

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

CRL.REV.P. 444/2018

Judgment Reserved :25.09.2019

Date of Decision : 30.09.2019

IN THE MATTER OF
RASHID

..... Petitioner

Through: Mr. Tahir Ashraf Siddiqui, Advocate
(DHCLSC)

Versus

STATE

....Respondent

Through: Ms. Radhika Kolluru, APP for State
with SI Anuj Yadav, P.S. Dwarka North

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceedings have been instituted challenging the judgment dated 21.02.2018 passed by the Special Judge, Dwarka Courts, Delhi in CA No.240/2017, whereby the conviction of the petitioner was upheld, however, the sentence under Section 304A IPC was reduced to RI for 6 months.

2. Earlier, vide judgment dated 05.05.2017 passed by the Metropolitan Magistrate-06, Dwarka Courts, Delhi, the petitioner was convicted in FIR No.397/2013 registered under Sections 279/337/304A IPC at P.S. Dwarka North. The petitioner was sentenced to RI for 3 months for the offence punishable under Section 279 IPC. He was also sentenced RI for 6 months for the offence punishable under Section 337 IPC and RI for 1 year for the office punishable under Section 304A IPC. The sentences were directed to run concurrently. The petitioner was also directed to pay compensation of Rs.75,000/- in terms of Section 357(3)

Cr.P.C. & out of which Rs.70,000/- was to be paid to the LRs of the deceased, Prabhawati and the remaining amount of Rs.5,000/- was to be paid to the injured Anil Kumar and in default of which, he was directed to undergo RI for three months in additions to the aforesaid sentence.

3. Briefly, the facts as noted by the trial court are as under:-

“1. Briefly stated the facts of the case, as alleged by the prosecution and as unfolded from charge-sheet are that at 05:05 PM on 06.11.2013, an information regarding an accident and shifting of injured to the dispensary by the ambulance was received at PS-Dwarka North. The same was reduced in writing vide DD no. 51B. The said DD was handed over to ASI Ved Prakash for necessary action. Thereafter, he alongwith Ct. Praveen reached at the spot of accident i.e. T Point near Sector-14 Dwarka Metro Station, Dwarka, New Delhi. There they found a motorcycle bearing registration No. DL 9S AA 2597 and one Bolero vehicle bearing registration No. HR 63A 3657 in an accidental condition and they also came to know that the injured persons had already been shifted to DDU hospital. In the meanwhile, another DD No. 54B regarding admission of injured in DDU Hospital was received by ASI Ved Prakash. He left Ct. Praveen at the spot and went to the said hospital. At hospital, he collected the MLC of injured Prabhawati, who was unfit for her statement. He also met the rider of the said motorcycle, namely, Anil Kumar, who claimed to be an eye witness of the accident. He recorded the statement of complainant Sh. Anil Kumar. He endorsed the said statement and prepared a rukka. On the basis of the said rukka, he got the present FIR u/s 279/337 IPC registered at PS-Dwarka North.

2. In his complaint, Sh. Anil Kumar had asserted that on 06.11.2013 he alongwith his sister-in-law (bhabhi) Smt. Prabhawati Devi was coming on his motorcycle bearing registration No. DL-9S-AA-2597 from Najafgarh and they were going towards his quarter at Delhi Cantt. He was driving the said motorcycle and Smt. Prabhawati was a pillion rider on it. He had alleged that at about 05.05 pm at T- point near Police Quarters, Sector -16 A, he took a left turn and in

the meanwhile one Bolero vehicle bearing registration no. HR-63A 3657 came at a very high speed and hit his motorcycle from behind. He had further alleged that the said Bolero was being driven in a culpable rash and negligent manner. He had alleged that on account of said impact, his sister-in-law fell from the motorcycle and she sustained injuries on her head. He had asserted that the driver of said Bolero got them in his vehicle for taking them to the hospital, but in the meanwhile, ambulance came at the spot and took them to DDU hospital. He had alleged that his sister-in-law sustained injuries due to culpable rash and negligent driving of the driver of the said Bolero.

3. During investigation, IO prepared the site plan. He seized the offending Bolero vehicle bearing registration no. HR 63A 3657 and the motorcycle bearing registration No. DL 9S AA 2597. The driver of the said offending vehicle, namely, Rashid was also found at the spot and the IO arrested the said accused on the identification of complainant Sh. Anil Kumar. The IO got the said vehicles mechanically inspected. He also obtained the MLC of injured Anil, on which the concerned doctor opined that he sustained simple injuries. On 08.11.2013, the injured Smt. Prabhawati succumbed to the injuries sustained by her in the said accident. Accordingly, section 304A IPC was also added. Postmortem of the deceased was got conducted in DDU Mortuary. After completion of investigation, the present chargesheet under section 279/337/304A IPC was filed in the court.”

4. I have heard learned counsel for the petitioner as well as learned APP for the State and have gone through the case records.
5. During trial, the prosecution examined a total of 12 witnesses. Anil Kumar, the complainant/injured, an eyewitness of the present case was examined as PW-1. He proved his case dated 06.11.2013 as Ex.PW1/A. He deposed that in the accident, he sustained minor injuries while his sister-in-law, the deceased, suffered fatal injuries. He identified the petitioner as the driver of the offending Bolero car. The witness also

identified the offending vehicle and the motorcycle in the photograph shown to him which was exhibited as Ex. PW1/H (collectively).

6. Learned counsel for the petitioner has submitted that he is neither disputing the accident nor the presence of the petitioner on the spot. The petitioner has also not challenged the MLC and the postmortem report of the deceased as well as the MLC of the injured eye witness, Anil Kumar. He, however, submitted that the petitioner was not driving the offending car in a rash and negligent manner. He has relied on the site plan to show that the motorcycle driven by the injured came from the side road and on account of negligence of the driver of the motorcycle, the accident took place.

7. The nature and scope of Section 304-A IPC 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 (p. 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".

8. The moot point to be considered in the present case is whether the accident was caused on account of rash and negligent act of the petitioner in driving the offending vehicle. In this regard, it is seen that the mechanical inspection report of the offending vehicle and the motorcycle driven by Anil Kumar were proved by Puran Chand as Ex. PW7/A and Ex. PW7/B.

9. In this view, besides the testimony of eye witnesses, the mechanical inspection report & the site plan assume significance.

10. The mechanical inspection report of the offending vehicle (Ex. PW7/A) showed fresh rubbing marks on the front bumper, front mudguard and head light on the left side. The mechanical inspection report of the motorcycle (Ex. PW7/B) showed fresh breakage of the right-side indicator on the back side and also fresh rubbing marks on the left leg guard and on the headlight.

11. The site plan showed that the place where the accident occurred was a T point, where traffic coming from the left road was merging with the traffic coming from the straight road. The motorcycle was taking a left turn while the offending *bolero* was coming from behind when the

accident took place.

12. 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.”

13. A combined evaluation of the testimony of the eye witness, mechanical inspection reports and the site plan leads to the conclusion that both the trial court and the appellate court rightly held that the petitioner owed a duty of care and was driving the offending vehicle rashly and negligently.

14. Learned counsel for the petitioner has relied upon the decision of the Supreme Court in Shiddanagouda Vs. State of Karnataka reported as **2015 (4) RCR (Criminal) 296** and prayed that the sentence of the appellant be reduced. Learned counsel for the petitioner further submitted that the petitioner is 28 years of age and is the sole earning member of the family having two children aged 5 years and 7 years. He has also submitted that the Jail conduct of the petitioner was satisfactory and he was not involved in any other case.

15. In view of the above discussion, the conviction of the petitioner under Section 279/337/304A IPC is upheld and the sentence is

maintained, subject to payment of compensation of Rs.75,000/- as directed by the trial court. The petition is dismissed. The petitioner's bail bond is cancelled and he is directed to surrender before the concerned court within a period of 2 weeks from today to undergo the remaining sentence.

16. A copy of this order be communicated to the trial court and the Jail Superintendent.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 30th, 2019
na/p'ma