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

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Reserved on: 16.08.2023
Pronounced on: 21.08.2023

+ **CRL.REV.P. 712/2023 & CRL.M.(BAIL) 927/2023**

ALI JAAN

..... Petitioner

Through: Mr. Amit Khatana & Mr.
Kunal Khatana, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Narender Kumar,
PS Chanakya Puri

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition has been filed on behalf of the appellant under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') assailing the order dated 27.03.2023 passed by the learned Additional Sessions Judge, South-East District, Saket Courts, Delhi ('learned ASJ') in Criminal Appeal No.173/2019 arising out of FIR bearing no. 170/2008 registered at Police Station Chanakya Puri, Delhi for offence punishable under Sections



279/338/304A of Indian Penal Code, 1860 ('IPC') and Sections 115/194 of Motor Vehicles Act, 1988 ('M.V. Act').

2. Briefly stated, the facts of the case are that on 17.08.2008 at 10:45 AM, an information regarding an accident at Ridge Road, near Buddha Garden, New Delhi was received at P.S. Chanakyapuri, New Delhi, after which concerned police official had reached the site of incident and had found a Maruti Car bearing registration no. DL-2CZ-5822 and a truck bearing registration no. HR-38M-4551 in accidental condition. The driver of the truck was identified as accused Ali Jaan, and injured persons at the site of incident were taken to hospital. During the course of investigation, it was revealed that the complainant Vivek Arora alongwith his wife and two daughters was traveling in his car from Rajender Nagar to Vasant Kunj, Delhi, and while passing through Buddha Garden, one truck came in reverse direction and had hit the car. The accused was driving the offending vehicle at the time of incident. In the said incident, the wife of the complainant and one of his daughters' had expired, and the complainant and his daughter Diksha Arora had sustained grievous injuries. Further, upon completion of investigation, chargesheet was filed on 25.05.2009.

3. During the course of trial, prosecution had examined injured eye witnesses PW-2 i.e. complainant and PW-8 i.e. injured daughter of complainant. The superdar of the offending vehicle was examined as PW-5.

4. The learned Trial Court had acquitted accused/petitioner under Sections 115/194 MV Act and had convicted him *vide* order dated



06.06.2019 and order on sentence was passed on 10.07.2019 sentencing accused/petitioner to undergo (i) simple imprisonment of 2 years along with fine of Rs. 2000/- for offence under Section 304A IPC; (ii) simple imprisonment of 6 months for offence under Section 279 IPC and (iii) simple imprisonment of 1 year along with fine of Rs. 1000/-for offence under Section 338 IPC. Thereafter, learned ASJ *vide* order dated 27.03.2023, had modified the sentence to (i) simple imprisonment of 1 year along with fine of Rs. 2000/- for offence under Section 304A IPC; (ii) simple imprisonment of 3 months for offence under Section 279 IPC and (iii) simple imprisonment of 6 months along with fine of Rs. 1000/- for offence under Section 338 IPC.

5. As per order dated 06.06.2019, the learned Trial Court had convicted petitioner/accused. The relevant portion of impugned order is reproduced as under:

“Thus, in light of the above said observations and the material available on record, the prosecution story stands proved beyond an reasonable doubts that accused Ali Jaan was reversing his vehicle (Truck) in such a rash and negligent manner on a public road, so as to endanger the human life and safety, and thereby he caused the death of victim Poonam Arora and Shivangi Arora and grievous injuries to injured Vivek Kumar Arora (PW-2) and Deeksha Arora (PW-8). There is no convincing rebuttal of the evidence led by the prosecution.

Therefore, in ultimate analysis as a result of trial, the accused Ali Jaan S/o Sh. Abdulla is convicted for the offences u/s 279/338/304A IPC.

However, the prosecution failed to prove the allegations that the offending truck driven by the accused was plying in a ‘no entry’ zone and therefore, allegations for offences u/s 115/194 MV Act have not been proved against the accused. Therefore, accused Ali Jaan is acquitted for the offences u/s 115/194 MV Act.”



6. The relevant portion of order on sentence dated 10.07.2019, passed by learned Trial Court is reproduced as under:

“In view of the observations above said, I sentence the convict to a period of two years simple imprisonment and fine of Rs. 2000/- for offence u/s 304A IPC; to a period of 6 months simple imprisonment for offence u/s 279 IPC; and period of one year of Simple Imprisonment and fine of Rs. 1,000/- for offence u/s 338 IPC. In default of payment of fine, the convict shall be liable to undergo simple imprisonment of one month for each offence, in addition to substantive imprisonment. All the sentences shall run concurrently.

The injured Vivek Kumar Arora has stated that he received around Rs.10-11 Lacs as compensation from Ld. MACT Court. Even though, the victims cannot be compensated for the loss of lives and their sufferings, no orders as to compensation are being passed considering the financial background of both the parties.”

7. As per order dated 27.03.2023, learned ASJ while upholding the conviction of the petitioner/accused had reduced the sentence.

The relevant portion of impugned order is reproduced as under:

“While sentencing, the court has to consider the aggravating as well as mitigating circumstances. The accused was driving a commercial vehicle resulted into death of two persons and two persons sustained grievous injuries. The accused remained at the spot and did not flee from there after the incident. The accused had faced the trial for more around 15 years without fail. Considering the facts and submissions and both aggravating as well as mitigating circumstances, the appellant/convict is sentenced to undergo simple imprisonment for a period of one year and fine of Rs.2,000/- (in default simple imprisonment for a period of 30 days) for the offence punishable u/s 304A IPC further sentence of simple imprisonment of six months and fine of Rs. 1000/- (in default simple imprisonment for a period of 15 days) for offence punishable u/s 338 IPC and further sentenced to simple imprisonment for a period of three months for offence punishable u/s 279 IPC. All the sentences shall run concurrently. The operative part of the sentence be attached with the custody warrant.”

8. Learned Counsel for petitioner states that learned Trial Court failed to appreciate the fact that there was no apparent damage to the



truck found at the spot. It is argued that the present FIR was registered without naming the accused and the statements of the injured eye witnesses was recorded after a period of 2 ½ months. It is further stated that there are material contradictions in the testimonies of the witnesses and the involvement of the present appellant in the said incident has not been proved beyond a reasonable doubt. It is stated that petitioner has undergone a period of sentence of 4 months and 4 days.

9. *Per contra*, learned APP for State argues that the contentions raised by the appellant have already been considered and appreciated by both the Courts below, and a lenient view in regard to the sentence has already been taken by the learned Trial Court. It is further stated that all the witnesses have supported the case of the prosecution and the identity of the accused as the driver of offending vehicle has been established beyond any doubt.

10. This Court has heard arguments addressed by learned counsel for the petitioner and learned APP for the State, and have perused material on record.

11. The testimony of PW-8 Diksha Arora, who is other injured/eye witness had revealed that on the day of incident at around 10:30 AM when they had reached near Buddha Garden in a car driven by PW-2, one truck came at high speed in reverse gear and had continued coming back despite horn being blown by her father PW-2. It was stated that the father of the witness had tried to turn the car towards right side to escape the impact but the truck had hit the left side of the car.



12. Perusal of testimony of PW-2 i.e. the complainant reveals that he was driving the car at a speed of around 30 KM/hr., when it was hit by the offending vehicle, which was coming at a high speed in reverse gear.

13. This Court notes that the learned Trial Court had rightly observed after perusing the testimony of PW-2 and PW-8 that the rashness and negligence of the driver of the offending vehicle at the time of incident is corroborated and unrebutted.

14. It has been argued by learned counsel for the petitioner/accused that the identity of the driver of the offending vehicle has not been established by the prosecution and the present petitioner/accused has wrongly been implicated in the present case. In this regard, it is observed that PW-5 Gyan Prakash Gupta, who was the superdar of the offending vehicle, had confirmed the identity of accused as the driver of the offending vehicle. The identity of petitioner to be the perpetrator of crime has been amply proved by cogent evidence. In addition to this, petitioner herein was driving a heavy vehicle and was expected to be more cautious.

15. This Court observes that the learned Trial Court while convicting the present petitioner/accused had rightly appreciated the material evidence, including the site plan to conclude that the accused was driving the offending vehicle in a rash and negligent manner. Further, the mechanical inspection report of the offending vehicle was also considered and found to be supporting the case of prosecution. The petitioner was not able to explain as to how the damage to the vehicle had occurred. The impact was so severe that



two of the passengers were declared 'brought dead' at the hospital. Nothing has been suggested if the petitioner had taken reasonable care and precautions to avoid the accident, or that there was contributory negligence on the part of the victim.

16. This Court observes that the factum of death of deceased Shivangi and Poonam Arora stands proved *vide* Post-mortem reports placed on record and grievous injuries to complainant Vivek Arora and Diksha Arora stands proved *vide* MLC placed on record. This Court notes that the injured persons were found and taken to the hospital from the site of incident after they were hit by the offending vehicle. The presence of the present petitioner/accused in the said incident as the driver of offending vehicle has been proved beyond doubt by the material evidence, including the testimony of PW-5, mechanical inspection report and the site plan of the said incident.

17. This Court notes that the learned Trial Court had already taken lenient view while awarding sentence to the petitioner/accused, which was further reduced by the learned ASJ to (i) simple imprisonment of 1 year along with fine of Rs. 2000/- for offence under Section 304A IPC; (ii) simple imprisonment of 3 months for offence under Section 279 IPC and (iii) simple imprisonment of 6 months along with fine of Rs. 1000/- for offence under Section 338 IPC, which cannot be termed excessive as two innocent lives were taken away including of a young child aged 9 years and a woman, and a family was destroyed because of rash and negligent acts of petitioner/accused.



18. Therefore, in view of the aforesaid discussion, this Court is of the opinion that the prosecution has established the factum of rashness and negligence of the accused being the driver of the offending vehicle beyond any doubt and the learned ASJ has rightly upheld the conviction of the petitioner/accused.

19. Accordingly, the present petition alongwith pending application stands dismissed.

20. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 21, 2023/dk