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

DECIDED ON : APRIL 03, 2018

+ **CRL.REV.P. 141/2018 & CrI.M.B.292/2018**

TARIF

..... Petitioner

Through : Mr.Ravindra Narayan with Mr.Afzal Khan
and Mr.Raghav Narayan, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through : Mr.Tarang Srivastava, APP.
SI Deepak Kumar, PS Sunlight Colony.

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

S.P.GARG, J. (ORAL)

1. Present revision petition has been preferred by the petitioner-Tarif to challenge the legality and correctness of a judgment dated 2.2.2018 of learned Additional Sessions Judge in CA No.279/2017 by which conviction and sentence recorded by the learned trial court by orders dated 29.05.2017 and 30.05.2017 respectively under Section 279/304-A IPC were upheld. The petitioner was convicted by the trial court by a judgment dated 29.05.2017 for commission of offences

punishable under Sections 279/304-A IPC. By an order dated 30.05.2017, he was sentenced to undergo simple imprisonment for one year with fine ₹5,000/- under Section 304-A IPC and simple imprisonment for three months for offence under Section 279 IPC. Both the sentences were to operate concurrently.

2. I have heard the learned counsel for the parties and have examined the file. Petitioner's counsel urged that the trial court did not appreciate the evidence in true and proper perspective and based conviction on the sole testimony of police official HC Sanjeev Kumar whose presence at the spot could not be established. The prosecution was unable to establish beyond doubt that the petitioner was rash or negligent in driving the vehicle. Material discrepancies and inconsistencies were overlooked by the trial court without cogent reasons. Learned Additional Public Prosecutor urged that no valid reasons exist to disbelieve the testimony of HC Sanjeev Kumar who categorically implicated the petitioner for driving the offending vehicle in rash and negligent manner.

3. The occurrence took place at around 4.30 a.m. on 16.08.2010. DD No.25-A (Ex.PW-6/A) came to be recorded at 4.35 a.m. at Police Station Sun Light Colony. The investigation was assigned to SI Prafful Kumar who along with Const.Praveen reached the spot without delay. They were informed that the injured had already been taken to AIIMS Trauma Centre. The Investigating Officer after recording the statement of HC Sanjeev Kumar (Ex.PW-1/A) lodged First Information Report. In the complaint HC Sanjeev Kumar gave detailed account as to how and in what manner, the petitioner while driving the offending vehicle i.e.

truck No.HR-55H-2434 in a rash and negligent manner caused the death of the pedestrian, aged around 25 years. The petitioner was named in the FIR and specific role was assigned to him in the incident. The Investigating Officer sent the rukka promptly at 6.45 a.m. Since the petitioner's involvement emerged soon after the incident, there was least possibility of the police official to concoct a false story in such a short period.

4. In his testimony as PW-5 HC Sanjeev Kumar reiterated the version given to the police without any variation. He deposed that on the night intervening 15/16.8.2010, he was on picket duty near Shiv Mandir Maharani Bagh and was standing there. At about 4.30 a.m. he saw an individual aged around 25/26 years coming from Ashram and going towards Sarai Kale Khan. The said individual was wearing a pant only. He was going on his own side i.e. left side of the road. When the said individual covered 10/12 paces from picket where he was standing, the truck bearing No.HR-55-A-2434 coming from the same direction at a speed of 70/80 Kmph hit the said individual from behind; the driver of the said vehicle was rash and negligent. Due to the impact, the said individual fell down on the left side and sustained injuries. On his shouting, the driver stopped the truck and got down; he apprehended the accused who was driving the said vehicle and informed the PCR. The PCR reached the spot and took the victim to AIIMS Trauma Centre. His statement came to be recorded as Ex.PW-5/A. In the cross-examination, he informed that he was deputed on the picket on the oral directions of the senior officers. On the day of incident, Ct.Sumit was also deputed along with him on the said picket duty. He clarified that

the driver of the vehicle was seen by him when he stopped the vehicle and came down from the truck. He denied that the accused was 'helper' in the offending vehicle. The witness volunteered to add that only the accused was present in the said vehicle.

5. On scanning the testimony of this official witness, it reveals that despite searching cross-examination, no infirmity could be extracted to disbelieve his version. His presence at the spot being on duty cannot be suspected. On his information about the incident, the PCR arrived at the spot and had taken the victim to the hospital. It has come on record that the victim was a 'stranger' and his identity was unknown to the complainant. Apparently, the witness had no ulterior motive to favour the victim with whom he had no prior acquaintance and to falsely implicate the petitioner against whom he did not nurture any grievance. This witness gave detailed account as to how the individual who was wearing only pant and was without shirt was hit from behind by the accused who was driving the truck in a rash and negligent manner. The petitioner has taken conflicting and inconsistent defence. At one stage he suggested that the accident was not caused by him; he being 'helper' in the offending vehicle. The petitioner, however, did not elaborate as to who else was the driver. Another defence was taken that the accident had taken place by some other vehicle. Again nothing was suggested as to which other vehicle was the offending one.

6. PW-1 (Ct.Praveen), who reached the spot along with SI Prafful Kumar fully supported the prosecution and deposed about the presence of the accused person at the spot. His testimony remained unchallenged.

Testimony of PW-7 (SI P.K.Jha) remained uncontroverted on material facts.

7. In 313 statement, the petitioner did not give plausible explanation to the incriminating circumstances proved against him. He claimed that when on the day of incident, he was going to unload the vehicle, the police official stopped him and asked for the documents. Thereafter, the owner of the vehicle was called and he was falsely implicated in this case; the accident had already taken place with some other vehicle. This defence was never put to the prosecution witnesses. The petitioner did not examine the owner of the vehicle who was allegedly called at the spot.

8. Both the courts below have given cogent reasons whereby the petitioner has been held guilty for commission of offence under Sections 279/304-A IPC. Impact was so forcible that the victim, a young man, suffered fatal injuries and was declared 'brought dead' at the hospital. It was the morning time and no crowd was there at the spot. Apparently, the petitioner was unable to control the vehicle being at a high speed and hit the individual from behind. The circumstances show that the accident had taken place due to rash and negligent driving by the petitioner. The conviction based upon fair appreciation of evidence warrants no interference.

9. The trial court had already taken lenient view while awarding the sentence. Mitigating circumstances have already been considered and no further modification in sentence is called for.

10. The revision petition lacks merits and is dismissed. The pending application also stands disposed of.

11. Trial court record be sent back forthwith with copy of the order.
12. Copy of the order be sent to the Superintendent Jail for information.

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

APRIL 03, 2018/sa

