

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

CRL.REV.P. 776/2019

Judgment Reserved : 24.09.2019

Date of Decision : 27.09.2019

IN THE MATTER OF

RISHI PAL

..... Petitioner

Through: Ms. Sunita Arora, Advocate

Versus

STATE

.... Respondent

Through: Ms. Manjeet Arya, APP for State
with SI Manoj Kumar, P.S. Malviya Nagar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceedings have been instituted challenging the judgment dated 23.07.2018 passed by the Addl. Special Judge-NDPS/ASJ (South), Saket Courts, New Delhi in Crl. Appeal No. 341 of 2017, whereby the conviction and sentence of the petitioner was upheld.
2. Earlier, vide judgment dated 25.11.2017 passed by the Metropolitan Magistrate-02 (South District), Saket Courts Complex, New Delhi, the petitioner was convicted in FIR No. 12/2008 registered under Sections 279/304A IPC at P.S. Malviya Nagar. The petitioner was sentenced to SI for 2 years for the offence under Section 304A IPC. He was also sentenced SI for 6 months for the offence under Section 279 IPC. All the sentence were directed to run concurrently.
3. Briefly, the facts, as noted by the trial court are that on 04.01.2008 at Gate No.2, near T-78, Khirki Extension, Krishna Mandir, New Delhi,

the petitioner was driving an Indica car bearing No. UA 07S 6252 on a public way in a rash and negligent manner and hit Ms. Madhuri (deceased), who was wife of the complainant from the back of his car and caused her death.

4. After completing the investigation, the charge-sheet was filed. The petitioner pleaded not guilty and claimed trial.

5. The prosecution examined total of 7 witnesses. The petitioner examined himself as DW-2.

6. The appellate court noted that the petitioner did not challenge the fact that at the time of the incident, the car was driven on a public way in a rash and negligent manner. He also did not dispute that the injured succumbed to her injuries on account of that accident. The petitioner had only assailed his identification by Mr. Azad Kapoor, husband of the deceased. He also assailed the steps taken during the investigation. He also did not deny that he was appointed the driver of the car but claims that at the time of the accident, the car was being driven by one Mr. Sanjay Shrivastav, who was a friend of the owner of the car and who had hired the car. In the statement recorded under Section 311 Cr.P.C., the petitioner stated that he drove the car from Dehradun to Delhi but just about five minutes before the accident, the said Sanjay Shrivastav took over and drove the car.

7. During the investigation, a Notice under Section 133 of the Motor Vehicle Act (Ex. PW6/B) was served upon Sahab Singh Thakur (PW-7), the owner of the car. He submitted his reply, in which it was stated that the petitioner was driving the car on that day.

8. To decide the controversy, the testimony of PW-2 assumes significance. He was, being the husband of the deceased, accompanying

her. In the cross-examination, he deposed that as he tried to catch the driver by hand, he could see his face. The petitioner refused to participate in the TIP proceedings during the investigation. The petitioner examined himself as DW-2. He deposed that he tried to extricate the victim but since the crowd had gathered, he ran away.

9. The appellate court had observed that the petitioner while refusing TIP did not state that it was Sanjay Shrivastav, who was driving the car. It was also observed that in view of the conduct of the appellant as well as the owner of the vehicle, the plea was taken that the vehicle was driven by Mr. Sanjay Shrivastav was found to be belated and not believed.

10. The nature and scope of Section 304-A was discussed in the case of Naresh Giri V. State of M.P. reported as **(2008) 1 SCC 791** as follows:-

“7. Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. This provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A.

8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or

negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edition) Volume 34 paragraph 1 (para 3) as follows:

"1. General principles of the law of negligence- Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may

accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two".

11. In Ravi Kapur Vs. State of Rajasthan reported as (2012) 9 SCC 284, it was held as under:-

"14. The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others."

12. In view of the above enunciation of law and concurrent findings of fact, I do not find any illegality or perversity in the view and findings of both the courts.

13. The trial court had observed that the petitioner was the sole bread earner of the family. He has an old aged mother and had no other criminal history. The trial took 9 years.

14. The Nominal Roll of the petitioner reflects that the petitioner has undergone a period of 1 year and 9 days as on 22.09.2019. The jail conduct has been satisfactory.

15. In view of the above discussion, the conviction of the petitioner under Section 279/304A IPC is upheld. However, keeping in view the fact that petitioner has already undergone more than one year, his sentence is

reduced to the period already undergone by him for the offence punishable under Section 304A IPC. The order on sentence is modified to the above extent. The petition is disposed of in above terms.

16. A copy of this order be communicated to the concerned Jail Superintendent.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 27, 2019
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