

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

RESERVED ON : 14th JULY, 2015

DECIDED ON : 9th SEPTEMBER, 2015

+ CRL.REV.P.598/2014 & CRL.M.B.No.10582/2014

ASHOK KUMAR

..... Petitioner

**Through : Mr.C.S.Rathour, Advocate with
Mr.Neeraj Kumar, Advocate.**

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through : Mr. Navin K.Jha, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The instant revision petition has been preferred by the petitioner – Ashok Kumar to challenge the legality and correctness of a judgment dated 20.08.2014 of learned Addl. Sessions Judge in Crl.A.159/13 arising out of FIR No.214/00 PS New Ashok Nagar by which conviction and sentence recorded by the learned Metropolitan Magistrate under Sections 279/304 A IPC vide order dated 25.09.2013 were upheld. The petitioner was sentenced to undergo SI for six months

with fine ₹1,000/- under Section 279 IPC and SI for one year with fine ₹5,000/- under Section 304 A IPC. The revision petition is contested by the State.

2. Briefly stated, prosecution case as reflected in the charge-sheet was that on 20.09.2000 at around 10.23 p.m. at St. Marry Public School Chowk, Mayur Vihar, Phase-III, the petitioner while driving Bus DL 1PA 6558 in a rash and negligent manner struck against one cyclist Nagender aged around 12 / 13 years and caused his death not amounting to culpable homicide. The petitioner was arrested at the spot and the offending vehicle was seized. The Investigating Officer lodged First Information Report after recording statement (Ex.PW-10/A) of the victim's father (Singheshwar Rai). Statements of the witnesses conversant with the facts were recorded. The victim was taken to hospital where he was declared 'brought dead'. Post-mortem examination was conducted on the body. Upon completion of investigation, a charge-sheet was filed in the Court. The prosecution examined ten witnesses to substantiate its case. In 313/281 Cr.P.C. statement, the petitioner denied his complicity in the crime and claimed that the offending vehicle was not being driven by him at the relevant time. He examined DW-1 (Sukhbir Singh) and DW-2 (Sushil Kumar) in defence. The trial resulted in conviction. The petitioner

challenged it in appeal which resulted in its dismissal. Being aggrieved and dissatisfied, the instant revision petition has been preferred.

3. Learned counsel for the petitioner urged that the Trial Court did not appreciate the evidence in true and proper perspective and overlooked material infirmities and discrepancies without valid reasons. Complainant did not opt to appear for cross-examination at a later stage. The Trial Court committed error in relying upon his evidence. Conductor or passengers in the bus were not associated during investigation. The vehicle was not being driven by the accused and he has been falsely implicated in the instant case. Learned APP refuting the arguments urged that there are no sound reasons to disbelieve the statements of the complainant and other material prosecution witnesses.

4. Factum of accident in which a child aged 13 years lost his life has not been denied. Petitioner's stand is that he was not the author of the crime as he was not driving the offending vehicle at the relevant time. This defence deserves outright rejection as the petitioner was apprehended at the spot and various articles including his driving licence were seized. Notice under Section 133 Motor Vehicle Act was served upon the registered owner of the vehicle without any delay. The prosecution examined PW-6 (Naresh Chandra), registered owner of the vehicle who in

his reply (Ex.PW-6/A) informed the police that the petitioner – Ashok Kumar was driving the vehicle at the time of incident at about 10.23 p.m. in front of St. Marry Public School. The vehicle was got released by him vide superdaginama (Ex.PW-6/B). Statement of the witness on this aspect remained unchallenged in the cross-examination and nothing was suggested to him if the offending vehicle was not driven by the petitioner at the relevant time. PW-6 (Naresh Chandra) had no ulterior motive to make false statement. PW-7 (Singheshwar Rai) (in his examination-in-chief recorded on 12.10.2011); PW-8 (Aditya Gupta) and PW-9 (Surender Yadav) all have identified him to be the driver in the vehicle in question in their Court statements.

5. The occurrence took place at around 10.23 p.m. On 20.09.2000 DD No.78B (Ex.PW-2/A) was recorded at 22.32 p.m. at PS New Ashok Nagar where information was conveyed that a child aged around 10 - 11 years had met with an accident with a Bus DL 1PA 6558 on route No.378. The investigation was assigned to ASI Maha Singh who along with Const.Ashok went to the spot. FIR was lodged promptly after recording statement of the victim's father (Ex.PW-10/A) at 12.15 a.m. In the statement, the complainant gave detailed account of the accident and implicated the petitioner for driving the vehicle in a rash and negligent

manner due to which his son sustained severe injuries and died at the spot. In his Court statement as PW-7, he identified the petitioner to be the driver of the offending vehicle. He further stated that the vehicle was being driven at a very high speed in a rash and negligent manner and it hit his son Nagender who fell down at a distance of 15 – 20 feet ahead. The cycle on which the victim was riding entangled in the bus and it stopped a little ahead. The witness was not cross-examined despite opportunity and it was recorded 'Nill. Subsequently, on petitioner's application under Section 311 IPC, PW-7 was recalled for cross-examination. He could not appear for cross-examination due to non-execution of process issued to secure his presence. Under these circumstances, it cannot be inferred that the complainant deliberately did not present himself for cross-examination.

6. Besides this, crucial testimony is that of PW-9 (Surender Yadav) an independent public witness running a 'Paan' shop near SFS Flat, Pocket – D, Mayur Vihar Phase-III. He deposed that at around 10.00 / 10.30 p.m. while closing his shop, he saw Bus No. DL 1PA 6558 coming at a very high speed in rash and negligent manner and it hit a cyclist. Resultantly, the victim fell down at a distance of 15 – 20 feet ahead. With the assistance of two or three individuals, the boy was taken to the

hospital. The driver of the offending vehicle was apprehended at the spot by the public and was arrested by the police. In the cross-examination, he informed that his 'Paan' shop was situated at the corner of the chowk on the road going towards phase-III. He elaborated that the accident was seen by him from a distance of 14 / 15 meter across the road. He also spoke about the presence of PW-8 (Aditya Gupta) whose statement was recorded there. This independent public witness having no acquaintance with the complainant or his family had no extraneous consideration to make a false statement. He did not nurture any enmity or grievance against the petitioner to falsely rope him in the crime. His presence near the spot was quite natural and probable as he had a 'paan' shop which is expected to remain open till late hours.

7. As per mechanical inspection report (Ex.PW-1/A), the offending vehicle had fresh damage due to accident. Its front headlight and number plate were found broken; its grill was also found bended. The vehicle was road worthy without any mechanical defect. The petitioner did not explain as to how the damage occurred to the vehicle. Impact of the accident was so severe that the victim died at the spot and was declared 'brought dead' at the hospital. PW-3 (Dr.B.N.Acharya) conducted post-mortem examination on the body and opined that all the

injuries reflected therein were ante-mortem in nature and were caused by vehicular accident. Death was due to ‘comma’ consequent to head injury. It has come on record that the accident took place at an unmanned crossing. The accident was so grave that after hitting the cyclist, the petitioner was unable to stop it then and there by applying brakes. The cyclist flew in the air due to impact and fell down at a distance of 15 – 20 feet. Apparently, because of high speed, the vehicle was beyond the control of the petitioner. The legal doctrine *res ipsa loquitur* gets attracted. Nothing has been suggested if the petitioner had taken reasonable care and precautions to avoid the accident or that there was contributory negligence on the part of the victim.

8. Minor discrepancies and infirmities highlighted by the petitioner’s counsel are not material to discredit the testimony of the prosecution witnesses. The findings recorded by Courts below are concurrent; these are neither perverse nor illegal. There is no reason to take a different view in the matter. Conduct of the petitioner is unreasonable. He even denied to be the driver of the bus at the relevant time and made a feeble attempt to level allegations against the owner of the vehicle. Petitioner’s identity to be the perpetrator of crime has been amply proved by cogent evidence.

9. The Trial Court has already taken lenient view and the sentence awarded to the petitioner is only SI for one year under Section 304-A IPC which can't be termed excessive as a young child aged 12 / 13 years has lost his life because of rash and negligent acts of the petitioner.

10. The revision petition lacks merit and is dismissed. The petitioner shall surrender before the Trial Court on 16th September, 2015 to serve the sentence awarded to him. Pending application also stands disposed of.

11. Trial Court record be sent back immediately with the copy of the order.

(S.P.GARG)
JUDGE

SEPTEMBER 09, 2015 / tr