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

% Reserved on : 08.12.2025
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\+ **CRL.A. 639/2016**

STATE .....Appellant
Through: Mr. Pradeep Gahalot, APP for State with SI Vishnu Singh, PS Badarpur

versus

IRSHAD KHAN .....Respondent
Through: Ms. Gayatri Nandwani, Advocate (DHCLSC)

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred by the appellant/State under Section 378 Cr.P.C. seeking setting aside of the impugned judgment dated 29.08.2014 passed by the learned ACMM, South-East District, Saket Courts, New Delhi, in proceedings arising out of FIR No. 722/1998 registered at P.S. Badarpur, whereby the respondent was acquitted of all charges. Notably, the leave to appeal before this Court was granted vide order dated 20.07.2016.

2. The case of the prosecution, briefly stated, is that on 08.10.1998 at about 12:45 PM, at Main Mathura Road, near Rajiv Gandhi Camp, Badarpur, the respondent was driving truck bearing no. HR-38-2462 in a rash and negligent manner and he hit a motor cycle bearing no. DL-4SL-

1247 from behind and caused simple injuries to one *Khushal Singh* and caused the death of one *Rajinder Kumar*, not amounting to culpable homicide.

3. The prosecution examined 8 witnesses in support of its case. The injured complainant *Kushal Singh* was examined as PW-1. PW-2 and PW-3 identified the body of the deceased *Rajinder Kumar*. HC *Bijander Singh*, the first I.O. of the case, was examined as PW-4; and Ct. *Rajesh Kumar*, who assisted him, was examined as PW-5. ASI *Rajender Singh*, the duty officer, was examined as PW-6. The second I.O. of the case, SI *Ram Sahay*, was examined as PW-8; and HC *Billu*, who joined the investigation with the second I.O., was examined as PW-7. The respondent admitted certain documents under Section 294 Cr.P.C., and the witnesses regarding formal proof of the said documents were therefore dropped.

4. The statement of the respondent under Section 313 Cr.P.C. was recorded, wherein he denied the allegations put to him and set up the defence that he was not driving the offending vehicle at the time of the incident. He claimed innocence and alleged false implication. He did not lead any defence evidence.

5. The legal position as to what constitutes "a rash or negligent act" is well settled. Section 304-A, for being attracted, requires that there must be death of the person in question; the accused must have caused such death; and the act of the accused must have been rash or negligent, though not amounting to culpable homicide.

6. This rash or negligent act must be proximately connected to the cause of death. Doing of any act with recklessness or indifference to the possible consequences, albeit without the intention of causing injury, constitutes

criminal rashness. Gross and culpable neglect or failure to exercise reasonable and proper care and precaution to guard against injury either to the public generally or to a particular individual is what defines criminal negligence. *Res ipsa loquitur* would only come into play when the nature of accident and surrounding circumstances would lead to the conclusion that the accident would not have occurred, but for the negligence; and the presumption of negligence of the driver cannot automatically be raised.

7. The Supreme Court elaborated upon the concepts of culpable rashness, criminal negligence, and presumptions of negligence in the case of Mohd. Aynuddin v. State of A.P.[1], wherein it was held 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.*
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> *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.*
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> *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."*

[1] (2000) 7 SCC 72

8. The nature and scope of Section 304-A IPC was discussed in Naresh Giri v. State of M.P.[2], wherein the Supreme Court 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 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."*

9. The Trial Court, upon a detailed analysis of the evidence, extended the benefit of doubt to the respondent and acquitted him for the offences under Sections 279/337/304-A IPC.

10. The prosecution case heavily relied on the deposition of the injured complainant *Khushal Singh*, examined as PW-1. He stated that on the date of the incident, he and his friend *Rajinder Kumar* (the deceased) were going to Meethapur, Badarpur on his motorcycle, and on reaching near *Peer Baba* on Mathura Road, a dumper truck came from behind and hit his motorcycle.

[2] (2008) 1 SCC 791

He identified the respondent as the person he saw sitting on the driver's seat of the truck. He also stated that he did not pay any attention to the driver, as he was attending to the deceased. He stated that the speed of the truck at the time of the accident was more than that of his motorcycle. However, he did not state that the truck was being driven in a rash or negligent manner. PW-1 has, in fact, not even stated that the respondent was driving the truck at a high speed. He failed to state what the speed of the motorcycle was or the lane in which he was driving, at the time of the accident. The Trial Court has rightly held that the even if the deposition of PW-1 is taken at face value, the fact that his motorcycle was hit from the back and dragged a certain distance is not sufficient to prove rash or negligent driving on the part of the respondent.

11. Moreover, the Trial Court also found that the testimony of the eyewitness went either uncorroborated on key aspects or was even contradicted at certain points. For instance, PW-1 stated that the offending truck, after hitting his motorcycle, dragged on for about 15 meters before it was stopped. However, the Trial Court has observed that no skid marks or dragging marks have been shown in the site plan (Ex. PW-8/A). The same also does not bear PW-1's signatures.

12. A major contradiction in the prosecution case is that the injured PW-1 has deposed that his statement was recorded by the police at the police station, whereas the first I.O. (PW-4) has deposed that he recorded the complainant's statement at the spot, thereafter prepared *tehrir* on its basis, and then sent Ct. *Rajesh* for registration of the FIR. Thus, serious doubts have been raised *qua* the testimony of the sole eyewitness.

13. Since the I.O. has not taken any photographs of the spot and nearby places, there is no evidence on record with regard to tyre skid marks. PW-1 has even failed to indicate in his evidence the exact location of impact and as such, the point of exact location cannot be ascertained.

14. At this stage, it is also apposite to note that it is well settled that an appellate Court must be slow to interfere in an appeal against acquittal unless the findings of the Trial Court are shown to be perverse. The principle of double presumption of innocence, which operates in favour of an accused after acquittal, must be duly respected[3].

15. In view of the foregoing discussion, this Court finds that the view taken by the Trial Court is plausible, well-reasoned, and supported by the evidence on record. The present appeal is accordingly dismissed.

16. The personal bond furnished by the respondent stands cancelled and his surety is discharged.

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

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 11, 2025
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[3] Ravi Sharma Vs. State (NCT of Delhi), (2022) 8 SCC 536; and Anwar Ali v. State of H.P., (2020) 10 SCC 166