



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 28th February, 2025**

+ CRL.REV.P. 94/2015 & CRL.M.As. 2219/2015, 20137/2017

VIRENDER SINGHPetitioner

Through: Mr. Satyam Thareja, Mr. Shaurya
Kathoch and Ms. Vasundhara
Nagrath, Advocates.

versus

STATE (GOVT OF NCT OF DELHI)Respondent

Through: Mr. Raghuinder Verma, APP for the
State

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [currently Section 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")], challenging the order dated 12th December, 2014 (hereinafter "impugned order") passed by the learned Additional Sessions Judge, Shahdara District, Karkardooma Courts, New Delhi (hereinafter "ASJ") whereby the learned ASJ set aside the order dated 20th July, 2013 passed by the learned Chief Metropolitan Magistrate, Shahdara District, Karkardooma Courts, Delhi (hereinafter "Trial Court/CMM"), by which proceedings against the petitioner in case FIR No. 274/2010 under Sections 279/304A of the Indian Penal Code, 1860



(hereinafter “IPC) registered at Police Station Vivek Vihar, Delhi had been stopped.

2. On 3rd December, 2010 at around 2:49 PM, information was received through PCR call recorded as DD No. 17A at Police Station Vivek Vihar, Delhi reporting an accident opposite Deepak Petrol Pump, Road No. 56, Seemapuri, Delhi involving a motorcycle driven by the victim bearing registration number DL-7SAN-5335, and a DTC Recovery Van bearing number DL-1PB-2281, which was allegedly driven by the petitioner, Mr. Virendra Singh, in a rash and negligent manner.

3. The police reached the spot of the accident, identified the motorcyclist/victim and reported that he had sustained severe injuries and was unconscious. The injured was immediately taken to the hospital and his condition was initially declared as unfit for providing any statement to the police regarding the accident due to blunt trauma.

4. Consequently, the FIR bearing no. 274/2010 was registered at Police Station Vivek Vihar, Delhi initially under Sections 279/337 of the IPC. Subsequently, upon the death of the motorcyclist, identified as Mr. Ikram S/o Mr. Raheem Ahmed, due to the injuries sustained in the accident, Section 337 of the IPC was amended to 304A of the IPC.

5. The Investigating Officer and other officials attending the scene could not find any eye-witnesses to the incident. The case was investigated based on available physical evidence.



6. Thereafter, the chargesheet in the present case was filed on 19th April, 2011, wherein charges under Sections 279 and 304A of the IPC were levelled against the petitioner.
7. Approximately four months after the incident, on 8th April, 2011, Shamshad Hussain appeared before the Investigating Officer, claiming himself to be the sole eyewitness. He gave a statement under Section 161 of the CrPC, asserting that he saw the accident at around 2:49 PM on 3rd December, 2010 at Deepak Petrol Pump, alleging rash and negligent driving by the petitioner.
8. The offending bus was seized on 10th April, 2011 and a mechanical inspection was conducted confirming that the bus was in a roadworthy condition, with fully functional brakes and steering. Further inquiries revealed that the offending bus was towing another bus bearing number DL-1PB-1986 at the time of the accident.
9. The petitioner filed an application under Section 258 of the CrPC for stoppage of proceedings before the learned CMM, citing the prosecution's weak and doubtful case due to the suspicious circumstances surrounding the eye witness's delayed appearance and incomplete identification of the offending vehicle.
10. The learned CMM allowed the said application on 20th July, 2013, emphasizing serious doubts regarding the witness's credibility and logical inconsistency in the account of the accident.
11. Aggrieved by the aforesaid order, the respondent preferred a revision before the learned ASJ, wherein the order dated 20th July, 2013 passed by the



learned CMM was reversed vide order dated 12th December, 2014 on the ground that the learned Trial Court exceeded its mandate at the preliminary stage by examining the reliability of witnesses and evidence in-depth.

12. Aggrieved by the impugned order, the petitioner has preferred the present revision petition seeking the setting aside of the same.

13. Learned counsel appearing on behalf of the petitioner submitted that the learned ASJ erred by not considering that the order dated 20th July 2013 passed by the learned CMM was under Section 258 of the CrPC and not under Section 251 of the CrPC. It is further submitted that the learned ASJ exceeded its jurisdiction by reversing the well-reasoned order of the learned CMM, despite the latter rightly exercising discretion under Section 258 of the CrPC based on the material on record.

14. It is submitted that the learned ASJ erred in not providing any reason for rejecting the well-founded findings recorded by the learned CMM while stopping the proceedings under Section 258 of the CrPC. Instead of demonstrating how the learned CMM's reasoning was erroneous, the learned ASJ substituted its own reasoning, which is impermissible in revisional jurisdiction and contrary to the settled principles of law.

15. It is submitted that the learned CMM, while exercising power under Section 258 of the CrPC, was fully competent to appreciate the statement of Shamshad Hussain under Section 161 of the CrPC, as well as documents filed along with the chargesheet. It is also submitted that the learned ASJ failed to acknowledge that the learned CMM had the authority to assess the



material on record to determine whether the proceedings should continue or be stopped, as was rightly done in the present case.

16. It is submitted that the learned ASJ erred by not considering that the learned CMM neither exceeded its jurisdiction nor ignored any material evidence while passing the order under Section 258 of the CrPC. It is further submitted that the order dated 20th July, 2013 passed by the learned CMM was based on a proper appreciation of the record, and there was no perversity or illegality warranting interference.

17. It is submitted that the learned ASJ erred by not considering that the learned CMM, while exercising power under Section 258 of the CrPC, was well within its jurisdiction to examine the evidence presented before it.

18. It is submitted that the learned ASJ erred by not considering that the offending bus allegedly driven by the petitioner was towing another bus, making it impossible for the vehicle to have been driven at a high speed under any circumstance. It is further submitted that this crucial fact was rightly considered by the learned CMM while exercising power under Section 258 of the CrPC, but was wrongly disregarded by the learned ASJ without proper justification.

19. It is submitted that the learned ASJ failed to appreciate that a recovery van towing another bus could not have been driven rashly or negligently without it being immediately noticeable to bystanders and passersby. It is further submitted that the alleged incident occurred at 2:49 PM, in broad daylight, near a petrol pump, a location where a large number of people would have been present. However, no eyewitness came forward at the time



of the incident, and it was only after four months that one Mr. Shamshad Hussain appeared, claiming to be an eye-witness. Therefore, the said improbabilities were rightly considered by the learned CMM while passing the order dated 20th July, 2013, thereby discharging the petitioner. However, the learned ASJ failed to appreciate this critical aspect, leading to an erroneous reversal of the said order passed by the learned CMM.

20. It is submitted that the learned ASJ erred in failing to appreciate that the statement of Mr. Shamshad Hussain, as the sole alleged eyewitness, is insufficient to establish the culpability of the petitioner under Section 249 and 304A of the IPC. It is also submitted that the learned CMM rightly considered these deficiencies while exercising power under Section 258 of the CrPC, however, the learned ASJ failed to recognize that a conviction cannot be sustained solely on such questionable testimony, leading to an unjustified interference with the well-reasoned order of the learned CMM.

21. Furthermore, it is submitted that the learned ASJ erred in concluding that the prosecution's case disclosed an offence under Sections 279/304A of the IPC, despite the absence of credible evidence of rash and negligent driving. It is further submitted that the learned CMM had rightly exercised its discretion under Section 258 of the CrPC to stop the proceedings, and the learned ASJ's interference was unwarranted and legally unsustainable.

22. In view of the foregoing submissions, it is prayed that the instant petition may be allowed and the order dated 12th December, 2014 passed by the learned ASJ be set aside.



23. *Per Contra*, the learned counsel for the respondent vehemently opposed the present petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

24. It is submitted that learned CMM erred in stopping the proceedings under Section 258 of the CrPC, as the circumstances of the case did not warrant such an order. It is further submitted that the impugned order dated 20th July, 2013 was incorrectly passed under Section 258 of the CrPC, whereas the appropriate provision at the stage of trial was Section 251 of the CrPC, dealing with notice of accusation in summons cases.

25. It is submitted that the learned CMM was incorrect in disregarding the testimony of Shamshad Hussain (PW-2) solely due to his delayed emergence as an eye-witness. Furthermore, the prosecution case is supported by his statement under Section 161 of the CrPC, which was duly considered while filing the chargesheet. Therefore, the learned ASJ correctly appreciated that it was within the trial court's domain to assess the credibility of a witness during trial rather than at the pre-trial stage.

26. It is submitted that the learned CMM failed to take into account the material on record, including the police investigation and supporting documents filed along with the chargesheet.

27. It is submitted that it is well-settled that where there exists a *prima facie* case against the accused, questions regarding the reliability of evidence should be tested at the stage of trial and not prematurely rejected.

28. It is submitted that the prosecution had established a *prima facie* case under Sections 279 and 304A of the IPC and whether or not the accused was



driving negligently is a dispute that should be decided at the stage of trial rather than at the pre-trial stage.

29. In view of the foregoing submissions, it is prayed that the present petition be dismissed being devoid of any merit.

30. Heard learned counsel for the parties and perused the material available on record.

31. It is the case of the petitioner that the learned Sessions Court erred in setting aside the well-reasoned order of the learned CMM, who had rightly exercised discretion under Section 258 of the CrPC to stop the proceedings. The petitioner contends that the sole eyewitness, Shamshad Hussain, surfaced four months after the incident, rendering his testimony highly doubtful and that no independent evidence establishes the involvement of the alleged offending vehicle. Furthermore, the petitioner argues that the learned ASJ exceeded its revisional jurisdiction by substituting its own reasoning without demonstrating any perversity or illegality in the learned CMM's order, thereby, warranting interference in revision.

32. The respondent opposes the present petition arguing that the learned CMM erred in stopping proceedings under Section 258 of the CrPC as the circumstances did not warrant such an order and that the correct provision at this stage was Section 251 of the CrPC. It is also argued that learned ASJ rightly set aside the learned CMM's order as the credibility of Shamshad Hussain should have been assessed during trial rather than dismissing the same outrightly due to delay. It has also been emphasized by the respondent that the prosecution has established a *prima facie* case under Sections 279



and 304A of the IPC, and whether the accused was driving negligently is a factual issue requiring trial scrutiny, and in light of the above, the present petition is liable to be dismissed.

33. The present case stems from an alleged incident of rash and negligent driving resulting in the death of the victim, Ikram Malik. The prosecution attributes liability to the petitioner, asserting that the offending vehicle was being driven in a manner that directly caused the accident. However, from the very outset, the case has been impaired by serious evidentiary deficiencies, raising concerns about whether the prosecution has made out a legally sustainable case fit for trial.

34. Shamshad Hussain (PW-2) gave his statement under Section 161 of the CrPC on 8th April, 2011 before the Investigating Officer. He claimed that on 3rd December, 2010 at around 2:00 PM, he witnessed a DTC bus being driven rashly and at high speed, hitting a motorcyclist from the left side, causing him to fall on the road. The relevant portion of statement recorded under Section 161 of the CrPC is reproduced as below:

“At about 2 PM I passed through Ghazipur Seemapuri Road and reached in front of Deepak Petrol Pump. I notice a DIG bus driven in a rash, high speed hitting from left hand side to a motor-cyclist who fell down on the road due to accident. After hitting the bus driver parked his bus at a distance and saw from the gate. I also parked the motor cycle and took care of injured but DIG driver of bus went away starting his bus towards Seemapuri. I in hurry could only read the bus no. 2281.

After some time PCR reached at the spot and pupil gathered to put the injured in PCR van. Pupil also spoke of number of the



DTG bus which caused the accident. I did not hear their conversation. I can recognize the bus driver if produced before me. Today I came Masjid Sayed Nagar for my personal work and there I overheard people talking about the 3.12.10 accident. I told those individuals that the accident which took place at Road No. 56 near Petrol Pump took place in my presence and that I had read the Bus No. was 2281. Hearing this person to have died in the accident and I told the same to their house and their family members immediately after and their family members came to me and today I came with his elder brother in your office and I gave my statement.”

35. According to the statement given by Shamshad Hussain under Section 161 of the CrPC, a PCR van arrived later, a crowd gathered, during which other people also mentioned the bus number, although he did not personally hear their conversation.

36. He further stated that he could recognize the driver if produced before him. Shamshad Hussain also asserted that he only recalled the incident and its significance before overhearing a discussion in Masjid Sayed Nagar. Upon realising that the accident had resulted in a fatality, he visited the victim's family and subsequently came forward to give his statement along with the deceased's elder brother.

37. The learned CMM, while considering the question of framing notice under Section 251 of the CrPC, undertook a detailed scrutiny of the case. The relevant portion of the order dated 20th July, 2013, passed by the learned CMM is reproduced as below:

“Ordinarily in summons trial cases no arguments are heard on framing charge as only notice of accusation is to be given to the



accused. But there are cases which require some scrutiny. The present case is one such case. In case titled “S.K. Bhalla Vs. State & Ors.” being Crl.MC No. 2727/2009, cited by Ld. Counsel for accused, it has been held by Hon’ble Delhi High Court that it is inherent u/s. 251 of Cr.PC that it is bounden duty of the trial court to carefully go through allegations made in the chargesheet and consider the evidence to conclude as to whether commission of any offence is disclosed or not.

Accused has been roped in this case only on the basis of statement of the abovesaid Shamshad Hussain. Even if statement of this Shamshad Hussain is believed to be true word by word, still prosecution can never prove that it was the accused who had caused the accident. The said witness has neither told the complete number of offending vehicle nor he has explained his absence from the spot of accident on the day of accident. The manner in which he has explained meeting the IO on 8.4.11 is also suspicious and full of doubts.

If the said Shamshad Hussain had seen the accident, he should have been available at the spot. He has not explained as to why he was not present. Rukka has not been prepared on his statement and rather was prepared on the basis of DD entry. This fact is also of relevance. It appears that just for the sake of solving the case, a person has been posed as eyewitness.

Conducting trial in the present case will be a wastage of precious time of the court. Even if some material brought on record is accepted as true, there will still remain a doubt always regarding culpability of accused. As such accused is entitled for discharge in the present case.”

38. Upon perusal of the aforesaid extracts, it is made out that the learned CMM found that there was no *prima facie* material to justify the



continuation of proceedings. Referring to *S.K. Bhalla v. State & Ors. Crl. M.C. 2727/2009*, the court reiterated that it is the duty of the trial court to carefully examine the allegations in the chargesheet and the accompanying evidence to ascertain whether an offence is made out. The learned CMM observed that the sole basis for implicating the accused was the statement of Shamshad Hussain which even if accepted in its entirety did not conclusively establish that the accused was responsible for the accident. The witness failed to provide the full registration number of the offending vehicle and could not explain his absence from the accident site, rendering his testimony highly suspicious.

39. Furthermore, the learned CMM noted that the *rukka* was prepared based on a DD entry rather than the statement of Shamshad Hussain. The learned CMM found that eye witness appeared to have been introduced merely to solve the case rather than being a genuine witness to the accident.

40. Given the absence of reliable evidence establishing the accused's culpability, the learned CMM concluded that proceeding with the trial would be a futile exercise and a waste of judicial time. Consequently, the learned CMM held that the accused was entitled to discharge because even if all the material on record was taken at its face value, a lingering doubt would remain regarding the accused's involvement in the alleged offence.

41. The learned ASJ, while reversing the learned CMM's order, primarily relied on the principle laid down by the Hon'ble Supreme Court in *Bhushan Kumar v. State AIR 2012 SC 1747*, which emphasizes that at the stage of framing of notice in a summons case under Section 251 of the CrPC, the trial



court is only required to ascertain whether an offence is disclosed and not whether the allegations are true or reliable. The relevant portion of the impugned order is reproduced below:

“In Bhushan Kumar v. State AIR 2012 SC 1747, the Apex Court held as under :-

“17. It is inherent in Section 251 of the Code that when an accused appears before the trial court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial court to carefully go through the allegations made in the chargesheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”

10. I have started my findings by referring to the aforesaid observation made by the Supreme Court, with only purpose to remind myself that at the stage of framing of notice in a summons case, the Court is to analyze the allegations and evidence with only purpose to find out disclosure of an offence. This means that the Court is not supposed to go further and analyze the allegations and evidence to find out whether the allegations are true or that whether the evidence is reliable or not.

11. In the present case, from the perusal of the trial court record, I find that besides DD No. 17-A, the IO had filed PCR form relating to the information given at Police Control Room regarding the accident in question. In response to such information received by the PCR van, the officials in the van responded back to the Police Control Room at 02:25 PM that an accident had taken place between a DTC bus No. DL-1PB-2281 and motorcycle no. DL1-SAH-5335 and that injured was handed over to Duty Constable at SDN Hospital. Such



information was transmitted to Police Control Room immediately after visit of PCR van on the spot and it does have some relevance. This information supports the case of prosecution and the version of alleged eye-witness regarding the identity of offending vehicle. The eye-witness stated before the IO about the reasons of not meeting him on the day of accident and such explanation has to be appreciated only after conclusion of the trial.

From his statement, it does transpire that the offending DTC bus, which was a recovery van, had hit the motorcyclist from his left side. This recovery van was towing another vehicle and it is not always a case that a vehicle running at high speed only is assumed to be driven in rash or negligent manner. A vehicle may be rashly or negligently driven without high speed as well.

At the stage of framing of notice, it was sufficient for the trial court to find that allegedly the driver of DTC recovery van had hit the motorcyclist from its left side and had run away thereafter, after halting the vehicle for a moment. IO had obtained duty roaster of the accused to establish that he was driving this recovery van, at the given time and the accused had refused to participate in TIP proceedings. Thus, the case projected by the prosecution did disclose an offence U/s 279/304-A IPC, but the trial court could not take notice of the same.

In my opinion, the impugned order is not based on correct appreciation of law and the materials placed on the record and hence, it is set-aside. The case projected by the prosecution does prima-facie disclose a case of offence U/s 279/304-A IPC against respondent/accused and therefore, this revision petition is allowed and case is remanded back to the trial court to frame notice against the accused/respondent accordingly and to proceed further with trial of the case, in accordance with law.”



42. It is observed that the learned ASJ reasoned that the learned CMM went beyond his jurisdiction by examining the credibility of evidence and analyzing the reliability of the eyewitness' testimony, which, according to him, was impermissible at this stage.

43. The learned ASJ further observed that the prosecution had placed on record certain documents, including DD No. 17-A and the PCR form, which indicated that the alleged offending vehicle was involved in the accident as per the information transmitted to the Police Control Room immediately after the incident. The learned ASJ viewed this information as having some relevance as it allegedly supported the prosecution's case and the version of the sole eyewitness.

44. Additionally, the learned ASJ held that the statement of Shamshad Hussain explaining his delay in coming forward could only be appreciated at the conclusion of the trial and not at the stage of framing notice. The learned ASJ further observed that rash or negligent driving does not necessarily require high speed. Based on the above reasoning, the learned ASJ set aside the trial court's order, holding that the case projected by the prosecution did disclose a *prima facie* offense under Sections 279/304A of the IPC. Consequently, the case was remanded back to the trial court with directions to frame notice against the accused and proceed with the trial in accordance with law.

45. A critical aspect of the matter is that no eye witnesses were initially available at the scene of the accident, and alleged identification of the offending vehicle occurred only after four months, solely based on the



testimony of Shamshad Hussain. The learned MACT has already scrutinized his testimony and found it to be unreliable. The learned MACT categorically disbelieved his account, observing that his delayed emergence as a witness, lack of corroboration raises serious doubts about its credibility.

46. The learned MACT while adjudicating the petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 against the petitioner, his employer Delhi Transport Corporation and the insurer of the offending vehicle United India Insurance Co. Ltd. scrutinized evidence and witness testimonies. The relevant portion of the award dated 23rd April, 2016 is reproduced below:

“21. I have carefully mulled over the record and the evidence brought during the inquiries. I find it strange enough that if Shamshad Hussain was an eye witness, he would have immediately informed the police and would have taken the injured to the hospital, more particularly, when the said injured happened to be his nephew. He admitted that he did not inform the police about the accident and it was only after a gap of four months, when he chose to give his statement to the police. This fact remains inexplicable.

22. The presence of PW-2 Shamshad Hussain thus on the spot is highly doubtful because of the aforestated observations. It is moreso because, PW-1 Mst. Nagina Malik in her testimony deposed that she could not tell the name of any person who had informed the family about the accident caused by the offending bus. She in her cross examination though stated that she knows Shamshad Hussain since her marriage i.e. since the year 2005 as he is uncle of deceased (Chacha Sasur).

24. ...It gets abundantly clear that none of the family members nor even PW-2 Shamshad Hussain had informed about the involvement of the offending bus in the accident prior to



08.04.2011. Even if the testimony of PW-2 is believed to be true word by word, the absence of this witness from the spot of accident at the time of accident, is not explained. No evidence has come up in respect of the manner in which the offending bus was being driven.

25. ... PW-2 should have been available on the spot, had he witnessed the accident and should have deposed about the manner of accident. He has failed to explain this all. None of the family members ever approached the police despite such knowledge of the offending bus and the eye witness being available between 03.12.2010 and during 08.04.2011.

26. ...The Petitioners have failed to establish that the deceased had sustained fatal injuries in an accident dated 03.12.2010 involving the offending vehicle, being driver in rash or negligent manner. The testimony of eye witness is not creditworthy as he is clearly an interested witness, being family member and close relative of the deceased. Therefore, I hold that the version set up by the Petitioners is not supported by any acceptable and independent evidence.

27. This court has considered the statement of PW-3 SI Rajpal Sharma, first 10 of the case, who stated that he had inquired about the factum of offending vehicle from HC Mool Chand, who was present on a Static PGR Van near Surya Nagar Crossing at that time. PW-3 however feigned his ignorance as to if he was provided the registration number of the offending vehicle. He states that either on 04.12.2010 or thereafter by HC Mool Chand. He admits that he did not inquire into the factum of involvement of offending vehicle. He states that only after 08.04.2011, he seized the offending bus on mere statement of PW-2 Shamshad Hussain. HC Mool Chand (Traffic) was examined by the Tribunal U/s 165 of the Evidence Act, during which he stated that being on duty on a Static Van at Surya



Nagar Crossing, he was informed by one TSR Driver about the accident in front of Deepak Petrol Pump just before Seemapuri Ryover without any other details about the vehicle. He went to the spot after calling Romeo I PHQ and found the injured there, who was taken to SDN Hospital. He did find any offending vehicle on the spot nor had he informed about the registration number of the offending bus.”

47. Upon bare reading of the aforesaid, it is made out that the learned MACT came to the conclusion that the involvement of the alleged offending vehicle in the accident was not established by credible evidence. The learned MACT was particularly critical of the testimony of Shamshad Hussain, noting that despite claiming to be an eyewitness and a relative of the deceased, he failed to inform either the police or the victim’s family until four months after the accident. The learned MACT found this delay inexplicable and highly suspicious, casting serious doubt on his presence at the accident site.

48. This raises a fundamental question about whether the prosecution’s case, in its present form, possesses the evidentiary integrity required to justify further proceedings. Thus, the crux of the matter narrows down to the question of *whether the prosecution has placed sufficient, credible and legally admissible evidence on record to justify the continuation of proceedings?* If the answer is in the positive, meaning thereby, it is found that the present case still discloses *prima facie* material warranting trial, then the instant revision petition must fail and the proceedings will continue, however, if the answer is in the negative, i.e., if it is found that the



prosecution lacks reliable evidence, then the proceedings must necessarily be stopped making further discussion on revisional jurisdiction irrelevant.

49. The prosecution's case rests primarily on the testimony of Shamshad Hussain, who claims to have witnessed the accident involving the alleged offending vehicle. However, his statement was recorded only on 8th April, 2011, nearly four months after the incident, without any plausible explanation for the delay. The question that arises is whether his testimony, standing alone and uncorroborated with any independent material evidence is sufficient to sustain the prosecution's case.

50. The learned MACT, after evaluating the same set of facts, categorically disbelieved the testimony of Shamshad Hussain citing reasons such as: *firstly* despite claiming to be an eyewitness Shamshad Hussain did not come forward immediately after the accident. There was no explanation for his silence during the intervening period, nor any record of him reporting the accident to the police or medical authorities. *Secondly*, a genuine eyewitness is expected to either assist the injured victim or alert the police, however, Shamshad Hussain took no such action. His failure to act at the given time raises serious concerns about the credibility of his testimony. *Thirdly*, his account of the accident conflicted with other evidence on record, particularly the absence of any mention of the offending vehicle in the FIR.

51. The learned Tribunal specifically cast doubt on whether Shamshad Hussain was even present at the accident site, observing:

“The presence of PW-2 Shamshad Hussain thus on the spot is highly doubtful because of the aforesaid observations.”



52. Furthermore, PW-1, who is the wife of the deceased did not confirm that Mr. Shamshad Hussain had informed the family about the accident, stating that she could not recall who told them about the accident. Another critical contradiction in Mr. Shamshad Hussain's account was his failure to provide any details regarding the manner in which the accident occurred. The learned Tribunal observed as follows:

“Even if the testimony of PW-2 is believed to be true word by word, the absence of this witness from the spot of accident at the time of accident, is not explained.

53. In ***Narendrasinh Keshubhai Zala v. State of Gujarat, 2023 SCC OnLine SC 284***, the Hon'ble Supreme Court has made the following observations regarding the reliance to be placed on sole eye-witness:

*“8. It is a settled principle of law that doubt cannot replace proof. Suspicion, howsoever great it may be, is no substitute of proof in criminal jurisprudence [***Jagga Singh v. State of Punjab, 1994 Supp (3) SCC 463***]. Only such evidence is admissible and acceptable as is permissible in accordance with law. In the case of a sole eye witness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness. This Court in the case of ***Anil Phukan v. State of Assam, (1993) 3 SCC 282*** has held that:*

“3. ... So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances



which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect...”

9. The same principle has been enunciated in : *Amar Singh v. State (NCT of Delhi), (2020) 19 SCC 165.*”

54. Applying the aforesaid principle to the instant facts of the case, it is evident that Shamshad Hussain’s testimony does not meet the legal threshold for reliance upon a sole eyewitness. The Hon’ble Supreme Court in the aforesaid case has reiterated that for a sole eyewitness to be believed, their testimony must be reliable, trustworthy and beyond reasonable doubt. Unnatural conduct and unexplained circumstances surrounding the witness can serve as valid grounds to disbelieve their testimony. Furthermore, the Hon’ble Supreme Court has emphasized that where a single eyewitness is not wholly reliable, independent corroboration is necessary.

55. In the present case, the delayed emergence of Mr. Shamshad Hussain as an eyewitness, his failure to report the accident at the time it occurred, and the lack of corroboration from independent evidence make his testimony wholly unreliable. Thus, in light of settled legal principles, it is clear that Mr. Shamshad Hussain’s testimony cannot form the sole basis for sustaining the prosecution, as it does not meet the standards required for reliance on a single eyewitness account in a criminal case.



56. Apart from the unreliable testimony of Mr. Shamshad Hussain, the prosecution has not produced any independent evidence establishing the involvement of the alleged offending vehicle in the accident. The absence of such evidence is fatal to the prosecution's case, as it prevents the court from drawing a direct connection between the vehicle and the alleged offence.

57. The learned MACT noted that PW-1 Mst. Nagina Malik who is the wife of the victim/deceased, was unable to state who informed the family about the accident. The learned Tribunal noted that if Mr. Shamshad Hussain was a genuine eyewitness, he would have been the first to inform the family or the authorities about the accident and the alleged offending vehicle.

58. The learned MACT, after examining the available evidence, concluded that there was no material to establish the involvement of the alleged bus in the accident. The first responder, HC Mool Chand, who arrived at the scene of the accident, categorically stated that no vehicle was found present at the site when he reached. His testimony is critical as he was the first official on record to examine the accident location.

59. It is further deposed by HC Mool Chand that he was informed about the accident by a TSR driver, but no specific vehicle was mentioned at the time. If the accident had indeed involved a DTC bus, such a significant detail would have been reported immediately by an eyewitnesses or the first responders. However, no such report was made, thereby, further weakening the prosecution's claim. The absence of any record mentioning the presence of the offending vehicle severely undermines the case against the accused.



60. Moreover, no independent witness apart from Shamshad Hussain has ever claimed that a DTC bus was involved in the accident. This omission is particularly glaring, given that the accident allegedly took place near a petrol pump in broad daylight. If a bus had indeed been involved, there would have been other witnesses to corroborate this fact.

61. Another significant flaw in the prosecution's case is the fact that the alleged offending bus was seized only on 8th April, 2011, despite the accident occurring on 3rd December, 2010. The inordinate delay of four months in seizing the vehicle casts serious doubts on the integrity of the investigation. The sole basis for the seizure of the vehicle was the statement of Mr. Shamshad Hussain. The learned MACT observed:

“It gets abundantly clear that none of the family members nor even PW-2 Shamshad Hussain had informed about the involvement of the offending bus in the accident prior to 08.04.2011”

62. From the foregoing observation of the learned MACT, it is observed that had the vehicle truly been involved, it would have been identified and impounded much earlier. The delayed seizure indicates an afterthought, seemingly aimed at retrospectively assigning liability to the vehicle based on a later statement rather than an independent investigation.

63. Lastly, the DPCR record, which purportedly identifies the offending vehicle, appears to be fabricated, further vitiating the prosecution's case. The first responder, HC Mool Chand, categorically denied the authenticity of this document and clearly stated that he never reported any registration number



of a vehicle linked to the accident. This assertion is significant, as it directly contradicts the prosecution's claim that the offending vehicle was identified at the time of the accident.

64. The learned MACT concluded that the DPCR Record's genuineness was highly doubtful at best and it was observed as follows:

“Since, the record of PCR Form dated 03.12.2010 was not brought and the source of this document Ex.PW3/A i.e. complete call log book not produced despite repeated directions, the genuineness of this document Ex.PW3/A is highly doubtful more so when HC Mool Chand categorically denied the genuineness of Ex.PW3/A and thus denying the stand of ACP (Incharge CPCR/Control Room).”

65. The failure of the prosecution to produce the original logbook, despite repeated directions, suggests that the document was manipulated to strengthen the case retrospectively. Such a tampered and unreliable document cannot be the basis for a criminal trial. The fabrication of evidence further reinforces the lack of any credible material linking the vehicle to the accident.

66. In the present case, the prosecution's case stands on nothing more than a mere suspicion, a delayed and unreliable witness, and fabricated documentary evidence. No legally admissible and independent material ties the accused or the vehicle to the incident, rendering the continuation of trial legally unjustifiable.

67. Upon careful consideration of the material on record, this Court observes as follows:



- a. The sole eyewitness, Mr. Shamshad Hussain, has been judicially discredited by the learned MACT. His testimony suffers from multiple infirmities, including unexplained delay, contradictions and the absence of corroboration from any other source.
 - b. The prosecution has failed to establish the involvement of the alleged offending vehicle. The DPCR record, which purportedly identified the vehicle, has been found to be unreliable, and no independent evidence places the offending bus at the scene of the accident.
 - c. As per the testimony of the first responder, HC Mool Chand, he found no vehicle at the accident site, and no eyewitness at the time of the accident reported the presence of a DTC bus, thereby undermining the prosecution's case and casting serious doubt on its claim that the alleged offending vehicle was involved in the accident.
68. Since both the primary elements of the prosecution's case i.e., the eyewitness' testimony and the identification of the offending vehicle, have been found to legally untenable, it follows that there remains no justification for the continuation of the present proceedings. If the present proceedings continue against the accused despite the lack of credible evidence, he will suffer undue prejudice, facing an unwarranted trial based on unsubstantiated claims. The legal threshold for proceeding with trial has not been met, and therefore, further prosecution would amount to an abuse of the process of law.
69. In light of the foregoing discussion, this Court finds that the prosecution has failed to place sufficient, credible, and legally admissible



evidence on record to justify the continuation of proceedings. The sole eyewitness, Shamshad Hussain (PW-2), has been judicially discredited due to the unexplained delay in his statement, the lack of corroboration, and contradictions in his account, which collectively render his testimony unreliable and insufficient to sustain the prosecution's case against the accused. Further, the alleged involvement of the offending vehicle (DTC Bus No. DL-1PB-2281) remains unestablished, as no independent evidence links the vehicle to the accident. The DPCR record, which purportedly identified the vehicle, has been found to be unreliable, and the first responder, HC Mool Chand, confirmed that no vehicle was present at the accident site.

70. In view of the above, this Court holds that the learned Sessions Court erred in interfering with the order passed by the learned CMM dated 20th July, 2013 under Section 258 of the CrPC. Given that the evidence on record does not establish a *prima facie* case against the accused, further continuation of trial would amount to an abuse of the process of law.

71. Accordingly, the impugned order dated 12th December, 2014 passed by the learned ASJ, Shahdara District, Karkardooma Courts, New Delhi in Crl. Revision No. 23/2014 arising out of FIR No. 274/2010, registered under Sections 279/304A of the IPC at Police Station - Vivek Vihar is set aside.

72. In view of the aforesaid terms, the petitioner stands discharged.

73. The bail bonds, if any, shall stand discharged.

74. Accordingly, the instant revision petition is allowed and stands disposed of along with the pending applications, if any.



2025:DHC:1319



75. This order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 28, 2025

na/kj/mk

Click here to check corrigendum, if any