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

+ **CRL.L.P. 338/2022 & CRL.M.A. 13506/2022**

STATE

.....Petitioner

Through: Ms. Priyanka Dalal, APP
SI Gurtej Singh, PS J.P. Kalan

versus

SATISH KUMAR SETHI

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

15.01.2025

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1. This is a petition seeking grant of leave to appeal against the impugned order dated 20.02.2020 passed by learned ASJ (SFTC), South West, Dwarka, New Delhi in Criminal Appeal No. 433/2019 wherein the appellant despite being convicted for offences under Sections 279/337/304A IPC, has been granted benefit of section 4 of the Probation of Offenders Act and released on probation for a period of 6 months on account of good conduct.
2. The facts of the present matter are that the accused/respondent was found driving in a rash and negligent manner. The vehicle driven by the respondent hit an electricity pole which resulted in some simple injuries to co-passengers and fatal injuries to one co-passenger who subsequently succumbed to his injuries.
3. By virtue of the order dated 19.07.2019, the learned MM convicted the respondent under sections 279/337/304A of IPC and sentenced the respondent to rigorous imprisonment for 6 months under section 304A IPC.
4. The learned Sessions Court *vide* the impugned order dated 20.02.2020



upheld the conviction of the respondent, however suspended the sentence of the respondent, awarded him probation for 6 months and on successful completion of probation, directed that the sentence awarded to the respondent will not be given effect to.

5. It is stated by Mr. Singh, learned APP that in the present case, the fact that the respondent was on the wrong side of the road has completely been ignored by the learned Sessions Court. The respondent has committed a heinous and serious crime and should have been sentenced for a minimum imprisonment of 2 years.
6. I have perused the material on record.
7. The learned MM had sentenced the respondent for a period of 6 months rigorous imprisonment under Sections 304A, which was effectively done away by the learned Sessions Court.
8. The learned Session Court while granting probation relied upon various grounds such as (i) respondent is not a professional driver, (ii) respondent was driving a private vehicle, (iii) respondent is not a previous convict, (iv) respondent is 67 years of age, (v) has faced 7 years of trial and (vi) the respondent is a social worker spending his free time doing 'Satsangs'.
9. What can be seen from a perusal of the impugned judgment is that the learned Sessions Court has paid attention to many factors but has failed to take into account the fact that the respondent was driving on the wrong side of the road clearly showing that he was rash and negligent.
10. The Hon'ble Supreme Court in *Mohd. Aynuddin v. State of A.P.*, (2000) 7 SCC 72 has held as under:-



“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. *Prima-facie*, it appears that the respondent was in the wrong since he recklessly and negligently drove on the wrong side of the road. In my view, the respondent not being a professional driver does not assist the respondent to shy away from his responsibility to follow traffic rules.
12. There is nobody appearing on behalf of the respondent today.
13. The respondent has appeared before and has even filed a Vakalatnama duly authorizing a team of advocates to appear for and on his behalf. The respondent on 13.102.2023 also sought time to file a written synopsis, however nothing has been filed till this date.
14. For the said reasons, I am inclined to grant leave to appeal. The leave to appeal is allowed.



CRL. A. _____/2025 (To be numbered)

15. ***“Admit”***
16. List in due course.

JASMEET SINGH, J

JANUARY 15, 2025/sp

Click here to check corrigendum, if any