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

% Reserved on : 06.10.2025
Pronounced on : 08.10.2025

\+ **CRL.A. 1173/2016**

STATE NCT OF DELH .....Appellant
Through: Mr Pradeep Gahalot, APP for State

versus

BHAGWAN DASS .....Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred by the appellant/State under Section 378(1) CrPC against the judgment dated 01.08.2015 passed by the learned Metropolitan Magistrate (West), Tis Hazari Courts, Delhi, in CC No. 1398/2/10 arising out of FIR No. 898/1999 registered at P.S. Paschim Vihar under Sections 279/304A IPC, whereby the respondent was acquitted of all charges.

2. The case of the prosecution in brief is that on 23.10.1999, the respondent was driving a tanker-truck bearing number DL-1G-9597 in a rash and negligent manner. He struck a cyclist, deceased *Surjeet Singh*, from the front side at Rohtak Road in front of A1 Super Bazar, who sustained injuries and died before reaching the hospital. The respondent was apprehended at the spot by the public and handed over to the police. Charges

were framed under Sections 279 and 304A IPC. The respondent pleaded not guilty to all charges and claimed trial.

3. The prosecution examined as many as 11 witnesses in support of its case. PW-1, Dr. *M. M. Narnaware*, conducted the post-mortem of the deceased victim's body and deposed in that regard, proving his report as (Ex. PW1/A). *Prithvi Singh* and *Jagdish Ram*, both relatives of the victim, testified as to the identification of the deceased victim's body at DDU Hospital. Dr. I.J. Kalra, Ex. CMO, DDU hospital (PW-4) stated that the victim was declared brought dead at DDU Hospital on 23.10.1999.

4. PW-5/*Ramesh* deposed that on 23.10.1999 at about 8:30-8:45 a.m., he was travelling from Rohini towards Paschim Vihar on a two wheeler. On reaching near the bus stand at Super Bazar, he noticed that an accident had occurred and a tanker, the number of which 'might be' 9577, was standing on the road. It had hit a cyclist from the front side. The Tanker was going towards Punjabi (Bagh) from the side of Peera Garhi and was being driven at a high speed and in a rash and negligent manner as it had overtaken him earlier. He admitted, however, that he had not seen the driver of the tanker, or whether he was apprehended by public.

5. PW-6/Nand Ram deposed that on the date of the incident around 8.45 PM, while travelling by a bus from Nangloi towards Dev Nagar, he saw a tanker coming from behind at a fast speed being driven in a rash and negligent manner and hit a cyclist who was coming from Peera Garhi side and that the cyclist fell down as he had sustained serious injuries. He identified the respondent as the driver of the said tanker. He further stated that the accused left the spot and that the police arrived within five minutes, and recorded his statement at the spot.

In cross-examination, however, he kept shifting his stand. Firstly, he stated that he witnessed the accident when he came down from the bus. Then, he stated that he saw the accident taking place from inside the bus, from the window. He further stated that after alighting from the bus, he saw the respondent coming down from the driver's seat of the tanker. He denied the suggestion that he was deposing falsely as he was a relative of the victim.

6. PW-10/Ct. *Manmohan* deposed that on receipt of DD No. 5A at 9.22 AM, he accompanied SI SK Gulia to the spot and found the PCR van already present. They found the tanker in accidental condition, the victim lying in a pool of blood, and the respondent having been apprehended by the public. He removed the injured to the hospital, and when he returned to the spot, there was no eyewitness. The rest of the witnesses were formal in nature and deposed as to various aspects of investigation.

7. In his statement recorded under Section 313 Cr.P.C., the respondent admitted that he was driving the said tanker on the date, time, and place of the incident but denied that it was being driven at a high speed or in a rash and negligent manner. He stated that there was heavy traffic on the road and that the tyre of the bicycle had got entangled with the rear portion of the tanker on the conductor's side, causing the cyclist to fall and sustain injuries.

8. Learned APP for the State has contended that the Trial Court erred in disbelieving the testimony of PW-6, who had categorically identified the respondent as the driver of the offending tanker that struck the deceased cyclist. He submits that the accused has himself admitted to being present at the spot and the prosecution case stands corroborated in light of the testimonies of PW-5 and PW-6. It was contended that the finding of the

Trial Court regarding the cyclist coming from the wrong direction was speculative and not supported by evidence.

9. In the present case, it was admitted by the respondent that he was driving the tanker at the time of the accident. There is no doubt that as a result of the accident, the death of the victim had taken place. It only remains to be seen whether the prosecution was able to prove that the respondent was driving the tanker in a rash or negligent manner.

10. For an act to constitute an offence under Section 304A IPC, the essential ingredient of a "rash or negligent act" must be proved. In addition, three conditions are required to be satisfied: (i) the death of a person; (ii) that such death was the result of an act of the accused; and (iii) that such act was performed in a rash or negligent manner, though not amounting to culpable homicide. The rashness or negligence must be of such a nature as to be directly and proximately connected with the cause of death. Criminal rashness implies the doing of an act with recklessness or disregard for its possible consequences, though without the intention of causing harm. Criminal negligence, on the other hand, denotes a gross and culpable failure to exercise reasonable care and precaution to prevent injury either to the public at large or to an individual in particular. In cases of motor accidents, negligence of the driver cannot be presumed merely because an accident has occurred. The principle of *res ipsa loquitur* applies only where the nature of the accident and the surrounding circumstances justify an inference that the mishap could not have taken place but for the negligence.

11. A gainful reference may be made to the decision of the Supreme

Court in Mohd. Aynuddin v. State of A.P.,[1] wherein the concepts of culpable rashness, criminal negligence and presumptions of negligence were elaborated upon as under:-

> *"7. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus.*
> *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."*

12. The nature and scope of Section 304A IPC was also discussed by the Supreme in Naresh Giri v. State of M.P., reported as **(2008) 1 SCC 791**, wherein it was held as follows:-

> *"8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was*

[1] (2000) 7 SCC 72

likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

13. PW5 is not an eyewitness to the incident. By the time he had reached the spot, the tanker was already stationary. He only gave a bald statement that the tanker was being driven at a high speed and in a rash and negligent manner as it had overtaken him earlier. Though he stated that the tanker had hit the cyclist from the front side, an overall reading of his testimony makes it clear that he had not actually witnessed the incident and he only saw the aftermath. Further, he admitted to not seeing the driver of the tanker and whether it was the respondent.

14. Coming to the deposition of PW6, his testimony suffers from improvements and contradictions. At one place he deposes that he saw the incident when he came down from the bus, at other place he deposes that he saw the incident taking place from the window while being present inside the bus. He also states that the police recorded his statement at the spot within 5 minutes, however a perusal of the trial court record reveals that his statement under Section 161 CrPC was recorded on the next day of the

incident. He has not stated in this statement from where he witnesses the accident, after alighting or from inside the bus. Moreover, he has not stated that he saw the respondent coming out from the driver's seat. His signatures are not reflected on any memos either to prove his presence at the spot of the incident.

15. In view of the less than satisfactory depositions of its star witnesses, it was for the prosecution to adduce other evidence to establish the charges against the respondent. The mechanical inspection report of the tanker revealed no fresh damage to the outer body of the tanker and that all the parts were functioning properly. It did not state as to the speed of the tanker at the time of the incident. For reasons best known to it, the prosecution did not get the mechanical inspection of the cycle conducted. There are no photographs of the site as well. No other evidence was led to establish the rash and negligent driving on part of the respondent, apart from the depositions of PW5 and PW6, which have already been discussed above.

16. In State of Karnataka v. Satish, reported as **(1998) 8 SCC 493**, the Supreme Court observed that "high speed" is a relative term and, by itself, does not establish either rashness or negligence unless the prosecution brings on record specific material to prove the manner of driving, visibility, traffic density, and the surrounding circumstances.

17. The Trial Court concluded that the prosecution had failed to prove rash or negligent driving on the part of the respondent. It was noted that apart from bald averments as to driving of the tanker in high speed and rash and negligent manner, no other evidence proved the rashness or negligence. No photographs of the accident site were taken, and the mechanical inspection did not disclose any indication of speed, or fresh damage to the

tanker. The cycle itself was never mechanically examined. In view of these deficiencies, the Trial Court extended the benefit of doubt to the respondent and acquitted him of the offences under Sections 279 and 304A IPC.

18. At this stage, it is also apposite to refer to the law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court, which is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, wherein it was observed, as hereunder:

> *"8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)*
>
> > *"25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.""*

19. The Supreme Court has also categorically held in Anwar Ali v. State of H.P., reported as (**2020) 10 SCC 166**, that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal against acquittal. The relevant portions are produced hereinunder:

"14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

"...

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

'... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

...

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

20. On a careful perusal of the entire record, this Court is of the considered view that, in circumstances such as the present, a finding of rash or negligent driving cannot rest on mere conjecture or assumptions. The prosecution has failed to establish the essential ingredients of the offences alleged. The inconsistencies in the testimony of the purported eyewitnesses,

the absence of corroborative physical evidence, and the deficiencies in investigation together render the prosecution version wholly unreliable.

21. In light of the above discussion, this Court finds no reason to interfere with the impugned judgment of acquittal. The present appeal is accordingly dismissed.

22. A copy of this judgment be communicated to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 08, 2025/*ry*