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

DECIDED ON : MAY 09, 2018

+ **CRL.REV.P. 69/2012**

ARUN BANSAL Petitioner

Through : Mr.Ravindra Narayan, Advocate along
with petitioner in person.

versus

NCT OF DELHI Respondent

Through : Mr.Ravi Nayak, APP with SI Somvir
Singh.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present revision petition has been preferred by the petitioner-Arun Bansal to challenge the legality and correctness of a judgment dated 02.02.2012 of learned Addl. Sessions Judge in Crl.A.No.16/11 whereby the findings of the trial court in case FIR No.132/2004 under Sections 279/304-A PC, registered at Police Station Seema Puri were endorsed. By an order dated 30.09.2011, the learned Metropolitan Magistrate had convicted the petitioner for the commission of offence punishable under Sections 279/304-A IPC; he was sentenced to undergo Simple Imprisonment for three months under Section 279 IPC and Simple Imprisonment for one year with fine ₹10,000/- under Section 304-A IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 11.04.2004 at about 7.00 a.m., at Main Road, Opposite Gate Meena Bazaar, Seema Puri, the petitioner while driving

Maruti Van bearing No.HR05G5654 in a rash and negligent manner hit an old man Gyan Chand, aged around 88 years from behind and caused his death not amounting to culpable homicide. To prove its case the prosecution examined eight witnesses. In 313 Cr.P.C. statement, the petitioner denied his involvement in the crime and pleaded false implication. The trial resulted in conviction. The appeal filed by the petitioner to challenge conviction also resulted in dismissal. Being aggrieved and dissatisfied, the present revision petition has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. The petitioner's counsel urged that the trial court did not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction on the testimony of PW-1 (Mukesh Kumar) who was not present at the spot. PW-1 had not taken the victim to the hospital and the FIR was not lodged on his statement. It was the petitioner who had taken the victim to GTB hospital. He further urged that the accident was not caused by the petitioner and there was no rash or negligent driving by him. In the end, prayer for lenient view was taken as the petitioner had remained in custody for certain duration. The learned Additional Public Prosecutor urged that the petitioner's conviction is based upon the dying declaration of the deceased who succumbed to the injuries later on.

4. Undisputedly, the accident in which the victim sustained fatal injuries took place on 11.04.2004 at around 7.00 a.m. Admittedly, the petitioner had taken the victim soon after the accident to GTB hospital. MLC (Ex.PW-6/A) records his name to be the individual who had

brought the victim to the hospital at around 7.40 a.m. It further records that the patient was conscious, responding and oriented. Soon after the incident DD No.7/A came to be recorded at Police Station Seema Puri at around 7.10 a.m. The information recorded in the said DD reveals that the petitioner was named to have hit an old man. Admittedly, the petitioner's involvement had surfaced soon after the incident at 7.10 a.m. when DD No.7A came into existence.

5. The investigating officer lodged First Information Report after recording victim's statement (Ex.PW-5/A) by sending rukka Ex.PW-5/B on that very day at 10.50 a.m. In 313 Cr.P.C. statement, the petitioner admitted that the victim was alive at 12.00 noon when he was being given water and grapes by his daughter-in-law. In the statement (Ex.PW-5/A) which is to be treated as dying declaration as the declarant expired in the evening, he specifically implicated the petitioner for causing the accident while driving the Maruti Van bearing No. No.HR05G5654 in a rash and negligent manner from behind. The petitioner was acquainted and known to the petitioner being residing in the same vicinity. Nothing has emerged on record to infer if there was any animosity with the petitioner forcing the victim, who was on the verge of death, to implicate him for the injuries sustained by him. It is highly unbelievable that the victim would let the real culprit go scot free and falsely implicate an acquaintance with whom he had no prior enmity merely to claim compensation, as alleged. No valid reasons exist to disbelieve the contents of the statement (Ex.PW-5/A) given by the victim to the investigating officer. PW-5 (ASI Rakesh Tyagi) on receipt of DD No.7A reached along with Const.Rattan Singh at GTB

hospital. He collected the MLC of the injured Gyan Chand and the patient was declared fit for statement by the doctors and thereafter, PW-5 (ASI Rakesh Tyagi) recorded Gyan Chand's statement (Ex.PW-5/A) and lodged the FIR. In the cross-examination, he too reiterated that the injured himself had made the statement recorded by him.

6. The prosecution case is further strengthened by the testimony of PW-1 (Mukesh Kumar Sharma), the grandson of the deceased. His presence at the spot is quite natural as the accident had taken place near the house and his grandfather Gyan Chand was going for a walk in the morning. He too accused the petitioner for causing the death of his grandfather by driving Maruti Van in a rash and negligent manner from behind. This Court finds no material discrepancy or inconsistency in the cross-examination to disbelieve the report (Ex.PW-3/A).

7. The mechanical inspection of the offending vehicle reveals that there was fresh damage on the petitioner's van. The petitioner did not explain as to how the fresh damage appeared on his van. Presence of the petitioner at the spot is not in question. In 313 Cr.P.C. statement, the petitioner did not furnish any plausible explanation to the incriminating circumstances. He did not attribute contributing negligence on the part of the victim. It was morning hours and seemingly there was no crowd or rush at the place of incident. The fact that the old man sustained fatal injuries and could not survive despite medical assistance made available to him soon after the accident shows that the impact was forcible and the petitioner was unable to control the speed of the vehicle in time. It speaks volume of his rash and negligent driving.

8. The courts below have returned concurrent findings holding the petitioner guilty for commission of the offences under Sections 279/304-A IPC. In the presence of ample evidence on record, the impugned judgment based upon fair appreciation of evidence needs no intervention. Minor discrepancies or insignificant omissions highlighted by the petitioner's counsel are of no significance.

9. True that it was the petitioner who had taken the injured to the hospital after the accident and for that reason certain leniency can be shown to him while awarding the sentence. The petitioner has suffered ordeal of trial/appeal for about 14 years.

10. Considering these facts and circumstances of the case, the substantive sentence of the petitioner is modified and is altered to simple imprisonment for four months. The petitioner shall, however, pay compensation of ₹50,000/- to the legal heirs of the deceased and shall deposit it within two weeks before the trial court. The trial court shall issue notice to the legal heirs of the deceased and shall release the amount to them.

11. The revision petition stands disposed of in the above terms.

12. The appellant shall appear before the trial court on 16.05.2018 to serve the remaining period of substantive sentence.

13. Trial Court record (if any) be sent back forthwith along with the copy of the order. Intimation be also sent to the Superintendent Jail.

**S.P.GARG
(JUDGE)**

MAY 09, 2018/sa