

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

Crl. Rev. P. 294/2018

Reserved on : 30.08.2019

Date of Decision : 06.09.2019

IN THE MATTER OF:

KAILASH

..... Petitioner

Through Mr. Anurag Singh, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through Dr. M.P. Singh, APP for the State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceedings arise of impugned judgment dated 29.01.2018 passed by the Addl. Sessions Judge-04 & Special Judge (NDPS) South-East District, Saket Courts, New Delhi in CA No.134/2017 in CA No.44/2017 arising out of FIR No.196/2010 registered under Sections 279/304A/338 IPC at police station Pul Prahlad Pur whereby the judgment of conviction of the appellant dated 07.03.2017 and order on sentence dated 15.03.2017 passed by the MM (South-East)-08, Saket Courts, New Delhi was upheld.

2. Vide judgement of conviction dated 07.03.2017, the Metropolitan Magistrate convicted the petitioner for offences punishable under Sections 279/304A/338 IPC and vide order dated 15.03.2017, the petitioner was sentenced to undergo SI for one year with fine of Rs.5,000/- u/s 304-A IPC, SI for 6 months with fine of Rs.1,000/- u/s

279 IPC and SI for one year u/s 338 IPC. All the sentences were directed to run concurrently. In default of payment of fine of either of the offences, the petitioner was directed to undergo simple imprisonment for a period of three months in addition to the substantive imprisonment.

3. The notice under sections 279/304A/338 IPC was framed to which the petitioner pleaded not guilty and claimed trial. During the trial, the prosecution examined 10 witnesses. The statement of the petitioner was recorded on 29.08.2013 under Section 294 IPC where he had admitted DD No.36A, 8-B, 9-B dated 22.07.2010, TIP proceedings dated 24.07.2010, superdarinama of offending vehicle, entry in Register No.19 of Malkhana of P.S. Pul Prahlad Pur, MLC bearing No.219278 and 219277, X-ray reports No.24806 & 24831 without disputing their genuineness. On 10.02.2017, the said documents were exhibited as Ex.A-1 to A-11. The documents pertaining to the identification and handing over of the dead body of deceased Ex.A-12 to Ex. A-15 were also admitted by the petitioner.

4. The complainant Ram Kumar Yadav was examined as PW-1. He deposed that on 22.07.2010 at about 6:00 a.m., he was driving the motorcycle bearing registration No.DL-3S-AE-5648 along with his son and his colleague Kikar Singh as pillion riders. His son was sitting in the middle. He was going to his office. When they reached at Chowk, Pul Prahladpur, he took a cut on the road on the right side. One truck/trolla came from Badarpur side in a high speed on the wrong side and hit the motorcycle from behind upon which all of them fell down and sustained injuries. The petitioner tried to flee but was apprehended near the flyover by the police officials. The petitioner was taken to the Trauma Centre

and his statement Ex. PW-1/A was recorded wherein he stated that the offending vehicle was being driven in a rash and negligent manner. He identified the photographs of the place of occurrence and the offending vehicle as Ex. P-1 & P-2 respectively.

5. Dr. Raghvendra Bagla, who conducted autopsy on the body of the deceased, was examined as PW-2. He proved the PM report as Ex. PW-2/A. This witness was, however, not cross examined. The PM report shows that there is crush injury on the face resulting in multiple fracture of the skull and facial bones, faces. The head is laterally compressed. The kind of injuries are possible only if the head or body is ran over by the truck. The injuries of complainant and his son Rahul were recorded in MLC exhibited as Ex. A-7 and A-8. As per the MLC, Rahul had sustained dangerous injuries.

6. The Mechanical inspection of the motorcycle and truck/trolla was conducted by T.U. Siddiqui (PW-3), who proved the reports as Ex. PW-3/A & Ex. PW3/B respectively.

7. The prosecution also examined HC Jot Singh as PW-4, who proved the FIR as Ex. PW-4/A. Rohtash Singh, Asstt. Ambulance Officer was examined as PW-4A. He deposed that he had removed the injured Rahul and Ram Kishore to the AIIMS Trauma Centre.

8. The prosecution further examined HC Harish Chand Nabar (PW-5) who was posted at PCR and deposed that he took one of the injured to the AIIMS Trauma Centre while two injured were removed to the hospital by CAT Ambulance.

9. In order to constitute an offence punishable under Section 279 IPC, the following ingredients must be made out:-

- I) There must be rash or negligent driving or riding;
- II) It must be on a public way; &
- III) The driving or riding must be in a manner so rash or negligent so as to endanger human life or to be likely to cause hurt or injury to any person other than the driver.

10. Similarly, to constitute an offence punishable under Section 304A IPC, it is necessary that the death is caused by rashness or negligence.

11. I have heard learned counsel for the parties and gone through the case record. The prosecution has been able to prove that the petitioner was driving a commercial vehicle on the wrong side of the road. As per the testimony of the complainant, the truck/trolly was being driven in a rash and negligent manner which resulted in the accident. The petitioner tried to flee away but was apprehended by the police near the flyover. The petitioner was identified by the complainant. The Mechanical Inspection report of the vehicles, the MLCs of the injured persons and the PM report corroborated the testimony of the complainant.

12. The learned counsel for the petitioner submitted that the petitioner has no involvement in any other case except this. He is the only bread earner of his family. He has his aged parents, wife and three children to support.

13. I find no infirmity or perversity with the concurrent findings arrived by the Courts below. Accordingly, the revision petition filed by

the petitioner is dismissed. However, his sentence under Sections 304A/338 IPC is reduced to a period of 6 months. The sentences under 279/304A/338 IPC shall run concurrently. The order on sentence stands modified accordingly. His bail bonds are cancelled. The petitioner is directed to surrender within two weeks from passing of the order and undergo the remaining period of sentence.

14. A copy of this order be sent to the trial court alongwith the lower court records.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 6th, 2019

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