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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on 06th November, 2017

Order pronounced on 14th November, 2017

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CRL. REV. P. 761/2017, Crl. M. (Bail) 1805/2017

PANKAJ YADAV

.....Petitioner

Through: Mr. Ramesh Gupta, Senior Advocate
with Mr. Ajay P. Tushir and Mr. Pushkar
Katyal, Advocates.

versus

STATE

....Respondent

Through: Mr. Amit Ahlawat, APP for State with SI
Sumit, PS-Dwarka, Sector-23.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present Criminal Revision Petition filed under Section 397 read with section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as '**Cr.P.C.**'), the petitioner assails the order dated 22.09.2017 whereby the Additional Sessions Judge, Special Judge, PC Act (CBI), Dwarka Courts affirmed the conviction order dated 12.08.2016 and order on sentence dated 03.11.2016 passed by the Additional Chief Metropolitan Magistrate, Dwarka Courts, Delhi whereby the petitioner was sentenced to undergo six months Rigorous Imprisonment for offence under section 304A IPC; three months Rigorous Imprisonment for offence under section 279 IPC and three months

Rigorous Imprisonment for offence under section 337 IPC. The petitioner was also directed to pay a sum of Rs 1,00,000/- as compensation to family of deceased and Rs.15,000/- each to injured persons.

2. Brief and relevant facts necessary for the disposal of the present petition are that on 10.11.20108, the complainant/Sumit along with his friends Amit and Mahender were going on a motorcycle bearing registration No. DL-4SBK-4999 to attend a marriage function; that when they reached at CRPF Quarters, one high speed Maruti Alto car bearing registration No. DL-8CR-5138 driven in a rash and negligent manner came from opposite side and collided with their motor cycle which led to unfortunate death of a young boy Amit on the next day whereas Sumit and Mahender received simple injuries; that an FIR in the instant case was registered and FIR No. 780/08 under Section 279/337 IPC was registered at Police Station – Dwarka.
3. Notice of accusation was framed against petitioner to which he pleaded not guilty and claimed trial. To bring home the guilt of the petitioner, the prosecution examined 17 witnesses, in all. Statement under Section 313 Cr.PC of the petitioner was recorded to which he reiterated his innocence and examined two witnesses in his defence.
4. After appreciation of the material adduced by the prosecution, the Additional Chief Metropolitan Magistrate held the petitioner guilty for the offence punishable under Section 279/337/304-A IPC and sentenced him six months Rigorous Imprisonment for offence

under section 304A IPC, three months Rigorous Imprisonment for offence under section 279 IPC, three months Rigorous Imprisonment for offence under section 337 IPC. The petitioner was also directed to pay a sum of Rs 1,00,000/- as compensation to family of deceased and Rs.15,000/- each to injured persons. All the sentences were directed to be run concurrently. The petitioner preferred an appeal against the said orders and vide order dated/judgment dated 22.09.2017, the Court of Sessions upheld the orders passed by the Court of Sessions. Hence, the present Criminal Revision Petition.

5. Learned counsel for petitioner contended that the Court below have grossly erred in holding the petitioner guilty of offence in the absence of no evidence led by the prosecution to prove that the accident was a result of rash and negligent driving of the vehicle by the petitioner; that both the Courts below have wrongly appreciated the entire evidence on record adduced by the prosecution and on proper scrutiny of the evidence; that there was unexplained and inordinate delay in registration of FIR; that none of the riders were wearing helmet nor possessing a valid driving licence at the time of accident; that essential element of Section 279/304A i.e. rashness and negligence driving is missing and lacking in evidence adduced by the prosecution; that no public witness was introduced by the prosecution despite the accident took place in a crowded place; that since carriage way was closed on account of repair work, the petitioner had to drive the other way.

6. Learned APP for the State vehemently opposed the aforesaid contentions and submitted that rash and negligent act of petitioner in causing the accident was proved beyond reasonable doubt by evidence of eye witness and petitioner caused the accident while driving on wrong lane and that there was no delay in filing FIR and delay has been properly explained in the *tehrir* and that petitioner cannot take undue advantage/benefit of the fact that none of the riders were wearing helmet nor were possessing a valid driving licence petitioner does not deserve any leniency. It is further contended that when both the Courts below have given concurrent and consistent findings on facts, the scope and ambit of such type of Criminal Revision Petition remains limited and this Court should refrain from re-assessing the evidence and come to a different conclusion. He further contended that the evidence adduced by the prosecution has proved its case beyond reasonable doubt and the learned Magistrate has rightly convicted the petitioner and the learned Sessions Judge has rightly upheld the conviction and sentence awarded to the petitioner.
7. I have heard the learned counsel for the parties and perused the material available on record.
8. The identity of the petitioner and accident are not disputed by the petitioner. The petitioner is now only seeking indulgence of this Court on the quantum of sentence awarded to the petitioner.
9. To bring a case of culpable 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.
10. 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".
11. The Apex Court in a well know Uphaar Tragedy Case titled as ***Sushil Ansal Vs. State through CBI : (2014) 6 SCC 173***, has defined the terms 'Rash' or 'Negligent'. The relevant part of the judgment reads as under:

“48. The terms 'rash' or 'negligent' appearing in Section 304A extracted above have not been defined in the Code. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. One of the earliest of these pronouncements was in ***Empress of India v. Idu Beg ILR (1881) 3 All 776***, where Straight J. explained that in the case of a rash act, the criminality lies in running the risk of doing an act with recklessness or indifference as to consequences. A similar meaning was given to the term 'rash' by the High Court of Madras in ***In Re: Nidamarti Negaghushanam 7 Mad HCR 119***, where the Court held that culpable rashness meant acting with the consciousness that a mischievous and illegal consequence may follow, but hoping that it will not. Culpability in the case of rashness arises out

of the person concerned acting despite the consciousness. These meanings given to the expression 'rash', have broadly met the approval of this Court also as is evident from a conspectus of decisions delivered from time to time, to which we shall presently advert. But before we do so, we may refer to the following passage from "A Textbook of Jurisprudence" by George Whitecross Paton reliance whereupon was placed by Mr. Jethmalani in support of his submission. Rashness according to Paton means "where the actor foresees possible consequences, but foolishly thinks they will not occur as a result of his act".

49. In the case of 'negligence' the Courts have favoured a meaning which implies a 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 which having regard to all the circumstances out of which the charge arises, it may be the imperative duty of the accused to have adopted. Negligence has been understood to be an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do. Unlike rashness, where the imputability arises from acting despite the consciousness, negligence implies acting without such consciousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him. The imputability in the

case of negligence arises from the neglect of the civil duty of circumspection.

12. The complainant/PW-3, the injured and eye-witness of the accident in his complaint stated that he along with his friend Amit and PW-2/Mahinder were going on a motorcycle being driven by Amit and when they reached near CRPF quarters, one Maruti Alto Car bearing registration No. DL-9CR-5138 driven very rashly and at a high speed on the wrong side came in front of their motorcycle and hit their motorcycle and they fell. He further stated that after the collision of the car with the motorcycle, the petitioner fled away from the spot in the offending vehicle.
13. Though PW-2 declared hostile by the prosecution to the extent of identifying the petitioner but being the eye witness of the accident, narrated the entire episode on the lines of PW-3/complainant.
14. Further, the impact of the hit can be easily made out from the mechanical inspection report of vehicles involved in the accident i.e. Ex.PW7/A and Ex.PW7/B. Front portion of both the vehicles were so badly damaged which shows the force of the impact.
15. The manner in which accident took place narrated by PW-2 and PW-3, eye witnesses to the accident vividly reveals that the offending vehicle was coming running on wrong side recklessly at a high speed. The plea taken by the petitioner that he took the wrong carriage as his carriage was closed for repair work, does not support by the witnesses produced by the petitioner in his defence.
16. Returning to the 'Rash' and 'Negligent' act attributed to the petitioner, the criminality lies in running the risk of doing an act

with recklessness or indifference as to consequence. The 'Negligent' is failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual which having regard to all the circumstances. It is an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do.

17. From above, I do not have any hesitation to record that the petitioner was driving the offending vehicle on the wrong side of the lane in such a rash and negligent manner which resulted culpable homicide death of deceased. The Courts below have concurrently and consistently held that petitioner is found guilty for offences punishable under Sections 279/337/304A IPC. I am of the considered view that there is no error on point of law and in no case, it cannot be said that because of non-appreciation of evidence in a manner as suggested by learned counsel for the petitioner that there is a flagrant miscarriage of justice. There is no material on record to dislodge the reasons on the basis of which both the Courts below have come to a definite concurrent and consistent finding based on facts.

18. In *State of Karnataka v. Sharanappa Basanagouda Aregoudar* reported in (2002) 3 SCC 738, the Apex Court held that :

“if the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts

should have deterrent effect on potential wrong-doers and it should commensurate with the seriousness of the offence. of course, the courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to the larger interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system.”

19. The Apex Court in **State of Punjab v. Balwinder Singh and Ors.** reported in **(2012) 2 SCC 182**, observed that:

“While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the Court.”

20. Keeping in view the aforesaid decisions rendered by the Apex Court, I am of the considered view that the Trial Court has already taken a very lenient view against the petitioner. No interference is called for. Being, there is no merit in the Criminal Revision Petition, the same is accordingly dismissed along with pending application.

SANGITA DHINGRA SEHGAL, J.

NOVEMBER 14, 2017

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