
(2006) 08 DEL CK 0237
In the Delhi High Court
Case No : Criminal Rev. P. 320 of 2006

Ishwar Singh

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2006) 08 DEL CK 0237

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Ramesh Gupta, Bharat Sharma and Abhinav Bajaj, for the Appellant;
O.P. Saxena, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—The present revision petition is directed against the judgment and order of the learned Additional Sessions Judge passed on 27.04.2006 whereby the appeal preferred by the petitioner against the order of conviction u/s 279/304A IPC and sentence by the learned Metropolitan Magistrate dated 28.06.2001 has been dismissed. The learned Metropolitan Magistrate had convicted the petitioner u/s 279/304A IPC and by an order on sentence dated 18.07.2001 had sentenced the petitioner to undergo rigorous imprisonment for one year u/s 279 IPC with fine of Rs. 1000/- and for rigorous imprisonment of six months u/s 304A IPC with fine of Rs. 5000/-. The Appellate Court has maintained the conviction and sentence.

2. The case of the prosecution was that on 28.5.1991 at about 8.25 a.m. at Barakhamba Road , New Delhi the DTC bus No. DEP 9368 which was being driven by the present petitioner, was being driven in a rash and negligent manner and in so driving this bus hit another bus bearing registration No. DEP 9749 which was stationary and parked on the extreme left of the said road. It is the case for the prosecution that the impact of the collision between the two buses resulted in the

death of one Vir Singh.

3. The petitioner has been convicted primarily on the testimony of PW3 Lakhpat Singh who was the conductor of the stationary bus (DEP 9749). The learned Counsel for the petitioner has argued that this was clear case of acquittal. He submitted that the informant Sant Raj on whose statement the FIR was registered was not examined. He submitted that initially the case of the prosecution was that there were several persons who were injured but none of them have been produced as witnesses. He also submitted that PW3 did not see the incident. According to him PW3 has stated that after the impact when he came down from his bus he found one passenger had fallen down from the bus driven by the petitioner and had died as a result of injury. He submitted that the petitioner has been convicted on the sole testimony of PW3 who has not even seen the incident. In examination-in-chief the said witness has stated as under:

At about 8 a.m. , a DTC bus Bus No. 9368 came from the ITO side and hit my bus from behind. The said bus was operating on route No. 390. Immediately after the impact I came down the bus and saw that one of the passenger of that bus had fallen down and sustained injuries

However, in cross- examination, PW3 stated as under:

I came to know about the defaulting bus only when I came down the bus. I do not know as to what was the fault in the bus only driver can tell. I can not tell the speed of bus erring bus. The erring bus may be at the speed of 10 Km. per hour or 20 Km per hour or any other speed

The learned Counsel for the petitioner after referring to the aforesaid portion of the testimony of PW3 drew my attention to the following observations in the impugned judgment;

I am of the opinion that the bus was being run on the left side of the road and the appellant was in position to see from a distance that a bus is already stationed there. In these circumstances the speed of the driver should have been very slow. The fact that the offending bus hit the stationary bus in itself shows that the appellant was driving his bus in highly rash and negligent manner.

4. He contended that while PW3 has given no indication as to the speed of the bus being driven by the present petitioner the learned Sessions Court has concluded that the petitioner ought to have been driven the bus at a slow speed. He submitted that, on the contrary, the evidence of PW3 is that the bus could have been driven at the speed of 10 Km per hour or 20 Km per hour or any other speed. Indicating there by that it could not be said that the bus was being driven at a high speed.

5. The learned Counsel for the petitioner also pointed out that the site plan Ext. PW9/C was also not admissible, on the ground that the investigating officer had prepared the site plan on the basis of the statement of the informant Sant Raj and Sant Raj has not been examined and no credibility could be attached to the

said plan and the same would be hit by Section 162 Code of Criminal Procedure 1973.

6. The learned Counsel appearing on behalf of the State supported the judgment of the learned Metropolitan Magistrate as well as the learned Additional Sessions Judge saying that both Courts had rightly relied upon the testimony of PW3. He also submitted that both Courts have rightly relied on the fact that the bus which was being driven by the petitioner did hit the stationary bus. According to him this is in itself is indicative of the rashness and negligence with which the bus was being driven by the present petitioner.

7. I have examined the impugned judgment and have also examined the testimony of PW3 which has been relied upon heavily by both the Courts below. First of all, I am of the view that PW3 did not see the incident . He is a witness to the fact that the bus did collide. He is also a witness to the fact that he found one passenger lying on the ground when he got down from his bus after the impact. He has not stated, and he did not claim to have any knowledge of the same, that the deceased Vir Singh who was found lying on the ground was hit by the bus. He did not see in what manner the bus was being driven. Secondly, even if it is assumed that the deceased Vir Singh got injured as a result of the impact, it has still to established beyond reasonable doubt that the present petitioner was driving his bus in a rash or negligent manner. There is no evidence forthcoming as to the speed at which the bus was being driven. There were many natural witnesses of the collision, but, the prosecution has failed to produce any one apart from PW3 who did not see the collision and the manner in which collision took place. The defense version of the petitioner trying to avoid collision with a scooterist was also lightly brushed aside. Thirdly, I am of the view that the impugned judgment is contrary to what is stated by PW3. In the above mentioned extracted portion it is indicated that the learned Additional Sessions Judge felt that the speed of the bus was not slow. On the contrary PW3 has stated that the bus could have been driven at 10 Km per hour or 20 Km per hour or any other speed which clearly indicates that nobody knows at what speed the bus was being driven.

8. For all these reasons, I feel that the conviction of the petitioner u/s 279/304A IPC cannot be sustained, the impugned order is set-aside and consequently the conviction and sentence are also set-aside. The petitioner be set at liberty forthwith. A copy of this order be sent to Superintendent of the concerned jail immediately. This revision petition stands disposed of.