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

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Judgment delivered on:12.11.2018

+ CRL.REV.P. 627/2016

KISHORE CHAND JOSHI

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Inderjeet Sidhu, Advocate. (DHCLSC)

For the Respondent : Mr. Hirein Sharma, APP for the State.
SI Rahul Kumar, PS Shakarpur.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

12.11.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 07.05.2016 of the Appellate Court, whereby, the Appellate Court has dismissed the appeal of the petitioner impugning judgment on conviction dated 29.10.2015 and partly allowed the appeal of the petitioner insofar as it related to order on sentence dated 29.01.2016.

2. Petitioner was convicted of an offence under Sections 304A/279 IPC. The Trial Court had sentenced the petitioner to undergo simple imprisonment of 15 months for the offence under Section 304A IPC and 5 months for the offence under Section 279IPC

and to pay fine of Rs.1,000/- and Rs.9,000/- for the two offences respectively. The Appellate Court while deciding the appeal of the petitioner on conviction partly allowed the appeal insofar as the sentence was concerned and reduced the sentence to 9 months for the offence under Section 304A and 2 months for the offence under Section 279 IPC.

3. As per the Nominal Roll of the petitioner dated 21.10.2016, the petitioner has undergone 4 months and 11 days of incarceration as on 19.10.2016 and earned remission of 21 days.

4. Learned counsel for the petitioner submits that the petitioner was granted bail on 21.10.2018, however, there was delay in release of the petitioner and she does not have the exact date when the petitioner was released on bail.

5. On merits, it is contended that the prosecution has failed to prove beyond reasonable doubt that the petitioner was guilty of the said offence and both the Trial Court as well as the Appellate Court have erred in not appreciating the same.

6. The case of the prosecution was that on 18.03.2006 at about 11:00/11:15 pm at Pee Jay Enclave, 75 Vijay Block in front of Vikas Marg, Shakarpur, Delhi, the petitioner was driving his TATA Indica Car at a very high speed and in a rash and negligent manner and struck against one person, who was crossing the road, thereby,

causing serious injuries due to which the said person died in the hospital later.

7. In support of the case, the prosecution, *inter alia*, examined two eyewitnesses as PW-1 and PW-2. Both of whom are police officers and were on duty at the police booth near the spot of the incident. PW1, in his testimony, had stated that he saw a taxi/car of the petitioner coming from ITO side and hit one pedestrian, who was trying to cross the road. PW2 also in his testimony had stated that he saw one pedestrian crossing at Vikas Marg Zebra Crossing and the offending vehicle came from ITO side and hit the pedestrian. PW2 deposed that the accident took place due to rash and negligent driving of the driver of the vehicle. PW2 further states that he asked the offending vehicle to stop and the vehicle's driver stopped.

8. As per the site plan of the spot, the distance between the accident and the place where the witnesses were standing is approximately 40 to 50 feet.

9. Learned counsel for the petitioner submits that the prosecution has failed to establish that the petitioner was driving the vehicle at a high speed or rashly or negligently. Learned counsel for the petitioner contends that PW1 has not stated anything about the speed of the vehicle or the manner in which the offending vehicle was being driven. She submits that testimony of PW-2 is that he was driving rashly and negligently. He has not stated as to what was the speed of

the offending vehicle or how the same was being driven except for giving his opinion. Further, it is contended that admittedly, the accident took place at a crossing and there is no evidence to show as to what was the condition of the traffic light as to whether it was operational or not. Further, it is contended that the time of the accident is 11:00/11:15 p.m. and in the poor light, from the distance of 40-50 feet, it was not possible for the two witnesses to have seen the pedestrian who was crossing the road so as to testify about the negligence of the petitioner or the lack of contributory negligence on the part of the pedestrian. Further, it is contended that the nature of injuries sustained by the deceased at the time of accident have not been proved and no death occurred on the spot and the victim died in the hospital later.

10. Learned APP for the State submits that there is no infirmity in the view taken by the Trial Court as also by the Appellate Court. He submits that the prosecution has proved that beyond reasonable doubt the accident took place on account of the act of the petitioner and his vehicle was involved in the accident. He further submits that deceased subsequently expired on account of the injuries sustained on account of the accident and the petitioner has not been able to contradict the testimony of the witnesses. He submits that the revision petition is liable to be dismissed.

11. I have heard learned counsel for the parties and perused the

record of the Trial Court as well as the Appellate Court.

12. PW-1 in his statement, has deposed as under:

“On 18.03.2006, I was posted at PS Shakarpur as Constable and on that day, I was on duty on check post along with HC Satprakash at Vikas Marg, Sira Pa-Pa I, at about 11.15 P.M., I saw a taxi bearing no. DL 1Y A 2403 which was coming from the side of ITO and had hit the pedestrian who was trying to cross the road.....”

13. PW-2 in his statement, has deposed as under:

“On 18.03.2006, I was posted as H.C. No. 131/E PS Shakarpur and I was picket duty from 8:00 p.m. to 8:00 a.m. next day. Const. Rupal Singh was also with me on duty. At about 11:15 p.m., one pedestrian was crossing at zebra crossing, Vikas Marg, in front of the picket. In the meanwhile, one Tata Indica Car came from ITO side and going towards Karkari More, the car hit the person crossing the road, so I indicated to stop the car and the car was stopped. I lifted the injured person and some people who were identified the injured person gathered there and they took the injured to the Walia Nursing Home. The accident took place due to the negligence and rash driving of the car driver. I apprehended the car driver when he stopped the car.....”

14. The petitioner was apprehended at the spot by PW-1 and PW-2, who were stated to be present at the time of the accident. They have identified the petitioner at the time of Trial.

15. The prosecution has relied on the testimony of PW-1 and PW-2 as the two eye-witnesses. PW-1 in his testimony has not stated as to

whether the vehicle was being driven in a fast manner or what was the manner in which the vehicle was being driven. PW-2 in his testimony has stated that the vehicle was being driven by the petitioner in rash and negligent manner.

16. PW-2 has given his opinion about the manner of driving. *Rash and negligent manner* is an opinion which may vary from person to person depending on the perception of an individual. What may be “rash and negligent” for one may not be “rash and negligent” for another. For one person, driving at a speed of 80 may be high speed and rash and negligent and for another it may not be.

17. A witness can depose as to the manner of driving or speed at which the vehicle was being driven but not render an opinion on “rash and negligent”. 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 the rashness or negligence on the part of the driver.¹

18. In the present case, PW-1 in his testimony has not stated anything as to how the vehicle was being driven. There is no mention as to whether the vehicle was being driven at a high speed or in a manner which may be construed as “rash and negligent” by the Court. PW-2 also has given his perception that the vehicle was being driven in a rash and negligent manner. No skid marks or tyre marks have

been obtained of the spot to indicate that the vehicle was being driven at a high speed.

19. Further, record does not show as to what was the nature of injuries sustained by the deceased at the time of accident which could have indicated as to the nature of the impact which further could have led to an inference of the manner of driving the offending vehicle. The medical record, which has been produced of the private hospital, (Ex. PW4/A) shows that the victim suffered a cardiac arrest after he arrived at the hospital.

20. It is further an admitted position that the accident took place at night at about 11:00/11:15 p.m. PW-2 in his cross examination could not state as to whether the area was well lit. Rather, he in his cross examination has stated that he could not say whether any street light pole has been shown in the site plan or not or as to whether there was moon night or dark night. Further, the prosecution has also not proved the condition of the traffic light which could have indicated as to whether the petitioner was within his right to drive on the road if it was green light or whether he was jumping a red light or whether the light was non-functional. Prosecution has also not been able to establish as to whether the pedestrian was within his right to cross the road at the crossing.

21. Reference may be had to the judgment of a Coordinate Bench

¹ *Ram Chander vs. State : 2017 [4] JCC 2676*

of this Court in *Abdul Subhan vs. State (NCT of Delhi)*: 133 (2006) DLT 562, wherein, this Court has held that to be punished under Section 304A IPC, a point to be established is that the act of the accused was responsible for the death and such act must have been rash and negligent and the prosecution has to prove the commission of a rash and negligent act. The court relied upon the decision of the Orrisa High Court in *Badri Prasad Tiwari Vs. The State*: 1994 Cri L J 389, wherein the Court had held that a bald statement of a witness that the vehicle was being driven at a high speed does not *ipso facto* establish rash and negligence conduct.

22. Keeping in view the facts and circumstances of the case and on perusal of the records, I am of the view that the prosecution has failed to prove beyond reasonable doubt that the conduct of the petitioner was rash and negligent and the petitioner is guilty of having committed offence under Section 304 A/279 IPC by causing death of the victim. Learned counsel for the petitioner has been able to show that there is reasonable doubt as to whether the accident was caused on account of the act of the petitioner and said act was rash and negligent. Accordingly, I am of the view that the judgments of the Trial Court as well as the Appellate Court suffers from infirmities.

23. In view of the above, giving benefit of doubt to the petitioner, the impugned order dated 07.05.2016 of the Appellate Court as also the order of conviction dated 29.10.2015 and order on sentence dated

29.01.2016 of the trial court are set aside. The petitioner is acquitted of the charges publishable under Sections 279/304A IPC.

24. The petition is accordingly allowed. There shall be no order as to cost. The bail bond and surety bond of the petitioner are discharged.

25. This court appreciates the assistance rendered by learned counsel for the petitioner who represent the petitioner through Delhi High Court Legal Services Committee as also the Learned APP.

26. Order *Dasti* under the signature of the Court Master.

NOVEMBER 12, 2018
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SANJEEV SACHDEVA, J