

A.F.R.

Reserved

Neutral Citation No. - 2023:AHC:196688

Court No. - 75

**Case :- CRIMINAL REVISION No. - 684 of 1999**

**Revisionist :-** Data Ram

**Opposite Party :-** State of U.P.

**Counsel for Revisionist :-** R.K. Goswami, Ashok Kumar Singh, Ashok Kumar Singh Amicus C.

**Counsel for Opposite Party :-** Govt. Advocate

**Hon'ble Umesh Chandra Sharma, J.**

1. Heard Sri Ashok Kumar Singh, learned Amicus Curiae for the revisionist, Sri Bhupendra Pal Singh, learned A.G.A. for the State and perused the record.

2. This revision has been preferred against the order of conviction and sentencing dated 31.7.1996 by 7<sup>th</sup> A.C.J.M. Agra, in CrI. Case No. 265 of 1995 (State of U.P. Vs. Data Ram) under Section 279, 304-A I.P.C. And the order of dismissal of the appeal dated 3.4.1999 passed by 5<sup>th</sup> A.S.J. Agra, (Data Ram Vs. State of U.P.) by which the revisionist-accused was awarded two years rigorous imprisonment and Rs. 2,000/- fine with default stipulation to undergo six months additional simple imprisonment in case of non-deposition of fine.

3. The revisionist has taken ground that the learned courts below have failed to appreciate the prosecution evidence in respect of Tempo's side on which it was stopped and which was the main cause of the accident. The learned trial Court has accepted that near the place of the accident tempo was standing on the wrong side and which was the main cause of the

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accident. The Courts below have discarded this fact only on flimsy ground holding the revisionist guilty for driving the Bus negligently, in arbitrary manner and illegally. The finding recorded by the Courts below in respect of the speed of the Bus is based on conjectures and surmises. Only because the Bus was stopped at a distance of 2 or 4 paces away from the place of incident, it can not be said that the speed of Bus was 50 or 60 km per hour at the time of incident.

4. The above fact itself is a sufficient proof that the Bus was driven by the revisionist very carefully and there was no negligence on his part in driving the Bus. Both the Courts below have failed to appreciate the fact that in case the Bus would be driven by the revisionist negligently, the driver would not stop the Bus and would escape from the place of the accident. The injuries of the deceased are in itself sufficient proof that the same were not on account of crushing beneath the wheels of the Bus and the same may occur by colliding with back of the Bus and for that the revisionist could not be held guilty for rash and negligent driving. The judgement and orders of both the Courts below suffer from the manifest error of law and deserve to be set-aside, hence, the revision be allowed and both the impugned orders be set aside.

5. In brief, facts of the case are that on 12.3.1992 the informant Shyo Raj Singh was going to Khadauli with his grand son Yogesh Singh, Giriraj Singh, Mangal Singh, Keshav Singh and Jagdeep of his village when the tempo reached near the Nagla Bigha, the towel fell down for which Yogesh got down from the Temp. By that time Bus driver Data Ram of Bus No. PUH 4490 rashly and negligently hit him and he got injured and died on the spot. Giriraj Singh, Mangal Singh, Keshav, Jagdeep and informant had seen the incident, they caught the accused and carried to the police station where a case under Section 279/304-A I.P.C. Was registered. The I.O. Started the investigation, recorded the statements of the witnesses, inspected the place of occurrence and prepared site plan

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and got the Bus technically examined. The inquest report, challan lash, photo lash, letter to C.M.O. and R.I. were prepared and the autopsy of the dead body was done by the P.M. Doctor.

6. After conclusion of the trial, a charge-sheet was submitted on which cognizance was taken by the concerned Magistrate and statement of the accused was recorded in which he said himself to be innocent. He said that he was plying the Bus, the accident is not the result of his negligence but the deceased himself had collided with the Bus.

7. The prosecution has examined following **witnesses** to prove the prosecution version:

P.W.-1	Informant Shyo Raj Singh
P.W.-2	Jagdeesh
P.W.-3	Giriraj
P.W.-4	Chob Singh
P.W.5	I.O, Ram Bhul Singh
P.W.-6	Dr. V.C.Arya
P.W.-7	H.C. Technical Suresh Chand
P.W.-8	Constable Asad Hussain

8. Following **documentary evidence** were produced in support of the prosecution:

Ex. Ka-1	Written complaint
Ex.Ka-2	Recovery Memo for taking blood stained and plain soil
Ex. Ka-3	Inquest

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Ex. Ka-4	Charge-sheet
Ex. Ka-5,	Site plan
Ex.Ka-6	P.M. Report
Ex. Ka-7	Technical Examination Report of the Bus
Ex. Ka-8	Chik F.I.R
Ex. Ka-9	Carbon Copy G.D. No. 2

9. In brief, the evidence of the prosecution witnesses are reproduced herein below:

(a) P.W.-1, Informant, Shyo Raj Singh, has deposed that on 12.3.1992 at about 1:00 p.m. He was travelling in a Tempo along with Giriraj Singh, Mangal Singh, Jaggo, Keshav and others to go to Khandauli. His grandson Yogesh was also sitting in the tempo. When the tempo reached in front of Nagla Bigha, towel of a passenger fell on the way, he got stopped the tempo to the road side. When Yogesh after getting off from the Tempo was picking up the towel, by then, the accused Bus driver ran over to him by plying the Bus negligently, rashly and under the effect of intoxication. Yogesh died immediately on the spot. They caught the driver, he dictated and got over the complaint written by Chob Singh. The witness has proved the written complaint Ex. Ka-1. Police had reached on the spot and had conducted inquest. The dead body was taken to the police station wherefrom it was sent to Agra for post-mortem. Blood stained and plain soil was also taken from the spot and a recovery memo was also prepared which he had signed. The witness has also proved the aforesaid memo Ex.Ka-2.

In the cross-examination this witness has deposed that the tempo had stopped one plot away from the place where the towel had fallen. The

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Bus was going from east to west. The towel had fallen to the south side of the road and on the unpaved footpath. After taking the towel from the spot when the deceased was coming to them, the Bus had run over to him. The towel belonged to a Jatav passenger of the same tempo. The deceased had hardly walked 10-12 steps when the Bus hit him. As soon as the Bus went ahead, it was stopped by the people. They had taken the Bus driver alongwith the Bus to the police station. The bus driver stopped the Bus in the police station. He could not know which intoxicating substance had been taken by the driver. The witness denied that the driver was not plying the Bus negligently. The witness accepted that the tempo driver had not stopped the tempo to his side but had parked to the wrong side but it was parked on the vacant place. The witness denied that after taking the towel the deceased ran fastly to the wrong side and collided with the Bus from the front side. The witness has also denied that the speed of the Bus was 10-15 km/hour or the driver had stopped the Bus at once at a distance of one step.

(b) P.W.-2, has given similar statement to the statement of the informant P.W.-1. This witness has proved the inquest Ex. Ka-3 and recovery memo Ex. Ka-2.

In cross-examination this witness has given similar statement to the statement of examination in chief and has not made any admission in favour of the accused. This witness has clearly deposed that when the deceased was lifting the towel, the Bus had hit him and had stopped near the potato field. The dead body was lying to the sought side of the road, 4-6 steps away from the Tempo. The witness has denied the suggestion given by the defence side and has denied that after picking up the towel from the road when the deceased had run on wrong side, he collided with Bus. The witness also denied that the driver was plying the Bus slowly. He also denied that the driver had stopped the Bus just after the collision.

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(c) P.W.-3, Giriraj Singh, has given similar statement to the statement of P.W.1 and P.W.-2. He had not made any admission in favour of the accused during the course of the cross-examination.

This witness has deposed in cross-examination that the tempo was going from east to west whereas the Bus was going from west to east. The witness denied that the deceased had crossed the Bus suddenly and got hit by the Bus.

(d) P.W.4, Chob Singh, is an independent witness who has deposed in favour of the prosecution. He has accepted that he had written the complaint Ex. Ka-1 on the dictation of the informant. The witness denied that he had written the complaint on the dictation of the police personnel.

(e) P.W.-5, S.I. Ram Bhul Singh, I.O. of the case, has deposed that he had recorded the statements of the witnesses and had submitted the charge-sheet Ex. Ka-4 against the accused persons Data Ram and Ram Swaroop. The witness has proved the charge-sheet Ex.Ka-4, the site plan Ex. Ka-5 and inquest Ex. Ka-3 and secondary evidence which was prepared by S.I. Nanhe Lal.

(f) P.W.-6, Dr. V.H.Arya, has proved the P.M. Report Ex. Ka-6, the witness had found following injuries on the person of the deceased:

- i. Traumatic swelling 8 cm. X 5 cm. On right side at temporal area clotted blood was present in the right ear.
- ii. Lacerated wound 30cm X 5 cm. Bone deep on inner side of right leg extended from 8 cm. Below the knee.
- iii. Abrasion 5 cm. X 2 cm. On the left thigh 2 cm below the growing.
- iv. Abrasion 12 cm. X 3 cm. On the front of the left leg.
- v. Abrasion 3 cm. X 2 cm. On left pelvic.
- vi. Abrasion 3 cm. X 2 cm. on the left side of the abdomen.

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vii. Lacerated wound 2 cm. X 1 cm. through and through left external ear.

Fracture right side middle fossa. Haematoma was present on the middle and base of the brain. The cause of the death was shock and haemorrhage as a result of A.M.I.

(g) P.W.-7, Suresh Chand, H.C.M.T., had technically examined the Bus No. PUH 4490 and had noted only one defect that though the break was okay but it was light due to leakage in break compression. The back light of the Bus was found to be broken and the milestone was not working properly. This witness has proved the technical examination report Ex. Ka-7.

(h) P.W.-8, constable Ashraf Hussain, has proved the chick F.I.R. Ex Ka-8 and carbon copy G.D. Ex.Ka-9 to be in the signature and handwriting of H.M. Jagnath Singh. This witness has proved these two documents by secondary evidence.

10. Heard and perused the record.

11. In this case according to the prosecution version and the site plan Ex. Ka-5, the informant and his grandson/deceased were going to Khadauli which lies to the west of the place of occurrence whereas the impugned Bus was coming from the side of Khadauli from the west to the east. But contrary to that P.W.1, informant, has deposed that the Bus was going from east to west which is wrong as per the map Ex Ka-5, the statement of the P.W.3 and the prosecution case as well.

12. P.W.3 has deposed that the Bus was going from the west to the east and the Tempo was going from east to west. The Tempo had been parked to the reverse side of the road due to which the deceased was bound to cross the road to reach on the place of occurrence which lies on the southern part of the road. But mere parking of Tempo in adverse side or

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crossing of road by the deceased is not material in this case which would be dealt with later on.

13. There are some variations in the statements of the eye witnesses regarding the mode of incident. P.W.1 has deposed in his examination in chief that when the deceased was picking up the towel, the Bus ran over to him but this witness has deposed in cross-examination that when the deceased walked on the road after picking up the towel, the Bus ran over to him. This witness has further deposed that the deceased would have hardly walked 10-12 steps when the Bus hit him. So far as the evidence of P.W.2 is concerned, the evidence of examination-in-chief of this witness is similar to the statement of the examination-in-chief of P.W.-1.

14. It has been proved by the oral evidence of the witnesses and also site plan as well that the Tempo was going from east to west and the Tempo had been parked towards north unpaved pavement of the road. P.W.-1 has admitted in his cross-examination that the Tempo had been parked in the opposite site of his way on a vacant place. P.W.-2 has admitted in his cross-examination that the dead body was lying to the south side of the road, 4-6 steps away from the Tempo.

15. In this regard the site plan Ex. Ka-5 prepared just after the incident by the I.O. on the pointing of the witnesses is material to decide the case. This site plan proves that the revisionist-convict is the guilty to cause death of the deceased by plying the Bus rashly and negligently. As per site plan the Bus was going from the west to east meaning thereby the north side would fall to the left side of the road, Bus and the driver. It is true that the Tempo had been stopped to the north side of the road but it was parked on a safe and a vacant place. It is true that the deceased had crossed the road to pick the towel which had fallen to the southern pavement of the road where the deceased had reached before the accident and had picked up the towel. It is not so that the deceased would have hit



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in the middle of the road or to the side of the Bus as the Bus would certainly be to the north side of the road when it was coming from the west side (Khadauli) to the east.

16. 'A', the place of occurrence is the unpaved footpath which situates to the southern side of the road. The Bus had to go by the left side of the road. Thus, there was no occasion for the Bus driver to ply the Bus on the southern side of the road and if he has run the Bus there, he has certainly gone to the wrong side and the driver can not plead himself to be not guilty.

17. From the memo of blood stained and plain soil taken from the place 'C' which situates on unpaved southern pavement of the road, it is again established that the Bus had left its left side, reached to the right southern side of the road and hit the deceased. Though the deceased had not been badly crushed by the Bus but from the site plan and the oral evidence it has been proved that the Bus driver was plying the Bus rashly and negligently, hence, he was unable to control and stop the Bus otherwise the Bus would not have gone to the right side of the road and the unpaved pavement. Though, it could not be proved by the medical or by smell that the Bus driver was in drunken state but it can not be a defence for the accused. It is first and foremost duty of a driver to ply the vehicle at left side of the road in such a speed so that the vehicle might be stopped anywhere in case of an emergency.

18. It is also noteworthy that few steps east to the place of occurrence there was a crossing, therefore, it was also prime duty of the accused to slow down the speed of the Bus. If it would have been done, the impugned occurrence would not have occurred.

19. No evidence in defence has been produced by the accused. As per technical examination report, the break of the Bus was light due to leakage in break compression but it was not the cause of the incident as it

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is not a case of break failure. It was not so light or loose that it can be said to be inactive. It is not a case of inevitable accident or act of God which could not be prevented in anyway.

20. A sufficient space was also available on the proper side of the road for plying the Bus but the accused left the left side, reached the right side against the traffic rules and hit the deceased. Thus, this Court is also of the opinion that the accused was rash and negligent while driving the Bus at the time of accident, therefore, the revisionist has rightly been convicted and sentenced by the trial Court and the appellate Court has rightly dismissed his appeal.

21. It would be expedient to cite some relevant judicial pronouncements to strengthen the finding recorded by this Court which are as under:

(a) In *Bal Chandra Waman Pathe Vs. State of Maharashtra, (1968) 71 Bombay LR 634 (SC)*, the Apex Court observed that in a rash act the person does the act with indifference as to its consequent whereas negligence is an omission to do something which a reasonable man, guided upon by those considerations which ordinarily regulate the human conduct would do, or doing something which a prudent and reasonable person would not do. In the instant case, the accused appellant was driving his car at the speed of 35 miles an hour which was permissible under the rules. The Apex Court held that, therefore, he would not be alleged of rash or reckless driving. However, he was certainly negligent in not looking ahead carefully that someone was crossing the road and kept himself talking to person who was sitting with him in the Car and as a result of this, it dashed the pedestrian causing his death. He was therefore, held guilty of an offence under Section 304-A of I.P.C.

(b) In *Baldevji Thakre Vs. State of Gujrat, 1979 Cr.L.J 1136 (SC)*, the accused had run over the deceased while the latter was crossing the road.

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The accused could have easily averted the accident by swerving over the other side where there was sufficient space available. He was held guilty of rash and negligent driving and his conviction under Section 304-A I.P.C. was held proper.

22. So far as the sentencing is concerned, if the guilt under Section 304-A I.P.C is proved, the accused may be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

23. In this respect, the Apex Court has held in *State of Punjab Vs. Balwinder Singh and Others, AIR 2012 SC 861 (para 11 & 12)* that the persons driving motor vehicles should not take a chance thinking that even if he is convicted, he would be dealt with leniently by the Court. While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence.

24. The Apex Court in its judgement in *State of Punjab Vs. Saurabh Baxi (2015) 5 SCC 182*, held that the penalty with a mere two years of imprisonment for the offence of causing death of any person by doing any rash or negligent act, particularly driving cars, vehicles etc. has failed to act as a sufficient deterrent and therefore, Section 304-A needs to be revisited so that rash and negligent driving which claims nearly 400 lives on Indian roads every day may be punished more severely. The Apex Court directed the Central Government to amend Section 304-A of I.P.C. and introduce harsher punishment for causing death due to rash and negligent driving.

25. Reprimanding the Central Government for its lackadaisical approach in reviewing the said penal provision of Section 304-A, the Supreme Court in its decision in **Abdul Sharif Vs. State of Haryana,**

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**Crl. Appeal No. 13513 of 2016**, decided on 26.8.2016, reiterated the need for a high punishment for rash and negligent driving and observed:

*“There is nonchalantly attitude among drivers. They feel that they are lords. Drunkenness contributes to careless driving where other people have become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and civilized persons drive in constant fear but are still apprehensive about the obnoxiously attitude of the people who project themselves as larger than life.”*

26. The Central Government through Attorney General has assured the Supreme Court to take up the matter with law makers for necessary amendment in Section 304-A I.P.C.

27. In this case the trial has awarded two years rigorous imprisonment and Rs. 2,000/- fine with default stipulation which is not too much or harsh in view of the fact of the case and the opinion of the Apex Court. Thus, the revision is liable to be dismissed in toto.

**Order**

28. This revision is **dismissed** accordingly. The 7<sup>th</sup> A.C.J.M. Agra, is directed to summon the convict Data Ram and to send him jail for serving the remaining period of sentence.

29. Let the original records alongwith a copy of this order be sent back to the 7<sup>th</sup> A.C.J.M. Agra, for compliance and consignment of the record.

**Order Date :-** 12.10.2023

S.Verma

**{Umesh Chandra Sharma, J.}**