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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 1406/2023**

YATIN RAWAT

.....Petitioner

Through: Mr. Mayank Khurana, Advocate with
petitioner in person.

versus

THE STATE & ANR. & ORS.

.....Respondents

Through: Mr. Amol Sinha, ASC for State.
Mr. Pankaj Gupta, Advocate for
respondent No.2 with respondent No.2
in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

25.11.2024

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1. The present proceedings are instituted on behalf of the petitioner seeking quashing of FIR No. 54/2016 registered under Sections 279/304A IPC at Police Station Ranjit Nagar, Delhi on the ground that the parties have amicably settled their disputes.

2. Notably, the present case came to be registered on account of an accident that was alleged to have taken place on 27.01.2016 at around 7.30 P.M. on Patel Road, in front of Shadipur Depot. The petitioner who was riding his motorcycle collided with one Mr. *Rajendra*, i.e. the deceased who was on foot and crossing the road. The petitioner and deceased were both injured and taken to hospital, where the deceased later succumbed to his injuries. The cause of death was opined to be head injury subsequent to road traffic incident.



3. Learned counsel for the petitioner contends that though the parties have been able to reach an amicable settlement, even otherwise ingredients of Section 304A IPC are not made out against the present petitioner. He further submits that no allegation has been levelled that the petitioner was riding the motorcycle in an intoxicated state. Lastly, it is stated that the petitioner is the sole bread earner as his father has expired and that a loan has been taken to compensate the victim.

4. Learned ASC for State submits that in the present case, the petitioner is the only accused person and respondent No.2 and 3 are the mother and minor daughter of the deceased respectively. He further submits that the incident was witnessed by eyewitnesses and one *Sanjay*, who called the PCR, stated to the police that it was the petitioner who was driving his motorcycle in a rash and negligent manner. It is further submitted that the motorcycle involved in the incident was not insured. He states, on instructions, that in the present case, the chargesheet stands filed and the trial is at the stage of prosecution evidence.

5. Learned Counsel for the parties submit that the parties have settled their disputes before the MACT in the sum of Rs. 10 lacs. Out of this amount, the minor daughter of the deceased is to receive a sum of Rs. 7 lacs, which is to be kept in FDR till she turns 21 and the respondent No.2, who is the mother of the deceased is to receive the remainder of the settled amount. It is further informed that the wife of the deceased, Ms. *Neetu* has stated before the MACT on 29.01.2019 that she has subsequently remarried and has foregone her share of the compensation amount in favour of her minor



daughter. It is further submitted that out of the settled amount of Rs 10 lacs, only Rs 1 lac remains to be given to the private respondents.

6. The petitioner and respondent No. 2 and 3, who are present in Court, have been identified by their respective counsels as well as by the Investigating Officer.

7. Respondent No.2, states on behalf of respondent No.3 as well, that they have entered into the aforesaid settlement out of their own free will, volition and without any coercion. She further states that he has no objection if the present FIR and consequent proceedings are quashed subject to the payment of balance settlement amount of Rs 1 lacs. She further requests that the said amount be transferred to her by way of a bank transfer.

8. I have heard learned counsel for the parties and learned ASC for the State and have perused the material placed on record.

9. 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.

The act of rashness or negligence should be such as to be proximately connected to the cause of death. Criminal rashness is the doing of any act with recklessness or indifference to the possible consequences, however



without the intention of causing injury. On the other hand, criminal negligence is gross and culpable neglect or failure to exercise reasonable and proper care and precaution to guard against injury either to the public generally or to a particular individual. In motor accidents, it is not a rule that negligence of the driver would be presumed in every case. *Res ipsa loquitur* would only come into play when the nature of accident and surrounding circumstances would lead to the conclusion that the accident would not have occurred, but for the negligence.

10. The Supreme Court elaborated upon the concepts of culpable rashness, criminal negligence and presumptions of negligence in the case of Mohd. Aynuddin v. State of A.P., reported as **(2000) 7 SCC 72** wherein it was held as under:-

“7. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus.

8. The principle of res ipsa loquitur is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.

9. A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty



of the driver of a vehicle to adopt such reasonable and proper care and precaution.”

11. The nature and scope of Section 304A IPC was 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”.

12. A perusal of the material would show that the incident is stated to have occurred at night time on Patel road, near Shadipur Depot. The deceased was crossing the ending of a flyover when the alleged accident occurred. The petitioner is also stated to have received injuries and was hospitalised. There is no mention in the FIR or Status Report of the presence of any alcohol or other intoxicating substance in the blood of the petitioner. As discernible from the record, nothing is stated to the effect that the motorcycle was being driven in high speed. Although the motorcycle stated to be involved in the incident was uninsured, the same, though attracting penalty under the Motor Vehicles Act, cannot be said to be a rash or negligent act which was proximately connected with the cause of the accident which ultimately led to the death of the victim. Thus, it is the opinion of this Court that in the present facts and circumstances, the ingredients of Section 304A IPC have *prima facie* not been made out in the present case against the petitioner.



13. Be that as it may, the petitioner has also entered into a settlement with the mother of the deceased, who is present in Court alongwith the minor daughter of the deceased and who has stated that she has no objection to the quashing of said FIR.

14. Considering the merits as well as the factum of settlement having been arrived at between the parties, it is directed that the aforesaid FIR and the consequent proceedings arising therefrom are hereby quashed, subject to payment by the petitioner of Rs. 1,00,000/- to respondent No.2 Prem Lata (A/c No. 90742010101022, Canara Bank, Branch: Shadipur, IFSC CNRB0019074) within a period of two weeks from today.

15. Proof evidencing payment of Rs.1,00,000/- shall be filed with the I.O.

16. With the above directions, the petition is disposed of.

17. In case the proof of payment is not filed within two weeks, the IO shall be at liberty to move an appropriate application in this regard.

MANOJ KUMAR OHRI, J

NOVEMBER 25, 2024/*js*