



2026:DHC:6780



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 13.08.2026

Judgment pronounced on: 18.08.2026

CNR No. DLHC010382032019

+ **CRL.A. 1072/2019**

STATE NCT OF DELHI

.....Appellant

Through: Mr. Utkarsh, APP for State with SI
Achal, PS Jamia Nagar, Delhi.

versus

MOHD ASIF

.....Respondent

Through: Ms. Katyayani Sharma, Advocate.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the State, in serial no. 437/2/14 on the file of the Metropolitan Magistrate-10 (South-East), Saket Courts, New Delhi assails the judgment dated 09.02.2016 as per which the sole accused has been acquitted of the offences punishable under Sections 279 and 304A of the Indian



Penal Code, 1860 (IPC).

2. The prosecution case is that at about 07:30 PM on 04.03.2012, Taufiq, the deceased, was proceeding on foot along with PW3, his friend, from Sarai Julena Chowk to Jamali Islami Hind Masjid and when they reached near the ATM of Union Bank, Jamia Nagar, New Delhi, the accused riding motorcycle bearing registration no. DL3SBW9340 in a rash and negligent manner so as to endanger human life, knocked him down from behind resulting in causing grievous injuries to him to which he later succumbed. Hence, as per the chargesheet, the accused is alleged to have committed the offences punishable under Sections 279 and 304A IPC.

3. On the basis of Ext. PW3/A FIS/FIR of the deceased, recorded on 04.03.2012, crime No. 137/2012, Jamia Nagar Police Station, was registered for commission of offences punishable under Sections 279 and 304A IPC by the PW6, Head Constable (HC). PW8, Assistant Sub-Inspector (ASI) conducted the



investigation into the crime and on completion of the same, filed the charge-sheet/final report alleging the commission of the offences punishable under the aforementioned Sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 Cr.P.C. The particulars of the offences punishable under Sections 279 and 304A IPC, as contemplated under Section 251 Cr.P.C., was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 11 were examined and Exts. PW1/A, PW2/A, PW2/B, PW2/C, PW3/A, PW3/B, PW4/A, PW5/A, PW5/B, PW5/C, PW5/D, PW6/A-B, PW7/A, PW7/B, PW8/A, PW8/B, PW8/C, PW9/A, PW9/B, PW10/A, PW11/A and Ext. P1-P5 were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the



incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. The accused submitted that he had been falsely implicated in the case and that he was not the driver of the offending motorcycle. According to the accused, he was not present at the time of the incident.

7. No oral or documentary evidence was adduced by the accused.

8. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgment dated 09.02.2016, acquitted the accused under Section 255(1) Cr.P.C. of the offences punishable under Sections 279 IPC and 304A IPC. Aggrieved, the State has preferred this appeal.

9. The learned Additional Public Prosecutor, appearing on behalf of the appellant/State, submitted that the trial court failed to properly appreciate the cogent ocular evidence along with the



materials on record. It was further submitted that the testimony of PW3, the eye witness, clearly establishes that the accident occurred due to the rash and negligent driving of the accused.

10. It was submitted by the learned counsel for the respondent/accused that there is no infirmity in the impugned judgment calling for an interference by this Court.

11. Heard both sides and perused the records.

12. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.

13. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW3/A FIS/FIR of the deceased recorded on 04.03.2012 in Hindi, translated, reads thus:-“...*Today, on 04.03.2012, my friend, Asir (PW3) S/o Shahabuddin Parvez, and I were heading towards the Jamaat-e-Islami Hind mosque to offer Namaz from Jullena Chowk, when a motorcycle No. DL-3S BW 9340, Passion Pro. Hero Honda*



hit me from behind near the gate of Jamia Millia Islamia University. My friend Asir (PW3) tried to catch both the boys riding the motorcycle, but they left their motorcycle at the spot and fled. Both the boys seemed to be in an inebriated condition. My friend Asir (PW3) asked a passerby for help who then dialled 100 from his own phone. The PCR then took me to Holy Family Hospital, from where I was referred to the Trauma Center of A.I.I.M.S..... My friend (PW3) can identify the motorcycle rider on sight. Legal action should be taken against the motorcycle rider...”

14. PW3, the friend of the deceased, when examined, deposed that on 04.03.2012, he was going by foot along with the deceased, to offer prayers at Jamate Islami Hind Masjid. When they reached near the gate of Jamia University, motorcycle bearing registration No. DL3SBW 9340 came from behind and hit his friend. The motorcycle was being driven at high speed and the rider had not sounded the horn. His friend's leg got entangled in



the shock absorber of the motorcycle and he was dragged along with the motorcycle for about 10 metres. Thereafter, the motorcycle came to a stop on hitting a wall. The rider of the motorcycle also fell down. There was smell of alcohol in his breath. PW3 identified the accused as the person who was riding the motorcycle at the relevant time. He took his friend to Holy Family Hospital and after getting the latter admitted there, he returned to the spot within about 10 minutes. The rider of the motorcycle was not at the scene. He was informed by the persons present there that the rider had been taken away by his friends on another motorcycle. When the police recorded the statement of his friend in the hospital, the latter was conscious. PW3 identified the signature of the deceased in the statement. The same has been marked as Ext. PW3/A. After two or three days, the condition of his friend became critical and the latter died due to internal bleeding in his head caused by the accident. PW3 further deposed that the police had prepared the site plan at his instance, which has



been marked as Ext. PW3/B.

14.1. PW3, in his cross examination, deposed that the offending motorcycle was being driven at a speed of about 80 to 90 kmph. There was normal traffic on the road at the time of the incident. PW3 denied the suggestion that he along with his friend were crossing the road when the incident occurred. According to PW3, they were walking adjacent to the road. PW3 admitted that they were walking on the road and not on the footpath. Both of them were on the *kacchi sadak* situated adjacent to the main road. PW3 denied the existence of a footpath at the place of incident. PW3 denied the suggestion that the road where the incident occurred was a highway. PW3 admitted that if two persons walk side by side on the said kaccha road, one of them would be walking on the main road. PW3 denied the suggestion that his friend had fallen over the motorcycle as he had pushed the latter while walking, or that the incident occurred due to the negligence on the part of PW3 and his friend as they had been carelessly



walking through the main road.

15. PW5, Head Constable, when examined, deposed that at about 07:50 p.m. on 04.03.2012, on receipt of DD No. 37A regarding the incident he along with PW2 (constable) went to the scene of occurrence. There he was informed of the incident by PW3. He along with PW3 proceeded to the hospital and recorded Ext. PW3/A statement. He prepared Ext. PW3/B site plan at the instance of PW3. He served Ext. PW5/B notice under Section 133 of the Motor Vehicles Act on PW1, the registered owner of the motorcycle to which he received a reply from the owner stating that it was the accused who was riding the motorcycle at the time of the incident.

16. PW8, Assistant Sub-Inspector, Jamia Nagar police station, the investigating officer (IO) when examined, deposed regarding the various steps taken during the course of investigation. PW8 in his cross examination deposed that he had seen Ext. PW3/B site plan when the file was handed over to him



for further investigation. He admitted that Ext. PW3/B site plan does not show or say that the place of occurrence is in front of Senior Secondary School, Jamia Nagar.

17. PW1, the registered owner of motorcycle bearing registration No. DL3SBW9340 deposed that on 04.03.2012, the motorcycle was taken by the accused, a friend of his younger brother. On 05.03.2012, he came to know about the incident. The motorcycle was released to him on execution of Ext. PW1/A superdarinama.

18. To bring home an offence under the Section 279 IPC, the prosecution has to establish that the accused had driven the vehicle on a 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 person. Further, in order to attract Section 304A IPC, the prosecution has to establish that the death of a person was caused by such rash or negligent act not amounting to culpable homicide. Therefore, the prosecution is required to prove: (i) death of the



person in question; (ii) the accused caused such death; and (iii) that such act of the accused was rash or negligent and that it does not amount to culpable homicide.

19. In **Naresh Giri v. State of Madhya Pradesh (2008) 1 SCC 791**, it has been held that Section 304A IPC applies to cases where there is no intention to cause death and no knowledge that the act done in all probability would cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304A IPC applies only to such acts which are rash and negligent and are directly the cause of the death of another person. Negligence and rashness are essential elements under Section 304A IPC.

20. The criminality as far as rash acts are concerned, lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence occurs when there is gross and culpable neglect or failure to exercise the required care and precaution to guard against injury, either to the



public generally or to an individual in particular, which, having regard to all the circumstances, was the imperative duty of the accused person to have adopted [See **Alister Anthony Pareira Vs. State of Maharashtra, (2012) 2 SCC 648**]. In other words, negligence is the omission to do something which a reasonable man, guided upon the considerations which ordinarily regulate the conduct of human affairs, would do, or, the doing of something which a prudent and reasonable man would not do.

21. In the case on hand, the factum of the death of the deceased is not disputed. Now coming to the question whether the accused was driving the vehicle in a rash and negligent manner so as to attract criminal liability under Sections 279 and 304A IPC. The prosecution, relies on the testimony of PW3, who was accompanying the deceased at the time of the accident, to establish that the accused was driving the offending vehicle in a rash and negligent manner so as to endanger human life and the personal safety of others, and thereby caused the death of the deceased.



However, a perusal of the testimony of PW3 does not establish any act of rashness or negligence on the part of the accused. Significantly, PW3 admitted that he and the deceased were walking on the road and not on the footpath. PW3 also deposed that they were walking on a *kacchi sadak* made of mud adjacent to the main road. More importantly, he admitted that if two persons were walking side by side on the said *kacchi sadak*, one of them would necessarily have to walk on the main road. Thus, the testimony of PW3 itself brings out that the deceased and PW3 were walking in close proximity to the main road and that one of them would, by necessity, have to be on the main road. In such circumstances, mere assertion of the speed of the offending vehicle, without any further evidence as to the manner in which it was being driven or the specific act constituting rashness or negligence, cannot by itself establish the requisite ingredients of the offence.

22. It is also necessary to examine, from the materials on



record, the nature and condition of the road and the respective position of the deceased and PW3 at the relevant time, so as to determine whether the accident was attributable to any rash or negligent manner of riding on the part of the accused. A perusal of the testimony of PW2, PW3 and PW5 confirm that Ext. PW3/B site plan was prepared by PW5 at the instance of PW3. It is well settled that a site plan/sketch map is admissible only to the extent it records what the investigating officer personally observed at the spot. Any markings showing the location of the incident, victim, or other facts based solely on statements made by witnesses during investigation are inadmissible, as they are hit by Section 162 Cr.P.C., being nothing more than statements made to the police during investigation. [See **Tori Singh v. State of U.P. AIR 1962 SC399 : (1962) 1 Cri LJ 469, Jagdish Narain v. State of U.P., (1996) 8 SCC 199**] Therefore, Ext. PW3/B site plan prepared by PW5, at the instance of PW3, cannot be treated as admissible insofar as it has the character of a statement recorded under



Section 161 Cr.P.C. and the same being barred under Section 162 Cr.P.C. Even otherwise, if the prosecution intended to rely upon the features depicted in the site plan to establish the manner of the accident, PW3, being the eye witness, ought to have been questioned when he was in the box regarding the position of the vehicle and the deceased. No such attempt appears to have been undertaken by the prosecution.

23. Even assuming, for argument sake, that Ext. PW3/B site plan, is admissible in evidence, a perusal of the same does not help the prosecution case. Ext. PW3/B Site plan seen prepared by PW5 has a note given at the bottom of it in Hindi, which translated reads thus:- *“.....In the site plan, a road leads towards the North and passes through Okhla Village. On the side of this road, the Proctor’s office is situated. On the other side, a road running alongside Jamia University leads to Jullena towards the South. There is a cut in the middle of the road leading towards Okhla which is at a distance of 10 gaj from the gate of the proctor’s*



office. About 6 gaj before this cut is the place where the accident took place which has been marked as point A. About 06 gaj ahead of the divider cut, a motorcycle was found parked near pole no. 3, which is indicated as Mark B. The distance between the divider of the road and the wall of the Proctor's Office is 27.5 Ft. It is to the west of the Police Station."

24. The site plan does not contain even a whisper about the alleged *kacchi sadak* spoken to by PW3 in his testimony. It is equally silent as to the presence of any footpath on the side where the accident is stated to have occurred, though a footpath is shown on the opposite side of the road. Therefore, even if Ext. PW3/B site plan is taken into consideration, it does not, by itself, establish that the accused was driving the offending vehicle in such manner so as to satisfy the essential ingredients of the offences punishable under Sections 279 and 304A IPC.

25. The prosecution has also relied upon the statement of the deceased recorded by PW5, which formed the basis of



registration of the crime. This brings this Court to the second aspect requiring consideration, namely, whether Ext. PW3/A FIS/FIR of the deceased can be treated as a dying declaration. Under Section 32(1) of the Indian Evidence Act, 1872, a statement made by a person as to the cause of her death, or as to any of the circumstances of the transaction which resulted in her death, is relevant when the cause of that person's death comes into question. The law does not mandate that a dying declaration must necessarily be recorded by a Magistrate, or that it must be in any particular format. A statement given by an injured person, if subsequently she succumbs to the injuries and the statement relates to the cause of her death, can be treated as a dying declaration. (See **Damodar Prasad v. State of U.P.**, AIR 1975 SC757 and **Lalita v. Vishwanath and Ors.**, 2025 SCC Online SC 370).

26. In the present case, PW5 has deposed that he recorded Ext. PW3/A FIS/FIR of the deceased at the hospital while the latter was conscious. The said statement, which formed the basis of



registering the crime, refers to the offending bike coming at high speed and hitting him from behind. Since the maker of the statement died due to injuries sustained in the accident, the statement can be taken as admissible under Section 32(1) of the Evidence Act.

27. However, Ext. PW3/A FIS/FIR given by the deceased to PW5 does not, by itself, establish that the accident occurred due to the rash or negligent driving of the accused. At best, the statement establishes the factum of the incident and that the offending motorcycle had struck the deceased from behind. It does not contain any description of the manner in which the vehicle was being driven including any deviation from the lane, or any other circumstance indicative of rashness or negligence. The evidentiary value of the dying declaration, therefore, has to be appreciated in conjunction with the entire evidence on record and cannot be treated as conclusive proof of rash or negligent driving merely because it attributes the accident to the accused's vehicle.



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28. In such circumstances, I find that the trial court was justified in acquitting the accused. I find no infirmity in the impugned judgment calling for an interference by this Court.

29. In the result, the appeal *sans* merit is dismissed.

30. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 18, 2026
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