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

\# **CNR No. DLHC010292582021**

\+ **CRL.L.P. 99/2021**

STATE .....Petitioner

Through: Mr. Shoaib Haider, APP for State with SI Mahesh Kumar, PS Vasant Vihar.

versus

SARIF KHAN .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **11.08.2026**

1. This application seeks leave to appeal against the impugned judgment dated 28.01.2020 whereby the accused has been acquitted of offences under Sections 279/304-A of the Indian Penal Code, 1860 ('**IPC**').

2. Mr. Shoaib Haider, has vociferously, made various submissions to impress upon the Court that the manner in which the Trial Court has proceeded with the matter is fundamentally perverse and warrants interference.

1. I have considered the submissions made by the State and perused the record.

2. Section 279 and 304-A of the IPC reads as under:

> "***279. Rash driving or riding on a public way.***
> *Whoever drives any vehicle, or rides, on any public way in a manner so*

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rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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."

3. The Trial Court in the order dated 28.01.2020 *vide* paragraph Nos.19, 20 and 24 had rendered the following findings:-

"19. Rashness and negligence in driving a vehicle are subjective concepts and no straight jacket formula can be put to use to ascertain the rashness or negligence while driving the vehicle. Criminal rashness and negligence have to be proved like a Relevant Fact' during the course of trial and this onus lie upon the prosecution. There cannot be any reason, including the unfortunate death of a person involved in the incident/ accident which may compel the courts to presume rashness or negligence in driving the offending vehicle. The Hon'ble Apex Court in the judgment titled as Miyam vs. State of A.P. (2000) 7 SCC 72

> *"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 tacle snow 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 haş 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.*
>
> *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."*

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> *20. in the case at hand it Is the case of the prosecution that accused was driving the offending vehicle in a wrong side. To prove this fact the prosecution only consists of testimony of PW-2 & PW-4. This court has already come a conclusion that presence of PW-2 & PW-4 is doubtful at the spot of incident at the time of Incident. Therefore, the fact that the accused was driving the offending vehicle in wrong side also becomes doubtful. It also becomes doubtful in the light of the fact that no attempt to collect any CCTV footage has been made, if any, available. No attempt has been made to gather the tyre marks of the offending vehicle at the wrong side of the road. No attempt has been made to gather any spare part of offending vehicle from the wrong side of the road which may have broken during the accident.*
>
> *…..*
>
> *24. Based on the above done discussion, this Court is of the opinion that the prosecution has failed to successfully bring home the guilt of accused Sarif Khan for the offences punishable u/s 279 and 304-A IPC through the testimony of examined witnesses. The case of the prosecution suffers from reasonable doubts, the benefit of which has to be examined to the accused. Hence, accused Sarif Khan is acquitted of the offence u/s 279/304-A IPC."*

3. In ***H.D. Sundara v. State of Karnataka***,[1] the Supreme Court discussed the scope of an appeal against an acquittal order, the material portion of the said decision reads as under:

> *"**8.** In this appeal, we are called upon to consider the legality and validity of the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:*
>
> ***8.1.** The acquittal of the accused further strengthens the presumption of innocence;*
>
> ***8.2.** The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
>
> *8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*

[1] (2023) 9 SCC 581.

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> ***8.4.*** ***<u>If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and</u>***
>
> ***8.5.*** ***<u>The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible</u>***."

(Emphasis supplied)

4. In ***Jafarudheen v. State of Kerala***,[2] the Supreme Court further held as under:

> "***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.*"

5. Bearing in mind the overall facts and circumstances and the material brought on record, this Court does not deem it appropriate to allow the State to file the appeal.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 11, 2026
Nc

[2] (2022) 8 SCC 440.

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