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

% ***Date of decision: August 14, 2023***

+ **CRL.REV.P. 58/2017**

RAM BABU

..... Petitioner

Through: Mr. Jitendar Singh, Mr. Praveen  
Kr. Singh and Mr. Pravind Jha,  
Advocates.

versus

STATE

..... Respondent

Through: Mr. Utkarsh, APP for State with  
SI Udai Singh, P.S. Saket.

**CORAM:**

**HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

**J U D G M E N T (oral)**

1. The present revision petition is filed under sections 397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) read with section 482 of the Code to impugn the judgment dated 06.01.2017 (hereinafter referred to as “**the impugned judgment**”) passed by the Court of District & Sessions Judge, South District, Saket Courts, New Delhi (hereinafter referred to as “**the appellate court**”) while dismissing the criminal appeal filed by the petitioner to impugn the judgment dated 23.12.2014 and orders on sentence dated 05.01.2015 and 26.06.2015 passed by the court of Sh.



Tarun Yogesh, ACMM, South District, Saket Courts, New Delhi (hereinafter referred to as “**the trial court**”).

2. The petitioner/accused Ram Babu (hereinafter referred to as the “**petitioner**”) was put to trial arising out of FIR bearing no. 0006/2010 registered under sections 279/338 of the India Penal Code, 1860 (hereinafter referred to as “**IPC**”) at P.S. Saket on allegations that on 06.01.2010 at about 07:00 PM, he was found driving vehicle Wagon-R bearing registration no.DL3CBJ-1844 rashly and negligently on Som-Bazar Road, T-Point near MGF Mall, Saket, New Delhi and while doing so, hit against a pedestrian Sohan Pal Chauhan and caused grievous injury/hurt to him. HC Ravinder Singh and Ct. Pradeep Kumar after receipt of DD bearing no. 43-B, reached at the spot near traffic light signal, Saket but no injured/eye-witness was found there and thereafter, they reached at Max Hospital, Saket upon information received vide DD bearing no. 46-B where they found that Sohan Pal Chauhan i.e. the injured/victim was admitted vide MLC no. 1244/2010, who was declared not fit for statement. The complainant (eye-witness) Rajesh Kumar was met whose statement was recorded and thereafter, on the basis of *rukka*, FIR bearing no.0006/2010 under



sections 279/338 IPC was got registered. HC Ravinder Singh, during the investigation, completed the formalities of investigation and filed the charge-sheet before the concerned trial court. Notice under section 251 of the Code was given to the petitioner for the offences punishable under sections 279/338 IPC vide order dated 30.08.2010 to which he pleaded not guilty and claimed trial.

3. The prosecution examined 5 witnesses including the eye-witness Ravi Sharma as PW1, the complainant/eye-witness Rajesh Kumar as PW4 and Investigating Officer ASI Ravinder Singh as PW5. The statement of the petitioner was recorded under section 313 of the Code wherein he admitted that he was driving Wagon-R car bearing registration no. DL3CBJ-1844 on 06.01.2010 at about 07:00 PM at Som-Bazar Road, T-Point near MGF Mall, Saket, New Delhi but was not driving the said car rashly and negligently. He further stated that the pedestrian was talking on mobile phone and was struck by the side of his car but he was not negligent and the traffic signal was green. The injured was also listening to songs using earphones. The petitioner preferred not to lead defence evidence.

4. The petitioner in the statement under section 294 of the Code



did not dispute the FIR bearing no.0006/2010 registered at P.S. Saket on 06.01.2010, DD no. 43-B dated 06.01.2010 registered at P.S. Saket, MLC bearing no.1244/2010 dated 06.01.2010 prepared by Dr. Rakesh Yadav, Max Hospital, Saket and CT Head/Brain prepared by Dr. Manoj Sharma, Max Hospital and the said documents were exhibited as Ex A-1 to Ex A-4.

5. The Court of Sh. Tarun Yogesh, Additional Chief Metropolitan Magistrate, South, Saket Courts, New Delhi vide judgment dated 23.12.2014, convicted the petitioner for the offences punishable under sections 279/338 IPC. The relevant part of the judgment dated 23.12.2014 is reproduced as under:-

**12. Complainant Sh. Rajesh Kumar (PW-04) in his examination-in-chief has deposed to be working in Sheraton Hotel, Saket with his friend (injured) Sh. Sohan Pal in the year 2010. On 06.01.2010, as they were walking back to home, after finishing their duty and had reached at Som-Bazar, traffic signal at around 07:00 PM, one silver colour Wagon-R car bearing No. DL-3CBJ-1844, coming from the side of Max Hospital, turned towards Som-Bazar Market, after crossing 'red light' and hit injured Sohan Lal who was walking a little ahead of him and as a result of 'high impact' injured came upon the bonnet of the car and thereafter fell towards the divider of the road. Injured was shifted to Max Hospital in the car alongwith driver and got admitted. Someone called the police upon which police personnels**



came to hospital and recorded his statement. He has proved his statement (complaint) as Ex. PW 4/A and identified his signature upon arrest memo of accused, proved as Ex. PW 4/B. He has also identified accused in court and testified that car was being driven at high speed and generally no one drives any vehicle at such high speed while negotiating turn.

13. Upon being subjected to cross-examination by Id. Defence counsel, complainant Sh. Rajesh Kumar has denied the suggestion about vehicles moving at very slow speed due to heavy traffic and also denied the suggestion that offending car was not being driven at high speed or that accident was not caused by offending car, but was caused by some other vehicle which was driven away. Witness (complainant) reiterated about his statement being recorded by police at hospital and denied the suggestion of being not present at spot or having not witnessed the accident.

14. Other eye-witness Sh. Ravi Sharma (PW-01) has corroborated complainant's testimony by deposing to be standing in-front of MGF Mall, near traffic light signal on 06.01.2010, for picking his wife who used to work in Honda City Car Showroom at MGF Mall, Saket. At about 07:00 PM, offending Wagon-R car, being driven at very fast speed and in rash and negligent manner, jumped its red signal, took right turn towards Saket Court and hit one person who was crossing the road, as a result of which the injured came on the bonnet of the car and then fell down on the road. Thereafter, he with the help of public persons managed to apprehend the driver and got injured admitted at Max Hospital. He has also deposed about his statement being recorded by police at hospital and identified accused present in court.

15. Upon being subjected to cross-examination, he has claimed to have been never called to PS Saket, during course



of investigation and his statement was recorded in hospital besides claiming to have taken injured to hospital in the offending vehicle. He has also testified to have witnessed the accident from a distance of about 10-12 meters, during his cross-examination by defence counsel and deposed about impact being caused on the front and left side of the car. Significantly, he has denied the suggestion about any fog or about injured using ear-phones at the time of accident.

16. As regards the contention raised by Id. defence counsel about PW Sh. Ravi Sharma being a planted witness who was not present at the spot and was not referred by any witness, his contention is contrary to depositions of police witnesses Ct. Pradeep and ASI Ravinder Singh who have deposed about other eye-witness. Ct. Pradeep (PW-03) during his cross-examination has testified to have met PWs Rajesh Kumar and Ravi Sharma in the hospital and their statements being recorded by 10 in hospital. Similarly, 10 / ASI Ravinder Singh in his examination-in-chief has deposed to have recorded statement of other eye-witness on 07.01.2010, as the public witness had left for his house on the previous day. The confusion regarding PW Sh. Ravi Sharma being present at traffic signal near MGF Mall, Saket and having witnessed the accident is set to rest by alluding to complaint proved as Ex. PW 4/A. In his complaint to police, complainant Sh. Rajesh Kumar (PW-04) has categorically mentioned about injured being shifted to Max Hospital in the offending car of accused with the help of one Ravi Sharma.

17. Therefore, conjoint reading of depositions of prosecution witnesses creates an impression in favour of their trustworthiness. Mere fact of statement U/s 161 Cr.P.C of PW Sh. Ravi Sharma being recorded on 07.01.2010 is not of such nature which would dissuade court from believing his



testimony or impel the court to raise any adverse inference against his testimony.

18. As per prosecution's case and depositions of eye-witnesses, accident was caused as a result of offending Wagon-R car turning right towards Saket court after jumping its red light signal. Therefore, it is necessary to advert to the twin concepts of rashness and negligence.

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21. Therefore, considering the testimonies of complainant Sh. Rajesh Kumar (PW-04) and Sh. Ravi Sharma (PW-01), since offending Wagon-R car bearing no. DL 3CBJ 1844 had jumped red-light signal at high speed for turning towards Saket Court and hit injured Sh. Sohan Pal, so, having not followed traffic signal, accused Ram Babu has indeed acted rashly and negligently and therefore stands convicted for offence U/s 279 IPC.

22. Similarly, having not disputed MLC No. 1244 dated 16.01.2010 of injured Sh. Sohan Pal and CT head / brain plain which disclose several haemorrhages and fracture of left frontal bone which has been opined dangerous, accused Ram Babu also stands convicted for offence U/s 338 IPC.

6. The trial court vide order on sentence dated 05.01.2015 sentenced the petitioner with SI for a period of three months and a fine of Rs.500/- and in default of fine to undergo further SI for one month for the offence punishable under section 279 IPC and SI for a period of six months and a fine of Rs.500/- and in default of fine to undergo further SI for one month for offence punishable under section 338 IPC. Both the sentences were ordered to be run concurrently.



7. Being aggrieved, the petitioner filed Criminal Appeal bearing no. 03/2015 whereby the order on sentence dated 05.01.2015 was set aside and the matter was remanded back to the trial court vide judgment dated 25.03.2015 passed by the court of District and Sessions Judge, South, Saket Courts, New Delhi on the ground that the trial court did not call for and consider the 'Victim Impact Report' while passing the order on sentence dated 05.01.2015.

8. The trial court in accordance with the judgment dated 25.03.2015, called for the 'Victim Impact Report' and after taking the same into consideration, passed the order on sentence dated 26.06.2015 whereby the petitioner was sentenced to SI for a period of three months and a fine of Rs.500/- and in default of fine to undergo further SI for one month for the offence punishable under section 279 IPC and SI for a period of six months and a fine of Rs.500/- and in default of fine to undergo further SI for one month for offence punishable under section 338 IPC. Both the sentences were ordered to be run concurrently.

9. The petitioner being aggrieved by the judgment dated 23.12.2014 and order on sentence dated 26.06.2015 filed Criminal



Appeal bearing no. 8165/2016 titled as **Ram Babu V The State (NCT of Delhi)** which was dismissed by the court of the District and Sessions Judge, South, Saket Courts, New Delhi vide judgment dated 06.01.2017. The relevant portion of the impugned judgment is reproduced verbatim as under:-

**“As rightly observed, there is no dispute regarding the fact that the Wagon-R car was being driven by the appellant. During the trial there was also no challenge made to the Wagon-R car having caused the accident. Therefore, to contend in the appeal that the Wagon-R car had been wrongly implicated and that the non production of the Wagon-R car, which was in any case in the custody of the accused, was not produced is meaningless. As rightly observed by the Ld. Trial Court, the only question for determination was whether the accused/appellant was guilty of rashness and negligence. The contentions raised by the appellant do not assist him in challenging the veracity of the witnesses produced and examined by the prosecution. Merely because, PW4 Rajesh Kumar was a friend of the injured would not by itself be sufficient to reject the testimony of the PW4. With regard to the presence of the PW1 Ravi Sharma at the spot, in cross-examination the witness has reiterated that he was waiting for his wife on his motorcycle who had to come from the MGF Mall and his being at the spot and witnessing the accident is absolutely natural. Though the appellant and the Ld. Counsel for the appellant submitted that there "may have been" dense fog, the defence had brought on record nothing to show what were the weather condition at the time of the accident. The defence raised is merely hypothetical. As regards the**



prosecution witnesses, both of them have denied that there was any fog at that time. Thus all these defences that have been raised by the appellant are devoid of any force and do not succeed in clouding the prosecution case with any degree of doubt.

PW-4 Rajesh Kumar in his cross-examination has stated that they used to use the Press Enclave to go home from the Shereton Hotel, Saket and it was a daily affair for them. It is clear that when the signal turned red, pedestrians were walking on the road and it is also amply made out that the appellant in order to overcome the need to wait for the next signal, chose to accelerate and take the turn to the right. PW4 Rajesh Kumar has stated that the driver of the Wagon-R was driving at a high speed and generally no one drove a vehicle at a turning at such a high speed. Thus the intention of the appellant who was at the wheel is clear that he wanted to take the turn before the oncoming vehicles started moving. In that haste the appellant chose to violate the traffic signal and also overlooked his duty to take care of other road users. He was also rash in as much he did not consider the consequences of his act, the result of which has been dangerous to the victim. As per the latest report dated 15.04.2015, the injured is a paralytic man today as he has no memory and he needs assistance of someone even for his daily needs. Considering the severity of the injuries and the circumstances of the accident, the mere claim that the appellant is a carpenter and not a professional driver would not suffice to call for an interference in the sentence. Though the appellant claims to have taken the injured to the hospital, the testimonies of the eye witnesses would show that it was not a voluntary act, to be read in his favour as a mitigating factor.



**In the totality of the circumstances, therefore, there is no ground made out to interfere with either the findings on conviction or the sentence imposed by the Ld. Trial Court. The appeal is devoid of merits. The appeal is accordingly dismissed. The bail bonds are forfeited and surety stands discharged. The appellant be taken into custody.”**

10. The petitioner challenged the impugned judgment passed by the appellate court by filing present petition on grounds that the impugned judgement is contrary to the settled propositions of law and is not based on the correct appreciation of the facts of the instant case. The trial court and the appellate court grossly erred in convicting the petitioner where the prosecution has miserably failed to prove its case beyond all reasonable doubt. The trial court failed to appreciate that there were two eye-witnesses to the alleged incident i.e. PW1 & PW4 and both have given contradictory statements and that PW 4 is a friend of injured and is an interested witness. It is prayed that the revision petition be allowed and the impugned judgment passed by the appellate court and the order on sentence dated 26.06.2015 passed by the trial court be set aside and the petitioner be acquitted.

11. The trial court as well as the appellate court primarily relied on testimonies of PW1 Ravi Sharma and PW4 Rajesh Kumar who as per



prosecution were eye witnesses of the accident. A witness in a criminal trial has pivotal role to play and is an important component in determining truth. The judicial process needs witnesses to give evidence so that courts can reach at a verdict or decision. A witness by deposing in court, assists the court in discovering the truth.

12. PW4 Rajesh Kumar deposed that he along with Sohan Pal i.e. the injured on 06.01.2010, reached at Som Bazar Road traffic signal at about 7 P.M. then, one silver color Wagon-R car bearing registration no. DL3CBJ-1844 came from the side of Max Hospital and turned towards the Som Bazar Market after crossing the red light and hit against a pedestrian Sohan Pal, as a result of which, he fell down towards the divider of the road.

13. PW4 Rajesh Kumar in cross-examination, denied the suggestions that the vehicles on the road were moving at a very slow speed due to heavy traffic and the offending car was not being driven at a high speed or that the accident was not caused by the offending car. The testimony of another eye-witness PW1 Ravi Sharma has corroborated the testimony of PW4 Rajesh Kumar who deposed that at about 7 P.M., the offending vehicle, being driven at a fast speed and in



rash and negligent manner, jumped the red light signal and took right turn towards the Saket Court and hit against one person (injured Sohan Pal) who fell down on the road.

14. The combined testimonies of the PW4 Rajesh Kumar and the PW1 Ravi Sharma reflect that the petitioner was rash and negligent in driving the car bearing registration no. DL3CBJ-1844 and has not taken due care towards the pedestrian i.e. the injured Sohan Pal. The petitioner while driving the car bearing registration no. DL3CBJ-1844 at high speed also hit against the pedestrian Sohan Pal. All these reflect that the petitioner was rash and negligent while driving the car at the place of the accident. The judgments passed by the courts below as mentioned hereinabove are well-reasoned and passed after due consideration of material placed on record. The courts below have taken a right view that the petitioner was rash and negligent in driving the car bearing registration no. DL3CBJ-1844. The impugned judgment dated 06.01.2017 passed by the appellate court and the judgment dated 23.12.2014 and order on sentence dated 26.06.2015 passed by the trial court do not call for any interference.



15. The trial court has convicted the petitioner for the offence punishable under sections 279/338 IPC which was upheld by the appellate court. The petitioner due to rash and negligent driving caused grievous injury/hurt to the victim, which must have caused irreparable loss to victim and his family. The petitioner while driving the car, was supposed to take care towards the pedestrian on the road. However, the accident happened in the year 2010. The petitioner is first time offender and his antecedents are clear. The petitioner already remained in custody for about 14 days. After considering all facts and by maintaining the conviction awarded to the petitioner vide judgment dated 23.12.2014 passed by the trial court, the sentence of the petitioner for the offence punishable under section 338 IPC is modified and is reduced from six months to four months. The remaining sentence for offences punishable under sections 279/338 IPC shall remain intact.

16. The petitioner is directed to surrender before the concerned trial court on 04.09.2023 at 2:30 P.M. for serving the remaining part of the sentence as per the nominal roll.



17. In case the petitioner fails to surrender before the trial court on 04.09.2023 at 2:30 P.M. as directed, the trial court is directed to initiate appropriate legal proceedings for arrest of the petitioner for serving unexpired part of the sentence.

18. The present petition is accordingly disposed of along with pending applications, if any.

19. Copy of this order be sent to the trial court for information and compliance.

**(DR. SUDHIR KUMAR JAIN)**  
**JUDGE**

**AUGUST 14, 2023**  
*N/AM*

