2025:DHC:2169

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

***Reserved on: March 18, 2025***
***% Pronounced on: April 01, 2025***

\+ **CRL.REV. P. 873/2022 & CRL.M.A. 3142/2023-Addl.doc**

**MANISH KUMAR** **.....Petitioner**
Through: Mr. Siddhant Buxy, Ms. Rupinder Kaur, Advs. along with petitioner on bail

Versus

**STATE OF NCT DELHI** **.....Respondent**
Through: Mr. Satish Kumar, APP for the State

**CORAM:**
**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**J U D G M E N T**

1. The petitioner, by the present petition under *Section 397* read with *Section 401* of the Code of Criminal Procedure, 1973[1] seeks to assail the judgment dated 03.12.2022 passed by the learned Additional Sessions Judge-07, South, Saket Courts, New Delhi[2] in Criminal Appeal no.384/2019 whereby the learned ASJ has dismissed his appeal and upheld the order of conviction dated 03.09.2019 and order of sentence dated 16.09.2019 passed by the learned Metropolitan Magistrate-06 (South), Saket Courts, New

[1] Hereinafter referred as "***Cr.P.C.***"
[2] Hereinafter referred as "***learned ASJ***"

Delhi[3], however reduced the sentence to eighteen months from twenty four months under *Section 304A* of the IPC, arising out of FIR No.48/2012 dated 20.02.2012 registered under *Section(s) 279/304A* at P.S. Hauz Khas, Delhi, whereby the petitioner was convicted of offences under *Section(s) 279 & 304A* of the Indian Penal Code, 1860[4] and awarded sentence of two years Rigorous Imprisonment[5] under *Section 304A* IPC and six months of Simple Imprisonment[6] under *Section 279* IPC, [both sentences to run concurrently], along with a fine of Rs.50,000/- [*Rupees Fifty Thousand Only*] to be paid to the families of each of the two pedestrians, namely Sultan Singh and Raja @ Raghu Verma[7], in default whereof, he would undergo one month of Simple Imprisonment.

2. As per facts, on the fateful day of 20.02.2012, at about 06:45 AM, *vide* DD No.9A P.S.: Hauz Khas, received information about an accident in front of Kamla Nehru College Bus Stand, August Kranti Road. Upon receipt of the said DD, SI Nihal Singh (PW-5) alongwith other police personal reached the spot and found that a Swift Dzire Car bearing no.DL-2C-AL-7285[8] had met with an accident, resultingly causing injury to the two pedestrians. Thereafter, the above said police personnel received

[3] Hereinafter referred as "***learned MM***"
[4] Hereinafter referred as "***IPC***"
[5] Hereinafter referred as "***RI***"
[6] Hereinafter referred as "***SI***"
[7] Hereinafter referred as "***pedestrians***"
[8] Hereinafter referred as "***Car***"

information vide DD No.10A that the AIIMS Trauma Centre, New Delhi had declared them dead on arrival.

3. The petitioner, who was employed as a cleaner by one Ms. Isha Shrivastava, the owner of the Car, while cleaning the Car on the fateful morning of 20.02.2012, was persuaded by five of his friends to take them for a joy ride in the Car for buying milk from the Mother Dairy booth. On their way back, whilst taking a left turn, the petitioner lost control of the Car and after hitting the two deceased pedestrians collided with the footpath.

4. After the said accident, all the persons in the offending Car including the petitioner, left the spot in a local transport bus without helping the then injured pedestrians.

5. Meanwhile, in response to the notice under *Section 133* of the Motor Vehicles Act, 1988, Ms. Isha Shrivastava submitted that the petitioner was driving the Car without her permission and knowledge at the time of the accident.

6. Thereafter, an FIR was registered. After investigation, a chargesheet dated 30.06.2012 was filed against the petitioner and charges framed against him under *Section(s) 279/ 304A* of the IPC. This led to the conviction of the petitioner under both *Section(s) 279/ 304A* of the IPC *vide* order dated 03.09.2019 passed by the learned MM.

7. In a challenge thereto, the learned ASJ *vide* the impugned order upheld the aforesaid order passed by the learned MM but reduced the sentence of

the petitioner under *Section 304A IPC* from two years of RI to eighteen months of RI.

8. Aggrieved thereby, the petitioner has filed the present petition.

9. As per the learned counsel for petitioner, the inference by the learned ASJ to establish guilt of the petitioner is contrary to the law laid down by the Hon'ble Supreme Court in ***Syad Akbar vs State of Karnataka***[9], wherein it has been held that guilt of an accused, like the petitioner herein, has to be proved beyond a *reasonable doubt* and not the other way around.

10. Furthermore, as per the learned counsel, the aspect of the petitioner's guilt of driving in a "*rash and negligent*" manner has been wrongly inferred from the factum that the petitioner was driving the Car at a "*high speed*". In support thereof, learned counsel for petitioner submitted that simply because the Car hit the two deceased pedestrians on the footpath at a *"high speed"*, it would not mean that the Car was being driven in a *"rash and negligent"* manner by the petitioner. Relying upon, ***State of Karnataka vs Satish***[10], ***Ram Chander vs State***[11], ***Raj Kumar vs State (NCT of Delhi)***[12] and ***Abdul Shubhan vs State (NCT of Delhi)***[13] he further submitted that driving at a "*high speed*" does not in itself mean that the act of the petitioner was in itself *"rash and negligent"*. It is the case of the learned counsel for petitioner that it was never the case of the prosecution/ State that the

[9] (1980) 1 SCC 30
[10] (1998) 8 SCC 493
[11] 2017 SCC OnLine Del 11763
[12] Judgment dated 26.03.2007 in Crl. Rev. Pet. 402/2006; Delhi High Court
[13] 2006 SCC OnLine Del 1132

petitioner was driving in a *"rash and negligent"* manner and even the testimonies of PW1 to PW4 only reflect that he was driving the Car at a *"high speed"*. In fact, the PW4 in his testimony has categorically denied that the petitioner was driving the Car in a *"rash and negligent"* manner. Moreover, as per learned counsel for petitioner, there was nothing in the evidence to prove driving at "*high speed*" on the part of the petitioner had any element of him being "*rash and negligent*" or that he was not in control of the Car. Thus, as per learned counsel for petitioner, the prosecution has failed to prove beyond reasonable doubt that the petitioner was driving the Car in a *"rash and negligent"* manner.

11. Learned counsel for petitioner then submitted that since the Seizure Memo dated 20.02.2012 [EX. PW5/B] as also the Mechanical Inspection Report dated 22.02.2012 [EX. A4] both mention that the front tyre and rear tyre of the left side of the Car were damaged, there were high chances that the accident took place because of the bursting of the tyres and not due to the culpability of the petitioner. In any event, the author of the Mechanical Inspection Report never deposed as a witness before the learned MM. There were, thus, glaring gaps in the investigation as the prosecution/ State was unable to prove at what stage the tyres burst. Relying upon ***Moti Singh vs State of Maharashtra***[14], learned counsel for petitioner submitted that the burden is on the prosecution/ State to prove the guilt of the accused beyond

[14] (2002) 9 SCC 494

reasonable doubt, especially, when the evidence adduced by the prosecution/ State itself leads to such a reasonable doubt.

12. Further, as per learned counsel for petitioner, the learned ASJ has erred in applying the principle of *res ipsa loquitor* merely to fill in the lacuna in the case of the prosecution.

13. Lastly, learned counsel for petitioner submitted that the sentence awarded by the learned ASJ is without considering the relevant factors like the petitioner being of a young age, that he was having clean antecedents, and also the fact that he has to take care of his aged parents.

14. *Per contra*, learned Additional Public Prosecutor[15] for the State submitted that there is consistency in the testimonies of all the prosecution witnesses since they identified the petitioner as the driver of the Car, who was driving the Car at a very *"high speed"* when the accident took place. The same, as per learned APP, is sufficient to establish that the petitioner was driving in a *"rash and negligent"* manner as also that the Car was not under his control, more so, since it led to the loss of two human lives. Learned APP further submitted that post-mortem report reveals that the cause of death was *ante mortem* injuries caused by blunt force impact, which could only be from the impact of the accident only. He also submitted that the accident was not caused due to the burst of tyres as none of the witnesses have anywhere in their testimony mentioned it or about the Car getting disbalanced due to said burst.

[15] Hereinafter referred as "***APP***"

15. Finally, relying upon the Site Plan [EX. PW5/H] prepared by the Investigating Officer of the place of the accident, the blood stains, and the final place where the Car stopped were shown, learned APP submitted that the petitioner was driving in a "*rash and negligent*" manner is apparent from the fact that the Car first hit the two deceased pedestrians and then hit the footpath only to drift towards the right side of the road. As per learned APP for the State, the impugned order has been correctly passed by the learned ASJ and the sentence awarded to the petitioner is commensurate thereto.

16. Prior to dealing with the facts involved, it is worthwhile to mention that the Hon'ble Supreme Court in SLP (Crl) 5536/2023, after initially granting interim bail to the petitioner, made the same absolute *vide* order dated 31.07.2023 till the pendency of the present petition. Therefore, till being granted bail, the petitioner had only served a sentence of about five and a half months of the total of eighteen months, as awarded to him by the impugned order of the learned ASJ.

17. This Court has heard the learned counsel for petitioner as also the learned APP for the State and has also gone through the judgments cited at the Bar by both of them, along with the material available on record.

18. Qua the issue of this Court exercising its jurisdiction to interfere with the impugned order by way of the present revision petition under *Section 397* read with *Section 401* of the Cr.P.C., the scope and interference thereof

has been well-settled by the Hon'ble Supreme Court in ***Amit Kapoor vs Ramesh Chander & Anr.***[16], wherein it has been held as under:-

> *"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the* ***revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely****. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.*
>
> *xxxx*
>
> *18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.*
>
> *xxxx*
>
> *20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or*

[16] (2012) 9 SCC 460

> *otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.*"
>
> ***[Emphasis supplied]***

19. In view of the above, it is clear that *Section 397* read with *Section 401* Cr.P.C. gives every High Court the power of revision in the form of supervisory jurisdiction to examine the record of any Court below situated within its jurisdiction to satisfy the correctness, legality or propriety of any finding, sentence or order of such inferior Court. In fact, as enumerated in *sub-Section (1)* of *Section 401* of the Cr.P.C., the High Court while exercising such jurisdiction under revision has all the power enjoyed by the Court of appeal under *Section(s) 386, 389 and 391* of the Cr.P.C. and, it also enjoys any power of the Court of Sessions under *Section 307* of the Cr.P.C.

20. Also, the revisional jurisdiction of a Court can be invoked where there is gross error, or the impugned decision is contrary to the provisions of law or the finding recorded is based on no evidence or the material evidence necessary for disposal of the case has been ignored or the judicial discretion

has been exercised arbitrarily or perversely. The High Court is free to exercise its revisional power(s) to avoid any kind of miscarriage of justice.

21. Before proceeding to deal with the facts herein, since the whole issue revolves around *Section(s) 279/ 304A* of the IPC, the same are reproduced as under:-

> *"**279. Rash driving or riding on a public way.**—Whoever drives any vehicle, or rides, on any public way in a manner **so rash or negligent** as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*
>
> ***[Emphasis supplied]***
>
> ***304A. Causing death by negligence.** -- Whoever causes the death of any person by doing **any rash or negligent act** not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*
>
> ***[Emphasis supplied]***

22. As borne out from the above, to constitute an offence under *Section(s) 279/ 304A* of the IPC, the act on the part of the person who causes the death of any person/ or endanger human life so as to cause, or likely to cause hurt or injury has to be a "*rash*" and "*negligent*". To sustain any punishment/ conviction of any such person thereunder, it is pre-requisite that it has to be "*rash*" and "*negligent*".

23. From the evidence recorded before the learned MM, this Court finds that the PW1 in his testimony before the learned MM had deposed that the petitioner *"…was driving the vehicle at high speed…"*, the PW2 had also deposed that the petitioner *"…was driving the vehicle at high speed..."*, as

also the PW3 also deposed that the petitioner *"…was driving the vehicle at high speed…"*. Similarly, the PW4 in his testimony before the learned MM had also not only deposed that the petitioner *"…was driving the above said car in high-speed…"* but had also specifically denied that the petitioner *"…was driving the above said swift car in rash and negligent manner and due to which the above said swift car had hit two persons and they sustained injuries."*.

24. Therefore, it emerges from the aforesaid depositions of PW1 to PW4 that though all of them deposed that the petitioner was driving the Car at a "*high speed*", however, neither of them deposed that the petitioner was driving the Car in a *"rash and negligent"* manner. This Court, thus, does not find any evidence on record which reflects that the petitioner was indeed driving the Car in a *"rash and negligent"* manner.

25. Another vital factor for consideration is whether the petitioner was indeed driving in a *"rash and negligent"* manner and which has all throughout been overlooked is that though it is the case of the prosecution/ State that the accident was caused by the petitioner since he was driving the Car at a *"high speed"*, it is nowhere mentioned/ proved as to what was the cause/ reason thereof. Furthermore, most relevantly there is no whisper from any of the witnesses and/ or by the prosecution/ State about what was/ is meant by "*high speed*" and/ or what was/ is the "*high speed*", the petitioner was actually driving at. Therefore, no such presumption, *per-se*, can be

drawn qua the petitioner driving at a "*high speed*" merely on the basis of the testimonies of PW1 to PW4.

26. In any event, merely because the petitioner was driving at a "*high speed*" it cannot lead to the conclusion that there was any element of his being "*rash and negligent*". The petitioner driving at a "*high speed*" does not/ cannot in itself always mean and/ or establish that he was acting in "*rash and negligent*" manner. Thus, even assuming that the petitioner was driving at a "*high speed*", the same is not sufficient to conclude that the petitioner was, in fact, driving the Car in a "*rash and negligent*" manner.

27. This Court cannot draw an inference or come to any presumption on the basis thereof whence there are gaps left unfilled by the prosecution/ State. This Court finds support in ***State of Karnataka (supra)***, wherein the Hon'ble Supreme Court, while dealing with a similar issue, as the aforesaid, has held 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..."*

28. Reliance may also be placed upon ***Abdul Shubhan (supra)*** wherein a Co-ordinate Bench of this Court, while dealing with the very same issue, has held as under: -

> *"7. …I may also note that I am of the view that the testimony of PW 3 head constable Munim Dutt, even if taken to be entirely true only leads to the conclusion that the vehicle driven by the present petitioner was being driven at a high-speed. This in itself does not mean that the petitioner was driving the vehicle rashly or negligently..."*

29. In fact, in ***Ram Chander (supra)*** a Co-ordinate Bench of this Court has similarly held as under: -

> *"15. A reading of aforesaid Section shows that to constitute an offence under Section 279 IPC, it must be shown that the person was driving the vehicle in a rash or negligent manner. Criminal negligence or criminal rashness is an important element of the offence under Section 279 IPC. Mere fact that the accused was driving the vehicle at high speed may not attract the provisions of Section 279 IPC and the prosecution is required to brig on record such negligence and rashness. 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 rashness or negligence on the part of the driver."*

30. In ***Ram Chander (supra)*** also a Co-ordinate Bench of this Court has held as under: -

> *"10. …The said witness has stated that the bus was being driven at a "very fast speed". He further stated that because it was so being driven, the driver could not control the bus and the accident was caused. Therefore, the foundation of the allegation against the petitioner is that he was driving the bus at a "very fast speed". There is no evidence as to what this "very fast speed" was…"*

31. *Additionally*, when the Seizure Memo [EX. PW5/B] also recorded that "*… On the left side the back tyre is burst, front rear glass is completely broken, side mirror is broken, side window glasses of driver side and left side are both broken, back side mirror is broken. The body on the left side is dented at the top. …*", it cannot be presumed that the petitioner was driving at a "*high speed*".

32. Similarly, no such presumption can further be drawn to that effect when even the Mechanical Inspection Report [EX. A4] also records as under:-

> *"…FRESH DAMAGES …*
> *xxxx*
>
> *5. Left fender dented.*
> *6. Left side 1st & 2nd door dented/ pressed/damaged and door glassesbroken and out side mirror broken.*
> *7. Left side roof dented/pressed/roof illegible damaged.*
> *8. Left side rear Otv panel dented.*
> *9. Rear pumper damaged.*
> *10. Front radiator Assly +AC condenser Assly pressed.*
> *11.* ***Left side front suspension Tyre/ tube/ rim damaged.***
> *12.* ***Left side rear rim/ tyre/ tube damaged.*** *…..…".*
>
> ***[Emphasis supplied]***

33. Given the facts involved, the aforesaid factors were very vital for consideration, but they have all been completely ignored by the learned ASJ as also by the learned MM prior thereto. More so, since it was apparent therefrom that the condition of the Car was very poor and both the left side front and rear suspension tyre/ tube/ rim were found damaged. Therefore, under such circumstances, it cannot be conclusively ascertained that the

petitioner was indeed driving the Car in a *"rash and negligent"* manner, particularly, since it was unclear whether the tyre burst happened before or after the accident.

34. Barring the above, this Court finds that various relevant surrounding circumstances such as the time of occurrence of the accident, the plausible reasons attributable to the accident, the condition of the Car involved in the accident as also the issue qua the tyres bursting or like, have also neither been addressed by the prosecution/ State nor have been taken into consideration either by the learned ASJ as also by the learned MM prior thereto.

35. Taking all of the aforesaid factors cumulatively, particularly, since all the above relevant/ vital factors have either been overlooked and/ or ignored and/ or not been considered by either the learned ASJ or by the learned MM prior thereto, these are sufficient enough reasons calling for interference by this Court under *Section 379* read with *Section 401* of the Cr.P.C. for setting aside the impugned order under challenge.

36. *Succinctly put*, there being an overall infirmity and unfilled lacunae in the case set up by the prosecution, the prosecution was not able to prove its case *beyond reasonable doubt* that the petitioner was indeed driving the Car in a *"rash and negligent"* manner, which resulted in the demise of the two pedestrians. Therefore, the necessary ingredients of *Section(s) 279/ 304A* of the IPC, not being fulfilled, neither of them are attracted. The petitioner,

therefore, cannot be punished and/ or be held guilty of the offence(s) thereunder.

37. Under such circumstances and based on the material available on record, there was no occasion for the applicability of the principle of *res ipsa loquitor*. More so, merely because the Car, allegedly being driven at a "*high speed*" hit the two pedestrians leading to their demise, it is not adequate for a Court of law to hold that the petitioner was being *"rash and negligent"*.

38. In view of the aforesaid analysis and discussion, the learned ASJ has gravely erred in holding that "*…The vehicle sustained severe damages as is evident from Ex.A-4 and photographs Ex.PW-2/P-1 & Ex.PW-2/P-2. The nature of damages are also suggestive that the vehicle was being driven at a very fast speed. There is no credible evidence led by the defence to show that the damage to the tyre was not because of the high speed at which the vehicle was being driven..…… … …The evidence led sufficiently proves that the vehicle was being driven at a very fast speed and was not within the control of the driver and thus, rashness is writ large in the manner of driving. … …*", particularly since the prosecution was unable to discharge the onus which lay upon it.

39. Lastly, another factor *qua* the petitioner taking the defence of not driving the Car and there being no defence of a tyre burst, though raised before the learned ASJ, was not, *rightly* agitated before this Court in view of ***Moti Singh (supra)*** wherein the Hon'ble Supreme Court, under similar

circumstances, has held that "*… …we may point out that it would be quite unjust to deny such a right to the accused merely on the ground that he adopted a different line of defence. … … … …it would be inequitable to deny the right of private defence to the accused merely on the ground that he has adopted a different plea during the trial. … … … …A different plea adopted by the accused would not foreclose the judicial consideration on the existence of such a situation.*", this Court need not to dwell into the same.

40. Since the issues/ acts involved do not fall within the precincts of *Section(s) 279/ 304A* of the IPC, the petitioner cannot be held guilty of a *"rash and negligent"* act.

41. In view of the aforegoing reasoning and analysis, the present revision petition is allowed and the impugned order dated 03.12.2022 passed by the learned Additional Sessions Judge-07, South, Saket Courts, New Delhi in Criminal Appeal no.384/2019, is set aside. Consequently, both the order of conviction dated 03.09.2019 and order of sentence dated 16.09.2019, passed by the learned Metropolitan Magistrate-06 (South), Saket Courts, New Delhi, are also set aside.

42. The petitioner is thus discharged under *Section(s) 279* and *304A* of the Indian Penal Code, 1860.

43. Accordingly, the present petition along with the pending application is disposed of.

**SAURABH BANERJEE, J.**

**APRIL 01, 2025/*bh***