

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23rd September, 2014

+ **CRL. A. 601/2012**

STATE

..... Appellant

Through: Mr. M.N. Dudeja, Additional Public
Prosecutor for the State

versus

HARI SINGH

..... Respondent

Through: Mr. Vishal Sehijpal, Adv.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Feeling aggrieved by the acquittal of the respondent/accused Hari Singh for offence under Sections 279/304A of Indian Penal Code in case FIR No.291/97 registered at Police Station HN Din under Sections 279/338/304A of IPC, the present appeal under Section 378(1) has been preferred by the State.

2. The prosecution case emanates from the fact that on 13.05.1997, Ismael (PW1) along with his father Mr. Habibullah was going to RML Hospital in TSR No.DL 1RB 1558 driven by Anoop Mehto. At about 7

am, when the TSR reached the crossing of Dr. Zakir Hussain Marg and Subaramanium Marg and was crossing the road on green signal, one truck bearing registration number HR 38B 5169, being driven by the respondent/accused came from the zoo side at a very fast speed and hit the TSR as a result of which Ismael was thrown out of TSR while driver of TSR and Habibullah got stuck beneath the TSR. The truck driver could not control the truck and after hitting the TSR, it hit the central verge and overturned. Constable Jaipal, who was present at the spot, apprehended the respondent/accused and informed the PCR which reached at the spot. The injured were rushed to the hospital. One of the injured had died on the spot while other injured was declared dead in the hospital. PW1 Ismael also sustained injuries. After completing investigation, charge-sheet was submitted against the respondent accused.

3. In order to substantiate its case, prosecution in all examined ten witnesses. All the incriminating evidence was put to the accused while recording his statement under Section 313 of Code of Criminal Procedure wherein he admitted the factum of driving the truck bearing number HR 38B 5169 on the fateful day at the relevant time. However, it was pleaded by him that he was not rash and negligent. The speed of his truck was

around 20 to 25 km per hour. All of a sudden a TSR hit his truck from left side, as a result of which the TSR driver and one other person died in the accident while one person was injured in the accident. He, however, did not prefer to lead any evidence in defence. Vide impugned judgment dated 08.12.2011, the learned Metropolitan Magistrate acquitted the accused/respondent primarily on the ground that no witness has been examined by prosecution to prove the factum of negligence and rashness on the part of the accused.

4. Assailing the findings of Ld. Trial Court, Mr. M.N. Dudeja, learned Additional Public Prosecutor for the State submitted that the impugned judgment is liable to be set aside inasmuch as the learned Trial Court has failed to consider the evidence available on record. The injured Ismael substantially proved the case of prosecution. Besides that, his testimony finds corroboration from PW2 – Constable Jaipal who was present at the spot and was an eye witness of the incident. Reliance was placed on *Mohammed Aynuddin alias Miyam v State of Andhra Pradesh* [AIR 2000 SC 2511] for submitting that principle of *res ipsa loquiritur* is applicable to the instant case and the findings are liable to be set aside and accused is liable to be convicted for the offences alleged against him.

5. Rebutting the submissions of learned Additional Public Prosecutor for the State, Mr. Vishal Sehijpal, learned counsel for the respondent/accused submitted that this is an appeal against acquittal and as such the parameters are entirely different. The presumption of innocence which lies in favour of the accused stands reinforced by findings of the Trial Court. Even otherwise, the impugned judgment does not suffer from any infirmity which calls for interference. As such, the appeal is liable to be dismissed.

6. The law relating to an appeal against an order of acquittal was succinctly laid down by Hon'ble Supreme Court in ***State of Goa v. Sanjay Thakran and Another***, (2007) 3 SCC 755 and it will be advantageous to reproduce the observations made by the Supreme Court as under:-

*“14. By a series of decisions, this Court has laid down the parameters of appreciation of evidence on record and jurisdiction and limitations of the appellate court, and while dealing with appeal against order of acquittal this Court observed in **Tota Singh and Anr. v. State of Punjab**, (1987) 2 SCC 529, as under:*

“6....The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view

which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous.”

15. Further, the Court has observed in **Ramesh Babulal Doshi v. State of Gujarat**, (1996) 9 SCC 225:

“7....This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions....”

and in **State of Rajasthan v. Raja Ram** (2003) 8 SCC 180, Supreme Court held:

“7. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. {See Bhagwan Singh v. State of M.P. (2002) 4 SCC 85}. The principle to be followed by appellate court considering the appeal against the judgment of acquittal is

to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793, Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225 and Jaswant Singh v. State of Haryana (2000) 4 SCC 484.”

7. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal, unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

8. Similar view was taken in *Govindraju @ Govinda v. State* by Sriramapuram P.S. & Anr. 2012 III AD (SC) 453, *Murlidhar @ Gidda & Anr. v. State of Karnataka*, 2014 IV AD (SC) 557 and *Ramesh Vithal Patil v. State of Karnataka & Ors.*, 2014 IV AD (SC) 565, *Ashok Rai v. State of U.P. & Ors.*, 2014 V AD (SC) 1.

9. In the light of the aforesaid principles laid down, we shall consider the evidence placed on record to find out whether the Court below has committed any error in dealing with the evidence which can be said to be patently illegal or that the conclusion arrived at is wholly untenable, calling for interference by us.

10. Section 304A of the Indian Penal Code makes any act causing death by a rash or negligent act not amounting to culpable homicide, punishable with imprisonment of either description for a term which may extend to two years or with fine or with both. It reads:

“304A. Causing death by negligence.-- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

11. The following requirements must be satisfied before applying Section 304A IPC:

(i) Death must have been caused by the accused;

- (ii) Death caused by rash or negligent act;
- (iii) The act is the proximate and immediate cause of death.

12. A perusal of evidence led by the prosecution coupled with the statement of accused recorded under Section 313 Cr.PC makes it clear that there is no dispute that on the fateful day of 13.05.1997 at about 7 am, the respondent accused was driving the truck bearing registration number HR 38 B 5169. It is also not in dispute that the TSR bearing number DL 1RB 1558 was being driven by Anoop Mehto. There is also no challenge that accident took place between the two vehicles as a result of which the TSR driver Anoop Mehto and passenger Habibullah died while another passenger Ismael sustained grievous injuries.

13. The only bone of contention is whether the respondent/accused was driving the truck in question in a rash and negligent manner as according to accused, he was not responsible for the accident. It is also the submission of counsel for the respondent accused that prosecution has failed to establish that accused was driving the vehicle in a rash and negligent manner. The expression “rash” or “negligent” was considered in *Sushil Ansal v State through CBI* [2014 IV AD (S.C.) 373] where the Supreme Court observed as under:

“48. The terms 'rash' or 'negligent' appearing in Section 304A extracted

above have not been defined in the Code. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. One of the earliest of these pronouncements was in **Empress of India v. Idu Beg** ILR (1881) 3 All 776, where Straight J. explained that in the case of a rash act, the criminality lies in running the risk of doing an act with recklessness or indifference as to consequences. A similar meaning was given to the term 'rash' by the High Court of Madras in **In Re: Nidamarti Negaghushanam** 7 Mad HCR 119, where the Court held that culpable rashness meant acting with the consciousness that a mischievous and illegal consequence may follow, but hoping that it will not. Culpability in the case of rashness arises out of the person concerned acting despite the consciousness. These meanings given to the expression 'rash', have broadly met the approval of this Court also as is evident from a conspectus of decisions delivered from time to time, to which we shall presently advert. But before we do so, we may refer to the following passage from "**A Textbook of Jurisprudence**" by George Whitecross Paton reliance whereupon was placed by Mr. Jethmalani in support of his submission. Rashness according to Paton means "where the actor foresees possible consequences, but foolishly thinks they will not occur as a result of his act".

49. In the case of 'negligence' the Courts have favoured a meaning which implies a gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual which having regard to all the circumstances out of which the charge arises, it may be the imperative duty of the accused to have adopted. Negligence has been understood to be an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do. Unlike rashness, where the imputability arises from acting despite the consciousness, negligence implies acting without such consciousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him. The imputability in the case of negligence arises from the neglect of the civil duty of circumspection.

(iii) What constitutes Negligence:

50. The expression 'negligence' has also not been defined in the Penal Code, but, that has not deterred the Courts from giving what has been widely acknowledged as a reasonably acceptable meaning to the term. We may before referring to the judicial pronouncements on the subject refer to the

dictionary meaning of the term 'negligence'.

51. **Black's Law Dictionary** defines negligence as under:

The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of other's rights.

52. **Charlesworth and Percy on Negligence** (Twelfth Edition) gives three meanings to negligence in forensic speech viz: (i) in referring to a state of mind, when it is distinguished in particular from intention; (ii) in describing conduct of a careless type; and (iii) as the breach of a duty to take care imposed by either common law or statute. The three meanings are then explained thus:

The first meaning: Negligence as a state of mind can be contrasted with intention. An act is intentional when it is purposeful and done with the desire or object of producing a particular result. In contrast, negligence in the present sense arises where someone either fails to consider a risk of particular action, or having considered it, fails to give the risk appropriate weight.

The second meaning: Negligence can also be used as a way to characterize conduct, although such a use may lead to imprecision when considering negligence as a tort. Careless conduct does not necessarily give rise to breach of a duty of care, the defining characteristic of the tort of negligence. The extent of a duty of care and the standard of care required in performance of that duty are both relevant in considering whether, on any given facts conduct which can be characterized as careless, is actionable in law.

The third meaning: The third meaning of negligence, and the one with which this volume is principally concerned, is conduct which, objectively considered, amounts to breach of a duty to take care.

53. **Clerk & Lindsell on Torts** (Eighteenth Edition) sets out the following four separate requirements of the tort of negligence:

(1) the existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damages in suit on the class of person to

which the claimant belongs by the class of person to which the Defendant belongs is actionable;

(2) breach of the duty of care by the Defendant, i.e., that it failed to measure up to the standard set by law;

(3) a casual connection between the Defendant's careless conduct and the damage;

(4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote.

54. **Law of Torts by Rattanlal & Dhirajlal**, explains negligence in the following words:

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the Defendant owes the duty of observing ordinary care and skill, by which neglect the Plaintiff has suffered injury to his person or property. According to Winfield, "negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the Defendant to the Plaintiff". The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) Breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs for damage is a necessary ingredient of this tort. But as damage may occur before it is discovered; it is the occurrence of damage which is the starting point of the cause of action.

55. The above was approved by this Court in **Jacob Mathew v. State of Punjab and Anr.**, (2005) 6 SCC 1."

14. In **Mohammed Aynuddin** (*supra*), the Hon'ble Supreme Court observed as under:

"9. 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 wrong doer.

10. A rash act is primarily an over hasty 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."

15. Reverting to the case in hand, in order to prove this essential ingredient, there is ocular testimony of PW1 Ismael and PW2 Constable Jaipal. PW1 Ismael who sustained grievous injuries in the accident has unfolded that on 13.05.1997, he along with his father Habibullah was going to RML Hospital in a TSR No.DL 1RB 1558. When the TSR reached at the crossing of Dr. Zakir Hussain Marg and Subaramanium Marg and was crossing the road on green signal, the truck hit the TSR and due to the impact, he was thrown out of TSR while the driver Anoop Mehto and his father got stuck beneath the TSR. The truck driver could not control the truck and after hitting TSR, he hit central verge and overturned. They were taken to hospital. His father and TSR driver had sustained grievous injuries and they both expired. He also received injuries on his right arm and right neck.

16. PW2 Constable Jaipal was posted as Traffic Constable at crossing of Dr. Zakir Hussain Marg and Subramaniam Bharti Marg. On the fateful day, he was coming for his duty and was at a distance of 20 paces from the crossing at about 7 am, he saw one truck no.5159 coming from zoo side and going towards said crossing. The truck was at a fast speed, one auto was coming from Nizamuddin side and at the crossing, the truck hit the auto. The truck driver could not maintain the balance of the vehicle and truck overturned at a short distance after hitting the TSR. The truck driver attempted to flee away leaving the truck but he apprehended him. He identified the accused as a truck driver. He called the PCR which reached the spot and recorded his statement Ex.PW2/A. The injured was also rushed to the hospital. One of the injured had already died on the spot. The TSR and the truck were seized vide memo Ex.PW2/B and PW2/C. The accused was also arrested.

17. The mechanical inspection of both the vehicles was conducted by PW5 SI Kedar Nath and he gave detailed reports Ex.PW5/A and PW5/B. A perusal of both these reports goes to show that following damages were found on the vehicles:

TSR DL 1RB- 1558:

- (i) Front part upto driver seat damaged.
- (ii) Hood broken and clothes torn.

- (iii) Motor system out of order.
- (iv) The TSR was not fit for road test.

Truck HR 38B 5169:

- (i) Front left side mudguard tyre bended.
- (ii) Front side mudguard upto tyre bended
- (iii) Front screen crashed
- (iv) Left side truck body damaged and scratched
- (v) front left side door broken.
- (vi) Chassis bended.

18. On being entrusted with the investigation of the case, SI K.P. Singh reached the spot and carried out investigation of the case. During the course of investigation, he also prepared the site plan Ex.PW10/B at the instance of Constable Jaipal. He also took the photographs Ex.P2 to P4 of the place of accident.

19. Record reveals that the injured Ismael was examined as PW1 and he deposed regarding the manner in which the accident took place due to fault of the driver of the truck. This witness was not cross examined by the accused. Subsequently, an application under Section 311 of Code of Criminal Procedure was moved by the respondent-accused for recalling this witness for the purpose of cross examination, but record reveals that he was not traceable and, therefore, he could not be produced for the purpose of cross examination. The effect of the same at the most can be that the testimony of this witness be not considered. However, there is testimony of

PW2 Constable Jaipal who is an eye witness of the accident and has deposed the manner in which the accident took place due to rash and negligent driving by the accused. His presence at the spot is also proved from the fact that it was he who apprehended the accused at the spot who was attempting to flee away after the accident. He called the PCR, thereupon police reached at the spot and recorded his statement Ex.PW2/A, which became the bedrock of the investigation. He was cross examined by learned counsel for the accused, however, nothing could be elicited to disbelieve the testimony of this witness. It is not understandable as to which witness the learned Trial Court was referring which was essential to be examined by the prosecution in order to establish the guilt of the accused which led to his acquittal. Moreover, the ocular testimony of the prosecution witness find substantial corroboration from the site plan, mechanical inspection report of the two vehicles and the photographs which clearly proved the rashness and negligence on the part of the accused in driving the truck in question and the rashness on the part of the accused stands amply proved from the fact that he not only hit the TSR as a result of which Ismael was thrown out of the TSR while TSR driver and Habibullah got stuck beneath the TSR but the speed of the vehicle was so

much that the truck driver could not control the truck thereby hitting the central verge which led to overturning of the truck.

20. Further, the act of the accused was proximate and immediate cause of death of two of the victims without intervention of any other person's negligence. In *Kurban Hussein Mohamedalli Rangwalla v. State of Maharashtra* [AIR 1965 SC 1616], Hon'ble Supreme Court observed that criminal liability under Section 304A of IPC which arose only if the prosecution proves that the death of the victim was a result of rash or negligent act of the accused and that such act was the proximate and efficient cause without the intervention of another person's negligence. This view was approved in *Suleman Rehiman Mulani & Anr vs State Of Maharashtra* [AIR 1968 SC 829] where the Supreme Court had also approved the view taken in *Emperor v. Omkar Rampratap* [1902(4) Bom. L.R 679] where Sir Lawrence Jenkins summed up the legal proposition in the following terms:

"to impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the act should have been the direct result of a rash or negligent act of the accused and that act must be proximate and efficient cause without the intervention of another negligence. It must have been the causa causans: it is not enough that it may have been the causa sine qua non."

21. To the same effect are the decisions of Supreme Court in *Rustom*

Sherior Irani v State of Maharashtra 1969 ACJ 70; *Balchandra @ Bapu and Anr. Vs. State of Maharashtra* AIR 1968 SC 1319; *Kishan Chand vs. State of Haryana* (1970) 3 SCC 904; *S.N. Hussain vs. State of A.P.* (1972) 3 SCC 18 and; *Ambalal D. Bhatt v State of Gujarat* (1972) 3 SCC 525.

22. In *Sushil Ansal* (supra), the law pertaining to Section 304A IPC was summed up as under:

“79. To sum up: for an offence Under Section 304A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim. As to what is meant by causa causans we may gainfully refer to **Black's Law Dictionary** (Fifth Edition) which defines that expression as under:

The immediate cause; the last link in the chain of causation.

80. The **Advance Law Lexicon** edited by Justice Chandrachud, former Chief Justice of India defines Causa Causans as follows:

the immediate cause as opposed to a remote cause; the 'last link in the chain of causation'; the real effective cause of damage.

81. The expression "proximate cause" is defined in the 5th edition of **Black's Law Dictionary** as under:

That which in a natural and continuous sequence unbroken by any efficient, intervening cause, produces injury and without which the result would not have occurred. *Wisniewski v. Great Atlantic and Pac. Tea Co.* 226 Pa. Super 574, 323 A2d, 744, 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or

omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.”

23. Reverting to the case in hand, it is established that:

1. The truck in question was being driven by accused/ respondent;
2. The fact that the accused was driving the truck in question in a rash and negligent manner stands proved from the testimony of PW1 and PW2, duly corroborated by the mechanical inspection report of the vehicles and the photographs;
3. It is also proved that rashness and negligence on the part of the respondent/accused in driving the offending vehicle was the immediate and proximate cause of accident resulting in death of two victims and grievous injuries to one person which stand proved from the fact that:
 - (i) PW8 Dr. Akash Jhanjee conducted post-mortem on the body of Habibullah and gave his report Ex.PW8/A opining the cause of death as combined effect of craniocerebral damage and haemorrhagic shock consequent on blunt force to the head, abdomen and chest regions, which is likely in road traffic accident. All the injuries were ante-mortem in nature.
 - (ii) Postmortem on the body of Anoop Mehto was also conducted

and as per post-mortem report Ex.PW4/A, the cause of death was as a result of head injuries, shock as a result of abdominal injuries. All injuries were ante-mortem in nature, caused by blunt force and could be seen in road traffic accident.

(iii)The MLC of injured Ismael (PW1) was also prepared and as per the report Ex. PW6/A given by Dr. Hitesh Lal, the injuries were grievous.

24. The foregoing discussion proves beyond reasonable doubt that the prosecution had succeeded in establishing its case beyond reasonable doubt and without considering the evidence coming on record in proper perspective, the respondent accused was acquitted on a wrong premise that no witness had been examined in order to prove rashness and negligent aspect of driving. The findings are not fortified by the record and cannot be sustained.

25. Accordingly, the appeal is allowed and the impugned judgment dated 08.12.2011 passed by learned Trial Court is hereby set aside. The respondent/accused is convicted for offences under Section 279/338/304A of Indian Penal Code and is sentenced to undergo rigorous imprisonment for a period of two years and is also directed to pay a fine of Rs.20,000/-.

In default of payment of fine, the respondent-accused to undergo simple imprisonment for a period of six months. Accused shall be entitled to benefit of Section 428 Cr.P.C. The respondent is directed to surrender forthwith, failing which, the learned Trial Court is directed to take necessary steps to get him arrested for serving the sentence.

The appeal stands disposed of accordingly. Trial Court record be returned back along with a copy of this judgment.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 23 , 2014

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