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

+ CRL.REV.P. 356/2009

RAMA NAND PASWAN Petitioner
Through: Mr.Mohinder Madan and
Ms.Rashmi B. Singh, Advocate
versus

STATE (GOVT OF NCT DELHI) Respondent
Through: Mr.Lovkesh Sawhney, APP for State

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **YES**
2. To be referred to the Reporter or not? **YES**
3. Whether the Judgment should be reported in the Digest? **YES**

ORDER
% 11.08.2009

G.S. SISTANI, J.

1. This is a petition under Section 397/401 of the Code of Criminal Procedure, 1973 against the order dated 25.03.2009 passed by learned Additional Sessions Judge, Delhi, in Criminal Appeal No.30/2008, upholding the judgment dated 06.08.2008 and order on sentence dated 12.08.2008 passed by the learned MM, by virtue of which, the petitioner was convicted under Section 279 read with Section 304-A of the Indian Penal Code 1860. As per the order on sentence dated 12.08.2008, the petitioner was sentenced to undergo Simple Imprisonment for a period of one year apart from fine of Rs.2000/- that was also imposed

upon him. In default of the payment of fine, the petitioner was directed to undergo further SI for a period of one month. As per the said order dated 12.08.2008, the fine stands deposited by the petitioner.

2. The facts of the case as noticed by the learned Additional Sessions Judge are that on the night intervening 3rd and 4th May, 2001, one Tata Tempo 407- bearing No. DL 1LC 6756, was parked near the pavement on the Ring Road, Naraina Flyover, Delhi. At about 4.00 a.m., one truck bearing No.DL 1G 0846, driven by the petitioner in a rash and negligent manner, coming from the Dhaula Kuan side, hit the stationery tempo from the back. The impact was so great that one person was crushed under the tempo. At that time Constable Fateh Singh happened to be on patrolling duty in that area and he witnessed the entire incident. The petitioner was apprehended at the spot and after due investigation, charge sheet was filed. Post trial, the petitioner was found guilty and was sentenced.
3. Learned counsel for the petitioner submits that the judgment dated 06.02.2008 passed by the learned Metropolitan Magistrate and the judgment dated 25.03.2009 passed by the learned Additional Sessions Judge upholding the conviction of the petitioner, are bad in law and based on inappropriate appreciation of the facts of the case. Counsel further submits that the prosecution examined the witnesses who were primarily formal

witnesses and the entire judgment has been based upon the evidence of Mr. Fateh Singh, PW-2. However, there are several contradictions in his statement and the same have been ignored by the learned Courts below. It is submitted that PW-2 in his examination-in-chief has deposed that he took the petitioner to police station and handed him over to the duty officer. This statement is contrary to the statement of PW-11, investigating officer of the case who has deposed that on the complaint of PW-2 a *rukka* was sent and FIR was registered. PW-2 further deposed that the persons standing in front of the tempo (deceased) told PW-2 that he was standing to look after the tempo which is again contrary to the report of the I.O., which states that the deceased was sleeping in front of the tempo and the tempo was punctured.

4. Learned counsel for the petitioner submits that statement of the petitioner under Section 313 Cr.P.C. was also recorded by the learned Trial Court, however, no incriminating material was put to the petitioner and the examination of the petitioner was rendered an empty formality. Counsel further submits that the learned Sessions Judge had failed to observe that the basic ingredients of the offence under Section 279 read with Section 304-A of IPC were not fulfilled. He submits that merely because the truck was driven at a high speed, that by itself would not be the

act of the petitioner which may connect him to rash and negligent driving, the basic ingredient of section 304-A, IPC.

5. Learned counsel for the petitioner submits that, however, the petitioner does not wish to press the revision petition on merits and submits that taking into consideration that the petitioner has three minor children and besides he has not been involved in any accident in the past, the sentence awarded to the petitioner be reduced to the period already undergone.
6. Per contra, learned APP for the State has submitted that since the act of the petitioner has resulted in the death of a person, the sentence should not be reduced to the period already undergone.
7. I have heard learned counsels for both the parties. In the facts of this case I find that on 4.5.2001, at about 4:00 a.m., an accident took place in which a tempo which was parked on the Ring Road, Narayana Flyover, Delhi was hit by a truck from the back. This resulted in the death of a person, who was standing in front of the tempo. The learned MM below observed that the petitioner was guilty under section 279 read with section 304-A of the IPC. The learned ASJ vide order dated 25.03.2009 upheld the judgment passed by the learned MM.
8. After some hearing in the matter, learned counsel for the petitioner has submitted that he does not wish to press the petition on merits and submits that in view of the fact that

the petitioner has three minor children and he is the only bread winner of the family and he has no previous conviction, the sentence of the petitioner be reduced to the period already undergone. The learned APP for the State, while opposing, has also addressed his arguments only on this short issue 'as to whether the sentence awarded to the petitioner under section 279 read with section 304-A of the IPC, be reduced to the period already undergone'.

9. It is seen that section 304-A, IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. This provision is directed at offences outside the range of Sections 299 and 300 IPC, and applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A. (*Naresh Giri Vs. State Of M. P.* reported at (2008) 1 SCC 791).
10. In the case of ***Dalbir Singh Vs. State of Haryana*** reported at **(2000) 5 SCC 82**, the Apex Court has dealt with the question relating to the quantum of sentence, which may be awarded in cases involving death of a person due to rash or negligent driving. It has been held that an ever increasing number of cases of rash and negligent driving require that the Courts be stern in imposing sentence in such offences. It was held as under:

“13. While considering the quantum of sentence to be imposed for the offence of causing

death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

11. In the case of ***Manish Jalan Vs. State of Karnataka***, reported at **(2008) 8 SCC 225**, the Apex Court has held that while awarding sentence under section 304-A, IPC, the Court should also consider whether the person found guilty of the offence was under the influence of alcohol or not at the time of the commission of offence. It was held:

“16. True that in the instant case the appellant has been found to be guilty of offences punishable under Sections 279 and 304-A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of a precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simpliciter and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment.

18. Accordingly, the conviction of the appellant under Sections 279 and 304-A IPC is maintained. However, the substantive sentence of imprisonment is reduced to the period already undergone."

12. In ***Rattan Singh v. State of Punjab*** reported at **(1979) 4 SCC 719**, the Supreme Court has held:

"5. Nevertheless, sentencing must have a policy of correction. This driver, if he has - to become a good driver, must have a better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Punishment in this area must, therefore, be accompanied by these components."

13. Applying the settled position of law, I find that as per the learned ASJ, it has been established against the petitioner that he was driving a truck at a high speed and that he is responsible for having caused an accident with a stationery tempo, on the Nariana Flyover, Delhi. It is further proved that the impact was so great that the tempo moved a few paces ahead and a person standing in front of the tempo was crushed under the tempo. Applying the principles laid down in ***Dalbir Singh*** (*supra*) that Courts should be sensitive to the plight of the victims and their family members and that the rising number of road accidents needs to be curbed and punishment should be so awarded that it creates a deterrence. In my considered opinion, there is merit in the contention of learned counsel for the State that in view of the rash and negligent act of the petitioner that has led to the death of an innocent person,

the petitioner cannot be released on the basis of the sentence undergone by him. However, at the same time, in light of the decision rendered in the case of **Manish Jalan** (*supra*), I find that there is no allegation against the petitioner that he was driving the truck under the influence of alcohol. In the case of **Manish Jalan** (*supra*) the Court took into account the fact that *there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simpliciter and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment.* Further it has been submitted before me that the accident actually occurred due to the fault of some other vehicle and the petitioner had to immediately move the truck on the side where the tempo was parked. I also find that as per the latest nominal roll dated 20.07.2009 filed on record, the unexpired portion of the sentence of the petitioner is seven (7) months. His conduct in the jail has been satisfactory and no other case has been pending against him. It has been submitted before me by the learned counsel that the petitioner has three (3) minor children, who want his immediate care and attention and he is the sole bread winner of the family. Thus, without being overtly sympathetic to the petitioner, in my considered opinion, the

interest of justice would be met if the sentence of the petitioner is reduced from one year of Simple Imprisonment to eight months of Simple Imprisonment. Accordingly, the order dated 25.03.2009 passed by the learned Additional Sessions Judge, Delhi, in Criminal Appeal No.30/2008, upholding the judgment dated 06.08.2008, is upheld. However the order on sentence is modified to the extent that the sentence awarded to the petitioner is reduced from a period of twelve months to eight months of SI.

14. With above modification, revision petition is disposed of.

August 11, 2009
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G.S. SISTANI, J.