

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

CRL.REV. P. 850/2019 and CRL.M.B. 1454/2019

Reserved on : 14.01.2020

Date of Decision : 23.01.2020

IN THE MATTER OF:

MOHD. ATIQ

..... Petitioner

Through: Mr. Imran Khan, Advocate

versus

STATE

..... Respondent

Through: Ms. Manjeet Arya, APP for State
with SI Deepak Kumar, P.S. Civil
Lines, Delhi

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceedings are instituted challenging the impugned order dated 20.07.2019, passed by ASJ (Central), Tis Hazari Courts, Delhi arising out of CA No. 140/2019 arising out of FIR No. 85/2007 registered u/s 279/304A IPC at P.S Civil Lines whereby while dismissing the appeal, the court upheld the order dated 16.11.2018 and order on sentence dated 20.02.2019 convicting the appellant for an offence punishable under Sections 279/304-A IPC. However, the order on sentence dated 20.02.2019 was modified to the following effect:-

“...the sentence imposed is reduced from 2 years to one year and appellant/convict is sentenced to undergo one year RI for offence under section 304A with fine of Rs 5000/- and to undergo SI for 15 days in default. The sentence of RI of six month alongwith fine of Rs 1000/- in respect of offence under section 279 IPC is maintained

alongwith the default sentence of 02 days. Both the sentences shall run concurrently.”

2. The facts of the prosecution, as noted by the Metropolitan Magistrate, are that:-

“Briefly stated, the facts of the case as unfolded from the charge-sheet are that on 05.04.2007, at about 1:00 AM, near Red Light, Chandagi Ram Akhara, Civil Lines, Delhi, within the jurisdiction of PS Civil Lines, accused was found driving vehicle bearing vehicle No. HR-38C-5812 in a manner so rash & negligent so as to endanger human life and personal safety of others and while driving so, hit against motorcycle bearing registration No. DL-ISP-1182 and caused death of Rohan Badan. Thereby, the accused committed the offences punishable u/s 279/304A and accordingly, charge-sheet was filed..”

3. Notice under Section 279/304A IPC was framed, to which the petitioner pleaded not guilty and claimed trial. During the trial, the prosecution examined total of 13 witnesses.

4. I have heard the learned counsels for the parties and have gone through the case records.

5. 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.

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

7. In Rashid v. State reported as **2019 SCC OnLine Del 10386**, this Court relied on the following observation of the Supreme Court in Naresh Giri v. State of M.P. reported as **(2008) 1 SCC 791** to determine whether the act of the accused was rash and negligent:

"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 prosecution had examined the complainant Rajiv Kumar as PW-2. He deposed that on 05.04.2007 he along with the deceased were going to Sant Nagar on his motorcycle bearing no. DL-1SP-1182. He was driving the said vehicle while the deceased was sitting on the pillion seat. He further stated that when they reached in front of *Akhara Chandgiram*, one truck bearing registration no. HR-38C-5812 came there from the side of ISBT at a very high speed, in a rash and negligent manner and hit his motorcycle from behind due to which the deceased fell down on the road and came under the wheel of the truck and got crushed as the truck ran over his body. In the process, the truck also got disbalanced and collided with the pavement and turned turtle. The accident has occurred near a traffic signal at about 1 am. It has come in the testimony of PW2 that the truck was being driven in the middle of the road despite being a commercial vehicle. As a result of the impact of the accident, deceased had come under the wheels of the offending truck and died at the spot. The presence of PW-2 at the spot was proved by HC Gajraj (PW-7), ASI Sugreev (PW-9) and Retired Inspector Raj Kumar (PW-13).

9. Mr. Jaspal Singh was examined as PW-5. He deposed that his wife Smt. Manjeet Kaur was the registered owner of the truck HR-38C-5812. He further deposed that at the time of the accident the petitioner was driving the truck. The offending truck was seized from the spot. The petitioner has not denied that he was driving the offending truck on the date and time of the incident.

10. During the course of the arguments, learned counsel for the petitioner has argued that even though it was not disputed that the petitioner was present at the spot however, the alleged accident was not caused by the petitioner. He submits that one Tata 407 was standing alongside his truck, who had first hit the motorcycle of the petitioner. In order to avoid the same, the petitioner turned his truck at the right side and hit against the divider resulting in his truck getting overturned upto the distance of 60-70 feet. He has referred to the statement of the petitioner recorded under Section 313 Cr.P.C, where while answering Q1, the aforesaid defence was taken. However, a perusal of the testimony of PW2 would show that no such suggestion was given to the witness during his cross-examination. The aforesaid stand of the petitioner was an afterthought and rightly disbelieved by the lower courts.

11. The mechanical inspection report was proved by retired ASI/Tech. Devender Kumar, who was examined as PW-12. As per the mechanical inspection report, Ex. 12/A and Ex. 12/B, there was fresh damage on both the vehicles.

12. I find no merit in the aforesaid submission.

13. The postmortem of the deceased was conducted on 05.04.2007. The relevant portion of the PM report is reproduced as under:

“Death in this case is due to combined effect of cremio-cerebral damage and hemorrhagic shock consequent upon blunt force/surface impact to the head and chest – abdominal region respectively. All injuries are ante mortem and could be possible in road traffic accident.”

14. In view of the above discussion, I am of the opinion that the prosecution has duly proved that the petitioner was driving the offending vehicle in rash and negligent manner and caused the accident resulting in the death of Rohan Badan. I find no infirmity or perversity in the impugned judgment and the concurrent findings reached by both the courts. Accordingly, the conviction of the revisionist under Section 279 and Section 304A IPC is upheld.

15. Learned counsel for the revisionist has submitted that the revisionist has suffered the trial for more than 12 years. He further submitted that the petitioner had been driving the truck since 2002 with an impeccable record and was not involved in the case of similar nature. He further submitted that the petitioner is the sole bread earner and has elderly parents and three minor children to support. He has also referred to the nominal roll of the petitioner to submit that the jail conduct of the petitioner has been satisfactory. Learned counsel for the revisionist has submitted in the alternative that in view of the aforementioned mitigating circumstances, the sentence of the petitioner be reduced. In support of his submission, he has referred to the decision rendered in Shiddanagouda v. State of Karnataka reported as **2015(4) RCR (Criminal) 296**.

16. A perusal of the Nominal Roll shows that as on 14.10.2019, the revisionist has undergone 2 months and 25 days including period of remission and his unexpired portion of sentence 8 months and 23 days.

17. The Sessions Court had modified the order on sentence and directed the appellant to pay fine of Rs 6,000/- for both the offences and to undergo default sentence of SI for 17 days. Learned counsel for the

petitioner on instructions from Akeel, brother of the petitioner present in court, volunteered to pay Rs.1 lac as additional compensation to the legal representatives of the deceased.

18. Accordingly, the sentence awarded to the petitioner for the offence under Section 279 IPC is maintained. However, in the facts and circumstances of the case, the sentence awarded under Section 304-A IPC is reduced to the RI for 6 months. Both the sentences were directed to run concurrently. In view of the voluntary statement of the learned counsel for the petitioner, the fine amount is enhanced to Rs.1,06,000/- out of which Rs.1 lac shall be paid as compensation to the legal representatives of the deceased and the remaining amount of Rs. 6000/- be deposited as fine. The default sentences in lieu of payment of fine are maintained.

19. As a result, the revision petition is allowed to the extent mentioned above.

20. Section 357A provides for victim compensation scheme and reads as follows:

“1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.

2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)

3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.”

21. In the case of Ankush Shivaji Gaikwad v State of Maharashtra reported as **(2013) 6 SCC 770**, the Supreme Court re-emphasized that Section 357A, confers a power coupled with a duty on the courts to apply its mind to the question of awarding compensation in every criminal case. A similar view was taken by a division bench of this Court in the case of Mohini v The State reported as **2015 SCC OnLine Del 12019**, wherein in a case relating to offences under Sections 279/338/304A, the Delhi Legal Services Authority under the then prevalent Delhi Victim Compensation 2011 was directed to provide compensation to the legal representative of the victim.

22. In exercise of the powers conferred under Section 357A of CrPC, 1973, the government of NCT of Delhi in compliance with the directions given by Supreme Court in W.P (C) No. 565/2012 titled Nipun Saxena vs Union of India, approved the Delhi Victim Compensation Scheme, 2018 for providing funds for the purpose of

compensation to the victim or his dependents who have suffered loss of life or injury as a result of the crime.

23. The legal representatives of the deceased are directed to approach Delhi State Legal Services Authority who shall consider the case and provide compensation to the legal representatives of the deceased in accordance with the aforesaid Scheme within a period of two months from the date of passing of this judgment.

24. A copy of this judgment be communicated to the trial court as well as to the Member Secretary, Delhi State Legal Services Authority for information and compliance. A copy of this order be also provided to the petitioner through Jail Superintendent at no cost.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 23, 2020