
(1991) 10 DEL CK 0021

In the Delhi High Court

Case No : Criminal Revision Appeal No. 169 of 1991

Tejpal Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-10-1991

Acts Referred:

Citation : (1992) 46 DLT 244

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : M.S. Mann and S.K. Agarwal, for the Appellant;

Judgement

R.L. Gupta, J.

(1) The petitioner was convicted vide order dated 16.10.89 by the Metropolitan Magistrate under Sections 279 and 304-A Ipc sentenced to suffer Ri for six months and a fine of Rs. 1.000.00 u/s 279 Indian Penal Code and Ri for 2 years and a fine of Rs. 5000.00 u/s 304A Ipc on 18.10.89. His appeal was dismissed by the Addl. Sessions Judge on 27.8.91. This revision petition has been filed for setting aside his conviction and sentence.

(2) The circumstances in which this accident took place are that on 28.1.83 at about 1.20 P.M. the petitioner had started driving bus of route No. 680 from Central Secretariat Bus Terminal, New Delhi. Some passengers were standing in the queue to board the bus at the Terminal. About 28 to 30 passengers had already boarded the bus from the queue. The deceased Phool Chand was alleged to be in the process of boarding the bus and was just on the foot-board of the rear gate when the petitioner started driving the bus without any signal or whistle from the conductor. Another Dtc bus of route No. 410 was parked a little ahead of that bus at its allotted bus stop. The petitioner overtook the bus and in this process the deceased Phool Chand was crushed in between the two buses and died of the injuries sustained by him.

(3) I have learned Counsel for the parties. Learned Counsel for the petitioner has

not challenged the conviction on the merits of the case. However he submitted that the circumstances in which this unfortunate accident took place do indicate that even the deceased was guilty of contributory negligence on account of which he suffered fatal injuries. Therefore, he submits that it was a fit case wherein the petitioner should be sentenced to the imprisonment already undergone and released forthwith. Learned Counsel for the State has not controverted these submissions. I think that whereas it was the responsibility of the petitioner to be careful in taking the bus out of the Terminal, at the same time, the liability was cost on the deceased also to be careful about his own life . He should h"ive seen that if the bus was about to leave the Terminal, he should not have bearded the bus. I am also aware that the contributory negligence of the deceased cannot be a good defense available to the petitioner himself, it can at least be taken as a mitigating circumstance in the matter of sentence. Before moving the bus the petitioner must have switched on the engine which would normally be an indication for the starting of the bus. The deceased could have very well sensed the danger ahead so the deceased was also negligent to some extent. Therefore, taking the totality of the circumstances into consideration, I am of the view that the ends of justice will be sufficiently met if the sentence of the petitioner is reduced to the one already undergone and it is ordered accordingly. The revision petition is disposed off in terms of the above direction. Order Accordingly.