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

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Judgment delivered on: 14.11.2017

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CRL.REV.P. 797/2017

NARENDER KUMAR

..... Petitioner

Through: Mr. Niraj Chaudhary, Advocate.

Versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Tarang Srivastava, Addl. Public
Prosecutor for the State with
SI Darpan Singh, P.S. New Friends
Colony.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

Crl. M.A. No.17279 /2017 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed off.

CRL.REV.P. 797/2017 & Crl. M. (Bail) No.1860/2017

3. The petitioner impugns the order dated 25.09.2017 passed in Criminal Appeal No. 204717/2016 by the learned Additional Sessions Judge, Saket Courts, New Delhi, on the ground that the accident leading to the unfortunate death of the respondent deceased was never caused by the Delhi Transport Corporation ('DTC') Bus. Hence, its driver, the present petitioner, could never have been the accused nor could he have been

convicted in the matter. To rebut on the allegations and evidence led by the State, he submits that the accident allegedly happened at 8.45 in the morning i.e. during peak traffic hours wherein the deceased, a motorcycle rider, suffered fatal injuries by the vehicle behind him i.e. a bus. He was taken to the hospital on a three wheeler auto rickshaw, where he succumbed to his injuries. It is argued that neither the conductor of the offending bus nor any passenger of the vehicle was examined by the prosecution. He submits that other than the sole eye witness in the form of a police officer, no other eye witness was examined by the prosecution, despite of its occurrence during peak traffic hours. It is argued that of the seven prosecution witnesses, only four were cross-examined by the defence counsel and that too in a cursorily manner. Poor legal representation led to the unfortunate conviction of the appellant, whereby neither any defence was set up nor any suggestion was given in the cross-examination for the defence. It is further argued that there was no reliable evidence which led to the conviction of the petitioner under section 279/304A IPC, hence the impugned order should be set aside.

4. Additionally, the petitioner argues that the accident occurred as a result of rash and negligent driving by the deceased who applied the brakes of his motor-cycle suddenly, due to which his vehicle skidded and he got crushed under some other vehicle but not by the offending bus which was being driven by the accused. It is argued that Ct. Sanjeev (PW2) is a planted witness. He was not present at the site of the accident. His testimony is not reliable, especially because he had stated that he was standing behind the Red Light at the traffic junction while the motor cycle of the deceased was parked in front of the bus at Mata Mandir T-Point. Hence, he could not have possibly seen the occurrence of the accident or identify the person to be

blamed for it. It is further argued that the presumption of the trial court, as well as of the appellate court, that the accused/ petitioner was driving the offending vehicle in a rash and negligent manner is against the evidentiary principle of presumption of innocence till proven guilty on the basis of incontrovertible evidence; there is no evidence to show that the bus was being driven by the appellant by flouting traffic rules or in a reckless manner. The learned counsel for the petitioner submits that it defies logic that a heavy and big vehicle like a bus, which cannot be easily manoeuvred, could be driven so rashly leading to a fatal accident in a restricted and busy street. It is argued that the photographs taken by PW2, Ct. Sanjeev of the site of the accident from his mobile phone were not sent to the FSL for authentication and the two impugned orders have erred in entirely ignoring the fact that there was a cutting/ alteration in the Medico-Legal Case ('MLC') report. The inspection of the DTC bus by the mechanical inspector too cannot be relied upon since the authority of the said inspector has not been produced on record. That the petitioner, as a bus driver, has had an accident-free record, he supports his three children and aged parents; is the sole bread winner; therefore, his case be considered compassionately. Hence, in view of above the impugned order should be set aside.

5. The prosecution led seven witnesses, of which Ct. Sanjeev (PW2) is stated to be an eye-witness to the accident. The other witnesses were formal in nature. The court below recorded the testimony of PW2 as under:

".... PW-2 Ct. Sanjeev, who is an eye witness in this case had deposed that on 27.08.2012, after finishing his morning patrolling duty, he was returning to PS NFC and when he reached at Mata Mandir T-point Red Light at around 08:45 am, there was red signal. He

saw that one DTC Bus and a Discover bike was standing on the red light. On green signal, the said motorcycle and DTC bus were proceeding towards Bharat Nagar side. He further deposed that said motorcycle crossed the said DTC bus and thereafter, the driver of the said DTC bus had accelerated the same and hit the said motorcycle from behind. Due to the collision, the motorcycle had fallen down on the left side of the road and the rider of the same had fallen down on the right side of the road in front of DTC Bus. He had further deposed that the driver of the said motorcycle got entangled in the left front side tyre of the said bus, which had dragged him to a distance of 5/6 meters. He had further deposed that he alongwith the passengers of the said bus had raised an alarm after which the driver of the said DTC Bus had stopped the bus 5/6 meters ahead from the spot. The registration number of the said DTC bus was DL-IPC-0737 and the registration number of the said motorcycle was DL-5SU-5211. He further deposed that the said motorcyclist had sustained injuries on the front parts of his body. He alongwith the help of the some other passengers of the said bus had pulled out the rider underneath the said bus and was shifted to the nearest hospital in a TSR.

It was deposed further by him that he had apprehended the driver of the offending vehicle at the spot itself who was also correctly identified by him in the Court. In the meantime, ASI Gurnam Singh and Ct. Rajesh had also reached at the spot, who were narrated the entire story by the PW-2. ASI Gurnam Singh/IO had also recorded his statement (Ex.PW2/A) bearing his signatures at point-A. After which he alongwith Ct. Rajesh had proceeded towards the Hospital leaving PW-2 behind at the spot. After their return from the spot, 10 prepared a rukka by making an endorsement on his statement (tehrir) and had handed over the same to Ct. Rajesh for registration of the FIR.

Ct. Rajesh had gone to PS for registration of FIR and had returned back to the spot after sometime and had handed over the copy of FIR and original rukka to the 10, who after formal interrogation had arrested the accused and had conducted his personal search vide memos Ex.PW2/B & Ex.PW2/C respectively, bearing signatures of PW-2 at point-A thereof. Seizure memos of the vehicles involved in the incident were Ex.PW2/D and Ex.PW2/E, which had also bearing the signatures of PW-2 at point-A. The documents pertaining to the offending vehicle such as RC, Permit and Insurance, which were handed over to the 10 by PW-1 ATI Roshan Singh were taken into possession by him vide memo already exhibited as Ex.PW1/A, bearing his signatures at point-A. Duty Slip as well as DL of accused were seized by the 10 vide memos EX.PW2/F and Ex.PW2/G respectively, both bearing his signatures at point-A.

6. During his cross examination conducted on behalf of appellant herein by his then Counsel Sh. Pravin Palival, he had deposed that he was going back to PS to attend morning briefing, when the accident had taken place at Mata ka Mandir Red Light. The gap between the front side of offending bus and the motorcycle was stated to be around 2-3 feet and gap between the position of bus from the footpath was stated to be around 10 feet. PW-2 had claimed himself to be standing behind the bus on his own motorcycle parked towards the left hand side of the bus. The gap between the offending bus and the motorcycle of deceased was stated to have been around 2 feet after the signal had turned green as both the vehicles moved ahead with the signal. The speed of the bus was stated to be around 10-20 kilometers per hour, when it had hit the motorcycle from left side. PW-2 was still stated to be behind the bus.

7. Witness had further reiterated his previous version by stating that after being hit, the bike had fallen on the left hand side, whereas its rider had fallen on the right hand side leaving a gap of around 5 feet between the motorcycle and the deceased. The deceased was stated to have been dragged for around 15-16 feet by the bus, after he got entangled in the front left side tyre. He had denied the formal suggestion that he was not a witness to the incident or that he was deposing falsely being a police official.

6. The arguments raised before the Trial Court were similar to the ones raised before this Court, all of which were considered and dismissed in the impugned order. The doubt about the MLC and the death summary was not sustainable because these documents had been admitted before the trial court. The alleged lack of authorization for the person conducting the mechanical inspection of the bus too could not be sustained because PW7 ASI Gurunam Singh had admitted the suggestion put to him that inspection of the vehicles was conducted by authorized persons. The Court presumed that by putting this suggestion to PW7, the accused had conceded the requisite authorization in favour of the PW3 Shadi Lal, who had conducted the mechanical inspection of the vehicle concerned. The evidence or lack thereof regarding Mukesh, who had brought the deceased to the hospital or about Pankaj Mishra, who had identified the deceased, was considered immaterial by the impugned orders because these two persons were not witnesses to the accident, hence their non-examination would not be fatal to the prosecution's case.

7. The appellants alternate theory that the deceased had been crushed under some other vehicle, after he applied sudden brakes to his motor-cycle,

due to which he fell down and thus suffered self-inflicted fatal injuries, is not borne out from the records, because in his examination under section 313 read with section 281 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the appellant had simply denied the incriminating circumstance put to him. In fact he had gone on to express his ignorance about being a driver of the bus at the aforesaid date, time and place. Furthermore, no such suggestion was put on his behalf to any of the prosecution witnesses, particularly, to PW2. The Appellate Court found this alternate theory to be an after-thought. On the contrary, the Appellate Court concluded that the plea taken by the appellant, itself establishes that he was present at the spot at the relevant time. The Appellate Court was not persuaded by the contention that PW2 was a planted witness, because his testimony remained unshattered and no independent evidence was brought by the defence to shake the evidence of PW2. Furthermore, the testimony of PW2 was not that he was standing right behind the bus in a manner that obstructed his view of what was ahead of the bus. Instead, he claims to be waiting on his motor-cycle behind the bus, on its left side, while the deceased was on his motor-cycle ahead of him. In other words, the deceased was clearly visible to him. There is nothing on record to disbelieve this testimony or to show that PW2 was not at the spot at the relevant point in time or that he was not on duty as deposed by him.

8. Apropos non-joinder (i) of passengers as independent public witnesses, the appellate court held that the accident happened at a time in the morning when people are generally in a hurry to reach their offices or destination at the earliest, so they would be reluctant to stop and give a helping hand, perhaps under a self-justification that someone else will surely

attend to the exigency, and; (ii) it is not reasonably expected of them to agree to join the proceedings at the behest of the Investigating Officer. Non-joinder of the bus conductor too was not fatal to the case because ordinarily the conductor sits at the rear of the bus and he may not have been an eye-witness to the accident. The accused/petitioner was apprehended at the spot itself while driving the offending vehicle at the date, time and place, which is not in dispute.

9. From the facts, the vehicles had stopped at the traffic light. The accident happened when they started moving upon a green light signal; the accident could not have happened unless the offending vehicle had hit the motor-cycle at a great speed or in a rash and negligent manner, dragged him for some distance under its chassis, even while moving at a speed of 10-20 km per hour. According to PW2, the deceased was dragged up to 5-6 meters i.e. 15-16 feet. A conscientious driver would stop his vehicle upon its impact with another vehicle or person. If a person and a motor-cycle come under its wheels after being hit by it, the bus driver would stop the bus immediately. But dragging somebody under the wheels of a bus for about 15-16 feet shows that either the bus was being driven at a great speed i.e. rashly and negligently or on a utter disregard, apathy and callousness of the bus driver towards another human life by dragging the human being for 15-16 feet. The appellate order rightly concluded that the rashness of driving a motor vehicle cannot be defined by a straight jacket formula of speed only. Speed of 80 kms per hour on a national highway may not be considered as excessive or high, whereas even 10 kms per hour in a densely populated area or on narrow streets may be deemed as high speed. The latter appears to be the case involving the

present accident. The bus driver should have stopped the vehicle immediately upon its impact with the motor cyclist, but this was not so done. The Court found the testimony of PW2 to be of sterling quality and saw no reason to disbelieve the same, accordingly. It held that the prosecution had successfully proven its case beyond reasonable doubt against the accused and that the latter had been justly convicted.

10. Keeping in mind the observations of the Supreme Court and High Courts apropos the quantum of sentence for drivers of commercial vehicles causing injury and the death of other road users in motor accident cases, the Appellate Court was of the view that it is imperative to ensure the safe travel of lacs of bus passengers, passersby, other road users and motorists. This duty acquires more importance when the vehicle involved belongs to a public transport organization. Hence, the appeal was dismissed.

11. The Court would note that all the points raised in the present appeal have been comprehensively dealt with in the impugned orders. The reasons for not agreeing with the appellant's contentions cannot be faulted. His contention that his case was not properly argued by the defence lawyer is hardly any reason for allowing the appeal. All-the-more so in view of his response to question no.3 in his cross-examination, where he expressed his ignorance about the fact of his being present at the time and the place of the accident. His response is odd because the petitioner was employed as a driver of DTC which is engaged in transporting lakhs of commuters throughout the city. He has brought nothing on record to show that he was not assigned duty in the offending bus on the said date. This denial or ignorance of his presence at the spot is like closing his eyes in the face of clear and incriminating evidence. His response to question no.3 cannot be

assigned to a lack of competent legal assistance to him. It clearly bears out his presence at the spot and discards the alternate theory propounded on his behalf.

12. The non-participation of other commuters or passengers in the bus is not surprising because the time of the accident – early morning, was such when people ordinarily wish to reach their place of work in time and do not wish to be get involved in police cases. Perhaps, because of the high incidence of road accidents and fatalities, citizens have come to accept it as routine. Such incidents here come to be regarded as non-alarming. The consequent hardening to a certain degree, of attitudes of the ordinary citizen in this city can be inferred from their non-participation in the process of reporting and other assistance. This is unfortunate. The good samaritan and the conscientious citizen is becoming an infrequent entity.

13. In view of the above, the Court finds that the arguments raised by the petitioner are without basis. The appeal being any without merit is, accordingly, dismissed.

NOVEMBER 14, 2017

Sb/kk

NAJMI WAZIRI, J.