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

+ **CRL.REV.P. 739/2015**

Date of decision: 18.11.2015

MADAN SINGH

Through

..... Petitioner

Mr.Habib Ur Rehman,
Advocate.

versus

STATE

Through

..... Respondent

Mr.M.P. Singh, APP.
SI Shiv Prakash, PS DBG Road

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

Crl.M.A. No. 16697/2015

1. Exemption granted subject to all just exceptions.
2. Application stands disposed of.

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1. Madan Singh was charged and convicted for the offence under Section 279/304A of the IPC and was sentenced to undergo rigorous imprisonment for four months under Section 279 of the IPC and rigorous imprisonment for six months for offence under Section 304A of the IPC and a fine of Rs.20,000/-, in default of payment of which, a further simple imprisonment for a month, by the learned Trial Court namely Chief Metropolitan Magistrate: Central District, Tis Hazari in connection with FIR No.96/01 (P.S. DBG Road).

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2. In the appeal preferred by Madan Singh namely Criminal Appeal No. 44/2015, the Additional Sessions Judge (Central): Delhi affirmed the conviction and sentences imposed upon him.

3. Hence, the present revision petition.

4. The petitioner is alleged to have been driving a truck, bearing registration No.RJ-04-G-0788, on a public way in a rash and negligent manner on 23.4.2001. Due to such rash and negligent driving, an accident took place and an auto-rickshaw was hit by the offending vehicle. The auto-rickshaw driver namely Raj Kumar sustained injuries and later died of such injuries in the hospital.

5. On information regarding the aforesaid accident, DD No.7A was registered and SI Satish Kumar (PW-6) along with HC Kiran Pal (PW-2) came to the spot. On learning that the injured has been shifted to RML Hospital, the aforesaid police officers went to RML Hospital and obtained the MLC of Raj Kumar which disclosed that the injured was declared brought dead. The place of the accident was visited by PW-6 (IO) again and the statement of one Ranjeet Choudhary was recorded. Ranjeet Choudhary has been examined as PW-1 at the trial. On the basis of the statement given by PW-1, FIR No.96/01 (P.S. DBG Road) was registered for the offences under Sections 279 and 304A of the IPC.

6. At the trial, six witnesses were examined in order to bring home charges of rash and negligent driving against the petitioner.

7. Ranjeet Choudhary (PW-1) has claimed to be the eye witness of the occurrence. He himself is an auto-rickshaw driver and on the date and time of the occurrence, i.e. 23.4.2001, at about 6 a.m. he was going to Karol Bagh in his auto-rickshaw to pick up passengers. He has testified to the fact that when he reached Faiz Road and DBG Road crossing, he saw one truck bearing registration No.RJ-04-G-0877 being driven in a rash manner. The aforesaid truck hit one auto rickshaw and as a result of the impact of such collision, the driver of the auto rickshaw fell down on the road. PW-1 and another auto driver took the injured to RML Hospital. It was learnt that the injured was Raj Kumar.

8. PW-1 has categorically stated before the Trial Court that the petitioner was driving the offending vehicle at a fast speed. The vehicle came from the side of Dhaula Kuan and the red light was jumped. The petitioner was handed over by PW-1 to the police. The arrest memo of the petitioner is Ex. PW1/B.

9. HC Kiran Pal (PW-2) has stated that when he along with the Investigating Officer (PW-6), went to the RML Hospital, it was learnt that Raj Kumar was brought declared dead. No eye witness was found at the hospital. PW-1 was spotted only when the police officers came back to the place of accident.

10. PW-2 prepared the site plan of the place of occurrence. The offending vehicle as well as the auto rickshaw were seized in his presence by the Investigating Officer vide memo Ex.PW2/A and

Ex.PW2/B. The aforesaid vehicles were sent to malkhana. PW-2 also testified about the fact that the post-mortem over the dead body of Raj Kumar was conducted and after identification of the dead body by the near relatives, the same was handed over to the brother of the deceased (Ex.PW2/E).

11. Thus from the deposition of Ranjeet Choudhary (PW-1) and HC Kiran Pal (PW-2), it stands established that Raj Kumar was killed because of the accident.

12. The fact that the petitioner was driving the offending vehicle namely truck bearing registration No. RJ-04-G-0788 also stands fully proved.

13. Ishwar Singh (PW-4), who is the Medical Record Clerk, has proved the post-mortem report and has stated that post-mortem was conducted by Dr. Avaneesh Gupta and the report is in his handwriting (Ex.PW4/A).

14. The offending vehicle as well as the auto rickshaw which was being driven by the deceased was mechanically inspected by T.U. Siddiqui (PW-5) who prepared the reports (Ex.PW5/A and Ex.PW5/B). The damage to the vehicles was because of the accident. Both the vehicles were found to be fit for the road test.

15. SI Satish Kumar (PW-6), who is the Investigating Officer of this case, has confirmed the fact that he arrested the petitioner, who

was present at the spot and who was held in captivity by PW-1, Ranjeet Choudhary.

16. The concurrent judgments of conviction and orders on sentence have been assailed by the petitioner on the ground that the entire prosecution case rests on the testimony of a solitary eye witness namely PW-1 whose statement is replete with inconsistencies and contradictions.

17. It has been urged that PW-1 had stated before the Trial Court that the auto rickshaw, which was being driven by the deceased, was coming from the opposite side. If this fact be true, it was argued, then there was no negligence on the part of the petitioner; rather the accident was because of the negligence of the deceased himself. DD No.7A, the information regarding the accident, has not been proved. It was also urged that the site plan (Ex.PW6/B) would suggest that at the time of the occurrence, the petitioner was driving his truck towards his left and that the deceased had crossed the way of his vehicle. The other grounds which have been raised by the petitioner are that PW-1, in his cross-examination, has stated about his statement having been recorded in Police Station whereas PW-2 and PW-6 have deposed about the statement being recorded at the place of accident; the post-mortem report was not proved by the doctor, who conducted the same and that another auto driver, who along with PW1 had reached the deceased to the hospital, has not been examined.

18. During trial following facts stood proved:

- (i) On the date and time of the accident, the petitioner was driving the offending truck;
- (ii) The offending truck, which was being driven by the petitioner, hit the auto rickshaw which was being driven by the deceased;
- (iii) Raj Kumar, the deceased, died because of the aforesaid accident as the offending vehicle was being driven in a rash and negligent manner;
- (iv) The petitioner was caught hold of by PW-1 and handed over to the police.

19. Admittedly, there is only one eye witness to the occurrence. However, there is nothing in his deposition which would discredit or falsify the prosecution version. There is no reason for PW-1 to falsely depose against the petitioner.

20. The post-mortem report has been duly proved by the Medical Record Clerk who has identified the hand writing of the doctor, in whose hand writing the post-mortem report has been written. Reasonable explanation has been given by the prosecution in not examining the doctor, who conducted the post-mortem. No question has been put to Ishwar Singh (PW-4), who is the Medical Record Clerk and who proved the post-mortem report of the deceased. The doctor, who conducted the post-mortem, had left the service of the hospital and his whereabouts were not available to either the hospital management or the police. The other auto-rickshaw, driver who helped PW-1 in reaching the injured to the hospital has not been

examined. His examination would have further lent assurance to the prosecution version. Nonetheless, his non examination would not dilute or falsify the prosecution version. He could have been a material witness but his non examination does not render the prosecution case doubtful.

21. Thus no fault can be found with either the Trial Court or the Appellate Court judgments.

22. So far as the sentence is concerned, it has been submitted on behalf of the petitioner that the petitioner is a middle aged man and has to fend for a large family which comprises his wife, five daughters and two sons. Apart from this, the petitioner has old and ailing parents, who are being regularly attended by the petitioner. It has also been submitted that the petitioner has not been convicted for any offence in the past, the present offence being the first one, and that he participated in the trial for about 14 years.

23. The nominal roll of the petitioner shows that he has remained in custody for more than three months and his conduct in jail has been satisfactory.

24. There can hardly be any dispute over the proposition that the sentence has to be in proportion to the crime and the circumstances in which it is committed. Instances are abound where, while operating the sentencing system, the courts of law have adopted a corrective approach and have considered the requirements of social/humane considerations.

25. The relevant aspects of consideration for sentencing a convict are nature of crime; the manner in which it was committed; motive for commission of crime; conduct of the accused etc. The list is not exhaustive but only illustrative. The fact that the occurrence took place 14 years ago and that the petitioner is required to fend for a large family comprising many children and old and ailing parents are also important considerations.

26. Considering the aforestated aspects as also taking into account the fact that the petitioner is the first offender, this Court is inclined to modify the sentence imposed upon the petitioner.

27. For the offences under Sections 279 of the IPC and 304 of the IPC, the petitioner is sentenced to rigorous imprisonment for three months each; the sentences to run concurrently.

28. The aforesaid sentence has already been undergone by the petitioner.

29. If the fine of Rs.20,000/- has not been paid, the same shall be paid by the petitioner within a period of 15 days from today.

30. In case of non payment of the aforesaid fine, the petitioner shall suffer simple imprisonment for a period of one month.

31. Thus, the conviction of the petitioner for offences under Sections 279 and 304A of the IPC are upheld. However, the sentence for each of the offences have been modified and reduced to three months.

32. If the fine which has been imposed on the petitioner has been paid and he is not required in any other case, he shall be released forthwith.

33. The revision petition is partially allowed and disposed of in terms of the above.

Crl.M.B No.8139/2015 and Crl.M.A. No. 16698/2015 (Release on probation)

1. In view of the petition having been partially 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 18, 2015
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ASHUTOSH KUMAR, J