

Om Prakash Vs. State

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Court : Delhi

Decided On : Feb-12-1997

Reported in : 1997IIAD(Delhi)396; 66(1997)DLT583

Judge : Mohd. Shamim, J.

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

Appeal No. : Criminal Revision Appeal No. 57 of 1996

Appellant : Om Prakash

Respondent : State

Advocate for Pet/Ap. : Jagat Rana and; M.S. Butalia, Advs

Judgement :

Mohd. Shamim, J.

(1) This revision petition is directed against the judgment and order dated February 6,1996 passed by Shri V.K. Malhotra, Additional Sessions Judge, whereby he dismissed the appeal preferred by the present petitioner against the judgment and order dated February 5,1993 and February 6,1993 passed by Shri H.S. Sharma, Metropolitan Magistrate, who found the petitioner guilty under Sections 279/304A of the Indian Penal Code and sentenced the petitioner to undergo Ri for one year and to pay a fine of Rs. 200.00 . In case of the failure of

the petitioner to clear the fine he was further directed to undergo imprisonment for a month.

(2) Brief facts which gave rise to the present petition are as under : that the petitioner herein was driving bus No. Dep 8019 on June 20,1984 at 9.20 a.m. at New Rohtak Road. The deceased Tilak Raj traveling in the said bus was standing near the front gate. The bus was being driven by the petitioner in a rash and negligent manner so as to endanger the human life. The deceased fell down from the said bus while the bus was negotiating a crossing near Kamal Restaurant. The said fall proved fatal as the deceased sustained injuries and died as a corollary whereof. The matter was reported to the police vide Ex. Public Witness Public Witness 1 /A. After completing the necessary formalities petitioner was challaned.

(3) The learned Magistrate after appraisal of the documentary as well as oral evidence came to the conclusion that the petitioner was guilty under Sections 279 / 304A of the Indian Penal Code. The petitioner was thus sentenced to undergo RI for one year under Section 304-A, Indian Penal Code with a fine of Rs. 200.00 . In case of failure of the petitioner to clear the fine he was further directed to undergo imprisonment for one month. No separate sentence was awarded under Section 279, Indian Penal Code though the petitioner was found guilty there under also.

(4) Aggrieved and dis-satisfied with the said judgment and order the petitioner went up in appeal before the Court of Sessions. However, as ill luck would have it the damsel luck did not smile on him and his appeal was dismissed. It was in the above circumstances that the petitioner has approached this Court.

(5) Learned Counsel for the petitioner Mr. Jagat Rana has contended that there is absolutely no evidence against the petitioner. There is only one alleged ocular witness known as Pappu. However, according to the learned Counsel he never witnessed the occurrence. Thus his statement is nothing but a white lie and it would thus be not safe to rely upon the same. There is an inordinate delay in lodging the Fir inasmuch as the alleged accident took place at 9.20 a.m. whereas the Fir was lodged at 11.00 a.m. Pappu (Public Witness 1) is also an interested witness inasmuch as he is a neighbour of the deceased. The prosecution has failed to prove any nexus in between the accident and the alleged rash and

negligent act of the petitioner. Thus the death in the instant case was not the result of any act on the part of the petitioner. According to the learned Counsel there must be a direct nexus between the death of the deceased and the rash and negligent act of the petitioner.

(6) Learned Pp, Mr. Butalia, on the other hand, has urged to the contrary.

(7) I have heard the learned Counsel for the petitioner and the learned Pp for the State at a considerable length and have very carefully examined their rival contentions and have given my anxious thought thereto.

(8) It is in the statement of Public Witness Public Witness 1 Pappu that the petitioner was the driver of the ill-fated bus bearing No. DEP-8-019 on June 20, 1984 at 9.20 a.m. The said bus was being plied on the said date at Rohtak Road by the petitioner. The deceased on the said date was standing in the front portion of the bus near the exit and was holding a rod. He has further deposed to the fact that the deceased fell down from the said bus while the bus was being driven rashly and negligently so as to endanger the human life while negotiating a crossing opposite Kamal Restaurant. The passengers of the bus requested the driver to drive the bus slowly. The said advice fell flat on the deaf ears of the petitioner. There is absolutely nothing in his cross-examination to render his testimony unworthy of credence.

(9) Learned Counsel for the petitioner while anim-adverting on the said statement of Public Witness Public Witness I Pappu has argued that he is a procured witness. He was not present at the spot inasmuch as no ticket was taken into custody from the said witness in order to show and prove that in fact he was traveling by the said bus. The learned Counsel thus wants me to conclude therefrom that Public Witness Public Witness 1 Pappu was not in the bus at the relevant time and he thus had no opportunity to witness the occurrence. I am sorry I am unable to agree with the contention of the learned Counsel. It is true that the Investigating Officer should have seized the ticket from Pw 1 Pappu. However, I feel that the failure of the Investigating Officer to have the tickets from Public Witness Public Witness I Pappu would not by itself be sufficient enough to fling to the winds the statement of Public Witness Public Witness 1 Pappu. The signatures

of Public Witness Public Witness 1 Pappu appear on almost all the relevant documents which were prepared at the spot on the date of occurrence i.e. Ex. Public Witness Public Witness 1/B, Public Witness Public Witness 1/C & Public Witness Public Witness 1 /D. The said documents prove beyond any shadow of doubt the presence of the petitioner at the spot.

(10) The next contention raised by the learned Counsel for the petitioner is that on being cross-examined, Public Witness Public Witness I Pappu was not in a position to give the exact speed of the bus in kilometers. Hence this fact goes a long way to show that he was not traveling at the time of the accident by the said bus. The contention of the learned Counsel is devoid of any force. Admittedly, Pappu is an illiterate person. It is in his statement, during the course of his cross-examination, that on the date of the incident he was working at some shop of Shri Madan Lal. Thus there is nothing strange if he was not in a position to give the exact speed of the bus. However, he has very categorically stated that the bus was being driven at a fast speed.

(11) The next contention put forward by the learned Counsel for the petitioner is that admittedly the deceased was himself standing in the bus near the exit. Thus the deceased himself was responsible for his own death. The cause of the death cannot be ascribed to the negligence, nonchalance on the part of the driver of the bus i.e. the petitioner. The contention of the learned Counsel does not hold any water.

(12) It is a well known fact that in Delhi buses are over crowded. The number of the buses which are being plied on the roads of Delhi falls far short in number to meet the requirement of the persons who have to travel by the buses in order to cover long distances in the city. More often than not the commuters have to travel in the buses by standing. Thus it is on account of the compulsion and paucity of the seats in buses that a person has to travel while standing in a bus. In normal circumstances nobody would like to travel by a bus while standing if sufficient seats are available to accommodate all the passengers.

(13) A close scrutiny of the cross-examination of the prosecution witnesses that the defense as suggested to them was that the deceased fell down from the bus

when he tried to get down from it. This question was specifically put to Public Witness Public Witness 1 Pappu. It was suggested to him that the deceased tried to get down from the bus and in his attempt to get down he fell down. Shri Pappu replied to the said question in the negative. Curiously enough in his statement recorded under Section 313, Criminal Procedure Code on being asked if he wanted to say any thing else (vide question No. 15), the petitioner stated that the deceased never fell down from his bus. In fact the bus which was being driven by him was not responsible for any accident. Thus the two defenses are altogether different and inconsistent with one another. They render nugatory the entire defense version.

(14) Mr. Rana has led me through a judgment of a Single Judge of this Court reported in 1996 (3) Cc C 291, Niranjana Singh v. State. I have very carefully gone through the said judgment. I feel the ratio of the said case would not be applicable to the facts of the present case inasmuch as the defense as set up in the said case was that the deceased tried to get down from the moving bus and thus fell down and sustained injuries which proved fatal.

(15) Considering the above facts and circumstances I do not see any force in the present revision petition. Dismissed. The petitioner was ordered to deposit a sum of Rs. 10,000.00 with the Registrar while he was ordered to be released on bail vide order dated April 16, 1996. The petitioner in pursuance of the said order has deposited the same. Let the said amount be refunded to the petitioner.

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