



\$~8

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

% *Date of decision: September 19, 2023*

+ **CRL.L.P. 50/2019**

STATE

..... Petitioner

**Through: Mr. Utkarsh, APP for State with
ASI Jitender Kumar, P.S. BHD
Nagar**

versus

RAM KISHAN

..... Respondent

**Through: Mr. Satendra Kr. Mishra, Mr. Om
Prakash, Mr. Rajeev Kumar,
Advocates with respondent in
person**

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

CRL.L.P. 50/2019

1. Leave granted.
2. The petition stands disposed of.

Crl. Appeal No. (to be numbered)

1. The respondent was put to trial after conclusion of the investigation arising out of FIR bearing no.135/2013 dated 09.06.2013 registered under sections 279/338 IPC at P.S. BHD Nagar on the allegations that the respondent on 09.06.2013 at about 10:00 A.M. in front of DTC Terminal, Subzi Mandi, Najafgarh within the jurisdiction of P.S. BHD Nagar, the respondent/Ram Kishan was found driving water tanker bearing registration no. UP 32 AN 4040 in a rash and negligent manner so as to endanger human



life and personal safety of others and while doing so, hit against one motor cycle bearing no. DL 9S AK 0893 and caused grievous injuries to Deepak and Madan Ram . A notice under section 251 Cr.P.C. was given to the respondent vide order dated 07.03.2014 to which the respondent pleaded not guilty and claimed trial. The prosecution, in support of its case, examined 9 witnesses including injured/Deepak Kumar as PW-1, Madan Ram as PW-2 and Investigating Officer, ASI Raj Singh as PW-9. The statement of the respondent was also recorded under section 313 Cr.P.C. wherein the respondent pleaded innocence and denied incriminating evidence. The respondent stated that after the accident, he took the injured to Ortho Plus Hospital with the help of Virender Singh Dagar and Baljeet Gautam and thereafter he was falsely implicated by the Investigating Officer. He further stated that at the time of incident, the road was under construction. The respondent preferred to lead defence evidence and examined Baljeet Gautam as DW-1. The court of Ms. Manu Goel Kharb, MM-07, Dwarka District Court, Delhi vide judgment dated 14.09.2018 had acquitted the respondent for the offences punishable under sections 279/338 IPC by observing that the prosecution has failed to prove its case beyond reasonable doubt. The relevant portion of the judgment dated 14.09.2018 is reproduced as under :-

26. Adverting to the facts of the case, none of the witnesses examined by the prosecution could give an indication, even approximately, as to what they meant by rash and negligent driving and it is for the prosecution to bring on record material to establish as to what is meant by rashness and negligence in the facts and circumstances of the case. It is true that speed is not the only criteria for determining whether the accused was rash or negligent and the mere fact that the accused was driving the offending vehicle at a high speed is not sufficient to bring home the charge of rash and negligent driving. At any rate there is no



calibrated instrument of definite precision, which could give a clear arithmetical result to establish rashness or negligence.

XXXX

XXXX

XXXX

28. Now applying the ratio of the aforesaid cases to the factual matrix and the evidence adduced by the prosecution in the present case, a mere bald averment of the eye witness that the accused was driving the offending vehicle in a rash and negligent manner would not suffice. I have no hesitation to hold that the prosecution has miserably failed to prove the case against the accused beyond reasonable doubt. Accordingly, accused Ram Kishan is hereby acquitted of the offences U/s. 279/338 IPC.

2. The Additional Public Prosecutor for the petitioner/State argued that as per the testimony of the Deepak Kumar/PW-1 and Madan Ram/PW-2 who are the injured persons of the accident, the guilt of the appellant is proved in accordance with law and their respective testimony proved that the respondent was rash and negligent at the time of driving the offending vehicle/water tanker bearing no. UP 32 AN 4040. He also referred the report of Mechanical Inspector who reported fresh damage to the motor cycle bearing no. DL 9S AK 0893 on which the injured were riding.

3. PW-1/Deepak Kumar deposed on 09.06.2013, he was going from his house to Surkh Pur village, Najafgarh on motorcycle bearing no. DL-9S-AK-0893 and picked Madan Ram (one of the relatives) from Nangli Dairy bus stop. PW-1/Deepak Kumar also deposed that at around 10.00 A.M., when they reached in front of DTC terminal out gate (Subzi Mandi Najafgarh), one CRPF water tanker bearing no. UP 32 AN 4040, being driven by the respondent in a rash and negligent manner, hit his motorcycle from behind, due to which they both fell on the road and received injuries. PW-1/Deepak Kumar also identified the respondent as the driver of the



offending vehicle and deposed that the accident took place due to rash and negligent driving of the respondent. PW-1/Deepak Kumar, during cross-examination, also deposed that the construction was going on the road at the time of the accident and the traffic was moving slowly and he was driving his vehicle i.e. motor cycle at a speed of 30 to 40 km/hour. PW-1/Deepak Kumar denied the suggestions that the bus bearing no.UP-3216-GO151 had hit his motorcycle and that his motorcycle slipped or that the tanker did not hit his motorcycle. PW-2/Madan Ram also supported the case of the prosecution and deposed that on 09.06.2013 PW-1/Deepak Kumar picked him from Nangli Dairy Bus Stop at about 09:30 A.M. as they were going to Surkh Pur Village in Najafgarh in connection with some personal work on motorcycle bearing no.DL-9SAK-0893 which was being driven by PW-1/Deepak Kumar. At around 10:00 A.M., they reached in front of DTC Terminal out gate (Sabji Mandi Najafgarh More), one CRPF water tanker bearing No.UP-32-AN-4040 which was being driven by the respondent/Ram Kishan in a rash and negligent manner hit the motorcycle from behind. PW-2/Madan Ram during the cross-examination stated that the road was under construction and the speed of motorcycle was around 30 to 40 km/hour. The PW-2 could not tell the speed of offending vehicle as the offending vehicle came from behind.

4. The prosecution is also examined, Puran Chand, Mechanical Inspector as PW-7 who in mechanical inspection report of the water tanker bearing no. UP 32 AN 4040 exhibited as PW-7/C reported fresh damage on the left side of the front bumper.

5. A careful perusal of the testimonies of PW-1 and PW-2, as observed by the trial court, only reflects that the respondent was driving offending



vehicle in rash and negligent manner but it was not deposed by PW-1 and PW-2 as to in what manner the respondent was rash and negligent while driving the vehicle bearing no. UP 32 AN 4040. It is also apparent from the cross-examination of PW-1/Deepak Kumar that traffic was moving slow on the road which was also under construction. Beside the deposition that the respondent was rash and negligent in driving the water tanker, no other fact is deposed by the PW-1/Deepak Kumar and PW-2/Madan Ram to constitute rashness and negligence on the part of the respondent. The deposition of PW-1/Deepak Kumar and PW-2/Madan Ram is not sufficient to constitute rashness and negligence on part of the respondent.

6. The trial court has rightly observed that the prosecution has failed to prove the guilt of the respondent beyond reasonable doubt. The impugned judgment passed by the trial court is well reasoned and does not call for any interference, hence the appeal is dismissed.

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 19, 2023

j/am