

**Satnam Singh Vs. State**

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**Court :** Delhi

**Decided On :** May-31-1991

**Reported in :** 44(1991)DLT710

**Judge :** R.L. Gupta, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 279

**Appeal No. :** Criminal Revision Appeal No. 120 of 1991

**Appellant :** Satnam Singh

**Respondent :** State

**Advocate for Pet/Ap. :** S.C. Bhuttan and; A.K. Manchanda, Advs

**Judgement :**

**R.L. Gupta, J.**

(1) This petition is directed against the judgment/sentence dated 31.7.86/11.8.86 by the Mm and the appellate judgment dated 20.3.91 of the learned Asj, Delhi. The Magistrate convicted the petitioner under Sections 279/337, 304A and 427 of the Indian Penal Code and awarded a consolidated sentence of Ri for 1 years and a fine of Rs. 1500/. In default he was to suffer Si for six months. Asj in appeal maintained the conviction of the petitioner. He, however, reduced the sentence to Ri of Six months.

(2) The Fir in this case is based upon the statement Ex.PW5/A of PW5 Munshi Ram recorded on 29.5.79. He stated that day at about 9.00 Pm after finishing his work of the day he along with his companions Ram Rakha PW4 and Balbir Singh deceased were returning to Jahangir Puri at about 9.00 PM. They were on their respective cycles. At about 9.15 Pm after the signal at the crossing of G.T. Karnal Ring Road had become green and they had advanced by a few paces only when bus Dep 2102 from the side of Ring Road Azadpur bridge and driven by the petitioner with a very high speed came there. First the bus broke side railing towards the left side and then jumped over the central verge. Thereafter it struck against his companion Balbir Singh. The driver did not even blow his horn at that time. After striking against Balbir Singh and the cycle it climbed on the central verge and also uprooted an electric pole. There after it over-turned. Balbir Singh fell unconscious. He was removed to the hospital where he succumbed to his injuries. After completion of investigation the challan was filed and the petitioner was convicted and sentenced as aforesaid.

(3) Learned counsel for the petitioner submitted that none of the prosecution witnesses deposed if the bus was being driven in a rash and negligent manner. Moreover, the alleged eye witnesses refused to even identify the petitioner as the person who was driving the bus at the relevant time. He further submitted that although according to the case of the prosecution the accident took place at about 9.25 PM. the petitioner was charged as if the accident had occurred at 9.25 AM. He further submitted that the learned Mm has not even discussed the evidence of the eye witnesses meaning thereby that practically there was no evidence against the petitioner and, therefore, his conviction and sentence could not be legally supported. I have carefully perused the judgment of the Courts below and have also perused the records and specially the evidence of the eye witnesses PW4 Ram Rakha and PW5 Munshi Ram. It is incorrect that the Magistrate has not referred to the statement of any of the eye witnesses. In para 6 of the judgment he has referred to the testimony of Public Witness Ram Rakha eye witness to the effect that it was the petitioner who was driving the bus and he also received injury because the bus first struck against the railing side of the road and central verge and thereafter hit the cyclist Balbir Singh. He further mentioned that in this process the petitioner himself also received injury and was medically examined in the

hospital. therefore, it is incorrect to say that the Magistrate has not discussed the evidence of any of the eye witnesses. In para 3 of the judgment the Magistrate does say that Public Witness Ram Rakha and Munshi Ram are the witnesses of the occurrence. However, he has not discussed the evidence of Munshi Ram. therefore, it became necessary for me to peruse the statement of both the eye witnesses. I would first refer to the statement of Public Witness 5 Munshi Ram because it was on his statement Ex. Public Witness 5/A that the Fir was recorded. He deposed that on 29.5.79 at about 9.15 P.M., he, Balbir Singh and Ram Rattan were going to their residence on their cycles after finishing their work in a house in Model Town. When they reached Chowk Azadpur, they stopped for a while due to red light. When the light became green, they again started when suddenly bus Dep 2102 came from the side of the bridge of the Azadpur Ring Road. It hit the cement barricade at the left turning, then the Central patri of the road and thereafter it hit his friend Balbir Singh and dragged him along to some distance. The bus again came on the central patri and thereafter hit the electric pole and then over turned. Balbir Singh, injured was sent to Hindu Rao Hospital along with Ram Rakha while the witness went to Jahangirpuri to inform the relatives of the injured. He did say in the examination-in-chief that he could not say who was driving the bus. therefore, the prosecutor sought permission to cross-examine the witness which was allowed. In his crossexamination he admitted that he could read Hindi and also sign in Hindi. The police official had recorded his statement at his own dictation which is Ex. Public Witness 5/A. He also admitted that before he signed the statement, it was read over to him by the police. Then he admitted that it was correct that he had given the name of the driver in his statement. Again he said that he was not aware whether the accused person in Court was the same person who was driving the vehicle. He also admitted that the police had not given any threat to him at the time of recording his statement. He also admitted that memo Ex. Public Witness 4/C was prepared in his presence and it bore his signatures. Memo Ex. W 4/C is the personal search memo of the petitioner in which his name father's name and the address of his native place in District Ludhiana are mentioned. Thus it will be seen that the witness after having mentioned the name and address etc. of the petitioner in his statement Ex. PW5/A to the police at the spot tried to help him in Court by saying that he did not know

who was driving the bus. The accident took place in 1979. The statement of the witness was recorded in 1983. Obviously much time had elapsed and a bare reading of the statement clearly gives an impression that he refused to identify the petitioner because he had been won over by that time. Otherwise if the personal search memo of the petitioner which is Ex. Public Witness 4/C which clearly mentions his complete particulars and bears the signatures of this witness would not have seen the light of the day. Public Witness 4 Ram Rakha is the other companion of the deceased who was also returning with them after finishing the day's work in Model Town. . He even identified the petitioner in Court and gave the details of the accident in the same manner as given by Public Witness 5. After perusal of the statements of both these witnesses, I am left with no doubt in my mind that it was the petitioner who was driving the bus at the relevant time in a very rash and negligent manner. Even if the witnesses have not deposed before the Court that the petitioner was driving the bus rashly or negligently, it is a case in which the facts speak for themselves. The petitioner was so rash and negligent in driving that he first broke side barricade of the road, then crossing central verge of the road and hit the cyclist Balbir Singh by taking the bus on the wrong side of the road. These facts are absolutely clear from the site plan coupled with the statements of PWs 4 and 5.

(4) So far as the submission regarding the time of occurrence is concerned, it is no doubt true that the accident took place at about 9.25 P.M. In the notice given to the petitioner the time of the occurrence was mentioned as 9.25 A.M. There is no doubt that the Magistrate in this respect has been negligent. However, still this Court is to see whether any prejudice has been occasioned to the petitioner ' on account of this lapse on the part of the Magistrate. In his statement under Section 313 of the Code in the very first question the petitioner was told that there was evidence against him that on 29.5.79 at 9.25 Am at G T. Karnal Road and Ring Road crossing he was driving bus Dep 2102 and what he had to say about it. He admitted this fact in his answer. thereforee, it will be seen that the mentioning of wrong time either in the notice or in the question put to the petitioner in his statement has not occasioned any miscarriage of justice. He could have very well denied in his answer that he was not driving the bus at that particular time. But he admitted this fact. thereforee, there is neither any miscarriage of justice nor any

prejudice caused to the petitioner by mentioning wrong time of the occurrence. In fact, he further says in answer to the last question that he was coming to the road at normal speed. There was red light and on seeing the red light he applied ' brake but the brake was not working properly and so he took turn towards the left side and his bus over turned. He further said that the deceased and the injured were hit some other vehicle and he was falsely implicated by the police. His very answers suggest that his only grievance was that he has been falsely implicated and that the' brakes of the bus were not working properly. In this respect, we have the statement of Public Witness 1 R L Dhamija. Si of police who has been mechanically inspecting such accidental vehicles for the last 12 years. No question was put to him that the brakes were out of order. Rather he stated in cross examination that he did not notice any fresh damage to the brakes.

(5) The conviction of the petitioner, however, under Section 427 Ipc cannot be sustained because no such notice was given to him. therefore, his conviction under Section 427 Indian Penal Code is set aside. However, it will otherwise have noe.effect in this case because the petitioner has been convicted under other Section of the penal Code for which he was initially sent for trial.

(6) Even on the point of sentence, I am of the view that it is not a case wherein probation should be granted to the petitioner. He was driving the bus in such a rash and negligent manner that he deserves no sympathy. Petition is therefore, dismissed.

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