

**Rattan Baxi Vs. State**

**Rattan Baxi Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/706128](http://sooperkanoon.com/706128)

**Court :** Delhi

**Decided On :** Apr-03-1998

**Reported in :** 1999CriLJ477

**Judge :** A.K. Srivastava, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304A and 337; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Cri. R. No. 522 of 1997

**Appellant :** Rattan Baxi

**Respondent :** State

**Advocate for Def. :** Neelam Grover, Adv.

**Advocate for Pet/Ap. :** Sunil Sehgal, Adv

**Disposition :** Revision allowed

**Judgement :**

ORDER

**A.K. Srivastava, J.**

1. The revisionist, Rattan Baxi, was convicted under Sections 279/337/304A, I.P.C. and was sentenced to two years rigorous imprisonment and a fine of rupees

three thousand. Against that conviction and sentence, he filed Criminal Appeal No. 18/97 which was dismissed by Shri Suresh Chand Rajan, Additional Sessions Judge, Shahdara vide his Order dated 29-11-1997. Against the appellate Court's order this revision has been filed.

2. The only point taken by the revisionist is that though right from the beginning, he had been agitating that he was not driving the bus when it got involved in the accident in question causing death of a lady but he had been convicted by the trial Court and his appeal has now been dismissed.

3, Heard the learned counsel for the revisionist and the counsel for State.

4. On perusal of the records it is to be found that in his statement under Section 313, Cr. P. C., the revisionist had categorically stated that he was not driving the bus. As such, it was the duty of the trial Court to have carefully scrutinised the evidence on record to assess whether the plea of the accused was right or wrong. In the appeal also, the aforesaid plea was taken and it was the bounden duty of the appellate Court to examine whether the plea was correct or wrong.

5. On going through the evidence of the prosecution on record, to me it is apparent that the trial Court as well as the appellate Court arrived at a wrong conclusion that the revisionist/ accused was driving the bus in question at the time of accident.

6. It is the admitted case of the prosecution that after causing the accident the bus did not stop and fled away and the bus driver was not apprehended at the spot. The prosecution, however, depended on the testimony of two eye-witnesses, namely, P.W. 1 Girish Sharma and P.W.2 Lakhan Singh. Reliance was also placed on the testimony of S. I. Roop Singh, who had impounded the bus in question on 18-2-1993 and had arrested the revisionist on that day though the accident had taken place on 17-2-1993. There is no other prosecution evidence on this point.

7. P.W. 1 in his examination-in-chief stated that the accused preset in the Court was driving the bus as he saw him while driving the bus though he did not say that he knew the accused from before. In his cross-examination he was suggested that

the accused was not driving the bus, P.W. 2 Lakhan Singh, though in his statement-in-chief stated that the accused present in the Court was driving the bus at the time of the accident but in his cross-examination, he admitted that it was correct that he could not identify the driver at the spot. therefore, if this witness had not identified the driver at the spot, his statement in the examination-in-chief in the Court that the revisionist was driving the bus at the time of accident is of no value. Thus only one eyewitness remains, namely, P.W. 1. He did not know the revisionist from before and if it is taken to be correct that he had seen the face of the driver, his testimony should have been tested on the basis of test identification parade. It is admitted by counsel for State that no test identification parade was conducted. Moreover, when there is statement of the witnesses that the bus had fled away and did not stop at the place of occurrence, to me it appears doubtful that P.W. 1, who was riding a scooter at the time of the accident could have seen the face of the driver as his very scooter had met with the accident and his wife sitting on the pillion of the same got injured and died due to the injuries received. therefore, testimony of P. W. 1 also becomes doubtful. There could have been one positive evidence of the bus owner who could have testified that the revisionist was the driver of the bus as he was given the bus to drive on the route at the time of the accident but incidentally, it was admitted by the counsel for the State that the record of the case did not show that statement of the owner of the bus was recorded by the IO. It is also a fact that owner of the bus was not produced before the trial Court to prove that the bus was given to the revisionist to ply it on the route at the time of the accident. Arrest of the revisionist on the next date of the accident cannot by itself prove the allegation that the revisionist was driving the bus at the time of the accident.

8. In view of above discussion, I am of the firm view that the prosecution failed to prove that the revisionist was driving the bus involved in the accident which resulted in death of the wife of P.W. 1. To me a grave miscarriage of justice has been done to the revisionist and there is every ground to interfere in this revision petition.

9. Consequently, the revision is allowed and the Orders dated 4-9-1997, 5-9-1997 passed by the trial Court and orders dated 29-11 -1997 passed by the appellate

Court are hereby set aside and the revisionist is acquittal of the charges framed against him.

10. The revisionist is in Jail. He shall be released forthwith.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**