

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

RESERVED ON : 16th SEPTEMBER, 2015

DECIDED ON : 9th OCTOBER, 2015

+ **CRL.REV.P.733/2014**

ANOOP SINGH

..... Petitioner

Through : Dr.Vijendra Mahndiyan, Advocate
with Ms.Pallavi Awasthi,
Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through : Mr.Sanjeev Sabharwal, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant revision petition has been preferred by the petitioner – Anoop Singh to challenge the legality and propriety of a judgment dated 30.10.2014 of learned Addl. Sessions Judge in Crl.A.37/14 by which order of learned Chief Metropolitan Magistrate dated 03.09.2014 convicting him under Sections 279/337/304-A IPC was upheld. The petitioner was sentenced to undergo RI for three months with fine ₹500/- each under Sections 279/337 IPC and SI for nine months with fine ₹9,000/- under Section 304-A IPC. The substantive sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 16.09.1997 at about 01.15 p.m. near Jeewan Hospital, New Rohtak Road, Delhi, while driving bus No.DL-1PA-0014 on route No.805 in a rash and negligent manner the petitioner hit it against a cycle-rickshaw from behind and caused injuries to Kiran Anand and Sushma Duggal. Sushma Duggal subsequently succumbed to the injuries and expired. Daily Diary (DD) No.14, Police Post Siddhipura, Mark 'B' came into existence at 01.20 pm on getting information about the accident. DD No.17 Mark 'A' was recorded at 02.35 p.m. intimating that two women were admitted at Jeewan Hospital in injured condition. PW-9 (SI Jai Pal Singh) along with Const.Ram Avtar went to the spot. After recording statement (Ex.PW-1/A) of the victim - Kiran Anand; he lodged First Information Report. The accused was arrested. Post-mortem examination on Sushma's body was conducted. Statements of the witnesses conversant with the facts were recorded. On completion of investigation, a charge-sheet was filed in the Court. The prosecution examined thirteen witnesses to establish its case. In 313 Cr.P.C. statement, the petitioner pleaded false implication. After considering the rival contentions of the parties and on appreciation of the evidence, by the judgment dated 03.09.2014, the petitioner was found guilty of the aforesaid offences. CrI.A.37/14 to

challenge the conviction and sentence resulted in its dismissal vide order dated 30.10.2014. Aggrieved by the said verdicts, the instant revision petition has been filed.

3. I have heard the learned counsel for the parties and have examined the file. The judgments of the Courts below are based upon fair appraisal of the evidence and all the relevant contentions raised by the petitioner have been duly considered. Petitioner's counsel has failed to point out any material irregularity or illegality in the impugned judgments to intervene.

4. Material testimony is that of PW-1 (Kiran Anand), who was one of the victims. On her statement (Ex.PW-1/A), the FIR was lodged on the same day without any delay. In her statement (Ex.PW-1/A), Kiran Anand disclosed that when she and her friend Sushma Duggal were coming to their home on a cycle-rickshaw and reached near Jeewan Hospital at around 01.15 p.m., a blue line bus No.DL-1PA-0014 driven by Anoop Singh in a rash and negligent manner came from behind and struck against the cycle-rickshaw as a result of which they both fell down and sustained injuries. In her Court statement also, proved the version given to the police at the very first instance without any variation. She elaborated that the bus driver was in a hurry to reach the bus stop to prevent another

bus to reach there before him. She reiterated that the bus was at a very fast speed and it hit the cycle-rickshaw suddenly from behind as a result of which it turned turtle. She revealed that number of the offending vehicle was A-0014. In the cross-examination initially she informed that the driver of the offending vehicle was not seen by her at the time of accident. However, when cross-examined by learned Addl. Public Prosecutor, she clarified that the accused was seated on the driver-seat of Bus No.A-0014 and she had seen him through the window screen. She categorically denied that the accident was due to negligence of the rickshaw-puller or that the bus was not being driven by the accused. It is pertinent to mention that bus No. DL-1PA-0014 was seized at the spot vide seizure memo Ex.PW-4/B. The relevant documents pertaining to the said bus were seized from the petitioner vide seizure memo Ex.PW-4/A. Petitioner's driving licence was also seized vide seizure memo Ex.PW-9/C. The offending vehicle was got mechanically inspected vide report Ex.PW-6/A. The accused did not furnish any explanation about his presence at the place of occurrence when he was not driving the vehicle. He did not inform if he had no concern with the offending vehicle and it was never driven by him. In his 313 Cr.P.C. statement, he wished to examine Pardeep, its conductor which he subsequently failed to do so. It falsifies

his plea that the bus was not being driven by him. He did not summon the registered owner of the vehicle in defence to establish that he was not employed as a driver on the said bus. Conflicting and inconsistent defence has been taken by the accused to buttress his plea. He even denied his presence at the spot and claimed that he was arrested from his house. In 313 Cr.P.C. statement, he did not claim his arrest from his house. Rather in response to Question No.2, he stated that he was stopped by the police officials at the spot and was falsely implicated in this case. The prosecution examined PW-13 (Anil Kumar), who had taken the vehicle on superdari. Nothing was suggested to him in the cross-examination that the bus was not being driven by him at the relevant time.

5. Non-examination of rickshaw-puller is inconsequential as process issued to secure his presence repeatedly remained unexecuted and could not be traced. Under these circumstances, no adverse inference can be drawn against the prosecution for his non-examination. Failure to conduct Test Identification Parade (TIP) is not fatal as the accused was arrested at the spot and was identified by one of the victims. He was named in the FIR. Similarly failure of the Investigating Officer to serve notice under Section 133 Motor Vehicle Act to the registered owner of the vehicle is of no relevance due to apprehension of the accused at the spot.

6. Minor discrepancies and improvements highlighted by the petitioner's counsel do not affect the core of the prosecution case. The victims were returning to their homes at about 1.15 p.m. when there was no possibility of heavy traffic at the spot. The accused hit the cycle-rickshaw from behind as a result of which it turned turtle and the passengers sitting on it sustained injuries due to fall. It appears that due to his anxiety to reach the bus stop to pick up passengers before the rival bus could reach there, the vehicle was being driven at a high speed by the accused. No contributory negligence was attributed to the rickshaw-puller. Petitioner's conduct is unnatural and unreasonable. He did not take the victims to the hospital and even denied to have driven the offending vehicle.

7. Petitioner's conviction is based upon acceptable legal evidence and needs no intervention. No sound reasons exist to differ from the concurrent findings of the Courts below. Since the Trial Court has already taken lenient view, sentence awarded to the petitioner requires no modification. The petition lack merits and is dismissed.

8. The petitioner shall surrender before the Trial Court on 16th November 2015 to serve out the remaining period of substantive sentence.

9. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

OCTOBER 09, 2015 / *tr*