

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

RESERVED ON : 19th OCTOBER, 2015

DECIDED ON : 19th JANUARY, 2016

+ CRL.REV.P.209/2015 & CRL.M.A.No.5071/2015

JASDEEP SINGH KOHLI @ LOUVI Petitioner

**Through : Mr.Sudarshan Rajan, Advocate
with Mr.Anshul Wadhwa &
Mr.Archit Arora, Advocates.**

versus

THE STATE OF NCT OF DELHI Respondent

**Through : Mr.Amit Gupta, APP with SI
Jargup Singh, PS Anand Parbat.**

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Present Revision Petition has been preferred by the petitioner to challenge the legality and correctness of an order dated 10.03.2015 of learned Addl. Sessions Judge by which he was charged for commission of offences under Sections 304(II)/323/325 IPC. The revision petition is contested by the State.

2. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the petitioner urged that no prima-facie case is made out for an offence under Section 304(II) IPC and at the

most, the petitioner can be presumed to have committed the offence under Section 304A IPC for driving the vehicle in a rash and negligent manner which caused the death of an individual. Section 304(II) IPC requires knowledge on the part of a person that the only probable consequence of his act would be 'culpable homicide'. In the instant case, the petitioner was not aware if the victim was sleeping on the pavement / divider. The petitioner was orient, conscious and fit to make statement at the time of his medical examination and was not under the influence of liquor. FSL report clearly demonstrates that no alcohol was found in his blood. Accident occurred primarily due to mechanical defects in the vehicle. Reliance has been placed on '*Bachubhai Hassanalli Karyani vs. State of Maharashtra*', 1971 (3) SCC 930; '*State vs. Sanjeev Nanda*', 2012 (8) SCC 450; '*State of Gujarat vs. Haidarali Kalubhai*', 1976 (1) SCC 889; '*Prabhakaran vs. State of Kerala*', 2007 (14) SCC 269 & '*Alister Anthony Pareira vs. State of Maharashtra*', 2012 (2) SCC 648.

3. Learned Addl. Public Prosecutor urged that at the time of consideration of charge, only prima-facie view is to be taken into consideration. The petitioner, who was driving the vehicle in an extremely fast and dangerous manner could foresee the natural and probable consequences of his acts. Reliance has been placed on '*Amarsingh*'

Ramjibhai Barot vs. State of Gujarat, 2005 (7) SCC 550; *State of Punjab vs. Hakam Singh*, 2005 (7) SCC 408; *Vijay Pal vs. State (Govt. of NCT of Delhi)*, 2015 (4) SCC 749; *Jagriti Devi vs. State of H.P.*, 2009 (14) SCC 771; *Alister Anthony Pereira vs. State of Maharashtra*, 2012 (2) SCC 648; *State of Gujarat vs. Haidarali Kalubhai*, 1976 (1) SCC 889 & *State vs. Sanjeev Nanda*, 2012 (8) SCC 450.

4. The occurrence took place at around 02.00 a.m. (mid night) when no heavy traffic is expected to be on the roads. HC Bharat Bhushan and Const.Vikram on patrolling duty on motorcycle bearing No.DL-1SN-5926 were overtaken by the vehicle driven by the petitioner. HC Bharat Bhushan immediately perceived that the vehicle being driven at a very high speed was sure to cause someone's death. Soon thereafter, the vehicle struck against a divider. Its impact was so heavy that the vehicle overturned in the air and again struck against the divider. This time, it hit the victim sleeping on the divider. The said individual, due to impact, flew in the air and fell on the other side of the road and died instantaneously. Engine of the car came out and fell 25 – 30 feet away. In the said occurrence, a boy aged around 11 – 12 years also sustained injuries. The petitioner and other occupants of the car namely Karanveer Singh, Abhishek Malhotra, Abhishek Gogia and Shival Nagpal also suffered

injuries; Abhishek Gogia's injury was grievous. The petitioner on medical examination at Jeewan Mala Hospital at around 02.25 a.m. was found having smell of alcohol. It was still present at the time of medical examination at 05.10 a.m. at Lady Harding Medical College. Other occupants in the car were also found to have consumed alcohol. One bottle of Royal Stag whisky was also seized from the vehicle. From these peculiar circumstances, it can be inferred that the vehicle was being driven at a dangerous speed by the petitioner after consuming liquor. The petitioner was unable to have control over the speed of the vehicle and it caused the death of an individual sleeping on the divider. Const. Vikram and Master Gaurav @ Bobby informed in their 161 Cr.P.C. statements that the vehicle was being driven at a high speed and all the occupants in the vehicle were under the influence of liquor. After the accident, the vehicle's engine fell at some distance. The victim sustained ten injuries on his body and died immediately at the spot.

5. It is true that in the FSL report, no ethyl or methyl alcohol was detected from the blood sample of the petitioner. Learned Addl. Public Prosecutor in the written submissions urged that the blood sample collected on 19.10.2014 could not be sent to FSL till 18.12.2014. It could not be thereafter examined till 20.02.2015. Hence, due to delay of four

months from the date of collection of the sample and its examination, no conclusive opinion can be made at this stage about its reliability. Moreover, this report is not in consonance with ocular testimony. Its reliability and authenticity requires to be tested during trial.

6. The circumstances delineated above demonstrate that the vehicle was being driven at a very high speed after consuming liquor. At the stage of consideration of charge, 'knowledge' can be attributed to the petitioner that driving the motor vehicle at such a high speed deliberately after consuming liquor was likely to cause the death of an individual. It appears to be an act of such character that no reasonable man could be ignorant of the likelihood of its causing death.

7. In '*Alister Anthony Pareira vs. State of Maharashtra*', 2012 (2) SCC 648, the Supreme Court held :

“Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law - in view of the provisions of the Indian Penal Code - the cases which fall within last clause of Section 299 but not within clause 'fourthly' of Section 300 may cover the cases

of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under Section 304 Part II Indian Penal Code. Section 304A Indian Penal Code takes out of its ambit the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description.

‘Prabhakaran vs. State of Kerala’, 2007 (14) SCC 269, does not say in absolute terms that in no case of an automobile accident that results in death of a person due to rash and negligent act of the driver, the conviction can be maintained for the offence under Section 304 Part II Indian Penal Code even if such act (rash or negligent) was done with the knowledge that by such act of his, death was likely to be caused. Prabhakaran¹⁴ turned on its own facts. Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II Indian Penal Code may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrong doer to cause death, offence may be punishable under Section 302 Indian Penal Code.”

8. In ‘State vs. Sanjeev Nanda’, 2012 (8) SCC 450, the Supreme Court held :

“37. Critical and microscopic analysis thereof shows that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term

which may extend to 10 years or with fine or with both.

38. Now, we have to consider if it is a fit case where conviction should be altered to Section 304 Part II of Indian Penal Code and sentence awarded should be enhanced.

39. We are of the considered view that looking to the nature and manner in which accident had taken place, it can safely be held that he had no intention to cause death but certainly had the knowledge that his act may result in death.

40. Thus, looking to the matter from all angles, we have no doubt in our mind that knowledge can still be attributed to accused Sanjeev that his act might cause such bodily injuries which may, in ordinary course of nature, be sufficient to cause death but certainly he did not have any intention to cause death. He was not driving the vehicle with that intention. There is nothing to prove that he knew that a group of persons was standing on the road he was going to pass through. If that be so, there cannot be an intention to cause death or such bodily injury as is likely to cause death. Thus, in our opinion, he had committed an offence under Section 304 Part II Indian Penal Code. We accordingly hold so.”

9. The trial is at its initial stage and the evidence of the prosecution is yet to be completed. The petitioner's defence that the accident had taken place due to mechanical faults in the vehicle is yet to be proved during trial. It is not a case of mere rash and negligent driving.

10. In ‘Dinesh Tiwari vs. State of Uttar Pradesh’, 2014 (8) SCALE 427, the Supreme Court discussing the provisions of Sections 227 and 228 held :

“From Sub-section (1) of Section 228, it is clear that after such consideration and hearing, as given Under Section 227, if Judge forms an opinion that there is a ground for presuming that the accused has committed an offence, Judge may frame the charge(s).

From Section 228 it is clear that no separate hearing is required to be given for framing the charge if the accused is not discharged upon consideration of the record of the case and documents and after hearing the submissions Under Section 227.

*10. Relative scope of Sections 227 and 228 Code of Criminal Procedure was noticed and considered by this Court in **Amit Kapoor v. Ramesh Chander and Anr.** : (2012) 9 SCC 460. This Court held as follows:*

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged Under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists,

then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19. *At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh: (SCC pp. 41-42, para 4)”*

11. The materials on record definitely disclose grave suspicion against the petitioner and the order of the Trial Court in framing charge under Sections 304(II)/323/325 IPC can't be faulted. Part-II, Section 304 IPC comes into play when death is caused by doing an act with

knowledge that it is likely to cause death. The judgments relied upon by the learned counsel for the petitioner are primarily on merits after the parties had led their respective evidence during trial. The instant case is still at the initial stage where the parties are yet to produce their evidence.

12. In view of the above, I find no legality or material irregularity in the impugned order. The revision petition is dismissed. Pending application also stands disposed of. Trial Court record (if any) be sent back forthwith with the copy of the order.

13. Observations in the order shall have no impact on the merits of the case.

(S.P.GARG)
JUDGE

JANUARY 19, 2016 / tr