



\$-

NEUTRAL CITATION NO: 2022/DHC/004013

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CRL.A. No. 494 of 2017**

Between:-

**THE STATE (GNGT OF DELHI)
THROUGH SECRETARY,
GOVT. OF NGT OF DELHI****APPELLANT**

(Through Mr. Utkarsh, APP for State)

AND

**SANTOSH KUMAR
S/O RAM SEWAK,
R/O WZ-96 RAJA GARDEN
NEW DELHI-110015** **RESPONDENT**

(Through Mr. Aditya Saluja, Advocate)

% Pronounced on : 27.09.2022

J U D G M E N T

1. This appeal under Section 378(1) of the Cr.P.C. is directed against the judgment of acquittal dated 12.07.2016 passed by learned Metropolitan Magistrate (North-West), Rohini Courts, Delhi in connection with FIR No. 136/2010 PS Mangol Puri, Delhi for offence punishable under Sections 279/337/338 of the IPC.

2. The prosecution case in short is that on 13.03.2010 at about 12.30 AM, the respondent/accused was driving a vehicle (truck) bearing registration No. HR-38E-0194 on a public way rashly and negligently. The respondent/accused struck against one car bearing registration No. DL-1YB-7131 and caused simple and grievous injury



to the passengers, namely, Antima Gupta and Shenam Jain. 1

NEUTRAL CITATION NO: 2022/DHC/004013

alleged that since the respondent/accused was driving the vehicle rashly and negligently so as to endanger the human life or to be likely to cause injury to other persons, FIR for offences punishable under Sections 279/337/338 IPC was registered against him. After investigation, charge-sheet for offences punishable under Section 279/337/338 IPC was filed.

3. Respondent/accused pleaded not guilty and claimed trial.

4. The prosecution has examined four witnesses to prove the charges against the respondent/accused. Ms. Antima Gupta, eye-witness was examined as PW-1. She deposed that when she and her colleague Shenam were going back to their respective houses after finishing their work in the car of their employer, while crossing the West Enclave traffic light, a truck came and hit against their car. According to her, the collision was so serious that the front portion of the truck embarked upon the bonnet of their car. She suffered injury on her head. She came out with the help of one passerby, in whose car she took her friend Shenam Jain to Jaipur Golden Hospital. She identified the accused as the person who was driving the said truck. She stated that respondent/accused was apprehended by the public persons. During cross-examination, she has admitted that she almost lost her consciousness for about 4-5 minutes and was not able to understand as to what has happened. The driver of the car, namely, Sunil Kumar, was examined as PW-3. He stated that the truck was being driven at a very high speed in a rash and negligent manner. He identified the accused as the person who was driving the truck.

5. It is thus seen that there are two eye-witnesses i.e. PW-1 & PW-3. PW-2 Vinod Kumar Sharma was the owner of the truck. PW-4

is HC-Vijay Pal, who recorded the DD No. 3B on 13.03.2010 w
he was posted in the concerned police station.

NEUTRAL CITATION NO: 2022/DHC/004013



6. Section 279 of the IPC requires only two essentials viz. (a) driving of vehicle and (b) such driving must be so rash or negligent so as to endanger the human life or to be likely to cause hurt or injury to any other person. For Section 279 to apply, the rashness or negligence must be criminal rashness or negligence. Both ingredients must be satisfied. Certain aggravated degree of rash and negligence is contemplated here. Burden lies on the prosecution to prove on record the material to establish the negligence or rash driving.

7. In the instant case, if the FIR and evidence is seen, except the statement made by PW-1 and PW-3 that respondent/accused was driving the vehicle rashly and negligently, there is no other evidence. There is no material on record so as to prove the injury sustained by the injured. No examination of any doctor has been conducted. The place in question where the accident had occurred, was a busy public road however, no independent witness has been examined. It is not the case that no independent witness was available. The order dated 12.07.2016 of the learned Metropolitan Magistrate indicates that several opportunities were given to the State for leading prosecution evidence. Since no other witness was examined, therefore, the matter was decided and respondent/accused was acquitted.

8. The Hon'ble Supreme Court in the matter of *State Of Maharashtra v. Sujay Mangesh Poyarelar*¹ while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*² has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review

¹ 2008 9 SCC 475

² (2007) 4 SCC 415



and reweigh at large the evidence on which the order of acquittal

NEUTRAL CITATION NO: 2022/DHC/004013

founded and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate Court. It has also been held that nonetheless it is not correct to say that unless the appellate Court in an appeal against acquittal under challenge is convinced that the finding of acquittal recorded by the trial Court is 'perverse', it cannot interfere. If the appellate Court on re-appreciation of evidence and keeping in view well established principles, comes to a contrary conclusion and records conviction, such conviction cannot be said to be contrary to law.

9. The Supreme Court in the matter of *Hakeem Khan & Ors v. State of M.P.*³ has again considered the powers of the appellate court for inference in cases where acquittal is recorded by the trial court. In the said decision it has been held that if the 'possible view' of the trial court is not agreeable for the High Court, even then such 'possible view' recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplanted over the view of the trial court.

10. Having considered the aforesaid facts and circumstances, this court finds that the prosecution has not been able to successfully prove the charge beyond reasonable doubt. On examination of the material available on record, this court is not inclined to take a different view other than the view which has already been taken by the court below. Accordingly, the appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 27, 2022/hk

³ (2017) 5 SCC 715