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

+ **CRL.REV.P. 550/2015**

Date of decision: 03.11.2015

RAJAN SINGH @ BOBBY Petitioner
Through Mr.D.B.Yadav, Advocate.

versus

STATE (NCT OF DELHI) Respondents
Through Mr.Raghvinder Varma, APP.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. Rajan Singh @ Bobby, assails the judgment and order of conviction dated 08.11.2012/04.12.2012 passed by the learned Metropolitan Magistrate-02/West: Delhi in connection with FIR No.365/03 (P.S.Hari Nagar) whereby he has been convicted under Sections 279/338 and 304A of the IPC and has been sentenced to undergo simple imprisonment for two months, fine of Rs.1000/- and in default of payment of fine simple imprisonment for 10 days for the offence under Section 279; simple imprisonment for two months, fine of Rs.1000/- and in default of payment of fine simple imprisonment for 10 days for the offence under Section 338 of the IPC and simple imprisonment for one year, fine of Rs.3000/- and in default of payment of fine simple imprisonment for one month for the offence under Section 304A IPC, the sentences, however, having been ordered

to run concurrently; as also against the order dated 16.5.2015 passed by the learned Additional Sessions Judge West-04, Tis Hazari Courts, Delhi passed in Crl.Appeal No.7/2/14 whereby the conviction and sentence imposed by the Trial Court has been upheld.

2. The petitioner, while driving a vehicle (Tata Sumo) bearing registration No.HR 38HT 1113 in a rash and negligent manner dashed two scooters, one of which was being driven by the deceased and the other by the complainant. Because of the impact of the collision, Ranjeet Singh expired and the complainant suffered grievous injuries. As a result thereof DD No.9A was lodged at police station Hari Nagar. The statement of the complainant was recorded at the Deen Dayal Upadhyay Hospital whereafter FIR No.365/2003 was instituted against the petitioner for the offences under Sections 279/338 and 304A with the Hari Nagar police station.

3. During trial, seven witnesses were examined on behalf of the prosecution.

4. Surinder Singh (PW-1) who is the complainant of the case, has deposed that while he was coming to his house on his scooter on 19.08.2003, he heard and saw that two boys were signalling him to stop his scooter. The boys were asking for petrol. It was at this point of time that a Tata Sumo vehicle came from behind and hit his scooter. The vehicle was being driven in a rash and negligent manner. One of the boys who was taking out petrol from his scooter was also injured. The aforesaid witness did not remember the complete number of the vehicle but had spotted the registration number as HR 38. The driver of the vehicle got down but PW-1 failed to identify the accused driver

in the Court. The aforesaid witness and the injured boy (Ranjeet Singh) were taken to DDU Hospital where the injured Ranjeet Singh was declared brought dead by the doctors. PW-1 has proved his complaint (Ex.PW-1/A).

5. Sumit Chawla (PW-2) another eye witness of the accident, testified to the fact that the Tata Sumo vehicle bearing registration No.HR 38 HT-1113 hit the scooter of the deceased and of the complainant as the offending vehicle was being driven in a rash and negligent manner. PW-2 has proved the site plan (Ex.PW-2/A). However, he has also failed to identify the accused in Court as the accident had taken place at night.

6. Devender Singh (PW-3), uncle of the deceased Ranjeet Singh identified the dead body of his nephew.

7. Head Constable Shyam Sunder (PW-4) has testified to the fact that two scooters which met with the accident were found at the site. He came to learn on the spot that the injured persons were taken to DDU Hospital.

8. Satish Sherawat (PW-5) is the proprietor of Megha Tour and Travels and is the owner of the offending vehicle. He had received notice under Section 133 of the Motor Vehicles Act (Ex.PW-5/A), to which he replied. It has been categorically stated by PW-5 during trial that on the time and date of occurrence, the vehicle in question was being driven by the petitioner. The offending vehicle was returned to PW-5 vide superdarinama (Ex.PW-5/D).

9. The petitioner was handed over to the police by PW-5 who had come to the police station along with his mother. Constable Ravinder

(PW-6) has confirmed the fact that the petitioner was arrested and his personal search was made in his presence.

10. The investigating officer of the case, PW-7, has supported the prosecution version in its entirety.

11. The petitioner has denied the allegation in his statement recorded under Section 313 of the Code of Criminal Procedure.

12. The petitioner has assailed both the judgments of the Courts below on the ground that there were material contradictions in the statement of the witnesses and that there was no eye witness of the occurrence. The two eye witnesses namely the complainant (PW-1) and Sumit Chawla (PW-2) did not identify the petitioner in the Court. Thus, it was urged that the prosecution has not been able to prove its case beyond reasonable doubts.

13. The identity of the petitioner as the driver of the offending vehicle stands established by the testimony of PW-5, the owner of the offending vehicle. The factum of rash and negligent driving by the petitioner has been proved by PWs.1 & 2. The fact that the deceased died because of the injuries suffered by him as a result of the accident which was caused because of rash and negligent driving of the accused has also been proved.

14. From a holistic reading of the deposition of PWs.1, 2 & 5, there remains no doubt that the petitioner drove the vehicle at the time of accident in a rash and negligent manner leading to the death of Ranjeet Singh. The scooter of the complainant as also of the deceased was in a stationary position as the complainant had been signalled to stop his

scooter for the purposes of lending petrol to Ranjeet Singh (deceased) and his associate.

15. The post mortem report of Ranjeet Singh (Ex.P-1) and the MLC of the complainant (Ex.P-2) has not been disputed by the petitioner.

16. There is only a simple denial of the occurrence by the petitioner in his statement recorded under Section 313 of the Code of Criminal Procedure. No effort has been made by the petitioner to dislodge the prosecution version that it was only he who was driving the offending vehicle at the relevant time.

17. Thus the conviction of the petitioner by the Trial Court and its affirmation by the Appellate Court cannot be faulted with.

18. The learned counsel appearing for the petitioner has, however, submitted that the petitioner has already deposited the amount of fine as also the compensation imposed by the Trial Court. It has also been submitted that the trial of the present case continued for about 12 years and, therefore, the sentences imposed upon the petitioner is excessive and harsh. It is submitted that after the affirmation of the conviction by the Appellate Court, the petitioner is in custody since 10.08.2015.

19. However, taking into consideration the fact that the accident took place in the year 2003; the petitioner participated in the trial for about 12 years and that the amount of fine and compensation has already been paid by the petitioner, this Court is of the opinion that for the offence under Section 304A of the IPC, the sentence of four months would sub serve the cause of justice. So far as the quantum of sentence for the offences under Section 279 and 338 of the IPC is concerned, there is no reason for interfering with the same.

20. Thus while maintaining the conviction and sentence for the offences under Sections 279 and 338 of the IPC, the sentence imposed under Section 304A of the IPC is reduced from one year to a period of four months.

21. The aforesaid reduction in sentence has been ordered on a consideration of the mitigating circumstances which have been listed above.

22. There can be no dispute over the proposition that the sentence has to be in proportion to the crime and the circumstances in which it is committed. What any court of law has to be careful of, while sentencing a wrongdoer, is that the sentence imposed ought not to be the antithesis of the reformatory approach of any penal legislation. The sentencing process has to be, and justifiably so, tempered with social/human considerations. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. The punishment should not be disproportionately excessive.

23. The judicial precedents in this regard suggest that relevant consideration for sentencing would be the facts and circumstances in each case; the nature of crime; the manner in which it was committed; the conduct of the accused post commission of offence and all other attending circumstances. All the above factors individually and collectively need form part of the consideration of a court while sentencing.

24. While reducing the sentence under Section 304A of the IPC from one year to four months, this Court has taken note of the fact that the petitioner is the bread earner of his family, he has to look after his

old mother and that the occurrence took place 12 years ago. The petitioner has not been made accused thereafter for rash and negligent driving.

25. Thus, for the reasons aforesaid, the revision petition is partly allowed and the sentence foisted upon the petitioner for the offence under Section 304A of the IPC is modified and is reduced from one year to four months.

26. The petition is disposed of accordingly.

Crl.M.B No.7670/2015 and Crl.M.A. No. 15745/2015(Early Hearing)

1. In view of the petition having been partly allowed, no orders are required to be passed in the instant applications.

2. Dismissed as infructuous.

A copy of this order be sent to the Superintendent of the concerned jail for information, compliance and record.

NOVEMBER 03, 2015
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ASHUTOSH KUMAR, J