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

Reserved on: 21.02.2024
Pronounced on: 28.05.2024

+ **CRL.REV.P. 988/2019**

RAJESH KUMAR GUPTA

..... Petitioner

Through: Mr. R.N. Sharma, Mr. Nikhil Mann,
Mr. Shalabh Bhardwaj and Mr.
Himanshu Solanki, Advs.

versus

THE STATE

..... Respondent

Through: Mr. Hemant Mehla, APP for State
with SI Ashish Police Station
Chanakya Puri.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present revision petition has been filed by the petitioner under Section 397 of the Code of Criminal Procedure, 1973 seeking setting aside of the judgment dated 12.09.2019 passed by the Court of ASJ, Special Judge – NDPS, Patiala House Courts, New Delhi.
2. *Vide* impugned judgment the Learned ASJ dismissed the appeal preferred by the petitioner herein against the judgment dated 05.02.2018, whereby the Learned Metropolitan Magistrate convicted the appellant for commission of offence under Section 279/304A IPC and *vide* subsequent



order dated 31.05.2018 sentenced the appellant to undergo rigorous imprisonment for a period of three months with fine of Rs. 1,000/- for the offence under Section 279 IPC, in default to undergo simple imprisonment for a period of 10 days. For the offence under Section 304A IPC, the petitioner was sentenced to undergo rigorous imprisonment for a period of one year and three months with a fine of Rs. 10,000/- and in default simple imprisonment for a period of 15 days.

3. This Court in the present petition *vide* order dated 20.09.2019 suspended the sentence of the petitioner subject to his furnishing a personal bond in the sum of Rs. 20,000/- with one surety in like amount to the satisfaction of the Trial Court.

4. The facts leading to filing of the present petition as borne out from the record are as under:

a. On 06.06.2004, information was received at P.S. Chanakyapuri, New Delhi that a man was lying at Malcha Marg stand in a blood stained condition and that he had met with an accident. A daily diary entry *vide* DD No. 18A was registered and S.I. C.L. Meena alongwith Ct. Suresh reached the spot of occurrence i.e. Sardar Patel Marg, Malcha Marg bus stand, where on inquiry it was found that the PCR had already taken the injured to the hospital.

b. At the hospital, the MLC of the injured was collected, and as per MLC the injured was declared to be brought dead. Thereafter, the IO again reached the spot of occurrence and it was learnt that the accused/petitioner was already apprehended by Beat Constable Surender Kumar. Beat Constable Surender Kumar disclosed that he was patrolling and about 08:20 PM, when he reached Sardar Patel



Marg bus stand, he saw that one pedestrian / deceased was crossing the road for going towards bus stand. In the meanwhile, one Fiat car driven in a rash and negligent manner hit the pedestrian due to which he fell on the other side. Thereafter, the driver stopped the car after around 10 meters and then ran away after seeing the accident, but he followed the car. The driver / petitioner was apprehended with the help of Ct. Ompal at Panchsheel SP Marg red light.

c. Thereafter, investigation was undertaken and the said Fiat car was seized, the broken glass and the shoes of the deceased were seized from the spot, site plan was prepared, mechanical inspection and postmortem was conducted, and on completion of investigation chargesheet was filed.

d. The prosecution to establish the guilt of the petitioner examined 09 witnesses in total, the details of which are as follows:

PW No.	Name of Witness	Designation of Witness
PW-1	Dr. Rajiv Sharma	Specialist forensic medicine, LHMC, New Delhi
PW-2	Ct. Suresh Chand	PIS No. 28950782, PS Chanakya Puri
PW-4	HC Dalbir Singh	PIS No. 28981672, E-Block, Security Line
PW-5	Rakesh	Eye witness present at the spot of occurrence
PW-6	HC Hira Lal	PS Mandir Marg
PW-7	Ct. Surender	Eye witness present at the spot



	Kumar	of occurrence
PW-8	T.U. Siddqui	Witness conducted the mechanical inspection of the vehicle
PW-9	S.I. CL Meena	PIS No, 28900600

5. The learned counsel for the petitioner submits that the impugned judgment has been passed without properly appreciating the evidence which does not establish the guilt of the petitioner beyond all reasonable doubt.

6. He submits that the complainant, namely, Ct. Surender (PW-7) claims to have given the information to PCR which was recorded at PS Chanakya Puri vide DD No. 11B Dt. 06.06.2004 at 8:40 PM but there is no mention of either the registration number or make of any offending vehicle or any vehicle causing accident due to rash and negligent driving by its driver, which makes the entire case of the prosecution highly suspicious.

7. He further submits that the site plan which was prepared at the instance of PW-7 and exhibited as Ex PW9/B, clearly records that the offending vehicle was of make-Maruti. This fact is further corroborated by eye witness Rakesh, who was examined as PW-5, who deposed that he saw a Maruti car striking against a person at the place of accident and that he had not seen the registration number of the offending vehicle, whereas the car registered in the name of the petitioner was Fiat Uno.

8. He submits that PW-7 in his cross-examination has admitted that public persons were available at the spot but they were not asked to join the investigation, as such, this omission on the part of the IO goes to the root of the case and is fatal to the case of the prosecution.



9. He submits that the case of the prosecution is that the deceased was crossing the Sardar Patel Marg road for going towards Malcha Marg bus stand, but it is not the case of the prosecution that the deceased was crossing the road at zebra crossing. A perusal of the site plan, Ex PW9/B, also shows that the deceased was not crossing the road at zebra crossing next to traffic light intersection. He submits that even assuming that the petitioner was driving the offending vehicle which hit the deceased, no negligence could be attributed to the petitioner when the deceased was randomly crossing the road without following the traffic rules.

10. Lastly, he submits that none of the PWs including the complainant proved as to how and in what manner the petitioner was driving the offending vehicle rashly and negligently. He submits that it is also not in dispute that it is the prosecution's own case that the driver of the car had stopped the car after 10 meters which itself shows that the car was not at high speed. Further, there are no skid marks or tyre marks indicated in the site plan or referred to by any of the PWs, wherefrom it could be inferred that the petitioner was driving in rash and negligent manner.

11. *Per Contra*, the learned APP appearing on behalf of the State has supported the judgment of conviction passed by the learned Trial Court as well the learned Appellate Court. He further submits that the impugned judgment is well reasoned and has been passed after appreciating the entire attending facts and circumstances of the present case which conclusively establishes the guilt of the petitioner.

12. He submits that in the absence of any apparent illegality, the decision of learned Trial Court, as well as, the learned Appellate Court ought not to



be disturbed routinely, especially, when there are concurrent finding of two courts.

13. I have heard the learned counsel for the petitioner, as well as, the learned APP appearing for the State and have perused the material on record.

14. Before proceeding to examine the merits of the case of the respective parties, it would be relevant to briefly recapitulate the scope of interference by this Court while exercising revisional jurisdiction against an order of conviction especially when there are concurrent findings by the learned Trial Court as well as the learned Appellate Court. In this regard, relevant would it to refer to the judgment dated 05.07.2022 of the Hon'ble Supreme Court in *Malkeet Singh Gill v. The State of Chhattisgarh*,¹ wherein the Court has held as under:-

*“Heard Mr. Awnish Kumar, learned counsel for the appellant and Mr. Sourav Roy, Deputy Advocate General for the State of Chhattisgarh and perused the record. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two Courts after detailed appreciation of the material and the evidence brought on record. **The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate Court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short ‘CrPC’) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded***

¹ 2022 SCC OnLine SC 786



error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

(Emphasis Supplied)

15. Keeping in mind the aforesaid legal position, this Court proceeds to notice the statements of two eye-witnesses viz., PW-5 and PW-7, on which the prosecution has rested its case. PW-5 was declared hostile and was cross-examined by the Ld. APP. The relevant part of the testimony reads as under:

*“On 06-06-04 I was residing at my above said address. On that day at about 8:00 to 8:15 PM I was waiting for the bus and I was present at Malcha Marg. S.P. Marg, Bus stop. At about 8:15 PM one red colour **maruti car** came from the side of **Teen Murti and stuck against a person. I had not seen the number of offending vehicle.** Due to impact of the hit the injured was fell down on the other side of the road. Public persons also gathered there. Police also came at the spot. I told to the PS regarding the accident. **Thereafter I went away. I had not seen the driver of offending vehicle as he ran away from the spot.** At this stage. Ld APP wants to cross examine the witness as he is resilling from his previous statement. Herd and allowed.*

XXX by Ld. APP for State.

*I had not told to the police number of offending vehicle DL-6CG-0826 make Flat UNO. Confronted with EX PW 5/A where it is so recorded. **It is correct that driver of the offending car is driving at a fast speed and negligent manner.** I had also not stated to the IO that driver of the offending vehicle was apprehended by the police at Panchsheel Marg. S.P. Marg, Red Light and I he revealed his identify as Rajesh Kumar Gupta. Confronted with EX PW 5/A where it is so recorded. **It is correct that accident had taken place due to negligent and rash driving of the vehicle as who***



hit against a person while he was crossing the road. Accused present in the court shown to the witness is stated that he had not seen driver the of the offending vehicle. It is wrong to suggest that I am deliberately or intentionally not identify the accused and concealing the facts as I have been won by the accused. It is wrong to suggest that I am deposing falsely on the point of identify and number ad made of the offending vehicle to save the accused.

*XXX by Ld. Def. Counsel for accused
It is correct accused is not in my relation.*

(Emphasis Supplied)

16. Eye-witness Ct. Surender Kumar, who was examined as PW-7, testified as under:

“On 06-06-2004. I was posted as Constable at P.S. Chanakya Puri and I was on patrolling duty. At about 8:20 PM in the course of patrolling duty. I reached near Malcha Road bus stand as Sardar Patel Marg. I saw a flat white colour car bearing no. DL-6CG-0826 came from 11 Murti Marg and his straight towards a pedestrian who was crossing the road towards Sardar Patel Marg from Malcha Marg Side. The driver of the fiat who is the accused present in the Court today was driving the vehicle rashly and negligently. After hitting the pedestrian, the accused stopped the vehicle at some distance and the injured/pedestrian fell down on the other side of the road. After seeing the accident from some distance, the accused ran away from the spot with flat car. I followed the accused. He stopped his vehicle at Panchsheel SP Marg red light.....”

(Emphasis Supplied)

17. The statement of IO SI C.L. Meena, PW-9, who prepared the site plan Ex PW9/B is also significant. The relevant part of the statement of PW-9 reads as under:



“I prepared the site plan Ex PW9/B bearing my signature at point A.”

“The distance between Panchsheel marg crossing and the spot of accident might be about 400 meters.”

“I cannot tell exact width of the road the spot of accident but it is two ways road. There was bus stand near the spot. The spot of accident shown in the cite already Ex PW9/B is depicted at point A which is in the middle of road. I cannot say the distance of the place of incident neither from the center nor from the left side of the road. As the site plan is without scale. I had prepared the site in the instance of Ct. Surender and public witness Rakesh Kumar. Both the said witnesses claim themselves as I witness. It is correct the position of the eyewitness. Is not shown in the site plan already Ex PW9/B.”

(Emphasis Supplied)

18. It is the prosecution case that the accident had taken place at around 8.15 PM to 8.20 PM in the month of June. This court can take judicial notice of the fact that in the month of June in Delhi, by 8.15 PM it is invariably dark. It is also the case of prosecution that the deceased was crossing Sardar Patel Marg, which is a two way road as per the testimony of the IO/PW-9. The site plan, Ex PW-9/B, also shows that Sardar Patel Marg is a two way road with divider in between. Conspicuously, it is not the case of the prosecution that deceased was crossing the road at zebra crossing while the traffic signal was red. Even in the site plan, Ex PW-9/B, no zebra crossing or traffic intersection has been indicated, rather the said site plan indicates that the deceased was crossing the road at a point other than zebra crossing and no traffic signal has been shown near the spot of accident, in the site plan. If the deceased was crossing Sardar Patel Marg at a point other than zebra crossing during the time when it was dark and the traffic was



flowing freely in the absence of any red light signal, no negligence can be attributed to the petitioner.

19. I am supported in my view by a decision of this Court in *State v. Rajesh, (2019) 10 AD (Delhi) 344*, wherein the deceased was hit by the offending vehicle while crossing the road and the prosecution had failed to establish that the accident had taken place when the deceased was crossing the road at zebra crossing while the light was red, it was held as under:

“12. Clearly if it was established that the victim was crossing the road at a zebra crossing while the light was red; negligence on part of the respondent would be established. This would not be so if the deceased was crossing the road at any other point. It is difficult to accept that negligence on part of the respondent has been established beyond any reasonable doubt. PW-7 had at one point stated that she had seen the accused riding the scooter in a fast and negligent manner and striking the deceased. However, in her cross-examination, she stated that the deceased was walking five to six metres behind her and she had turned back on hearing the noise of the impact. Thus, clearly, she could not have witnessed the respondent riding the scooter in a fast and negligent manner, as deposed by her. The site plan (PW-10/B) indicates that the incident had taken place at a T-Junction and it has been affirmed that there was a zebra crossing at the road. However, the testimony of PW7 is inconsistent in this regard. Although, at one point she had stated that the deceased and her were crossing the road at the red light, she had also stated that there was no zebra crossing at the spot where they were crossing the road. In her cross-examination she had stated that the deceased and her were crossing the road about half a kilometer ahead from the red light. In view of the inconsistencies in the testimony, the prosecution has been unable to establish that the accident had taken place while the deceased was crossing the road at the zebra crossing.”

(Emphasis Supplied)



20. Further, PW-5 in his testimony has deposed that the offending car was being driven at a fast speed and in a negligent manner. He also deposed that the accident was caused due to the negligent and rash driving of the vehicle. Whereas, PW-7 has also stated that the driver of the offending vehicle was driving rashly and negligently. However, none of these two eye witnesses have given description about the manner in which the offending vehicle was being driven so as to bring the act within the purview of Section 304A IPC. Intriguingly, no skid marks and tyre marks were obtained to corroborate that the petitioner was driving at high speed and in rash and negligent manner.

21. It is trite law that the expression “fast speed” or “high speed” is a relative term and merely driving the vehicle at “fast speed” by itself may not tantamount to “rashness” and “negligence”. Reference in this regard may be had to the decision of the Supreme Court in *State of Karnataka v. Satish*,² the relevant part of which reads as under:

“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

² (1998) 8 SCC 493.



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”.* There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.

5. There being no evidence on the record to establish “negligence” or “rashness” in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view. To us it appears that the view of the High Court, in the facts and circumstances of this case, is a reasonably possible view. We, therefore, do not find any reason to interfere with the order of acquittal. The appeal fails and is dismissed. The respondent is on bail. His bail bonds shall stand discharged.”

(Emphasis Supplied)

22. Similarly, this Court in *Kishore Chand Joshi v. State*,³ under somewhat similar circumstances has held as under:

“15. The prosecution has relied on the testimony of PW-1 and PW-2 as the two eye-witnesses. PW-1 in his testimony has not stated as to whether the vehicle was being driven in a fast manner or what was the manner in which the vehicle was being driven. PW-2 in his testimony has stated that the vehicle was being driven by the petitioner in rash and negligent manner.

16. PW-2 has given his opinion about the manner of driving. Rash and negligent manner is an opinion which may vary from person to person depending on the perception of an

³ (2018) 172 DRJ 586.



individual. What may be “rash and negligent” for one may not be “rash and negligent” for another. For one person, driving at a speed of 80 may be high speed and rash and negligent and for another it may not be.

17. A witness can depose as to the manner of driving or speed at which the vehicle was being driven but not render an opinion on “rash and negligent”. High speed by itself may not in each case be sufficient to hold that a driver is rash or negligent. Speed alone is not the criterion for deciding the rashness or negligence on the part of the driver.

18. In the present case, PW-1 in his testimony has not stated anything as to how the vehicle was being driven. There is no mention as to whether the vehicle was being driven at a high speed or in a manner which may be construed as “rash and negligent” by the Court. PW-2 also has given his perception that the vehicle was being driven in a rash and negligent manner. No skid marks or tyre marks have been obtained of the spot to indicate that the vehicle was being driven at a high speed.”

(Emphasis Supplied)

23. Keeping in view the aforesaid *dicta* and regard being had to the evidence on record, it is clear that the prosecution has failed to establish beyond all reasonable doubt that the accident was caused by the petitioner by driving the offending vehicle in a rash and negligent manner, so to sustain the finding of petitioner’s guilt and his consequent conviction under Section 304A IPC.

24. In view of the above, the criminal revision is allowed. Resultantly, the impugned judgment dated 12.09.2019 passed by the Court of ASJ, Special Judge – NDPS, Patiala House Courts, New Delhi in Crl. Appeal no. 10/2018, arising out of FIR No. 126/2004 registered as PS Chanakyapuri, is



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set aside and the petitioner is acquitted of charges punishable under Section 279/304A IPC.

25. The Bail Bond and Surety Bond of the petitioner, if any, stand discharged.

26. The petition is disposed of.

27. Order be uploaded on the website of this Court.

28. Order *dasti* under the signatures of the Court Master.

VIKAS MAHAJAN, J.

MAY 28, 2024
MK