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

+ **CRL.REV.P. 49/2019**

**BRIJESH PAL THROUGH
ITS PAROKAR**

..... Petitioner

Through: Mr S. K. Siwal and Ms Indu Tyagi,
Advocates.

versus

STATE

..... Respondent

Through: Ms Kusum Dhalla, APP for State.
SI Naveen Kumar, PS S. L. Colony.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 13.03.2020

1. The petitioner has filed the present petition, impugning a judgement dated 05.12.2018 passed by the learned ASJ dismissing the petitioner's appeal (Criminal Appeal No.442/2017) against an order dated 16.10.2017 passed by the learned MM. By the aforesaid order dated 16.10.2017, the learned MM had convicted the petitioner for offences punishable under Sections 279/337/338/304A of the IPC. By a subsequent order dated 17.10.2017, the petitioner was sentenced to undergo (i) simple imprisonment for a period of six months for committing the offence punishable under Section 304A of the IPC; (ii) simple imprisonment for a period of one month for the offence punishable under Section 279 of the IPC; (iii) simple imprisonment for a period of one month for the offence punishable under Section 337 of the IPC; and (iv) simple imprisonment for a period of one

month for the offence punishable under Section 338 of the IPC. All sentences were directed to run concurrently.

2. The petitioner was prosecuted pursuant to FIR bearing No. 271/14 under Sections 279/337/338/304A of the IPC, registered with PS Sunlight Colony. The FIR in question was registered as it was reported that on 03.05.2014, Ms Ragini Bhalla (the complainant) had arrived at Delhi Airport and Mr Kamal Deep Bhalla (the deceased) and her daughter (Sakshi) had come to pick her up in a Tata Indigo car (bearing no. UP 25 BA 4691) which was being driven by Sanju Singh (the driver). When the car reached near ISBT, Sarai Kale Khan, New Delhi one of its tyres got punctured. Thereafter, the driver parked the car to a side and changed the punctured tyre. At about 11:40 PM, while the driver was putting the tools back into the car and the deceased was organising the luggage kept in the trunk (dicky) of the car, a Tata Cantor (bearing no. HR 38K 9920 – the offending vehicle) coming from the Maharani Bagh side struck the car from behind. The deceased and the driver came between the Cantor and the car. The complainant was standing beside the car and her daughter was sitting inside the car. The complainants' daughter also received injuries. The offending vehicle came to a halt as it got stuck to the rear bumper of the car. Thereafter, a crowd collected at the spot and someone from the crowd called the police. The driver (the petitioner) of the offending vehicle reportedly fled from the spot and was seen doing so by the injured persons as well as the complainant. The injured persons were shifted to AIIMS Hospital by PCR. The doctors declared that the deceased had been brought dead.

3. It was alleged that the petitioner was driving the offending vehicle at a

very high speed and in a rash and negligent manner.

4. The chargesheet was filed against the petitioner following which, he was charged with the offences punishable under Sections 279/337/338/304A of the IPC. The petitioner pleaded not guilty and the matter was set down for trial. During the course of the trial, the prosecution examined eleven witnesses and the defence did not lead any evidence.

5. The Trial Court noted that at the time of evidence, the accused had admitted the MLC of the victim, the driver and the complainant's daughter. It held that the fact that on 03.05.2014 at about 11:30 p.m. the accused was driving the offending vehicle at the spot of the incident, was established beyond reasonable doubt. Further, it was also established that the car had been parked on the extreme left side of the road. Its emergency lights were switched on and broken branches had been placed on the road at the rear of the vehicle. The Investigating Officer, in his cross-examination, also testified to the aforesaid effect. The site plan (Ex. PW11/D) also finds mention of the aforesaid facts. In view of the evidence before it, the Trial Court held that the offending vehicle was being driven in a rash and negligent manner and at a speed of over 100 km/h.

6. The Trial Court held that since the road where the incident took place is a one-way road with four lanes, there was no reason for the petitioner to drive on the extreme left side. This, coupled with the fact that the offending vehicle was being driven at a speed over 100 km/h also established that the petitioner was driving in a rash and negligent manner, thereby endangering human life and public safety.

7. The Trial Court held that it had been proved, beyond reasonable doubt, that the death of the deceased and the injuries to the other persons were caused due to the petitioner driving the offending vehicle in a rash and negligent manner. Thus, it convicted the petitioner for the offences punishable under Sections 279/337/338/304A of the IPC.

8. Aggrieved, the petitioner preferred an appeal before the ASJ, Saket Courts on 15.11.2017. By a judgment dated 05.12.2018, the learned ASJ upheld the decision of the Trial Court in convicting the petitioner for the offences for which he was charged with. The Appellate Court found that the Trial Court had evaluated the evidence, as obtaining, and had delivered a cogent and well-reasoned decision. It found that the testimonies of the witnesses were credible and thus, were rightly accepted by the Trial Court. The Appellate Court found no reason to interfere with the impugned judgment dated 16.10.2017.

9. The learned counsel appearing for the petitioner contended that the courts below had erred in not appreciating that the vehicle was parked in the middle of the road and hazard lights had not been switched on. He further submits that there is also no evidence to prove that the petitioner was driving the offending vehicle at a speed of about 100 km/h.

10. The above contentions are unmerited. There is sufficient evidence on record to establish that the vehicle was parked on the left side of the road. The witnesses are also testified that the hazard lights were blinking. The police official (PW8 – Ct Narender Kumar) who reached at the spot has also testified that hazard lights were on. Further, PW2, who is an eye-witness, has testified that blinker (hazard) lights were switched on and broken

branches were also kept on the road on the rear side of the car. He further testified that the offending vehicle was driven at a high speed (100 km/h). Given the extent of damage to the vehicles involved in the accident, the said testimony cannot be disbelieved.

11. Although the learned counsel appearing for the petitioner contended that it is not possible to drive the offending vehicle at 100 km/h, there is no material whatsoever to establish the same. The petitioner had not produced any evidence in defence to establish that the vehicle could not be driven at a high speed.

12. This Court finds no reason to fault the impugned order. The petition is accordingly, dismissed.

VIBHU BAKHRU, J

MARCH 13, 2020

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