

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

**RESERVED ON : 4th MAY, 2017
DECIDED ON : 18th MAY, 2017**

+ CRL.REV.P. 14/2017

MOHD. SHAKEEL

..... Petitioner

Through : Mr.S.N.Pandey, Advocate.

versus

THE STATE (GNCT DELHI)

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present revision petition has been preferred by the petitioner – Mohd. Shakeel to challenge the legality and correctness of a judgment dated 09.12.2015 of learned Addl. Sessions Judge in CrI.A.No. 54939/2016 whereby orders on conviction and sentence under Section 279/304A IPC in case FIR No.286/2000 at PS Kamla Market dated 09.12.2015 / 25.06.2016 of learned Metropolitan Magistrate was upheld.

2. Briefly stated, the facts of the case as reflected in the charge-sheet were that on the night intervening 30/31.07.2000 at around 11.00 p.m. at Chowk Hamdard Asaf Ali Road in front of Police Booth, the petitioner was found driving blue-line bus No. DL-1P-6807 in a rash and negligent

manner and while so driving hit a rickshaw puller, Mahesh Gupta, and caused his death not amounting to culpable homicide. Information about the accident was conveyed to the police and Daily Diary (DD) No. 27 A (Ex.PW-5/A) came into existence at 11.10 p.m. at PS Kamla Market. After recording statement of SI Satyabir, the Investigating Officer SI Govind Chauhan lodged the First information Report. The petitioner was arrested; he declined to participate in the Test Identification Proceedings. Statements of the witnesses conversant with the facts were recorded. Post-mortem examination report was collected. Upon completion of investigation, a charge-sheet was filed against the petitioner for commission of offence under Sections 279/304A IPC. In order to establish its case, the prosecution examined sixteen witnesses. In 313 Cr.P.C. statement, the petitioner denied his involvement in the crime and pleaded false implication. He examined DW-1 (Puttan) in defence. The trial resulted in conviction. The petitioner challenged the conviction / sentence in appeal and it was dismissed by an order dated 07.10.2016.

3. I have heard the learned counsel for the parties and have examined the file. The petitioner has not denied that the offending vehicle bearing registration No. DL-1P-6807 was being driven by him at the time of occurrence. In 313 Cr.P.C. statement, he admitted that at the time of occurrence, he was the driver of the vehicle in question. PW-3 (Jagdish Kumar Saini), registered owner of the vehicle, in response to the notice under Section 133 Motor Vehicles Act (Ex.PW-3/A) responded vide reply (Ex.PW-3/B) that at the relevant time, the petitioner was the driver on the said bus.

4. Factum of accident is not in dispute. Mahesh Gupta had sustained multiple injuries due to massive impact of the collision. He succumbed to the injuries and was declared brought dead at the hospital.

5. Material and crucial testimony to infer the petitioner's guilt is that PW-2 (SI Satyabir Singh). In his complaint (Ex.PW-2/A), he gave detailed account as to how and under what circumstances, the accident was caused by the driver of the blue line-bus No. DL-1P-6807. He further deposed that the driver was driving the vehicle in a rash and negligent manner. The driver hit the rickshaw from behind, as a result of which, the right side wheel of the rickshaw came underneath the offending bus. The petitioner fled the spot after the occurrence.

6. In his testimony before the Court, PW-2 (SI Satyabir Singh) proved the version given to the Investigating Agency at first instance without any variation. He deposed that on 30.07.2000 at around 11.00 p.m., when he was present at Neb Chowk police booth, a rickshaw puller going towards Minto Road was hit from behind by a blue line bus bearing No. DL-1P-6807 coming at a very high speed in a rash and negligent manner. It was being driven by the petitioner. He further deposed that the right wheel of the rickshaw came under the wheel of the bus and rickshaw puller was seriously injured. He rushed to the spot; took out the rickshaw puller from underneath the bus and sent him to JPN Hospital through Const.Subhash. The petitioner ran away from the spot. In the cross-examination, he informed that street lights were 'on' around the spot. He was not aware if the petitioner was in uniform or not. The left side front wheel of the bus went over the right wheel of the rickshaw which was crushed and the rickshaw got entangled

underneath the bus. He denied the suggestion that he was not present at the spot at the time of occurrence and reached there subsequently.

7. On scanning the entire testimony of this witness, it appears that despite searching cross-examination, no material infirmities could be extracted. No ulterior motive was assigned to this police official for making a false statement to implicate the petitioner for the incident. The petitioner had no prior acquaintance or familiarity with the witness and he had no ill-will or animosity to make a false statement against him. In the absence of any prior enmity, the witness, a responsible police officer, was not expected to falsely rope in the accused in a false case. The victim was a poor rickshaw-puller and the witness was having no acquaintance with him to favour him. Presence of the witness at the spot is quite natural and probable. DD No. 44B dated 30.07.2000 (Ex.PW-15/A) has been proved to show that at around 05.00 p.m. PW-2 (SI Satyabir Singh) had departed from the Police Station for verification of the interim bail application in case FIR No.616/1998. In the cross-examination, when specifically enquired as to where he was at the time of arrival of the Investigating Officer. The witness clearly informed that he had met the Investigating Officer after his return from the hospital. He further explained that he had gone to a nearby place for verification of interim bail of the accused in other case. Mere absence of the witness at the spot at the time of arrival of the Investigating Officer at first instance does not discredit his entire testimony. The witness has given graphic detail of the incident and has identified the petitioner being the driver of the offending vehicle.

8. A plea was taken by the petitioner that the accident had taken place due to victim's fault. This plea does not inspire confidence. At

different stages of the trial, conflicting suggestions have been put by the petitioner to shift the blame. In the cross-examination of PW-2 (SI Satyabir Singh), nothing was suggested if the accident was due to victim's negligence. Contrary to that, material facts regarding rash and negligent driving by the petitioner remained unchallenged in the cross-examination. Nothing was suggested to him as to how accident had taken place due to victim's negligence or that the speed of the bus being driven by him was normal. PW-5 (HC Dharmender) was not cross-examined by the accused despite an opportunity given. For the first time, suggestion was put to PW-5 (HC Dharmender) when recalled for cross-examination under Section 311 Cr.P.C. that the petitioner was not at fault and it was the fault of the rickshaw-puller which caused the accident. It was, however, not elaborated as to how the victim was at fault. Suggestion was put to PW-16 (Insp.Govind Chauhan) that the accident took place due to rickshaw-puller's negligence. It was, however, not suggested as to how and in what manner rickshaw-puller was negligent. DW-1 (Puttan) introduced a different story claiming that at the time of accident it was raining. The petitioner while driving the bus took turn at Hamdard chowk and suddenly a rickshaw came in front of the bus due to which the accident took place. He denied that the bus hit the rickshaw puller from behind.

9. The Trial Court has discussed all these submissions of the defence counsel. It recorded :

“Here, it is also to be noted that a hand pulled/manual rickshaw does not move on much high speed. Its speed is limited due to its design of chain-pulling system and being

three tired. Therefore a rickshaw puller if falls off his running rickshaw by hitting of any other slow moving vehicle, he will not receive injuries of such nature and extent. From the number and extent of injuries, the only conclusion which can be arrived at is that rickshaw was hit with a massive force which caused the fall of the rickshaw puller on the ground with great force. Consequently, the necessary corollary arises that said massive force can be produced only if the bus was in a high speed. As observed earlier, the site of incident was not conducive even for normal speed and therefore it can be safely concluded that the bus was being driven in a rash manner by the accused.”

10. The findings recorded by the Trial Court based upon fair appreciation of the evidence can't be faulted and no different view needs to be taken.

11. Petitioner's post-event conduct points an accusing finger against him. Instead of rendering assistance to the victim, the petitioner opted to flee the spot. He declined to participate in the Test Identification Proceedings. Apparently, the petitioner did not take reasonable care in driving the bus and caused loss of a life due to his rash and negligent driving. Otherwise, there was no reason to hit the rickshaw-puller from behind and to cause multiple injuries on his person. Apparently, the petitioner had no control over the speed and despite the place of occurrence being a 'round about', he failed to control it timely and hit the rickshaw from behind.

12. Concurrent findings recorded by the Courts below based upon fair appreciation of the evidence deserve no intervention. The petition lacks in merits and is dismissed.

13. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

MAY 18, 2017 / tr

