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**(2019) 10 UK CK 0050**

**In the Uttarakhand High Court**

**Case No : Criminal Revision (CRLR No. 75 Of 2012)**

Shyam Lal @ Shyam Baboo

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

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**Date of Decision : 16-10-2019**

**Acts Referred:**

Indian Penal Code, 1860 — Section 279, 304A

Code Of Criminal Procedure, 1973 — Section 251, 313

**Citation : (2019) 10 UK CK 0050**

**Hon'ble Judges : Sharad Kumar Sharma, J**

**Bench : Single Bench**

**Advocate : Siddhartha Sah, P.S. Bohra**

**Final Decision : Allowed**

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## **Judgement**

Sharad Kumar Sharma, J

1. The revisionist is the convict for commission of the offences under Sections 279 and 304A IPC. As a consequence of the culmination of trial vide its judgment impugned rendered by the Court of Additional Civil Judge (Senior Division)/ Judicial Magistrate, District Udham Singh Nagar in Criminal Case Number 906 of 2010, State of Uttarakhand v. Shyam Lal @ Shyam Babu, the trial Court vide its judgement dated 9th October 2005, has convicted the revisionist for the aforesaid offences. Being aggrieved against the judgememnt of conviction by trial Court dated 9th October 2005, the revisionist preferred Criminal Appeal No. 147 of 2011, Shyam Lal @ Shyam Babu v. State of Uttarakhand, before the Court of District and Sessions Judge, District Udham Singh Nagar. The Appeal too was dismissed by the learned Appellate Court vide its judgement dated 24th April 2012, thereby affirming the conviction of 6 months of simple imprisonment for the commission of an offence under Section 279 and one year simple imprisonment for the commission of offence under Section 304A IPC.

2. The brief facts as are involved for consideration in the instant case is that on

the perusal of the lower court records, which have been received by this Court, it has reflected that a FIR was registered on 18th July 2007, as against the present revisionist, naming him as an accused for the commission of offences as aforesaid, which was registered as Case Crime No. 210 of 2007 before the Police Station, Kichha, District Udham Singh Nagar.

3. As per the narration of the incident, which has been complained of in the FIR dated 18th July 2007, it was to the effect that the revisionist, who was said to be the driver of the Truck bearing Registration No. MP 06 1996, while it was being driven by him near Shani Mandir, Kichcha, the deceased child, Ajay, who was 5 years of age, who was moving around by the side of the road along with his father, complainant Nem Singh and brother-in-law of the complainant namely Mahendra, when the accident chanced due to negligence of the revisionist.

4. It is the case of the prosecution that the Truck in question, which was being driven by the revisionist Shyam Lal, was being driven in a rash and negligent manner resulting into causing of an accident and the consequential death of the child, who was 5 years of age, it was on account of which his head being crushed under the vehicle, it has resulted into his instant death on the spot.

5. It is contended by the prosecution that on commission of the said offence by the revisionist, he ought to have stopped the vehicle and stayed behind and should have provided whatever medical help which could have been possible in those circumstances but rather he has escaped from the place in question. The allegation of rash and negligent driving on part of the revisionist as per the prosecution would stand established against him because even otherwise also as per the evidence, which has been brought on record it shows that the cleaner of the Truck in question, who could not escaped from the site, at which the accident has occurred, he was caught by the public and he was beaten by them.

6. On an investigation being conducted by the Investigating Officer, a chargesheet has been submitted by the Investigating Officer, being chargesheet No. 164 of 2007 dated 6th August 2007, and the Investigating Officer the process to investigate the aforesaid offence, has examined as many as 14 witnesses and one of them was the complainant Nem Singh, who too during trial has appeared as PW1, one Mr. Pushkar Singh Rautela has appeared as PW5, Dr. L.S. Tolia, who has conducted the post-mortem on the deceased-Ajay, has appeared as PW3 and there were other witnesses also, who were examined, and who were the witnesses of the panchnama, conducted by the police officials after the death of Ajay.

7. On submission of the chargesheet, the cognizance was taken, hence the prosecution commenced with the registration of the Criminal Case No. 906 of 2010, State v. Shyam Lal, and as per the observation which has been made in the impugned order for trying the present revisionist for the aforesaid offences, it has come on record that the proceedings as contemplated under Section 251 of the Code of Criminal Procedure was duly complied with, and even so much so

that as per the argument extended by the learned Assistant Government Advocate also, the fact of the commission of the accident stand established by the evidence brought on record, because the two eyewitnesses, who were moving around with the deceased child, they have fortified the fact that the incident did occurred on the date as complained of in the FIR in their presence, due to negligent and rash driving of the Truck by the revisionist.

8. He further submitted that the presence of the Truck on the site in question where the accident has occurred, which was abandoned by the revisionist after the accident, itself is a un rebuttable evidence of the accident, it has also showed that the said accident has occurred on account of rash and negligent driving of the Truck by the revisionist which is a fact which stand established because had there been any element of innocence on part of the revisionist, he ought to have stayed behind and should have administered the first-aid or should have taken the deceased child to the nearest hospital for being provided with the first-aid and medical treatment. This fact of the vehicle being found on the site in question, as would be apparent from the site plan submitted before the trial Court and the fact that the revisionist had escaped from the place in question that in itself cannot be conclusively attributed to that the revisionist was negligent in driving the vehicle in question, resulting to the accident and ultimate death of the child-Ajay.

9. It is quite a normal human psychology and reactionary aptitude that whenever an accident chances, the driver of the vehicle out of sudden fear and chaos escapes away from the place in question in order to safeguard himself from the sudden public wrath, which, in fact, has actually happened in the instant case which was ultimately faced by the cleaner of the Truck in question, who could not escaped and was caught by the public and was beaten.

10. The prosecution in support of their case, had produced PW1, Nem Singh and they have also produced on record the report i.e. exhibit Ka (1) and has also recorded the statement of Mr. Mahendra Pal as PW2, who were the sole witnesses as they were present on spot, so as to substantiate the fact that the revisionist was engaged in a rash and negligent driving of the Truck in question. Apart from it, PW3, i.e. Dr. L.S. Toliya, who was the Doctor, who conducted the post-mortem on the deceased, has placed on record the post-mortem report i.e. exhibit ka-2, to show that the cause of death was the accident, which has chanced by the Truck, which was being driven by the revisionist reason of the death was the ante-mortem injuries.

11. Besides this, there were other witnesses also and documentary evidences which were also placed on record by the prosecution to show that the revisionist in fact was responsible for the commission of aforesaid offences. During the course of the trial, the statement was recorded under Section 313 of Cr.PC of the accused/revisionist and the revisionist has denied the factum of the commission of the said offence and he has contended that he has been falsely implicated for the commission of offence and he cannot be attributed to be driving the vehicle

in a rash and negligent manner in the absence of there being an independent witness which ought to have been produced by the prosecution, because the accident itself is alleged that it has occurred at 4:00 p.m. in a market place, hence there wouldn't be an scarcity of an independent witness being available too, who could substantiate the act of negligent driving of the revisionist in a rash and negligent driving.

12. In the absence of the same, as far as the presence of the vehicle in question on the site, and the post-mortem report showing the cause of death of deceased Ajay, on account of the accident which has occurred, there cannot be any doubt that the accident did occur and it has resulted into the death of the deceased-Ajay. But, that in itself will not be sufficient enough to attribute negligence to the revisionist to convict him for Section 279 IPC, until and unless there are independent witnesses produced by the prosecution before the trial Court in order to substantiate that actually the revisionist was indulged in rash and negligent driving as contemplated under Section 279 of IPC, because the consequential prosecution and ultimate conviction of the revisionist under Section 304A of IPC is a result of the negligence contemplated under Section 279 of IPC.

13. There is another argument, which has been raised by the learned counsel for the revisionist that even if the case of the prosecution is accepted that there was a negligence on part of the revisionist in driving the Truck in question, in that eventuality, the revisionist would be entitle for the benefit of the Probation of Offenders Act, 1958 for the reason being that the accident in question being the first offence and apart from it that there was no motive attributed to the revisionist having deliberately committed the said offence resulting into the death of the child-Ajay.

14. After having considered the pleadings and the findings which has been recorded by both the Courts below, affirming the judgement of conviction of the revisionist, this Court is of the view that the sole testimony of PW1 and PW2, who were accompanying the deceased child at the time when the accident occurred that itself cannot be taken as to be the sole ground or foundation to derive a conclusion about the rash and negligent driving of the truck by the revisionist. It has been further postulated by various judgements of the Hon'ble Apex Court that for the purposes of commission of an offence and to convict a person under Section 279 of IPC, it is not necessary that merely because the vehicle is being driven at a higher speed that in itself will amount to be an offence under Section 279 of IPC. It has been laid down that for making a person liable to be convicted for an offence under Section 279, there has had to be an element of joyride or a negligent driving more than that of a normal driving of the vehicle at a highest speed. Since as per the evidence, which has been adduced by the prosecution before the Court below and as per the finding recorded too the said element of driving the vehicle at a higher speed in a negligent manner was not established beyond doubt as to be consequence of

joyride in the absence of there being any independent witnesses being produced by the prosecution, hence this Court is of the view that the manner in which the determination has been made for convicting the revisionist for the offences exclusively based upon the statements of PW1 and PW 2, may not be a safe mode to infer rash and negligent driving and thus even otherwise also as per the argument extended by the learned counsel for the revisionist, the revisionist would be falling within the purview of the Probation of Offenders Act, 1958.

15. Consequently, in view of the aforesaid reasons, this revision is allowed and the impugned orders / judgements of conviction dated 9th October 2011, as passed by the First Additional Judge Senior Division / Judicial Magistrate, Udham Singh Nagar in Criminal Case No. 906 of 2010, State v. Shyam Lal, which ultimately stood affirmed by the appellate Court's judgements dated 24th April 2012, as rendered in Criminal Appeal No. 147 of 2011, Shyam Lal v.State of Uttarakhand, are hereby quashed. The revisionist is acquitted of the offences under Section 279 of IPC and 304A of IPC. Since the revisionist has already been released on bail by this Court, the sureties as extended by him for availing the bail in pursuance to the orders of this Court would stand discharged.