Delhi High Court Niranjan Singh vs The State (Delhi Administration) on 4 September, 1996 Equivalent citations: 1997 CriLJ 336 Bench: M Siddiqui ORDER 1. This is a revision against the judgment dated 5-7-1993 of Additional Sessions Judge, New Delhi in Cr. Appeal No. 282/91 affirming the conviction of the petitioner under Sections 279/304-A I.P.C. of which he had been convicted by the Metropolitan Magistrate, New Delhi and sentenced in consequence to rigorous imprisonment for one year as well as fine of Rs. 1000/-, the sentence in default of payment of fine being rigorous imprisonment for three months. 2. In brief the prosecution case was to the effect that on 25-2-86 at about 8.30 a.m. the petitioner was driving bus No. DEP 6107 in a rash and negligent manner and while so driving, he tried to overtake a vehicle from wrong side and since he could not find any space for overtaking, he applied the brakes at full speed and because of the jerk, the deceased Badal Chandra Dass, who was travelling in the bus, fell down as a result whereof he was run over by the rear wheel of the bus. On hearing the alarm raised by passengers, the petitioner stopped the bus. The deceased Badal Chandra Dass, succumbed to the injuries on the spot. On these facts, the petitioner was charge-sheeted for the offences punishable under Sections 279/304-A, I.P.C. 3. The accused pleaded not guilty to the charges levelled against him. He has examined Sukhanlal (DW 1) and Surjit Singh (DW 2) in support of his defense that his act of driving the bus was not the proximate cause of the death of the deceased. Both the Trial Court as well as the appellate Court on consideration of the evidence came to the conclusion that it had been established that the accused was driving the bus its a rash and negligent manner and was responsible for the accident. On these fact the accused was convicted u/S. 279/304-A, I.P.C. and it is the correctness of that conviction which is being assailed in the present revision. 4. The main contentions of the learned counsel for petitioner are that there is not an iota of legal evidence on record to prove that on the day in question the petitioner was driving the bus in a rash or negligent manner and further that his act of driving the bus was the proximate cause of the death of the deceased. According to the learned counsel, not only none of the grounds for the petitioner's conviction u/Ss. 279/304-A, I.P.C. given by the Trial Court as well as by the appellate Court are in any way sustainable to maintain the order of conviction but the reasoning adopted is too peripheral, lopsided, mechanical and without any honest effort to find out the real truth. 5. The facts found out by the Courts below on the basis of the testimony of sole eyewitness of the alleged incident, namely, Vasant More (PW 6) are that :- (i) at the relevant time the accused was driving the offending bus at an excessive speed, (ii) the deceased fell down from the said bus and came under the rear wheel of the bus as a result whereof he sustained fatal injuries (iii) the accused had no knowledge about the alleged incident till the time the alarm was raised by passengers of the bus and (iv) even after the alarm was raised, the accused could stop the bus at a distance of 30/40 paces from the spot. On a perusal of the impugned judgment, I am of the opinion that both the Courts below have failed to judge the story of the prosecution with a view to find out whether the alleged rash or negligent act of the accused was the proximate cause of the death of the deceased Badal Chandra Dass or in

other words there was direct nexus between the death of the deceased and the alleged rash or negligent act of the accused. Both the Courts below have held that the accused was guilty of criminal rashness because in their view he was driving the bus at an excessive speed. I am constrained to observe that both the Courts below are blissfully ignorant about the concept of culpable 'rashness' or 'negligence. Rashness consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand is the gross and culpable neglect or failure to exercise that reasonable or proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. Thus, the main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed of the offending vehicle but deliberate disregard to the obligation of its driver to drive with due care and attention and taking a risk indifference as to the harmful consequences resulting from it. In a case of this nature, the test is whether the prosecution has proved that :- (i) the accused was driving the vehicle in such a manner as to create an obvious and serious risk of causing physical injury to some other person who might happen to be using the road or of doing substantial damage to the property; (ii) in driving the vehicle in that manner the accused did so without having given any thought to the possibility of there being any such risk or, having recognized that there was some risk involved, had nonetheless gone on to take it; and (iii) the rash or negligent act of the accused was the proximate cause of the death of the deceased. 6. As the accused's conviction is primarily based on the evidence of Vasant More (PW 6), who claims to have witnessed the alleged incident, it would be in the fitness of things to see what he deposed in the Court. His evidence is to the effect that on 25-2-1986 at about 8.30 a.m. while he was going on a cycle and had reached Block G.K. he saw the offending bus coming at a fast speed being driven by the accused and he noticed the deceased falling down from the bus on the road and that thereafter he raised an alarm in consequence of which the accused stopped the bus at some distance. Investigating Officer, R. K. Tyagi (P.W. 10) deposed that when he came to the spot, he found the bus standing at about 30/40 paces ahead of the dead body. It is worth highlighting that the prosecution case is that while driving the offending bus, the accused attempted to take over a vehicle from wrong side and since he could not find any space for overtaking, he applied the brakes at full speed and because of the jerk, the deceased fell down from the bus and was run over by its rear wheel. Surprisingly, none of the prosecution witnesses including Vasant More (PW 6) has stated anything about the said story. It appears that during the trial, this part of the story was abandoned by the prosecution and both the Courts' below have failed to take into account this material aspect of the prosecution case while testing the prosecution evidence extrinsically as well as intrinsically. This is a serious infirmity which shakes the very foundation of the prosecution case. 7. Both the Courts below seem to have been greatly

impressed by the facts as deposed by Vasant More (PW 6) that the accused was driving the bus at a fast speed and that the deceased fell down from the bus as a result whereof he sustained fatal injuries which ultimately led to his instantaneous death and from these facts they drew an inference that the accused was responsible for the death of the deceased. I regret to observe that in this case the approach made by the Courts below was purely wooden, artificial and based on pure speculation. It needs to be emphasised that a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. 8. As stated earlier, Vasant More (PW 6) has simply stated that at the relevant time the accused was driving the bus at a fast speed. This witness did not have the capacity to fix the speed of the bus. What is a dangerous speed is a question of fact. The normal principle is that the speed should be such as to permit the driver to stop or deflect his course within the distance he can see is clear. It has come in the examination-in-chief of Vasant More (PW 6) that immediately after the alleged occurrence he raised an alarm in consequence of which the accused stopped the bus. In his cross-examination, he deposed that the bus was stopped at a distance of 8 to 10 feet from the spot. The very fact that on hearing the alarm raised by the said witness, the accused stopped the bus at a distance of 8 to 10 feet from the spot shows that the bus was being driven at a normal speed. Both the Courts below have failed to consider this aspect of the matter. The elementary procedural law with regard to the question as to how a finding as to whether a particular fact has been proved or not should be arrived at is that such a finding should be arrived at not on the basis of a stray piece of evidence considered in an isolated manner but on the basis of the total effect of the entire evidence on record. This is laid down in Section 3 of the Evidence Act. The mere fact that deceased fell down from the bus and came under its rear wheel would not be enough to make the petitioner responsible for the death of the deceased. What Section 304-A, I.P.C. requires is causing death by doing any rash or negligent act, and this means that death must be the direct or proximate result of the rash or negligent act. I may in this connection usefully excerpt of the following observations of Sir Lawrence Jenkins is Emperor v. Omkar Rampratap, (1902) 4 Bom LR 679 :- "To impose criminal liability under S. 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of the author's negligence. It must be the causa causans; it is not enough that it may have been the causa sine qua non." 9. Both the Courts below have failed to notice that none of the prosecution witnesses has states as to what was the actual cause of the deceased's fall from the bus. It is not at all amenable to reason that a passenger sitting in a bus would have fallen down from the moving bus in the manner as alleged by the prosecution. It is the contention of the learned counsel for the petitioner that a general picture of the alleged incident that emerges from the testimony of the bus conductor Sukhan Lal (D.W. 1) is that at the relevant time the deceased had attempted to alight from the moving bus and in that attempt he fell down and came under its rear

wheel on account of the rolling of the body by a fall from the bus which ultimately led to his instantaneous death. It is the further argument of the learned counsel that this circumstance was not taken into consideration by the Courts below in analysing the evidence adduced by the prosecution. On a perusal of the evidence of Sukhan Lal (D.W. 1), I am of the opinion that the aforesaid possibility finds sufficient assurance from his testimony. The prosecution has not been able to exclude or eliminate this possibility beyond reasonable doubt. At, any rate, the fact that the deceased may have fallen down while alighting from the moving bus cannot be safely excluded or eliminated. Viewed thus, it appears that the direct or proximate cause of the accident which resulted in the death of the deceased Badal Chandra Dass was the act of the deceased himself. Both the Courts below attached no importance to the above mentioned catena of significant circumstances and recorded the finding of guilt by the simplistic method of accepting the evidence adduced by the prosecution without analysing or testing it on the touchstone of probabilities. In fact, the findings of the Courts below can be said to be findings which are not supported by any evidence worth the name. I am, therefore, unable to maintain the petitioner's conviction under Sections 279/304-A, I.P.C. 10. In the result, the revision succeeds, the order of conviction and sentence is set aside and the petitioner/accused is acquitted of the offences charged u/Ss. 279/304-A, I.P.C. His bail bonds shall stand discharged. The amount of fine, if paid by the petitioner, shall be refunded to him. 11. Revision allowed.