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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on 13th November, 2017

Order pronounced on 16th November, 2017

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CRL. REV. PETITION 686/2017, Crl. M. B. 1622/2017

RAM CHANDER

..... Petitioner

Through: Mr. Mobin Akhtar, Mr. Ajay Singh and
Mr. Noor Alam, Advocates.

versus

STATE

..... Respondent

Through: Ms. Anita Abraham, APP for the State
with SI Sandeep Sharma, PS-Vasant
Kunj (North).

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present Criminal Revision Petition has been filed under Section 397 read with Section 401 Cr.PC assailing the order dated 12.07.2017 passed by the Additional Sessions Judge-02, Fast Track Court, Patiala House Courts, New Delhi in Criminal Appeal No. 06/2017 whereby the order of conviction dated 10.08.2016 and order on sentence dated 26.08.2017 passed by the Metropolitan Magistrate was upheld.
2. The relevant and necessary facts to dispose of the present petition is that a DD No. 26-A dated 07/08/2007 was recorded at the Police Station – Vasant Kunj (North) to the effect that one child has been run over by a vehicle near Crematorium (Shamshaan Ghat), Mahipalpur, Delhi; that the said DD was assigned to ASI Ramesh Kumar (PW-7), who went to the spot and found that the victim had

already been removed to Safdarjung Hospital by PCR Van; that thereafter PW-7 went to the hospital and came to know that the victim was declared to have been “brought dead”; that statement of PW2 (father of the victim) of the victim was recorded to the effect that when he went to call the son, who was playing outside the home, saw that a vehicle bearing registration No. HR-55-A-7142 driven in a rash and negligent manner hit his son; that the driver of the vehicle alighted from the spot and thereafter fled away from the spot; that someone called the police and PCR took him and his son to Safdarjung Hospital where doctor declared him “brought dead”; that PW-7 along with PW-2 went to the spot where PW-2 pointed towards the truck bearing registration No. HR-55-A-7142 and stated that the same truck had caused accident; that petitioner was arrested and released on bail.

3. Substance of accusation for the offence under Section 279 and 304-A IPC was framed against the petitioner to which he pleaded not guilty. The prosecution relied upon seven witnesses in all, besides the exhibits produced during the trial. The statement of the petitioner under Section 313 of the Code of Criminal Procedure was recorded wherein he reiterated his innocence and denied all the incriminating circumstances appearing in evidence against him.
4. Vide judgment dated 10.08.2016, the Metropolitan Magistrate held the petitioner responsible for the offence punishable under Section 279/304-A IPC and on 26.08.2017, the petitioner was sentenced to undergo one year Rigorous Imprisonment for the offence punishable under Section 304-A and further ordered to pay a

compensation of Rs.10,000/- to the L.R.'s of the deceased failing which he shall undergo Simple Imprisonment for one month.

5. The petitioner preferred a criminal appeal against the order of conviction dated 10.08.2016 as well as order on sentence dated 26.08.2017. The Court of Sessions dismissed the said appeal and upheld the order passed by the Metropolitan Magistrate. Hence, the present Criminal Revision Petition.
6. Assailing the orders passed by the Trial Court, learned counsel for the petitioner contended that the impugned orders are highly presumptive, insupportable in law and based merely on conjectures and surmises; that the identification and arrest of the petitioner is very doubtful; that there is no iota of evidence to suggest that PW-2/father of the deceased was present at the spot; that it is nowhere stated in the MLC of the deceased that he was brought to the hospital by his father/PW2; that the mechanical inspection of the vehicle involved in the present case shows that there was no fresh damage on the vehicle and even no blood stains were found on the vehicle; that the investigating agency failed to book the real culprit and the petitioner has been made a scapegoat in the present FIR.
7. To substantiate his arguments, learned counsel for the petitioner has placed reliance upon **Suleman Vs. State of Maharashtra : AIR 1968 (289, Mahadeo Hari Lokre Vs. The State of Maharashtra : AIR 1973 SC 221 (V 59 C47) and Lakshmanan Vs. State of Tamilnadu : JT 2001 (Suppl. 2) SC 396.**
8. Refuting the arguments addressed on behalf of the petitioner, learned APP for the State contended that there is no infirmity and

illegality in the impugned orders and the prosecution has proved its case beyond any shadow of doubt; that the Trial Court has rendered its decision after dealing each and every aspect of the matter meticulously and as such present petition deserves to be dismissed being devoid of merit.

9. I have heard the learned counsel for the parties and perused the material available on record.
10. From the perusal of the record, it transpires that the Trial Court (Metropolitan Magistrate) while convicting the petitioner passed the following order :

"In view of the fatal injuries sustained by the victim Sonu Kumar, the accused Ram Chander is liable to be held guilty of the offence punishable u/s. 304A IPC. Since, Section 279 IPC is a minor offence with respect to Section 304-A IPC, therefore, the accused is not liable to be convicted separated for the said offence."

11. To bring a case of homicide under Section 304A Indian Penal Code, the following conditions must exist, namely,
 - 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 : AIR2007SC1064*, 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. 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".
14. Section 279 IPC deals with such rash 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"
15. A reading of aforesaid Section shows that 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. Mere fact that the accused was driving the vehicle at high speed may not attract the provisions of Section 279 IPC and the prosecution is required to bring on record such negligence and rashness. High speed by itself may not in each case be sufficient to hold that a driver is rash or negligent. Speed alone is not the criterion for deciding rashness or negligence on the part of the driver.

16. As per the case of the prosecution, complainant/PW-2, father of the deceased is only eye-witness to the accident and his reliability is to be judged from his testimony and other material on record. According to the complainant/PW-2, after the accident took place, he took his son to the hospital where he was declared 'brought dead'. He further deposed that he accompanied the police at the spot and a site plan Ex.PW2/A was prepared at his instance but the same does not bear his signatures.
17. The presence of the complainant/PW-2 at the spot is highly doubtful. *Firstly*, the name of the complainant/PW-2 does not figure in MLC Ex.PW5/A whereas it finds the name of ASI Joginder Singh against the "Name of relative or friend" and it is further stated that "case brought by police i.e. alleged h/o RTA". Moreso, in his cross examination he stated that he reached the hospital at about 10:00 pm. *Secondly*, the site plan Ex.PW2-A stated to be prepared at the instance of the complainant/PW-2, does not bear his signatures. These discrepancies cast shadow of doubt on the testimony of the complainant/PW-2.
18. 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. The mere fact that a person knocked down and died, the presumption of negligence against the petitioner cannot be drawn. The fact the death of the deceased was caused by rash and negligent driving has to be proved by the prosecution as merely driving at a high speed does not denote driving in a rash manner and the petitioner cannot be held guilty for causing the death of the

deceased. In order to impose criminal liability on the petitioner, it must be found as a fact that collision was entirely or atleast mainly due to the rashness or negligence on the part of the petitioner who was driving the vehicle.

19. In the present case, 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. The prosecution failed to bring that there was a direct nexus between the death of the deceased and rash and negligent act on the part of the petitioner.
20. In ***Harbeer Singh Vs. Sheehpal*** reported in ***AIR 2016 SC 4958*** the Apex Court has observed that :

“11. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.”

21. Undoubtedly, wrongful acquittals are undesirable as they shake the confidence of the people in the judicial system but much worse, however, is the wrongful conviction of an innocent person. Keeping in view the aforesaid principle laid down by the Apex Court, I am of the considered view that the prosecution failed to bring on record that the petitioner was driving the vehicle in such a rash or negligent that amount to culpable homicide.

22. Keeping in view the facts and circumstances of the present case, I am of the considered view that the prosecution has failed to discharge the established onus of proving the guilt of the accused beyond reasonable doubt.
23. Resultantly, the present Criminal Revision Petition is allowed by setting aside the orders dated 12.07.2017 passed by the Additional Sessions Judge-02, Fast Track Court, Patiala House Courts, New Delhi in Criminal Appeal No. 06/2017, order of conviction dated 10.08.2016 and order on sentence dated 26.08.2017 passed by the Metropolitan Magistrate and the petitioner is hereby acquitted of the charges under Section 279/304A IPC. Petitioner is ordered to be released forthwith if not required in any other case.
24. The present petition along with pending application is disposed of.
25. Trial Court Record be returned with a copy of this order.
26. A copy of this order be sent to the concerned Jail Superintendent.

SANGITA DHINGRA SEHGAL, J.

NOVEMBER 16, 2017