

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

RESERVED ON : 06th February, 2013

DECIDED ON : 10th April, 2013

+ CRL.A.245/2007

MOHAN SINGH & ORS. Appellants

**Through : Mr.Gaurav Bhattacharya, proxy
counsel for Mr.Ajay Verma,
Advocates.**

versus

STATE NCT OF DELHI Respondent

Through : Ms.Fizani Husain, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Mohan Singh (A-1), Kalyan Singh (A-2) and Gopal Singh (A-3) were arrested in case FIR No.109/1995, Police Station Paschim Vihar for committing offences punishable under Section 304/279/34 IPC. The case was registered on Paramjit Singh's statement (Ex.PW-15/A). He disclosed to the police that on 19.02.1995 at about 06.30 P.M., the bus No.DL-P-6655, in which they were travelling, reached near Peeragarhi Chowk, Rohtak Road, a tempo bearing No.DL-ILA-3544 overtook the bus from wrong side and hit it. The tempo halted at the red light, Peeragarhi Chowk. He, his father-Trilochan Singh, Manoranjan Singh and Gurjeet

Singh alighted from the bus and enquired from the driver as to why he was driving the tempo in a rash manner and advised him to drive the vehicle with care. He further disclosed that when his father Trilochan Singh was talking while standing near the cleaner side of the bus, two occupants in the tempo pulled him inside the tempo and speed up towards Mangolpuri. They chased the tempo and when it reached at some distance away at flyover, Trilochan Singh was thrown out of the tempo and the tempo driver fled the spot. A-1 to A-3 were apprehended after some chase. Manoranjan Singh took Trilochan Singh to Jaipur Golden Hospital where he was declared 'dead on arrival'. ₹20,000/- were found missing from deceased's pocket.

2. During the course of investigation, the police conducted post-mortem examination of the body. Statements of witnesses conversant with facts were recorded. The vehicles were seized and got mechanically inspected. After completion of investigation, A-1 to A-3 were charge-sheeted for committing offences described previously. The prosecution examined 20 witnesses to prove the charges. By the impugned judgment all the three appellants were held perpetrators of the crime and sentenced.

3. From the inception prosecution case was that Trilochan Singh was pulled inside the tempo and after covering some distance, he

was thrown out on the flyover. It is relevant to note that there was no direct evidence to prove as to how and under what circumstances Trilochan Singh was thrown out of the tempo and if so, who gave the push. The accused had no acquaintance with the deceased or with other passengers in the bus. They had no prior animosity. Tempers ran high over trivial issue when A-1 (tempo driver) overtook the bus in which deceased and other passengers were traveling. The tempo had slightly touched the bus when it stopped at red light near Peeragarhi Chowk. Passengers in the bus including Trilochan Singh alighted and confronted A-1 as to why he was not driving the tempo properly. There was no ulterior motive for the accused to pull Trilochan Singh inside the tempo and to throw him out of the running tempo after some distance to cause harm to him. The prosecution witnesses have given inconsistent and contradictory statements as to how Trilochan Singh was pulled inside the tempo and was taken away. PW-15 (Paramjit Singh) made vital improvements in court statement and was duly confronted with his statement (Ex.PW-15/A) where material facts introduced for the first time were not stated. It does not find mention in Ex.PW-15/A that his father was thrown out of the tempo or that the tempo came in front of the bus from wrong side by overtaking. In the cross-examination, he admitted

that he had not seen the two other occupants in the tempo. He further admitted that he had not stated in his statement (Ex.PW.15/A) that two persons came down from the tempo and thereafter pulled his father inside the tempo. When he was asked whether he made any efforts to stop the accused persons from pulling his father into the tempo, he replied in the negative. He again said that he could not reach the spot when his father was pulled. The prosecution has failed to reconcile the two contradictory versions. At first instance, the witness claimed that he along with his father and other passengers had reached to the tempo and had confrontation with the driver. However, subsequently, he changed the version and stated that he was at a distance when his father was taken in the tempo and he could not intervene. PW-7 (Manoranjan Singh) did not depose that any occupant of the tempo had got down to pull Trilochan Singh inside the tempo. He contradicted PW-15 (Paramjit Singh) and stated that he, PW-6 (Gurpal Singh), PW-15 (Paramjit Singh) and other passengers had conversation with the driver of the tempo. PW-1 (Gurjeet Singh) merely stated that he and Trilochan Singh had conversation with the driver and advised him to drive the tempo with care and that he started abusing Trilochan Singh. He further introduced a new story that A-2 and A-3 had scuffle with Trilochan Singh and thereafter, he was pulled inside

the tempo. Due to material discrepancies emerging in the statement of PWs 1, 6 and 15 as to who had confrontation with the driver; whether Trilochan Singh was pulled inside the tempo and if so, by whom, the Trial Court, in the impugned judgment did not believe the prosecution version as presented. It noted down various contradictions and improvements. It is relevant to note the following findings in the judgment:-

“Coming to the case in hand, I may state that though it may not have happened that the accused persons pulled inside the tempo Sardar Trilochan Singh but when Sardar Trilochan Singh and other occupants of the bus got down to question the tempo driver as to why he was driving his tempo in such a rash and negligent manner then some exchange of hot words must have taken place and the tempo driver seeing the number of ‘Sikh’ persons gathering around him must have tried to run away with his tempo. In the said process, Sardar Trilochan Singh must have caught hold on to the side of the tempo in order to prevent them from running away. It is also crystal clear and apparent from the facts and circumstances of the present case that in the process of fleeing away with the tempo the accused persons finding Sardar Trilochan Singh hanging on to the side of the tempo threw him in the midst of Mangol Puri Fly Over which unfortunately resulted in the death of Sardar Trilochan.

“It is thus clear that irrespective of the fact that Sardar Trilochan Singh was pulled inside the tempo or he on his own chose to hang on to the side of running tempo, it was the utmost duty of the tempo driver to stop it. This act of his clearly imputes knowledge upon him that this act of his was likely to cause death of the persons so hanging on his tempo.”

4. There is no positive evidence to establish that Trilochan Singh was pulled inside by A-2 and A-3 or they threw him out of it on the flyover. Admittedly, Trilochan Singh had confrontation with A-1, driver of the tempo, over his rash and negligent driving. A-2 and A-3 did not intervene. Trilochan Singh had no conversation with them. Before PWs 1, 6 and 15 could reach at the spot, due to fear, the tempo driver fled the spot. The findings of the Trial Court inspire confidence that Trilochan Singh hanged on the side of the tempo to prevent A-1 from running away. However, it was utmost duty of the tempo driver to stop the tempo to protect the innocent life. For his omission, A-2 and A-3, other occupants in tempo, cannot be imputed with any liability as it was the driver who could stop the tempo and save Trilochan Singh.

5. The findings of the Trial Court that A-1 continued to drive the tempo at fast speed despite having knowledge that Trilochan Singh was clinging to the door of the tempo and did not take reasonable steps to stop him; he was aware that his act in driving the tempo at a fast speed was likely to cause Trilochan Singh's death who was hanging on to his tempo; inspire confidence and need no inference. However, for that A-2 and A-3 cannot be held liable.

6. There is no substance in the defence that none of the accused was present at the spot or that they was lifted from their respective houses. All these aspects have been dealt in detail by the Trial Court and there are not good reasons to deviate from the findings of the Trial Court.

7. In the light of the above discussion, the appeal qua appellant-Mohan Singh (A-1) lacks merits and is dismissed. His conviction and sentence are maintained. Appeal qua Kalyan Singh (A-2) and Gopal Singh (A-3) is allowed and their conviction and sentence are set aside.

8. It is significant to note that as per nominal roll on record A-1 to A-3 have already served the sentences awarded to them and have been released from Jail in 2011.

9. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

April 10, 2013/sa