

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

CRL.REV.P. 3/2020

Reserved on : 04.10.2021

Date of Decision: 12.10.2021

IN THE MATTER OF:

NARENDER

..... Petitioner

Through: Ms. Usha Pandey, Advocate.

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present revision petition has been filed under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the petitioner assailing the judgment dated 18.12.2019 passed by the learned Addl. Sessions Judge-02 (Central District), Tis Hazari Courts, Delhi in Crl. Appeal No. 30/2019, whereby the judgment on conviction dated 09.05.2019 and the order on sentence dated 28.05.2019 passed by the learned Metropolitan Magistrate-04, Central District, Tis Hazari Courts, Delhi in FIR No. 51/2006 registered under Sections 279/304A IPC at Police Station I.P. Estate, Delhi, were upheld.

2. Vide the aforesaid judgment on conviction and order of sentence, the Trial Court had convicted the petitioner for the offences punishable under Sections 304A/279 IPC and sentenced him to undergo Rigorous Imprisonment for a

period of 01 year for the offence punishable under Section 304A IPC, and Rigorous Imprisonment for a period of 03 months for the offence punishable under Section 279 IPC alongwith fine of Rs.1,000/-, in default whereof to undergo Simple Imprisonment for a period of 01 month. Both the sentences were ordered to run concurrently. The fine amount of Rs.1,000/- is stated to have been deposited by the petitioner before the learned Metropolitan Magistrate itself.

3. Briefly stated, the facts of the present case, as noted in the impugned judgment dated 09.05.2019 are that, on 05.02.2006 at about 09:45 p.m., the petitioner was driving a DTC bus bearing registration No. DL-1PB-5602 in a rash and negligent manner, which hit a motorcycle bearing registration No. DL-3SAQ-3019 from the back side, due to which the pillion rider of the motorcycle, namely *Shagun*, lost her life. The FIR came to be registered at the behest of *Yaduvendra Singh* (PW-1), who deposed that on 05.02.2006, he alongwith his sister *Shagun* (deceased) was going from *Darya Ganj* to *Mayur Vihar* via *Rajghat* Red Light on his motorcycle bearing no. DL-3SAQ-3019. His sister was the pillion rider on the motorcycle. At about 09:45 p.m., he was crossing the Red Light of *Rajghat* by taking right turn and in the meantime the bus in question, being driven by the petitioner in a rash and negligent manner, hit his motorcycle from the back side. As a result of the hit, he (*Yaduvendra Singh*) and his sister (*Shagun*) both fell down and the bus ran over the body of his sister causing her death on the spot.

4. During the trial, besides examining *Yaduvendra Singh* (PW-1), the prosecution also examined *Rohtash* (PW-4), who had mechanically inspected the bus in question and proved his report as Ex.PW-4/A, and *Shri. T.U. Siddiquie* (PW-9), who had mechanically inspected the motorcycle bearing no.

DL-3SAQ-3019, which met with the accident. The registered owner of the motorcycle, *Mr. Mukesh Gupta*, was examined as PW-10. He deposed that at the time of the accident, the motorcycle was in possession of his friend *Yaduvendra Singh*.

5. The prosecution also examined *Shri. Anant Singh* (PW-7) to prove the duty slip (Ex.PW-7/A). *Dr. Amit Sharma* (PW-12), who conducted the post-mortem of deceased *Shagun*, was examined to prove the Post Mortem report (Ex. PW-12/A) As per the post mortem report, the death of the deceased occurred due to cerebral damage upon blunt force/surface impact to the head.

6. In his statement recorded under Section 313 Cr.P.C. on 29.11.2018, the petitioner stated that his time to leave the ISBT bus stand was 9:50 p.m. It was claimed that he left the bus stand at said time for Noida. It was further stated that when he was on his way and had reached ITO flyover, two-three '*qualis vehicles*' suddenly came in front of the bus which he was driving and made him stop the bus. The persons stopping his way alleged that he had caused an accident on his way, in response to which, he told them that he had not caused any accident. Yet, PCR came and took him to the police station where he was falsely implicated.

7. Learned counsel for the petitioner has taken a stand that the alleged accident was not caused by the petitioner and he has been falsely implicated. She has submitted that the petitioner had left from ISBT bus stand at 9:50 p.m. and thus his presence at the *Rajghat* Red Light at 9:45 p.m. was not possible. In this regard, she has referred to the testimony of *Vinod Kumar* (DW-1), who had proved the petitioner's duty slip (Ex. DW-1/A) and had deposed that as per the record the bus in question started from ISBT on 05.02.2006 at 9:45 p.m.-9:50 p.m. Learned counsel argued that in view of the testimony of DW-1 and the duty

slip duly proved by him, the testimony of *Yaduvendra Singh* is open to doubt, yet the petitioner has been convicted on the sole basis thereof. She also submitted that no blood stains or blood marks were found on the tyres of the bus in question. Lastly, learned counsel pointed out that the mechanical inspection report of the bus in question (Ex. PW-4/A) shows no fresh damage to it.

8. Learned APP for the State, on the other hand, has vehemently opposed the prayer made by the petitioner and supported the judgments and the order on sentence passed by the Trial Court and the Sessions Court, as the case may be.

9. I have heard learned counsels for the parties and gone through the Trial Court as well as the Appellate Court records.

10. In view of the submissions made and the aspersions cast on the testimony of *Yaduvendra Singh*, which forms the basis of the prosecution case, this Court is called upon to examine the merits of the case. It has been held time and again that the High Court while dealing with a revision petition, shall only exercise its power where there is material error or defect in law or procedure, misconception or mis-reading of evidence. However, a Bench of the Bombay High Court in Kisan Pandurang Pachange v. State of Maharashtra reported as **2003 SCC OnLine Bom 1071** through B.R. Gavai, J. (as His Lordship then was) has made the following observation:-

“10. ...No doubt, that, the scope of interference by this Court in revisional jurisdiction, under Section 397 of Criminal Procedure Code, is limited. In its revisional jurisdiction, this Court, is not expected to sit as a Court of Appeal and reappreciate the evidence. However, when the findings of the Courts below, appear to have been recorded, on the basis of no evidence, or evidence which even if believed in entirety, cannot prove the guilt of the accused for the offences charged, this Court, would be justified, in

exercising its jurisdiction, under Section 397 of the Code of Criminal Procedure.”

11. Keeping in view the aforesaid, this Court would be justified in exercising its revisional jurisdiction under Section 397 Cr.P.C. in the present case.

12. 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.

13. Similarly, to constitute an offence punishable under Section 304A IPC, it is necessary that the element of ‘rash or negligent act’ is established. In addition,

- i) there must be death of the person in question;
- ii) the accused must have caused such death; and
- iii) the act of the accused must have been rash or negligent, though not amounting to culpable homicide.

14. In Rathnashalvan v. State of Karnataka reported as **(2007) 3 SCC 474**, the Supreme Court has elaborated on the law surrounding cases of rash and negligent acts and distinguished between ‘rashness’ and ‘negligence’ in the following terms:-

“7. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections

299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, 'rashness' consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.

9. The distinction has been very aptly pointed out by Holloway J. in these words:

'Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The immutability arises from acting despite the consciousness (luxuria). Culpable

negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.’ (See Nidamarti Nagabhushanam, In re¹, Mad HCR pp. 119-20.)”

15. The nature and scope of Section 304-A IPC was also discussed in Naresh Giri v. State of M.P. reported as **(2008) 1 SCC 791**, wherein the Supreme Court held as follows:-

"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 wilfully 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 Edn.), Vol. 34, Para 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". "

16. Considering the facts of the present case, I deem it apposite to also refer to the observations made by the Supreme Court in State of Karnataka v. Satish reported as (1998) 8 SCC 493, wherein the importance of the prosecution

establishing guilt of the accused in a case of rash and negligent driving was discussed:-

“4. Merely because the truck was being driven at a ‘high speed’ does not bespeak of either ‘negligence’ or ‘rashness’ by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by ‘high speed’. ‘High speed’ is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by ‘high speed’ in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of ‘rashness’ or ‘negligence’ could be drawn by invoking the maxim ‘res ipsa loquitur’. ...”

(emphasis added)

17. From the exposition of law outlined hereinabove, it is apparent that to establish the offence either under Section 279 IPC or Section 304A IPC, the ‘commission of a rash and negligent act’ has to be proved. Further, the onus is on the prosecution to prove beyond reasonable doubt that the accused engaged himself in the commission of an act which could be called ‘rash’ or ‘negligent’.

18. In the present case, the Trial Court as well as the Sessions Court, while noting the testimony of *Yaduvendra Singh*, observed that he was the only eye-witness of the incident. After analysing the evidence, it was further observed that the petitioner had not denied driving the bus in question. Insofar as the question of the bus being driven by the petitioner in a rash and negligent manner is concerned, both the Courts opined that *Yaduvendra Singh*, who is the eye-witness of the incident, has stated that the bus was driven by the petitioner in a

rash and negligent manner on the aforesaid date and time and after having caused the accident, the petitioner was made to get down from it.

19. On a perusal of the testimony of *Yaduvendra Singh*, it is noted that both the Trial Court as well as the Sessions Court have failed to correctly appreciate the said testimony before arriving at their respective decisions. The witness *Yaduvendra Singh* has baldly asserted that the bus was being driven in a rash and negligent manner, despite admitting in cross-examination that he had not seen the bus before the incident. He has also not given any details as to the manner in which the bus in question was being driven. Further, while he deposed in his examination-in-chief that after the accident, the driver of the bus in question was made to get down and as a result he came to know his name, in cross-examination, he stated that the bus did not stop at the time of incident and only when he made a call at 100 number the bus was made to stop.

20. In order to impose criminal liability on the petitioner, the prosecution had to prove that the petitioner had acted with recklessness and there was a failure to exercise reasonable and proper care. However, the prosecution case, based solely on the testimony of *Yaduvendra Singh*, does not establish that the petitioner was driving the bus in question in such a manner that it showed total disregard for life and safety of others. It also does not establish that the vehicle was being driven in a hazardous or reckless manner, knowing that the result of such driving was most likely to cause injury to the persons or the vehicles on the road.

21. In the instant case, on the mere fact that an innocent died in a road accident, the presumption of rashness and negligence against the petitioner cannot be drawn. Reference may be taken in this connection of the observation

made by another Bench of this Court in State (NCT of Delhi) v. Jagbir Singh reported as **2019 SCC OnLine Del 8401**, where it was held that:-

“20. ...It is necessary to avoid being influenced by the prejudice arising out of the loss of a life which is a dominant factor in cases of accident.”

22. Thus, a bald assertion of *Yaduvendra Singh* that the bus in question was being driven in a rash and negligent manner does not *ipso facto* establish rash and negligent conduct on the part of the petitioner. It needed to be proved as a fact that the accident was due to the rashness or negligence on the petitioner's part, but the prosecution has failed to discharge that burden. No 'rash and negligent act' on the part of the petitioner has been established beyond reasonable doubt, much less a direct nexus between the death of the deceased and 'rash and negligent act' on the part of the petitioner.

23. In view of the foregoing, it is discerned that there is no cogent material on record to establish the guilt of the accused/petitioner for the offences punishable under Sections 304A/279 IPC. While no attempt has been made by the prosecution to establish beyond reasonable doubt that a rash and negligent act was committed by the petitioner, learned counsel for the petitioner, by referring to the testimony of *Yaduvendra Singh*, has been able to show that there is reasonable doubt as to whether the alleged act of the petitioner was rash and negligent. The ingredient of 'rashness and negligence' in driving, essential for prosecution under Sections 304A/279 IPC, not having been made out against the petitioner, this Court is of the opinion that the judgments impugned suffer from perversity.

24. Accordingly, the present petition is allowed and giving benefit of doubt to the petitioner, the impugned judgment passed by the Trial Court alongwith the

order on sentence, as well as the impugned judgment passed by the Sessions Court upholding the decision of the Trial Court, are set aside. The petitioner is acquitted for the offences punishable under Sections 304A/279 IPC.

25. A copy of this judgment be communicated electronically to the Trial Court and the concerned Jail Superintendent.

MANOJ KUMAR OHRI, J

12 October, 2021
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[Click here to check corrigendum, if any](#)



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