach any importance to this statement of PW-5 and affirmed the conclusion of the trial court that the deceased had fallen from the bus because of the fault of the petitioner without saying as to how the petitioner could stop the deceased from jumping from the moving bus when he was driving the bus. In any event, since two versions had come before the trial Court as to how the deceased had fallen from the bus, the prosecution's case that the deceased had fallen

down because of the petitioner having suddenly started the bus at a fast speed while he was in the process of getting down becomes doubtful and the prosecution has also not been able to rule out the possibility of the deceased himself being responsible for his falling down from the bus while trying to get down before the bus had stopped completely and so the benefit of that doubt should go to the petitioner and it should have been given to him by the Courts below also. Here, a useful reference can be made to a judgment of this Court in the case of “Niranjan Singh vs The State”, 1(1998) ACC 391 wherein this Court had found from the prosecution evidence that the prosecution had failed to rule out the possibility of deceased falling down from the bus while attempting to get down while the bus was moving and the defence version that the deceased had in fact fallen down from the bus while attempting to get down from the moving bus was accepted and the judgment of conviction of the trial Court and that of the appellate Court maintaining that judgment were set aside and the accused was acquitted of the charges under Sections 279/304-A IPC.

13. This revision petition, therefore, is allowed and the conviction of the petitioner under Section 304-A IPC is also set aside and he is acquitted. His bail bonds stand discharged.

P.K. BHASIN, J

October 11, 2012