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

+ **CRL.REV.P. 673/2015**

Date of decision: 23.11.2015

GAFFAR AHMED Petitioner
Through Mr. Haneef Mohammad &
Mr. Kamal Pal, Advocates.

versus

STATE Respondent
Through Mr.Raghvinder Varma, APP.
ASI Yash Pal Singh,
P.S. Kashmere Gate

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. Gaffar Ahmed was convicted by the learned Trial Court in connection with FIR No.180/2001 (P.S.Kashmere Gate) for the offences under Sections. 279 and 304A of the IPC and was sentenced to undergo simple imprisonment for three months for the offence under Section 279 and simple imprisonment for one year for the offence under Section 304A IPC besides compensation of Rs.50,000/- to be paid equally to Affan Riaz and Sania Riaz, son and daughter of the deceased. The aforesaid judgment of conviction and sentence was passed on 06.08.2015/20.08.2015.

2. Gaffar Ahmed preferred an appeal against the aforesaid judgment and order of conviction and sentence before the learned

Additional Sessions Judge-03: (Central), Tis Hazari Courts, Delhi vide Criminal Appeal No.4415/2015. The Appellate Court, while maintaining the conviction under both the counts, modified the sentence imposed for the offence under Section 304A IPC from one year to nine months. The sentence imposed for the offence under Section 279 of the IPC was not interfered with. However, the amount of compensation was enhanced from Rs.50,000/- to Rs.1,00,000/-, to be equally distributed between the son and the daughter of the deceased.

3. Hence the revision petition.

4. The petitioner is alleged to have driven a truck bearing registration No.HR-01-GB-0318 in such a rash and negligent manner on 30.04.2001 at around 12.10 p.m that it against a two wheeler leading to the death of the pillion rider.

5. Constable Ravinder Kumar (PW-2), one of the two eye witnesses, has deposed before the Trial Court that on 30.04.2001 while he was posted at Kashmere Gate on traffic duty, he saw one truck bearing registration No. HR-01-GB-0318 being driven in a rash and negligent manner. The vehicle came from the side of ISBT flyover and hit one scooter bearing registration No.DL1SE 1610. As a result of the impact, the scooter fell down. The truck was stopped and the petitioner was apprehended. He has testified to the fact that the truck papers were taken in custody. A lady was spotted by him lying on the road. Somebody had called the police. After sometime, ASI Rattan Lal (PW-4) came from the local police station to the spot. The vehicle and its documents were handed over to SI Rattan Lal (PW-4). A case was

registered on the basis of statement of Riyaz Khan, PW-8 who was driving the scooter and who is the husband of the deceased Anjum.

6. Riyaz Khan (PW-8) has stated that on 30.04.2000 he along with the deceased had gone to Seelampur on his scooter. At about 12 noon when he reached near ISBT flyover, he spotted in the looking glass a truck coming in a zig-zag fashion from behind. The vehicle was coming at a high speed. Before he could realize, his scooter was hit by the offending vehicle. He and his wife, both, fell down on the road. The wife of PW-8 fell on the right side of the scooter and was trampled by the offending truck. Since the check post was very near the place of accident, the offending vehicle was stopped by one of the police officials. The petitioner was handed over to the police officer. There was no life in the body of his wife. She had obviously expired. His statement was recorded at the spot by the police (Ex.PW-4/A). After the post mortem, the dead body of his wife was given to him. He has, however, fairly stated that he did not remembered the exact registration number of the truck but only remember that it was registered at Haryana.

7. Dr.D.K.Goel (PW-3) proved the post mortem report (Ex.PW-3/A). He had conducted the post mortem on the body of Anjum, wife of Riyaz Khan (PW-8) on 30.04.2001.

8. Thus from the evidence of PWs.2, 3 & 8 it is clearly established that the deceased was the wife of PW-8; she was travelling along with PW-8 on a scooter on 30.04.2001; the scooter was hit by the offending truck; the offending truck was being driven by the petitioner who was arrested on the spot and because of the accident, the wife of PW-8

namely Anjum died.

9. Thus all the ingredients for establishing offences under Section 279 and 304A of the IPC have been successfully proved at the trial.

10. Khalid Ahrishan (PW-1) has confirmed before the Trial Court that he received an information regarding the accident of his sister-in-law. He is also said to have identified the dead body of his sister-in-law Anjum. Similar statements have been made by Constable Vinod Kumar (PW-5), Constable Amit Kumar (PW-7) and Retired Head Constable Raghubir Singh (PW-9).

11. SI Rattan Lal (PW-4) has deposed that on the relevant date i.e. 30.04.2001, he was posted at Kashmere Gate and was on an emergency duty. At about 2.30 p.m on the same day DD No.11A was marked to him, whence he along with Constable Vinod Kumar (PW-5) went to the place of occurrence and arrested the petitioner who had earlier been apprehended by Constable Ravinder Kumar (PW-2). The statement of Riyaz Khan, husband of the deceased was recorded. Papers of the offending vehicle were seized and site plan (Ex.PW-4/D) was prepared.

12. Thus the testimonies of PWs.2 & 8 have remained unshaken despite serious cross examination.

13. It has been argued on behalf of the petitioner that both the judgments of the Court below are perverse and irregular and the accepted canons of accepting the evidence has been thrown to the winds. It has been submitted that the conclusion of guilt arrived at by the Courts below is against the weight of overwhelming evidence. However, from the record it appears that in the appeal it was argued

that the compensation amount be enhanced and the petitioner be released on probation.

14. The fact that the petitioner was apprehended at the spot and mechanical inspection report (Ex.CW-4/J) confirms the fact that the offending vehicle as well as the scooter had met with an accident, lends complete support and credence to the prosecution version additionally.

15. Thus the conviction of petitioner under Section 279/304A IPC is justified.

16. However, considering the fact that the accident took place about 15 years ago, this Court finds it difficult to maintain the sentence imposed upon the petitioner. Though a court of law ought not to be only guided by the fact as to what would happen to the family of a convicted person if he is sent to jail but it should also not be over zealous in imparting heavy sentence in order to demonstrate that wrongdoer cannot be allowed to go off lightly.

17. Sentencing a convict is a serious business and there can be no cavil on the proposition that the sentence has to be in proportion to the crime and the circumstance in which it was committed. The reformatory approach, while undertaking the sentencing process, has more often than not, been adopted in cases of this kind. This is not only in tune with social/humane considerations and requirements but is also aimed at making a convict an important adjunct of society, who is to render useful service to particularly members of his family and society at large.

18. A just punishment is the collective cry of the society. However, the principle of proportionality between crime and punishment and the principle of just punishment can also not be overlooked and brushed aside lightly.

19. A very important consideration in the present case is whether the petitioner should be sent to jail after 15 years of the occurrence. The conduct of the petitioner in the intervening period namely his participation in the trial and his not involving himself in any other crime would be relevant considerations for deciding about the quantum of sentence to be imposed upon the petitioner.

20. It has been submitted that the petitioner has remained in jail for a total period of 53 days.

21. For the aforesaid reasons, this Court is of the opinion that instead of sending the petitioner to jail now after 15 years it would only be fruitful if the petitioner is sentenced to the period of custody which he has already undergone and is made to pay a fine of Rs.1,00,000/- to be equally distributed between the son and daughter of the deceased. The aforesaid modification in the sentence has been made by this Court on the basis of the submission made on behalf of the petitioner that he is privately employed and has a large family comprising his wife and four children including one differently abled boy.

22. Thus while maintaining the conviction, the sentence imposed upon the petitioner is reduced and modified to the period of custody which he has already undergone and payment of fine of Rs.1,00,000/-, to be equally distributed between the son and the daughter of the

deceased within a period of seven days from the date of passing of this order.

23. The petitioner shall be released from jail if not wanted in any other case and on satisfaction of the Superintendent of the concerned jail regarding payment of fine to the son and daughter of the deceased.

24. The revision petition is partly allowed and is disposed of in terms of the above.

Crl.M.B No.7990/2015

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.

Let two copies of the judgment be transmitted to the Superintendent of the concerned jail for information, compliance and record.

NOVEMBER 23, 2015
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ASHUTOSH KUMAR, J