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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on 16th November, 2017

Order pronounced on 24th November, 2017

+ CRL.REV. P. 805/2016

RAS BIHARI SINGH

..... Petitioner

Through: Mr. Pranesh, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Deepak, PS-Nariana.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present Criminal Revision Petition has been filed under Section 397 read with Section 482 Cr.PC assailing the order dated 22.11.2016 passed by the Additional Sessions Judge-03, Patiala House Courts, New Delhi in Criminal Appeal No. 8706/2016 titled as 'Ras Bihari Singh Vs. State' whereby the conviction order dated 25.05.2016 and order on sentence dated 30.06.2016 passed by the Metropolitan Magistrate-3, Patiala House Court, New Delhi, was upheld.
2. The case of the prosecution in nutshell is that on 27.09.2010, the accused was driving a vehicle i.e. Innova Car bearing registration No. DL-4-CAE-4071 in a rash and negligent manner, hit Parul, an infant girl aged about 9 months who later died. An FIR has been

registered in the instant case on the complaint of mother of the deceased girl.

3. On completion of the trial, the Trial Court (Metropolitan Magistrate) held the petitioner guilty for the offence punishable under Section 279/304A IPC and sentenced him to undergo rigorous imprisonment for three months with fine of Rs.1,000/- for the offence punishable under Section 279 IPC fine and rigorous imprisonment for one year and fine of Rs.10,000/- for the offence punishable under Section 304A IPC. Fine amount has been deposited by the petitioner. The petitioner preferred an appeal before the Court of Session against the aforesaid order and the Court of Session vide its order dated 22.11.2016 modified the sentence to the extent that appellant shall undergo four months rigorous imprisonment for the offence punishable under Section 279/304A IPC collectively subject to appellant shall pay Rs.50,000/- to the mother of deceased child as compensation failing which he shall undergo one year simple imprisonment.
4. Assailing the impugned judgment, learned counsel for the petitioner contended that judgment of conviction and sentence awarded by the Trial Court are not sustainable and deserve to be quashed and set-aside as they are not based on correct appreciation of evidence available on record; that both the Courts below have fallen in grave error in holding that Parul died due to rash and negligent driving of the accused; that testimony of PW-4, mother of the deceased, claiming to have seen the accident, is highly doubtful; that no independent person has been cited in the list of

witnesses; that the prosecution failed to bring on record that the petitioner was driving the offending vehicle in such a rash and negligent manner which led unfortunate death of an infant girl; that the petitioner was willing to take the victim to the hospital but the complainant refused to do so and the victim was taken to the hospital after delay of 5-6 hours and she died due no negligence of her mother as she did not get proper treatment on time; that the prosecution failed to prove the Post Mortem Report of the deceased.

5. Refuting the arguments advanced on behalf of the petitioner, learned APP for the State vehemently opposed the present petition and contended that the judgments rendered by the Trial Courts does call for any interference by this Court; that the issues raised by the learned counsel for the petitioner has already been dealt by the Trial Court and while exercising its revisionary powers under Section 397 Cr.P.C. to re-appreciate the evidence, this Court has very limited powers, especially when it stands duly proved that impugned judgment have been passed after dealing with evidence meticulously by the Trial Court; that the prosecution has been able to prove its case beyond reasonable doubt that the accident in question occurred due to rash and negligent act of the petitioner; that PW4, mother of the deceased, who was present at the time of the accident categorically deposed that the accident had occurred due to rash and negligent driving by the petitioner.

6. I have heard the learned counsel for the parties and perused the record.
7. At the outset, before delving into merits of the submissions made by learned counsel for the parties, I find deem it appropriate to discuss the relevant Section involved in the instant case. The petitioner has been convicted and sentenced for the offences punishable under Section 279 and 304A IPC.
8. Section 279 IPC deals with rash and negligent driving, which reads as under:

"S. 279. Rash driving or riding on a public way- Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both"
9. To constitute an offence under Section 279 IPC, it must be shown that the person was driving the vehicle in a rash or negligent manner. Criminal negligence or criminal rashness is an important element of the offence under Section 279 IPC.
10. Section 304A reads as under:

"304A. Causing death by negligence.— Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term

which may extend to two years, or with fine, or with both."

11. In a road accident case, to convict a person for the offence punishable under Section 304-A IPC, the prosecution is required to bring on record the basic requirement of the said Section i.e. "Rash or Negligent Act" with following conditions:

- 1) There must be death of the person in question;
- 2) that the accused must have caused such death; and
- 3) that such act of the accused was rash or negligent and that it did not amount to culpable homicide.

12. In ***Rathnashalvan vs. State of Karnataka : AIR 2007 SC 1064***, the Apex Court observed that:

"5. Section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly

on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

6. *As noted above, "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.*

13. Section 304A which deals with unintentional death caused by doing any rash or negligent act of the offender. The applicability of this Section is limited to rash or negligent acts which cause death but fall short of culpable homicide amounting to murder or culpable homicide not amounting to murder. To bring an offence within the ambit of Section 304A, the prosecution is required to bring on record that the act was done by an accused and the death was caused due to rash and negligent act.

14. The instant case of the prosecution rests upon the sole testimony of PW-4/Ram Dulari, mother of the deceased, who is stated to be a sole eye witness of the alleged accident. In her complaint, she stated that she is a labourer and on the day of incident, she was working in Kothi No. A-21, Naraina Vihar and had left her daughter near the flower pots of the Kothi No. A-32, Naraina Vihar, which is just opposite across the road to Kothi No. A-21. At about 11:30 a.m., she saw that the offending vehicle took a right turn and hit her daughter who was playing on the pavement, she rushed to her daughter, who was unconscious. The petitioner stopped the car and took the complainant and her injured daughter to Bahal Hospital, Naraina where doctor advised them to take the injured to a Government Hospital. The complainant asked the petitioner to drop them to her house. The petitioner dropped them and gave his name and told her that he was driver in New Era School at A-32, Naraina Vihar. After sometime, the complainant informed her husband about the accident and he came home at about 2-2:30 p.m., who later called police and the PCR took her daughter to the hospital where she was declared brought dead.

15. PW-4 in her examination narrated the entire incident as under :

"xxxx I kept my daughter on the side of the road where Gamla etc. were put on in front of A-32 which was just opposite to A-21 and I started doing the construction work by giving the sand to other labourer. At about 11:30 AM while I was working in the building and I saw from there one car coming and the said car hit

my child and then stop after going some distance. The accused was saying some labourer who was cutting the iron rods (saria) when he hit my child. Thereafter, I came down from the building and took my daughter in my lap and then told the driver of the car who was also present there to take my daughter in the hospital. Thereafter, the accused took the child to the hospital after consulting his owner and firstly he took us to Bhel Hospital and thereafter Bhel Hospital authority told us to go to some Govt. Hospital. Thereafter, the accused took the child to the hospital after consulting his owner and firstly he took us to Bhel Hospital and thereafter Bhel Hospital authority told us to go to some Govt. Hospital. Thereafter, the driver of the offending car took us to some Govt. Hospital. Thereafter, the Govt. Hospital official refused to admit the patient as my daughter was already dead. Thereafter, the accused told us that he would arrange the last rites of my daughter, I refused and told him to leave me and my child to my home. The accused revealed his name as Raj Bihar. Thereafter, we reached our home and I also called him to home from Payal Cinema. Thereafter, we went to the police, the police took my daughter to the hospital."

16. A close reading of testimony of PW-4 casts serious doubt that she had witnessed the accident. PW-4 in her examination-in-chief stated that "while I was working in the building and I saw from there one car coming and the said car hit my child and then stop

after going some distance. The accused was saying some labourer who was cutting the iron rods (saria) when he hit my child. Thereafter, I came down from the building and took my daughter in my lap". It is improbable that a person working on a construction site can also look after her child at the same time by keeping her across the road side on the pavement and whether the vehicle had been brought on the pavement. Further, she failed to state the 'rash' and 'negligent' manner in which the offending vehicle hit her child which is the essential elements to book a person for the offence punishable under Section 279/304A IPC. She also failed to state In her statement, PW-4 categorically stated that "*Thereafter, the driver of the offending car took us to some Govt. Hospital. Thereafter the Govt Hospital Official refused to admit the patient as my daughter was already dead.*" She failed to give any plausible explanation as to why police was not immediately called.

17. Further, the accident took place at about 11:30 a.m. in a broad day light at place where a construction was going on and labourers were working there which is evident from the testimony of PW-4. None of the labourer was introduced as witness by the prosecution and nothing has been emerged on record to say that any effort has been made by the prosecution to cite any of the labourer as witness who were present at the place of incident. According to the PW-4, the car hit the child from right side, however, the mechanical inspection of the offending vehicle does not support the version of PW-4 as it shows no damage on the right side. Though non-examination of Investigating Officer is not fatal to the case of the

prosecution but in the instant case, neither the site plan nor the MLC of the deceased was proved by the prosecution. In these circumstances, the petitioner has been prejudiced and the non-examination of the investigating officer is a material circumstance in favour of the petitioner.

18. The mere fact that the petitioner has admitted that he was driving the vehicle at the relevant time in his statement recorded under Section 313 Cr.PC cannot be only ground to hold him guilty for the offence. Though, it is a well established in law that admission or confession of accused in the statement under Section 313 of the Cr.P.C. recorded in the course of trial can be acted upon and the Court can rely on these confessions to proceed to convict him. In *Ashok Debbarma @ Achak Debbarma Vs. State of Tripura* reported in (2014) 4 SCC 747, the Apex Court observed that :

21. We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in *State of Maharashtra v. Sukhdev Singh and Anr.* : (1992) 3 SCC 700 held that since no oath is administered to the accused, the statement made by the accused under Section 313 Code of Criminal Procedure will not be evidence *stricto sensu* and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being

examined under Section 313 Code of Criminal Procedure. But, Sub-section (4) says that the answers given by the accused in response to his examination under Section 313 Code of Criminal Procedure can be taken into consideration in such an inquiry or trial. This Court in *Hate Singh Bhagat Singh (supra)* held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In *Narain Singh v. State of Punjab*: (1963) 3 SCR 678, this Court held that when the accused confesses to the commission of the offence with which he is charged, the Court may rely upon the confession and proceed to convict him.

22. This Court in *Mohan Singh v. Prem Singh and Anr.*: (2002) 10 SCC 236 held that the statement made in defence by accused under Section 313 Code of Criminal Procedure can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 Code of Criminal Procedure cannot be made the sole basis of his conviction. In this connection, reference may also be made to the judgment of this Court in *Devender Kumar Singla v. Baldev Krishan Singla* : (2004) 9 SCC 15 and *Bishnu Prasad Sinha and Anr. v. State of Assam* : (2007) 11 SCC 467. The above-mentioned decisions would indicate that the statement of the accused under Section 313 Code of

Criminal Procedure for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.

19. The statement of the petitioner was recorded under Section 313 Cr.PC wherein he admitted that he was driving the offending vehicle bearing registration No. DL-4-CAE-4071 at the relevant time and the accident did occur but denied his negligence and rashness and took up a plea that it happened on account of negligence on the part of parents of the deceased. Rashness and negligence being the crux of an offence under Section 304A IPC, it has to be proved that the act by which accident caused was rash and negligent and any admission on causing death by driving a vehicle cannot amount to any admission for the offence punishable under Section 304A IPC.
20. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it may cause injury but done without any intention to cause injury that it would probably cause injury. The criminality lies in such an act or indifference to the consequences.
21. The question whether the conduct of the accused amounted to culpable rashness or negligence depends directly on the question as to what amount of care and circumspection which is prudent and reasonable man considered to be seen considering all the

circumstances of the case. It is necessary to avoid being influenced by the prejudice arising out of the loss of a life which is a dominant factor in cases of accident.

22. Undoubtedly, in the present case, the accident, death of an innocent and identity of driver of offending vehicle, are not in dispute. The Courts below brushed aside the fact that the complainant/PW-4 left her 9 months old infant baby on the pavement unattended and prosecution failed to prove that she died due to the rashness and negligence on the part of the petitioner. The prosecution failed to bring on record that the death of the deceased, was due to the rash and negligent act of the petitioner and there was a direct nexus between the death of the deceased and rash and negligent act on the part of the petitioner.
23. The prosecution had to prove that there was a direct nexus between the death of the person and rash and negligent act of the petitioner. No doubt a life has been lost. The prosecution had to prove that petitioner had acted with recklessness and therefore a failure to exercise reasonable and proper care in person but in the instant case the baby had been left unattended. The mere fact that an innocent died in a road accident, the presumption of rashness and negligence against the petitioner cannot be drawn. In order to impose criminal liability on the petitioner, it must be found as a fact that the accident was entirely or atleast mainly due to the rashness or negligence on the part of the petitioner who was driving the vehicle.

24. From the above discussion, I find that the prosecution failed to show that though the death of the deceased occurred, it was due to the rash and negligent act of the petitioner. Consequently, the present revision succeeds. The impugned order dated 22.11.2016 passed by the Additional Sessions Judge-03, Patiala House Courts, New Delhi in Criminal Appeal No. 8706/2016 titled as ‘Ras Bihari Singh Vs. State’ as well as order of conviction dated 25.05.2016 and order on sentence dated 30.06.2016 passed by the Metropolitan Magistrate-3, Patiala House Court, New Delhi, are hereby set aside and the petitioner shall stand acquitted for the offences under Section 279/304A IPC.
25. Ordered accordingly.
26. Trial Court Record be returned along with a copy of this order.

SANGITA DHINGRA SEHGAL, J.

NOVEMBER 24, 2017

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