

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

CRL.REV.P. 427/2018

Reserved on : 29.01.2020

Date of Decision : 03.02.2020

IN THE MATTER OF:

GURBACHAN SINGH

..... Petitioner

Through: Mr. Vinay Kumar and Mr. Pavitra
Veer, Advocates

Versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Manjeet Arya, APP for State
with ASI Pramod Kumar, AIU/NDD

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceeding are directed against the judgment dated 12.04.2018 passed by the Appellate Court in Cr. Appeal No. 150/2017 arising out of FIR No.173/2012 registered under Section 279/337/338/304A IPC at P.S. Parliament Street, New Delhi whereby the petitioner's conviction was upheld.

2. Initially, the trial court vide judgment dated 15.4.2017 convicted the petitioner under Sections 279, 337, 338 and 304-A IPC and vide order on sentence dated 26.04.2017 sentenced the petitioner to RI for three months under Section 279 IPC, RI for three months under Section 337 IPC, RI for nine months under Section 338 IPC and RI for one and half year under Section 304-A IPC. The convict was also directed to make payment of Rs 50,000/- as compensation to the LR's of the deceased and in default whereof to undergo SI for three months. The

Trial Court also directed the L.Rs of the deceased to approach DLSA for additional compensation. However, the Appellate Court modified the order on sentence dated 26.04.2017 to the extent that the sentence under Section 304-A IPC was reduced to RI for nine months. The rest of the sentences were maintained.

3. Learned counsel for the petitioner handed a certified copy of the order dated 29.10.2018 whereby an amount of Rs.50,000/- had been handed over to the mother and the wife of the deceased.

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

“2. ... In gist prosecution evidence is that on 07.12.2012, PW1 and PW2 boarded TSR bearing registration number DL-1RK-5109 for Nizarauddin Railway Station, at about 07:00 am when it reached K. G. Marg, Firoz Shah Crossing, one TATA Indigo car bearing registration number CH-01AC-8201 came from the side of Mandi House at very high speed and being driven in rash manner and further it hit their TSR after jumping red-light when TSR was crossing its green-light due to which PW1, PW2 and driver were thrown out of the auto. They received severe injuries. The PW3 and PW4 also witnessed the incident being present/posted at nearby places and went to the spot. PW3 called at 100 number. The incident was reported at PS vide D.D.No.37A dated 17.12.2012 of PS Parliament Street vide Ex.PWX/D2. PCR van came at the spot and shifted all injured persons to the hospital. On receipt of D.D.No.37A from DO, PW6 reached at the spot, met with PW3 and accused and further he came to know that injured has been shifted to RML Hospital. PW6 left PW3 at the spot, went to RML Hospital, found two injured admitted there and one declared being brought dead. PW6 recorded statement Ex.PW1/A of PW1, came back at the spot where PW5 had already reached at the spot. PW6 made endorsement Ex.PW6/A on statement Ex.PW1/A, sent PW3 to PS to get FIR registered and handed over further investigation to PW5. PW3 got FIR registered and came back at the spot. PW5 got clicked

photographs of the spot, seized both vehicles vide Ex.PW5/A and Ex.PW5/B, arrested accused vide Ex.PW5/C, prepared site plan Ex.PW5/D at instance of PW3 and then released accused on bail. PW5 received dead body of deceased Durga Prasad, got conducted postmortem and released body to its relatives vide Ex.PWX/D11. PW5 deposited vehicles in police malkhana, deposited MLCs of injured persons, collected their results, added Section 338 IPC in the matter, collected postmortem report, got verified driving license of accused and other papers of vehicle, got conducted mechanical inspection of both vehicles, recorded statements of various witnesses, prepared challan and filed in the Court. All witnesses have identified accused as driver of offending Indigo car and have correctly identified the photographs of Vehicles Ex.Pl (Collectively) in the Court. Prosecution witnesses were examined and discharged.”

5. Learned counsel for the petitioner has contended that the testimony of witnesses is not trustworthy and the petitioner has been falsely implicated as he did not comply with the bribe demand of the police officials. It was further contended that one of the injured namely, Nisha’s parentage and address as mentioned in the MLC is different from the parentage and the address which was mentioned at the time of her testimony. It was thus urged that some other person in place of the injured, Nisha had appeared in court and therefore the testimony ought not be relied upon.

6. I have heard learned counsel for the petitioner as well as learned APP for the State and have also gone through the case records.

7. 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.”

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

9. 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".

10. A perusal of the testimony of Nisha, the complainant (PW2) reveals that the petitioner did not dispute the identity of the complainant at the time of her deposition. No such question was put to her whether she was not the same person who had received injuries in the accident. The witness had received grievous injuries in the accident and have identified both the petitioner as well as the offending vehicle i.e., the TATA Indigo Car bearing No. CH 01 AC 8201.

11. Besides Nisha, her friend Vikas (PW2) also boarded the TSR driven by the deceased Durga Prasad. Vikas also suffered injuries in the accident which was opined to be simple. The witness also identified the petitioner as well as the offending vehicle.

12. Both the witnesses stated that the offending vehicle was driven by the petitioner which was coming from the side of Mandi House being driven in a rash and negligent manner at the time of the accident. The prosecution also examined PW3 and PW4 who had witnessed the

aforesaid accident. The offending vehicle was seized on the spot and was mechanically inspected. As per the mechanical inspection report (Ex. PWX/D4), the front bumper grill/right head light of the offending vehicle was damaged and the right side front bonnet was dented /pressed.

13. In view of the overwhelming evidence on record, I do not find any merit in the contention sought to be raised by the learned counsel for the petitioner. There is no illegality, perversity or infirmity in the concurrent findings recorded by both the lower courts. Accordingly, the petitioner's conviction and sentence is upheld and the petition is dismissed. As per the Nominal Roll , the petitioner, on completion of his sentence, has been released.

14. A copy of this judgment be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 03, 2020

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