RESERVED

A.F.R.

Court No. - 74

Case :- CRIMINAL REVISION No. - 1961 of 2016

Revisionist :- Munshi Singh
Opposite Party :- State of U.P.
Counsel for Revisionist :- Anil Kumar Srivastava
Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

1. This revision is directed against a judgment and order of Mr. Vivek, the then Additional District and Sessions Judge, Court No. 6, Agra dated 07.06.2016, partly allowing Criminal Appeal No. 233 of 2013, and modifying the revisionist's conviction and sentences awarded by the Additional Chief Judicial Magistrate, Court No. 11, Agra, *vide* judgment and order dated 02.07.2013 in Criminal Case No. 572 of 2010, State v. Munshi Singh, acquitting him of the charge under Section 337 of the Indian Penal Code, 1860[1], but upholding his conviction for offences punishable under Sections 279 and 304A IPC.

2. Heard Mr. Anil Kumar Srivastava, learned Senior Advocate, assisted by Mr. P.N. Singh, learned counsel for the revisionist and Mr. Nitin Kesarwani, learned A.G.A. appearing on behalf of the State.

3. The prosecution case, set out in the First Information Report[2], is that on 08.06.2001, the informant, Tunda Ram, along with his son Mukesh, besides Pratap Singh, son of Sohran Singh, a native of Village - Nagla Veer Bhan, Police Station - Jagner, and another Gopi Chand, son of Bhanwar Singh, a resident of Singaich, Police Station - Jagner, District - Agra, was on way to his Village - Gopalpura. He was waiting for a conveyance at Saraindhi Chauraha. The party could not find a vehicle to

1 **for short "IPC"**
2 **for short "FIR"**

undertake the journey. In consequence, they boarded a *"Jugar"* (an unauthorised and illegal contraption of a powered vehicle) that was headed towards Sahpau. This vehicle of sorts, stated to be driven at a high speed and negligently, overturned near the Siddh Baba Mandir, at about 12 noon. In consequence of this accident, the informant's son, Mukesh, a boy of 23 years, died on the spot. The other passengers on board the contraption also sustained injuries.

4. It was mentioned in the FIR that the informant had come to report the incident at the station, after informing his relatives. It was also stated that he could identify the driver, if confronted. Based on the aforesaid written information, Crime No. 103 of 2001, under Sections 279, 337, 304 IPC was registered at Police Station - Jagner, District - Agra.

5. After investigation, the police submitted a charge-sheet against the revisionist. The Magistrate took cognizance of the offence. The revisionist, who is the sole accused of the case, denied the charges, and was put on his trial. The prosecution examined four witnesses, that is to say, P.W.1 Pratap Singh, P.W.2 Tunda Ram (father of the deceased), P.W.3 Dr. A.K. Singh, and P.W.4 Gopi Chand. The documentary evidence, that was produced, included the charge-sheet, the site-plan, the written information received, and the *chik* FIR.

6. The accused, in his statement under Section 313 of the Code of Criminal Procedure, 1973, stated that the prosecution was false, but declined to enter defence. It was P.W.2, the deceased's father, who supported the prosecution, testifying to all the facts in issue and the relevant facts. He identified the revisionist in the dock as the driver, apart from testifying to facts relating to boarding the vehicle, the fact about it being driven at a high speed and with negligence, the fact about the accident, and the resultant death of Mukesh, the victim.

7. It appears that before the Magistrate, it was urged on behalf of the revisionist that he was moving in the *Jugar* along with his family, when

the deceased and the other injured voluntarily boarded it as gratuitous passengers. The revisionist did not offer them a ride, or compelled them to board it. It was, therefore, contended that there was no such duty of care owed, which may invite a prosecution under Section 304A or 279 IPC. The Magistrate found the fact about the accident and the resultant death in the circumstances, stated by the prosecution, to be proved. The Magistrate held that it is established that the revisionist was driving a *Jugar*, regarding which a report of accident has been submitted. She further held that a *Jugar* has no registration number. It is illegal to ply it. The testimony of witnesses show that, at the time of the incident, there were passengers on board. The Magistrate has noticed that there were about 25 passengers, according to the testimony of P.W.2, whereas according to P.W.4, there were 7-8 passengers. The Magistrate rejected the revisionist's contention that he was out on a sojourn with his family. The Magistrate has disbelieved the fact that there were family members of the revisionist on board, because none of the witnesses mentioned the fact about the revisionist's family members riding the contraption. The Magistrate has concluded that the vehicle was ferrying passengers for hire, inviting them to board his vehicle. It was also concluded that he drove the vehicle negligently, resulting in the fatal accident.

8. The Magistrate convicted the revisionist for offences punishable under Sections 279, 337 and 304A IPC, sentencing him to terms of two months, two months and six months of rigorous imprisonment on each count in that order, with a direction that the sentences would run concurrently. The revisionist carried an appeal to the learned Sessions Judge, which was allowed in part, acquitting the revisionist of the charge under Section 337 IPC, but affirming his conviction and sentence for the offences under Sections 279 and 304A IPC.

9. Aggrieved, this revision has been brought.

10. It is urged before this Court by Mr. Anil Kumar Srivatava, learned

Senior Counsel appearing for the revisionist, that no responsibility can be fastened upon the revisionist because he was not plying his vehicle for any commercial gain, hire or reward. The deceased and his father had asked for a lift, that was given out of humanitarian considerations. The revisionist was out with his family, when the deceased and his father sought his assistance to ferry them, as there was no vehicle around. It is urged that in these circumstances, even if a case of accident involving the vehicle in question is to be believed, no liability under Section 304A or 279 IPC can be fastened. It is further submitted that the courts below held in manifest error that the accident happened the way it is claimed by the prosecution, involving the revisionist's vehicle, inasmuch as there is no substantive evidence available on record to sustain that finding; and *a fortiori* the revisionist's conviction. The orders of conviction passed by the two courts below are termed as perverse. It is urged that the conviction be overturned.

11. Mr. Nitin Kesarwani, learned A.G.A., has supported the orders impugned. He submits that the findings of the courts below are based on a just, plausible and logical inference, from the evidence available on record. It is not for this Court to interfere with these findings of facts, in exercise of its revisional jurisdiction.

12. So far as the contention based about the incident taking place the way it has been found by the two courts below to have occurred, it is not open to this Court to reappraise evidence. This Court finds that the two courts below have believed the evidence of the deceased's father, who was a co-passenger on board the ill-fated contraption of a vehicle, and there is no reason to discard the findings of the two courts below on the fact in issue and the relevant facts attending it. The submission of the learned Senior Counsel appearing for the revisionist that he was not plying his vehicle for hire or reward, but acceded to a request by the informant and his son for a lift, rendering him not liable for the offences, cannot be accepted. The distinction between a gratuitous passenger riding a vehicle,

not meant for ferrying passengers, may have some relevance in a claim under the Motor Vehicles Act, 1988[3] but that is quite irrelevant, so far as an offence under Section 304A IPC, or, for that matter, Section 279 IPC is concerned. The offence under Section 304A IPC is about death caused by doing any rash or negligent act, that is short of culpable homicide. The gist of the offence has been elucidated by the Supreme Court in **State of Punjab v. Balwinder Singh & Others**[4] where it has been held :

> **10.** Section 304-A was inserted in the Penal Code by Penal Code (Amendment) Act 27 of 1870 to cover those cases wherein a person causes the death of another by such acts as are rash or negligent but there is no intention to cause death and no knowledge that the act will cause death. The case should not be covered by Sections 299 and 300 only then it will come under this section. The section provides punishment of either description for a term which may extend to two years or fine or both in case of homicide by rash or negligent act. To bring a case of homicide under Section 304-A IPC, the following conditions must exist, namely,
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> (*1*) there must be death of the person in question;
> (*2*) the accused must have caused such death; and
> (*3*) that such act of the accused was rash or negligent and that it did not amount to culpable homicide.

13. It would, thus, appear that there is nothing in the ingredient of an offence punishable under Section 304A IPC that would connect it to the fine principle of torts, regulating the right of an injured party to recover, in case of a motor accident governed by the provisions of the Act of 1988. The distinction in compensation cases between a gratuitous passenger riding a non-passenger vehicle *vis-à-vis* the liability of the insurer, will have no application here. All that is relevant is the causing of death by a rash or negligent act - whether a motor vehicle is involved or not, is not at all relevant. But, it is relevant whether the act of the revisionist in permitting the deceased and his companions to board a motor vehicle, which he knew was not authorized to ply under the Act of 1988, is rash

3 **for short "Act of 1988"**
4 **(2012) 2 SCC 182**

enough to invite the consequences contemplated under the Statute. A *Jugar* is a privately fabricated motor vehicle, which cannot be registered under the Act of 1988. No license is issued to ply such a vehicle. There is a direction about these contraptions called *Jugar* to be found, in a decision of the Punjab and Haryana High Court in **Sunil Suman Kaushik v. State of Haryana & Others**[5] while dealing with a Public Interest Litigation *inter-alia* seeking prohibition of plying such contraptions in pubic places. It was held and directed :

> **5.** The petitioner has also prayed for the stoppage of unauthorised use of vehicles such as 'Jugars' on the road. Jugar is a vehicle fitted with an engine. Under sub-section (28) of Section 2 of the Motor Vehicles Act, 1988, motor vehicle has been defined as follows:—
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> > "2(28) "motor vehicles" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding (twenty five) cubic centimeters."
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> **6.** Therefore, any vehicle which is mechanically propelled for use on roads comes within the definition of motor vehicle. Under the provisions of the said Act, no vehicle can be plied without a licence. Therefore, respondents Nos. 1 and 3 are directed to take effective steps to prevent the plying of the 'Jugars' on the public places without getting them registered and obtaining necessary licence under the provisions of Motor Vehicles Act.

14. The registration of a motor vehicle is a *sine qua non*, for it being driven in any public place or any place, as mandated by Section 39 of the Act of 1988. The Registration Authorities ensure strict standards of manufacture in terms of safety to the occupants of a motor vehicle, and to third parties, without which, vehicles would not be admitted to

5 **1997 (1) RCR (Civil) 591**

registration. Generally speaking, if at all, privately done contraption of a motor vehicle would not be registered under Chapter IV of the Act of 1988. Whatever the standards of safety insisted upon by the Registration Authorities, unless a vehicle is registered, it cannot be plied anywhere. Thus, the act of plying a privately fabricated contraption of a motor vehicle, popularly called a *Jugar* on a public road, and then permitting anyone to ride it, or driving it himself, is an act utterly rash on the revisionist's part. By that act of the revisionist's rashness, the deceased met an untimely demise. It must be also noted that rashness and negligence are no mere synonyms. An act may not be negligent, and yet utterly rash. This was precisely the case in **Cherubin Gregory v. State of Bihar**[6]. In **Cherubin Gregory** *(supra)* the facts there can be best recapitulated in the words of their Lordships, which read :

> ....The facts, as found are that in order to prevent the ingress of persons like the deceased into his latrine by making such ingress dangerous (*1*) the accused fixed up a copper wire across, the passage leading up his latrine, (*2*) that this wire was naked and uninsulated and carried current from the electrical wiring of his house to which it was connected (*3*) there was no warning that the wire was live., (*4*) the deceased managed to pass into the latrine without contacting the wire but that as she came out her hand happened to touch it and she got a shock as a result of which she died soon after. .…

15. It was held in the context of these facts in **Cherubin Gregory**, thus :

> 4. The voltage of the current passing through the naked wire being high enough to be lethal, there could no dispute that charging it with current of that voltage was a "rash act" done in reckless disregard of the serious consequences to people coming in contact with it.

16. The distinction between "negligence" and "rashness" has been elucidated in the Law Lexicon by **P. Ramanatha Aiyer (3rd Edition)**, where at Page 1188-1189, it is adumbrated :

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6 **AIR (1964) SC 205**

> There is a clear distinction between 'negligence and rashness' and that distinction is contemplated even by S. 279, IPC. In the case of negligence, the party does not do an act which he was bound to do, because he adverts not to it. In the case of rashness, the party does an act and breaks a positive duty. He thinks of the probable mischief, but in consequence, of a missupposition begotten by insufficient advertence, he assumes that the mischief will not ensue in the given instance or case. The radical idea denoted is always this. The party runs a risk of which he is conscious. Culpable rashness is often explained as acting with the consciousness that dangerous consequences will follow, but with the hope that they will not follow and with the belief that the actor has taken sufficient precautions to prevent the happening of such consequence. Similarly, culpable negligence is acting without the consciousness that dangerous consequences will follow, but in the circumstances which show that the actor has not exercised the caution that was incumbent of him. *J.C. May, In re*, MLJ: QD (1956-1960) Vol. IV C144: 1960 CrLJ 239 : AIR 1960 Mad 50 : 1960 Mad LJ (Cri) 570. [Motor Vehicles Act (4 of 1939), S. 116]

17. This Court is of opinion that the act of the revisionist in fabricating or causing to be fabricated a contraption of a motor vehicle, and moving out on the road, was an inherently rash act, unless that vehicle was certified to be according to safety norms by an authorized government agency and then registered under Section 39 of the Act of 1988. This vehicle, in whatever manner, if the cause of death of any person, regardless of the fact whether the victim was a gratuitous passenger, a family member, or a third party, would render the revisionist liable for an offence of death by negligence.

18. Here, there are further findings that the contraption was indeed driven negligently at high speed, resulting in an accident, leading to the victim's death. In the face of these facts and the position of law, the charge of causing death by negligence is well established against the revisionist. So far as the evidence under Section 279 IPC is concerned, that, on evidence too, is proven beyond doubt. There is no scope for interference with the findings of the two courts below, who are *ad idem* about the

revisionist's guilt.

19. Now, turning to the question of sentence, Mr. Srivastava, learned Senior Counsel appearing for the revisionist, submits that it is not a case where anything was intentioned by the revisionist. He was himself the driver of the vehicle and what happened was a pure accident. Looking to the nature of the vehicle that the revisionist employed to venture out on the roads, and the evidence about negligence forthcoming against him, this Court does not think that the revisionist is entitled to leniency in the matter of sentence. Accident on roads that are caused by rashness or negligence are a specie of pernicious conduct that has devastating consequences for not only for the victim, but the entire family. It is an offence which impacts the society by rendering women destitute, children orphans and old parents staring at the darkness of a lost progeny, just on the rush of adrenaline capturing the man, who manouvers the steering of a motor vehicle and presses the accelerator. Here, the case is worse, because the vehicle involved is one that ought never to have been fabricated, much less driven in a public place. In this connection, it would again be relevant to mention the authority of their Lordships in **Balwinder Singh** *(supra)* where adopting a deterrent stance in sentencing in matters of rash and negligent driving, it was held :

> **11.** Even a decade ago, considering the galloping trend in road accidents in India and its devastating consequences, this Court in *Dalbir Singh* v. *State of Haryana* [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] held that, 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 should not take a chance thinking that even if he is convicted, he would be dealt with leniently by the court.
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> **12.** The following principles laid down in that decision are very relevant: (*Dalbir Singh case* [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] , SCC pp. 84-85 & 87, paras 1 & 13)

"*1*. 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 the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

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13. 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 Probation of Offenders 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 cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. 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 the vehicle he cannot escape from a 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."

> The same principles have been reiterated in *B. Nagabhushanam* v. *State of Karnataka*[(2008) 5 SCC 730 : (2008) 3 SCC (Cri) 61].
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> **13.** It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in *Dalbir Singh*[(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] .
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> **14.** While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the court.

20. In view of what this Court has found above, there is no good ground to interfere with the orders impugned.

21. In the result, this revision **fails** and is **dismissed**. The revisionist shall surrender before the Trial Court within a week, to serve out the remainder of the sentence. Upon the revisionist's surrender, the sureties shall stand discharged.

22. Let this judgment be communicated to the Additional Chief Judicial Magistrate, Court No. 6, Agra through the learned Sessions Judge, Agra forthwith, along with a copy of this judgment. Let the lower court records be sent down at once.

Order date :- 22.01.2021
I. Batabyal / BKM/-