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

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Reserved on: November 07, 2023

Decided on: November 21, 2023

+ **CRL.REV.P.1154/2023, CRL.M.(BAIL) 1517/2023,**
CRL.M.A. 29518/2023 & CRL.M.A. 29519/2023

MAHESH

..... Petitioner

**Through: Mr. Lohit Ganguly, Mr.
Pradeep Kumar, Mr. Ajay
Kumar and Mr. Satyam,
Advocates.**

versus

THE STATE (GNCT OF DELHI)

..... Respondent

**Through: Mr. Yudhvir Singh
Chauhan, APP for the State
with SI Ashutosh Mishra,
P.S. Mehrauli.**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present petition is filed under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) to set aside the judgment dated 07.06.2023 (hereinafter referred to as “**the impugned judgment**”) and order on sentence dated 10.10.2023 (hereinafter referred to as “**the impugned**



order”) passed by the court of Additional Sessions Judge-05, South, Saket Courts, New Delhi (hereinafter referred to as “**the appellate court**”) in Criminal Appeal bearing no.337/2018 and judgment dated 16.04.2018 and order on sentence dated 08.08.2018 passed by the court of Sh. Vaibhav Mehta, MM-05, South, Saket Courts, New Delhi (hereinafter referred to as “**the trial court**”) in case bearing no. 2032754/2016 titled as **State V Mahesh** arising out FIR bearing no.0551/2007 registered under sections 279/304A of the Indian Penal Code, 1860 (hereinafter referred to as “**IPC**”) at P.S. Mehrauli.

2. The factual background of the case is that HC MahenderBhardwaj along with Constable Shiv Kumar and Constable Sanjeev Kumar on 24.07.2007 after receiving DD bearing no.24A reached at Chattarpur Road, Opposite Ansal Villa, Satbari where Truck bearing registration no.HR-47A-8610 (hereinafter referred to as “**the offending vehicle**”) and Bajaj Pulsar motorcycle bearing no.DL-3SA-3477 were found to be in accidental condition. The injured was already removed to hospital for treatment. HC Mahender Bhardwaj along with Constable Shiv Kumarafter receiving DD no.27A reached at G.M. Modi Hospital, Saket where he



obtained MLC bearing no.2697/2007 pertaining to Raj Kumar S/o Richha Ram with history of Road Traffic Accident (RTA) and was declared brought dead.

2.1 HC Mahender Bhardwaj at G. M. Modi Hospital met with Jitender S/o Jagdish (hereinafter referred to as **“the complainant”**) who was stated to be an eye witness of the incident. HC Mahender Bhardwaj recorded his statement wherein the complainant stated that he was a resident of village and post office Chandan Hola, New Delhi and was a property dealer by a profession. The complainant on 24.07.2007 was going to Chattarpur with regard to property dealing in car along with his cousin Raj Kumar. The complainant was sitting in car while Raj Kumar was on motorcycle make Bajaj Pulsar bearing registration no DL-3SA-3477 and was moving ahead of car of the complainant. The complainant and Raj Kumar at about 7.30 pm reached in front of gate of Ansal Villa, Satbari then the offending vehicle which was being driven rashly and negligently and on the wrong side came from Satbari Village side and hit against the motorcycle bearing registration no. DL-3SA-3477 being driven by Raj Kumar. The motorcycle came



under the offending vehicle. Raj Kumar received the injuries on his forehead and neck and became unconscious. The driver of the offending vehicle was identified as Mahesh but he ran away from the spot. Raj Kumar was removed to hospital by the complainant and other persons where he was declared as brought dead.

2.2 FIR bearing no.0551/2007 was got registered on the basis of the statement of the complainant under sections 279/304A IPC at PS Mehrauli. The further investigation was handed over to SI Adesh Prakash. The driver of the offending vehicle who was identified as Mahesh (hereinafter referred to as “**the petitioner**”) was arrested. The post-mortem on the dead body of Raj Kumar (hereinafter referred to as “**the deceased**”) was conducted. The cause of the death was opined as craniocerebral injuries caused by blunt external force which could be possible in road traffic accident.

2.3 The charge sheet was filed after conclusion of the investigation for offences punishable under sections 279/304A IPC. The concerned court took cognizance and after complying with section 207 of the Code, notice under section 251 of the Code was given to the petitioner for offences punishable under sections 279/304A IPC vide



proceedings dated 22.08.2009 to which the petitioner pleaded not guilty and claimed trial. The petitioner under section 294 of the Code admitted copy of FIR bearing no.0551/2007 as Ex. A1, DD bearing no.24A and DD bearing no.27A dated 24.07.2007 as Ex. A2 and Ex.A3 respectively, Postmortem Report of the deceased dated 25.07.2007 as Ex. A4, Death report of the deceased dated 24.07.2007 as Ex. A5, Mechanical Inspection Reports pertaining to the offending vehicle and motorcycle bearing registration no.DL-3SA-3477 as Ex. A6 and Ex.A7 respectively. The prosecution to prove the guilt of the petitioner examined 05 witnesses including the complainant as PW2 and the Investigating Officer SI Adesh Prakash as PW4. The prosecution evidence was ordered to be closed vide order dated 08.12.2017. The statement of the petitioner was recorded under section 313 of the Code vide proceedings dated 03.01.2018 wherein the petitioner pleaded innocence and false implication. The petitioner also stated that he was not driving the offending vehicle. The petitioner preferred to lead defence evidence. The petitioner examined Rameshwar Dayal as DW1 and Vir Singh as DW2.



2.4 The trial court vide judgment dated 16.04.2018 convicted the petitioner for the offences punishable under sections 279/304A IPC and vide order on sentence dated 08.08.2018 sentenced the petitioner to undergo RI for one year for the offence punishable under section 304A IPC. The petitioner was also directed to pay compensation of Rs.1,00,000/- to the legal heirs of the deceased for commission of offence punishable under section 304A IPC and in default of payment of compensation, to undergo SI for two months. The petitioner was also sentenced to undergo RI for one month for the offence punishable under section 279 IPC. The sentences were ordered to be run concurrently.

2.5 The petitioner being aggrieved by the judgment dated 16.04.2018 and the order on sentence dated 08.08.2018 passed by the trial court preferred Criminal Appeal bearing no.337/2018 titled as **Mahesh V State**. The appellate court vide the impugned judgment upheld the conviction of the petitioner under sections 279/304A IPC and vide the impugned order, modified the sentence of the petitioner to RI for six months for the offence punishable under section 304A IPC. The petitioner was also directed to pay fine of Rs.40,000/- out of



which Rs.30,000/- was ordered to be paid to the legal heirs of the deceased and the remaining fine amount was ordered to be paid to the State and in default of payment of fine, to undergo SI for two months. The petitioner was also sentenced to undergo SI for one month for the offence punishable under section 279 IPC. The sentences were ordered to be run concurrently.

3. The petitioner being aggrieved filed the present petition to set aside the impugned judgment and the impugned order on the grounds that the impugned judgment and the impugned order passed by the appellate court and the judgment dated 16.04.2018 and order on sentence dated 08.08.2018 passed by the trial court are based on surmises and conjectures and against the facts and material available on record and are not sustainable in law. The courts below have acted in an arbitrary and prejudicial manner without looking into the record. The testimony of the complainant as PW2 cannot be relied upon particularly in view of his cross-examination. The appellate court in the impugned judgment also observed that the testimony of the PW2/the complainant was not believable. The courts below wrongly arrived at conclusion that the testimony of the PW2/the



complainant was sufficient to convict the petitioner. The prosecution has failed to prove its case beyond reasonable doubt. The courts below have wrongly placed reliance on the photographs Ex. P1 and Ex. P2 and Mechanical Inspection Reports Ex. A6 and Ex. A7. There was no evidence that the petitioner was allegedly driving the offending vehicle in rash and negligent manner. PW2/the complainant has not seen the accident. The prosecution has failed to prove that the deceased died due to injuries caused by the accident. The petitioner also challenged the judgments and orders passed by the courts below on various other grounds and prayed that the petition be allowed and the petitioner be acquitted.

4. The prosecution during the trial in support of its case examined the complainant as PW2. A witness plays a pivotal role in a determining truth of the case. The role of a witness is paramount in the Criminal Justice System as a witness has relevant information about commission of crime. The witness by giving evidence assists the court to discover the truth. PW2/the complainant primarily deposed that on 24.07.2007 he along with the deceased was going to Chattarpur. PW2/the complainant was driving Honda Citycar and the



deceased was driving the motorcycle bearing registration no. DL-3SA-3477 and was moving in front of car. PW2/the complainant and the deceased at about 07.30 pm reached at Ansal Village Gate then the offending vehicle being driven by the petitioner came at a high speed from wrong side i.e. against their direction and struck from the front side against the motorcycle being driven by the deceased. The motorcycle and the deceased came under the front side of the offending vehicle and the deceased sustained injuries on his neck and body. The petitioner ran away from the spot and the deceased was removed to hospital where he was declared as brought dead. The police also came to the spot and recorded the statement of PW2/the complainant exhibited as PW2/A. PW2/the complainant also deposed that the accident was caused due to the rash and negligent driving of the driver i.e. the petitioner of the offending vehicle. PW2/the complainant also participated in further investigation. The petitioner was also arrested at the instance of PW2/the complainant. PW2/the complainant correctly identified the petitioner in the court as the person who was driving the offending vehicle at the time of accident. PW2/the complainant during cross-examination deposed that he was



about 300metres behind the motorcycle when the accident took place and the numbers of vehicles were going ahead of him. PW2/the complainant did not see the accident and his statement was recorded at the police station. The accident had occurred with LP/Dumper and he had seen the petitioner first at the police station and second time at the time of deposition before the court. The petitioner denied the suggestion that the accident was caused by any other vehicle.

5. The perusal of the judgment dated 16.04.2018 passed by the trial court reflects that the trial court had relied upon the testimony of the PW2/the complainant who deposed that the offending vehicle came at a high speed from the wrong side and was being driven by the petitioner and also during examination-in-chief, deposed that the accident took place due to rash and negligent driving of the petitioner. The trial court also observed that the testimony of a hostile witness can be relied upon if it finds corroboration from other material on record. The trial court was of the opinion that the MLC bearing no. bearing no.2697/2007 corroborated the testimony of PW2/the complainant regarding factum of injury sustained by the deceased. The testimony of PW2/the complainant is also



corroborated by the Mechanical Inspection Reports Ex.A6 and Ex. A7 and the photographs Ex. P1 and DD bearing no.27A which were admitted by the petitioner in his statement under section 294 of the Code. The trial court also did not find any credibility in the testimony of the defence witnesses i.e. Rameshwar Dayal as DW1 and Vir Singh as DW2. The trial court also relied upon the Mechanical Inspection Report Ex. A6 and Ex. A7 in respect of the offending vehicle and motorcycle bearing registration bearing no.DL-3SA-3477.

6. The appellate court in the impugned judgment also relied upon the deposition of PW2/the complainant in examination-in-chief. The appellate court also observed that the cross-examination of PW2/the complainant was recorded after 4/5 years and the possibility of winning over the witness cannot be ruled out. The appellate court did not believe the deposition of PW2/the complainant recorded in his cross-examination. The appellate court also observed that the identity of the driver of the offending vehicle i.e. the petitioner is ascertained by the statement given by PW2/the complainant during his examination-in-chief. The appellate court also did not accept the



contradictions in the respective testimonies of the witnesses examined by the prosecution and held them to be without any consequence. The appellate court opined that the petitioner while driving the offending vehicle had caused the accident due to which the deceased died. The appellate court upheld the conviction of the petitioner.

7. The counsel for the petitioner argued that during investigation no CCTV footage was collected and led in evidence by the prosecution even though the road near Ansal Villa is a busy main road. There was only one eye witness of the incident i.e. PW2/the complainant being the cousin of the deceased was an interested witness. There are material contradictions in the statements of PW2/the complainant recorded during his examination-in-chief and cross-examination. There are contradictions in the respective testimonies of the witnesses examined by the prosecution. The petitioner in his statement under section 313 of the Code stated that he was driving some other truck on the day of the incident. DW1 and DW2 also deposed that the petitioner had attended a marriage function in a village in Rajasthan on the day of the incident. There is



no material on record to show that there was any rashness or negligence in driving the offending vehicle. It has not emerged from the investigation or any of the depositions during the trial as to whether and how the accused fled from the spot and how and why he was not restrained and the police could not arrest him from the spot itself. The testimony of PW2/the complainant cannot be partly appreciated and relied upon as has been done by the courts below. The family/legal heirs of the deceased have received a favorable award from the MACT which was not opposed by the petitioner.

7.1 The Additional Public Prosecutor for the respondent/State argued that the testimony of PW2/the complainant recorded during his examination-in-chief is sufficient to prove the guilt of the petitioner beyond reasonable doubt and the petitioner can be convicted only on the basis of the testimony of PW2/the complainant. There is no reason to interfere with the judgment dated 16.04.2018 and order on sentence dated 08.08.2018 passed by the trial court and the impugned judgment and the impugned order passed by the appellate court. The present petition is liable to be dismissed.



8. It is argued on behalf of the petitioner that the testimony of the PW2/the complainant cannot be relied upon as he was an interested witness being a cousin of the deceased. PW2/the complainant happened to be a cousin of the deceased. The issue which needs judicial consideration is that whether the testimony of PW2/the complainant being interested witness can be relied upon against the petitioner. The testimony of a related witness can be relied upon if it is found trustworthy and a mere relationship does not disqualify a witness. The interested or related witnesses are as competent to depose the facts as any other witness but such evidence has to be carefully scrutinized and appreciated before reaching to a conclusion about the guilt of the accused. The Supreme Court in **Masalti V State of U.P.**, (1964) 8 SCR 133 observed that there is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. It was further observed that whether or not there are discrepancies in the evidence; whether or not the evidence strikes to the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into



account. However, evidence given by such witnesses should not be discarded only on the ground that it is evidence of partisan or interested witnesses and the mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. The Supreme Court in **Hari Obula Reddi and Others V State of Andhra Pradesh**, AIR 1981 SC 82 held that evidence of interested witnesses is not necessarily unreliable evidence and it cannot be laid down as an invariable rule that the evidence of interested witnesses can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. However, the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. The Supreme Court in **Pulicherla Nagaraju @ Nagaraja Reddy V State of Andhra Pradesh**, AIR 2006 SC 3010 observed that it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased, if it is otherwise found to be trustworthy and credible and the said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly



convicted. It is as such an accepted legal proposition that the testimony of an interested witness can be relied upon if it is otherwise inspiring the confidence of the court and found to be trustworthy. The testimony of PW2/the complainant cannot be discarded due to reason that he was known to the deceased being his cousin. There is no evidence on record that PW2/the complainant had any ill will or motive against the petitioner to falsely implicate him in present case. The testimony of PW2/the complainant is narrative of facts leading to the fatal accident and after careful analysis with caution, it can be relied upon. The argument advanced by the counsel for the petitioner that the testimony of PW2/the complainant cannot be relied upon being an interested witness is without any basis and is accordingly rejected.

9. PW2/the complainant supported case of prosecution in examination-in-chief but did not support case of prosecution in cross examination. The evidence of the hostile witness cannot be rejected but has to be considered with caution. The Supreme Court in various decisions has discussed admissibility of testimony of a hostile witness. The Supreme Court in **State of U.P. V Ramesh Prasad**



Misra and Another, (1996) 10 SCC 360 held the evidence of a hostile witness should not be totally rejected but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The Supreme Court in **C. Muniappan and Others V State of Tamil Nadu**, (2010) 9 SCC 567 held that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law can be used by the prosecution or the defence. The Supreme Court in **Mrinal Das and Others V State of Tripura**, (2011) 9 SCC 479 held as under:

67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at



least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

The Supreme Court in **Arjun V State of C.G.**, 2017 (2) MPLJ (Cri.) 305 held that merely because the witnesses have turned hostile in part, their evidence cannot be rejected in *toto*. The evidence of such witnesses cannot be treated as effaced altogether but the same can be accepted to the extent that their version is found to be dependable and the court shall examine more cautiously to find out as to what extent he has supported the case of the prosecution. The testimony of PW2/the complainant cannot be rejected as he did not support case of prosecution in cross examination.

10. The counsel for the petitioner argued that no CCTV footage was collected and led in evidence by the prosecution even though the road near Ansal Villa is a busy main road. There was only one eye witness of the incident and all other witnesses examined by the prosecution were police witnesses who were not present at the spot. It is accepted legal proposition that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The



evidence should be cogent, credible and trustworthy. The Supreme Court observed in **Kuna @ Sanjaya Behera V State of Odisha**, 2017 SCC OnLine SC 1336 that the conviction can be based on the testimony of single eye witness if he or she passes the test of reliability and that is not the number of witnesses but the quality of evidence that is important. The Supreme Court in **Veer Singh and Others V State of UP**, (2014) 2 SCC 455 observed as under:-

Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided Under Section 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable.

The prosecution does not require number of eye witnesses to prove its case beyond reasonable doubt. Even if there is one eye witness and his testimony is up to the mark, the conviction can be based upon the same. The Supreme Court in **Namdeo V State of Maharashtra**, (2007) 14 SCC 150 held as under:-



In the leading case of Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs." In Anil Phukan v. State of Assam, (1993) 3 SCC 282 : JT 1993 (2) SC 290, the Court observed; "Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect.

The testimony of PW2/the complainant after being analysed carefully, inspires confidence and is trustworthy and can be safely relied upon. If the Investigating Officer did not collect CCTV footage or did not include any public person in investigation, it is not fatal to case of prosecution. The argument advanced by the counsel for the petitioner is without any legal force. There is legal force in the



arguments advanced by the Additional Public Prosecutor that the sole testimony of PW2/the complainant is sufficient to prove the case of prosecution.

11. This Court in **Ajeet Singh V The State Govt. of NCT of Delhi and Another**, CrI.A. 612/2023 decided on 31.10.2023 observed that the witness is considered to be an important factor or integral part of the administration of justice and role of a witness is paramount in the criminal justice system. The witness by giving evidence assists the court in discovery of the truth. The testimony of PW2/the complainant reflects that the offending vehicle was being driven by the petitioner in a rash and negligent manner. The petitioner came from wrong side and particularly the place of accident happened to be a busy main road where the petitioner was required to take necessary precautions while driving the offending vehicle. It is also proved by the prosecution that the petitioner while driving the offending vehicle had hit the motorcycle bearing registration no. DL-3SA-3477 being driven by the deceased from the front side which is reflective of the fact that the petitioner was not vigilant with respect to the vehicles being driven on the road. The



petitioner was under an obligation to take appropriate care on the road particularly towards other vehicles being driven by the deceased. The mere fact that the offending vehicle came from the wrong side and hit the motorcycle itself reflects negligence on part of the petitioner. The prosecution has led sufficient evidence to establish the guilt of the petitioner beyond reasonable doubt. The Mechanical Inspection Report of the offending vehicle Ex.A6 reported that there was Front left side bumper damage, Left side head light damage, Left side indicator glass broken and Drive VMD glass of both sides broken. The Mechanical Inspection Report of the motorcycle Ex.A7 reported that there was Front shocker damage, Front head light damage, Head light buzzer damage, Steering arm tee broken, Front indicator light of both sides damage, Speedometer damage, Electric wiring damage and Horn damage. The extent of damage on both the vehicles shows that there was a head-on collision between the offending vehicle and the motorcycle. The post mortem report of the deceased also proved that the deceased had died because of craniocerebral injuries caused by blunt external force which could be possible in road traffic accident. The quality and quantity of evidence



led by the prosecution is sufficient to prove rashness and negligence on part of the petitioner while driving the offending vehicle.

12. Section 313 of the Code empowers the court to examine the accused with the purpose to enable the accused to explain incriminating circumstances in the prosecution evidence. The Supreme Court in **Reena Hazarika V State of Assam**, Criminal Appeal No. 1330/2018 decided on 31.10.2018 observed that a solemn duty is cast on the court in the dispensation of justice to adequately consider the defence of the accused taken under Section 313 of the Code and to either accept or reject the same for reasons specified in writing. The petitioner in statement recorded under section 313 of the Code denied incriminating evidence and pleaded innocence and false implication. The petitioner in statement recorded under section 313 of the Code stated that he was not driving the truck on the day of accident rather he was driving some other vehicle on the above said date. The petitioner in cross-examination of PW2/the complainant, did not raise the defence that he had not caused the accident or that the accident was caused by any other vehicle although a suggestion was given that the accident had taken place by



any other vehicle in cross-examination of the Investigating Officer PW4/SI Adesh Parkash. The petitioner in defence evidence, took a new defence by examining DW1 and DW2 that the petitioner on 24.07.2007 was attending the marriage function of the daughter of DW1. The defence as taken by the petitioner is sham, inconsistent and without any basis and does not inspire confidence of this Court. The courts below have rightly observed that the respective testimonies of DW1 and DW2 that the petitioner had attended a marriage function in a village in Rajasthan do not inspire the confidence as this plea was not raised by the petitioner in his statement under section 313 of the Code.

13. Every person accused of an offence is presumed to be innocent and burden lies upon the prosecution to establish the guilt of the accused beyond reasonable doubt. The Supreme Court in **Shivaji Sahabrao Bobade and Another V State of Maharashtra**, (1973) 2 SCC 793 emphasized that our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. The Supreme Court in **State of U.P. V Shanker**, AIR 1981 SC 897 observed that it is



function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest. The Supreme Court in **Gurbachan Singh V Sat Pal Singh and Others**, AIR 1990 SC 209 observed that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. The Supreme Court in **Krishna Mochi and Others V State of Bihar**, (2002) 6 SCC 81 observed that there is sharp decline in ethical values in public life and in present days when crime is looming large and humanity is suffering and society is somuch affected thereby duties and responsibilities of the courts have become much more. It was further observed the maxim “let hundred guilty persons be acquitted, but not a single innocent be convicted” is in practice changing world over and courts have been compelled to accept that “society suffers by wrong convictions and it equally suffers by wrong acquittals”. However, the Supreme Court in **Sujit Biswas V State of Assam**, (2013) 12 SCC 406 also held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to



steer clear of any possible surmise or conjecture. The prosecution from the quality and quantity of evidence led by it proved that the petitioner was driving the offending vehicle rashly and negligently and caused death of the deceased by accident. The arguments advanced by the counsel for the petitioner as detailed hereinabove were considered in right perspective but are without any legal and factual force. The impugned judgment passed by the appellate court and the judgment dated 16.04.2018 passed by the trial court are justified and do not call for any interference.

14. The petitioner vide the impugned order was sentenced to undergo RI for six months for the offence punishable under section 304A IPC. The petitioner was also directed to pay fine of Rs.40,000/- out of which, Rs.30,000/- had to be paid to the legal heirs of the deceased and the remaining fine amount had to be paid to the State for offence punishable under section 304A IPC and in default of payment of fine, to undergo SI for two months. The petitioner was also sentenced to undergo SI for one month for the offence punishable under section 279 IPC. Both the sentences were ordered



to be run concurrently. As per the nominal roll, the petitioner is in judicial custody since 10.10.2023.

14.1 Sentencing is an important task in the future prevention of crime. The criminal law should impose adequate and just sentence after taking into consideration nature and gravity of the crime. The Supreme Court in **Dalbir Singh V State of Haryana**, (2000) 5 SCC 82 also observed as under:-

Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

14.2 The happening of an accident is an unforeseen incident but it cannot be a ground to let off the offender. The accident may render



the entire family of the deceased in state of destitution. The Supreme Court in **Dalbir Singh**(*supra*) guarded against leniency in relation to the drivers found guilty of rash driving and observed as under:-

When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and frolic.

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion..... He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.



In **State of Karnataka V Muralidhar**, (2009) 4 SCC 463 the respondent caused fatal accident. The Trial Court sentenced the respondent to rigorous imprisonment for a period of one year with fine for the offence punishable under section 304A IPC. The appeal was dismissed by the Sessions Court. The High Court waived custodial sentence and only fine was imposed. The Supreme Court referred to the principles related with the offence punishable under section 304A IPC as also the problems associated with the road traffic injuries and found absolutely no reason due to which the High Court waived the custodial sentence awarded to the respondent. The judgment of the High Court was set aside and that of the Trial Court was restored. The Supreme Court in **Abdul Sharif V State of Haryana**, SLA (Criminal) No. 13513 of 2016 decided on 21.09.2016 also observed that section 304A IPC should be revisited so that higher punishment can be provided. The punishment provided under section 304A IPC is absolutely inadequate. The Supreme Court in **State of Punjab V Saurabh Bakshi**, (2015) 5 SCC 182 also observed as under:-

Before parting with the case we are compelled to observe that India has a disreputable record of road accidents.



There is a nonchalant attitude among the drivers. They feel that they are the “Emperors of all they survey”. Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as “larger than life”. In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinise, relook and revisit the sentencing policy in Section 304-A IPC. We say so with immense anguish.

15. A perusal of the impugned order on sentence dated 10.10.2023 passed by the appellate court reflects that the appellate court has already taken a lenient view in respect of the petitioner. Hence, there is no reason to interfere with the impugned order. The sentence awarded by the appellate court is maintained.

16. Copy of this judgment be supplied to the petitioner through the concerned Jail Superintendent and be also sent to the concerned trial court for information.

17. The present petition along with pending applications, is decided accordingly and stands disposed of.

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

NOVEMBER 21, 2023