

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.659/2018**

Date of decision: 25th June, 2021

IN THE MATTER OF:

RAM KISHAN

..... Petitioner

Through Mr. Mukul Talwar, Senior Advocate
with Mr. M.K. Vasisht and Ms.Pallavi
Shegal, Advocates

versus

THE STATE

...Respondent

Through Ms. Kusum Dhalla, APP for State
with SI Roshal Lal, PS Sarita Vihar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition under Section 397/401 CrPC read with Section 482 CrPC is directed against the judgment dated 30.07.2018 passed by the learned Additional Sessions Judge, Special Judge (NDPS), South East, Saket Courts Complex in C.A. No.236/2018. The learned Additional Sessions Judge by the judgment impugned herein has affirmed the judgment dated 04.04.2018 passed by the learned Metropolitan Magistrate convicting the petitioner for offences under Sections 279 and 304A IPC and order on sentence dated 17.04.2018 sentencing the petitioner to undergo simple imprisonment for a period of six months for offence under Section 279 IPC and simple imprisonment for two years for offence under Section 304A IPC

and directing the petitioner to pay a compensation of Rs.50,000/- to the Legal Representatives of the victim.

2. The facts in brief leading to the present revision petition are as under:-
 - a) PW-1, Ct. Satpal, Police Station Sarita Vihar who gave information vide DD No.25A regarding an accident opposite A-19 Mohan Cooperative Mathura Road.
 - b) On receiving the said information, the Police reached the spot. PW-1 gave a statement that on 30.05.2010, while working at Police Station Sarita Vihar, he was on beat duty on Mathura Road, Delhi at about 12:40 p.m. in front of A-19 Mohan Cooperative the bus bearing registration No.HR-38L 7814 came from Badarpur side at a high speed in a rash and negligent manner and hit the right side of the bus against one motorcycle bearing registration No. UP-14AY 8745. The occupants of motorcycle fell down and sustained injuries. There were two persons on the motorcycle. The bus driver tried to flee from the spot. PW-1 stated that he told one person to apprehend the driver. He diverted the traffic in order to take care of injured. PCR van reached on the spot and removed one of the injured who was alive to Apollo hospital and the other person who had already passed away was removed to AIIMS Trauma Centre by PCR van through HC Bhim Singh. The bus was chased and stopped by public near Police Station Sarita Vihar. The bus driver fled the spot. Photograph of the site, body of the deceased, offending vehicle and the motorcycle were taken from the spot. The accident had taken place due to rash and negligent driving of the bus driver. On the basis of the statement of PW-1, FIR No.162/2010 was registered.

- c) The second occupant of the motorcycle who had been taken to the hospital also passed away. After investigation, charge sheet was filed for offences under Section 279 and 304A IPC. The charges were framed. To bring home their case, the prosecution examined nine witnesses.
- d) PW-1, Ct. Satpal, the complainant is the star witness of the prosecution. He states that on 30.05.2010 at around 12:40 p.m. in front of A-19, Mohan Cooperative where one bus bearing registration No.HR-38L 7814 came from Badarpur side at a high speed in a rash and negligent manner hit against one motorcycle No. UP-14AY 8745. As a result, occupants of motorcycle fell down and sustained injuries. He stated that he raised an alarm upon which public persons gathered on the spot. One person from the public got the bus stopped. He has stated that the accident has taken place due to fault of the petitioner. PW-1 stated that he diverted the traffic in order to take care of the injured. PCR van reached on the spot and removed the injured to Apollo hospital as other person had passed away on the spot. SI Krishan Kumar reached on the spot. He further states that the petitioner and conductor fled from the spot. During the cross-examination by the counsel for the defence, he stated that he has witnessed the accident. He denied the suggestion that the accident did not take place in his presence.
- e) PW-2, HC Bhim Singh stated that on 03.05.2010 at 10:00 a.m. he along with Ct. Ajay Pal reached the spot and saw motorcycle which had been hit by the bus. One person was lying dead on the spot. The body was taken to the hospital in PCR van. On 01.06.2010, petitioner

came to the Police Station who was arrested by the I.O.

- f) PW-3 and PW-4 have identified the dead body of the deceased Nitin.
- g) PW-5, Insp. Jawahar Singh, Haryana Roadways received the notice. He gave a reply along with duty slip of the petitioner to the Police. The duty slip demonstrates that the petitioner was on duty and was driving the offending vehicle.
- h) PW-6, HC Om Prakash deposed that he removed the injured to the Apollo Hospital.
- i) PW-7, Bhupender Singh states that he was working as a conductor in the offending bus and the bus was on route from Delhi to Agra and was returning from Agra. He states that when the bus entered Delhi, they dropped the passengers at bus stop Sarita Vihar and a motorcycle came under the rear wheels of the bus. He states that the rider may have lost the balance of the motorcycle and the occupants came under the wheels. He states that after coming to know that accident had taken place, the driver (petitioner herein) stopped the bus after some distance. He states that the bus not driven at a high speed. Since PW-7 was deposing against the statements made by him under Section 161 CrPC he was declared hostile and was cross-examined.
- j) PW-8, SI Umrao Singh deposed that on 14.06.2010, further investigation of the case was handed over to him. He collected the post-mortem report (PMR) of the deceased. The motorcycle was released on superdari. The investigation was completed and charge sheet was filed.
- k) PW-9, Insp. Kishan Kumar is the IO in the case. He deposed that on 30.05.2010 he was SI at Police Station Sarita Vihar. On that day DD

No.21B was handed over to him upon which he went to the spot of the accident and found that one person had died. One motorcycle bearing No. UP14 AY 8745 was lying there. PW-1, Ct. Satpal was present there. Photographs of the spot were taken. PW-2, HC Bhim Singh and Ct. Ajay reached the spot. He came back to the spot where statement of Ct. Satpal was recorded and rukka was prepared and sent through Ct. Ajay for registration of case upon which FIR was registered.

- 1) On 01.06.2010, the petitioner came to the Police Station where he was interrogated and arrested. The petitioner was put to TIP but refused to join TIP.
3. The learned Trial Court after perusing the records relied on the deposition of PW-5 to come to the conclusion that the offending vehicle was driven by the petitioner at the time of the incident.
4. The learned Metropolitan Magistrate disbelieved the statement of PW-7, the conductor that he and the accused stopped the bus and came to the spot where the accident had occurred. The learned MM observed the fact that the bus was stopped after 800 metres shows that the bus was being driven at a high speed in a rash and negligent manner to endanger the human life. The learned MM observed that if the vehicle was being driven slow then the driver would have stopped the vehicle immediately after accident. The learned Trial Court held that all the ingredients of offences under Section 279 and 304A are satisfied and convicted the petitioner for offences under Section 279 and 304A IPC. The learned Trial Court by order dated 17.04.2018 sentenced the petitioner to undergo simple imprisonment for six months for offence under Section 279 IPC and simple imprisonment of two

years for offence under Section 304A IPC.

5. It is relevant to point out that the petitioner moved an application for examining PW-1. The learned Additional Sessions Judge found that the petitioner had moved an application to recall of PW-1 who had been examined on 17.11.2011 and the same had been allowed on 24.11.2016. The order to recall PW-1 had been recalled by an order dated 11.08.2017 on the ground of misrepresentation that PW-1 had not been examined. The said order had not been challenged.

6. Aggrieved by the order, the petitioner filed an appeal before the learned Additional Sessions Judge in CA 236/2018. The learned Additional Sessions Judge also once again perused the witnesses and upheld the judgment of the learned Trial Court. The learned Additional Sessions Judge found that the testimony of PW-1 was reliable and that the petitioner was driving the offending vehicle at a high speed in a rash and negligent manner. The learned Additional Sessions Judge also disbelieved the testimony of PW-7.

7. The learned Additional Sessions Judge held that the accident had taken place in the afternoon and the motorcycle was visible to the petitioner. It is not the case of the petitioner that the motorcycle came suddenly in front of the vehicle. The fact that the motorcycle was visible to the petitioner is itself a major factor which points out to the fact that the petitioner was driving the offending vehicle at a high speed and in rash and negligent manner. The learned Additional Sessions Judge relied on the post-mortem report which shows extensive injuries on the body of the deceased and held that these injuries could be caused when a vehicle is driven at a high speed in a negligent manner. Learned Additional Sessions Judge observed that the

testimony of PW-7 that he and the petitioner went to the spot does not inspire confidence as both of them fled from the spot whereas it has come on record that the petitioner surrendered on 01.06.2010 at about 10:00 a.m. The petitioner had prayed for a remand of the case to the learned MM on the ground that PW-1 ought to be examined again to bring out as to how the accident occurred and why members of the public who were present at the spot were not added as witnesses. The request was turned down.

8. The learned Additional Sessions Judge also was of the opinion that the benefit of the Probation of Offenders Act should not be extended to the petitioner by increasing the compensation. The appeal was dismissed. Against this order, the present revision petition has been moved.

9. Mr. Mukul Talwar, learned Senior Advocate contends that PW-1 has not stated as to how the accident was caused and as to whether the offending motorcycle was being driven in a rash and negligent manner so as to hit the bus on the side. He has taken this Court to the site plan to contend that it is possible that the motorcycle was driven at a high speed and hit the side of the bus and in that case it cannot be said that the petitioner was driving the offending vehicle at a high speed. He states that since the deposition is vague in the manner as to how the accident had occurred and the order of courts below should be set aside for this reason. He states that the death has occurred due to bleeding and not due to crush injuries. He states that this fortifies the case of the petitioner that the motorcycle was driven at a high speed and hit the bus on the side due to which they fell on the road and one of them died on the spot.

10. Learned Senior Advocate states that the application had been filed for recall of PW-1 so as to question PW-1 regarding the manner in which the

accident occurred and whether public witnesses were present or not and the petitioner ought not to have been deprived of the said opportunity. He further contends that the place where accident took place is a busy road and it is not possible that there were no passer-by and no one witnessed the accident. He states that according to PW-1 he sent a passer-by to stop the bus. He states that the person who was sent by PW-1 to stop the bus being an eyewitness ought to have been examined but for the reason unknown to the petitioner has not been produced as a witness.

11. *Per contra*, Ms. Kusum Dhalla, learned APP supports the case of the prosecution. The scope of revision under Section 397/401 CrPC read with Section 482 CrPC is narrow. Courts do not go into excruciating details on facts and unless the judgments of the courts below are so perverse High Court does not interfere with concurrent findings.

12. The power of a revisional court to interfere with concurrent findings of fact arrived at by two courts is well settled. It is well settled that a revisional court is not an appellate court and it cannot substitute its conclusion to the one arrived at by two courts just because another view is possible. The Supreme Court in State of Kerala v. Puttumana Illath Jathavedan Namboodiri reported as (1999) 2 SCC 452 has observed as under:-

"5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one

of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence." (emphasis supplied)

13. The Supreme Court in State of Haryana v. Rajmal & Anr reported as (2011) 14 SCC 326 has observed as under:-

"14. In State of A.P. v. Pituhuk Sreeinvasa Rao [(2000) 9 SCC 537:2001 SCC (Cri) 642] this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature". (emphasis supplied)

14. In State v. Manimaran reported as (2019) 13 SCC 670 the Supreme

Court has observed as under:-

"16. As held in State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452 : 1999 SCC (Cri) 275], ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained"
(emphasis supplied)

15. Both the courts below have appreciated the evidence in the correct perspective. At this juncture, this Court is not inclined to remand the case back to the Trial Court or for recalling and re-examining PW-1. The order dated 11.08.2017 by which the application to recall PW-1 was declined by the Trial Court has attained finality. There is no reason to disbelieve PW-1 nor does this Court find that the reasons given by the two courts below accepting the deposition of PW-1 to arrive at a conclusion that the offending vehicle was being driven negligently by the petitioner requires interference. It cannot be said that the judgment of the courts below is perverse and based on nil evidence. The fact that no public witness had been examined also cannot be a ground to disbelieve the case of the prosecution. In Girja Prasad v. State of M.P. reported as **(2007) 7 SCC 625** has observed as under:-

"25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police

witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. **There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.**

26. It is not necessary to refer to various decisions on the point. We may, however, state that before more than half a century, in *Aher Raja Khima v. State of Saurashtra* [AIR 1956 SC 217 : 1956 Cri LJ 426] , Venkatarama Ayyar, J. stated: (AIR p. 230, para 40)

“40. ... The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.”

27. In *Tahir v. State (Delhi)* [(1996) 3 SCC 338 : 1996 SCC (Cri) 515] , dealing with a similar question, Dr. A.S. Anand, J. (as His Lordship then was) stated: (SCC p. 341, para 6)

“6. ... Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.”

(emphasis supplied)

The said judgment has been quoted with approval by the Supreme Court in Baldev Singh v. State of Haryana reported as (2015) 17 SCC 554 has

observed as under:-

"10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness."

16. This Court has gone into the deposition of PW-1. There is no reason to disbelieve him. PW-1 has no animosity towards the accused. He has withstood a detailed cross-examination.

17. Two persons have died in the accident. No one can and much less persons driving roadways buses can be permitted to drive in rash and negligent manner so as to put the lives of the passengers and other persons in danger. This Court is not inclined to extend the benefit of Probation of Offenders Act, 1958 and Section 368 CrPC to the petitioner and reduce the sentence awarded to the petitioner.

18. In view of the above, this Court does not find any infirmity in the judgment of the court below. The revision petition is dismissed. Bail bonds of the petitioner are cancelled and the petitioner is directed to surrender within four weeks from today.

SUBRAMONIUM PRASAD, J.

JUNE 25, 2021

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