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

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**Reserved on: October 16, 2023
Decided on: November 22, 2023**

+ **CRL.A. 895/2023**

STATE

..... Appellant

**Through: Mr. Utkarsh APP for State
with Insp. Rajiv, P.S.
Mangolpuri**

V

BALDEV SINGH

..... Respondent

Through: Mr. V.K. Vats, Advocate

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present appeal is filed under section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **“the Code”**) to impugn the judgment dated 30.03.2019 (hereinafter referred to as **“the impugned judgment”**) passed by the court of Sh. Rakesh Kumar, MM (North-West), Rohini Courts, Delhi (hereinafter referred to as **“the trial court”**) in trial arising out of FIR bearing no. 0865/2001 registered under sections 279/337/304A of the Indian



Penal Code, 1860 (hereinafter referred to as “**IPC**”) at P.S. Mangol Puri.

2. The respondent was put to trial bearing Unique Case Identification No. 534464/2016 arising out of FIR bearing no. 0865/2001 registered under sections 279/337/304A IPC at P.S. Mangol Puri on the allegations that the respondent on 02.11.2001 at about 08:30 am was found driving a truck bearing registration no. DL-1GB-3046 (the offending vehicle) and hit against a scooter bearing registration no. DL-4S-7576 and caused simple injury to its rider namely Sumit Kumar and death of the pillion rider namely Sonia (hereinafter referred to as “**the deceased**”).

2.1 The notice under section 251 of the Code was given notice to the respondent vide order dated 29.09.2005 to which he has pleaded not guilty and claimed trial. The respondent stated that he was not rash or negligent and the accident had happened due to the fault of the driver of the scooter. The prosecution in support of its case examined 8 witnesses including the only eye-witness namely Sumit as PW1 who is stated to have received simple injuries in the accident. PW1 deposed that he along with his sister i.e. the deceased on



02.11.2001 was going to drop the deceased at Hostel Kasturba Kanya Vidhyala, Okhla on scooter bearing registration no. DL-4S-7576. PW1 Sumit was driving the scooter and the deceased was sitting on the pillion seat. PW1 Sumit further deposed that they at about 08:00 am reached between Deepali Chowk and Madhuban Chowk then one truck bearing registration no.3046 came from the back side being driven at fast speed and in a rash and negligent manner and hit against the scooter. PW1 Sumit due to the impact fell down on the left side and the deceased had fell down on the other side which caused simple injury upon to him but the back wheel of the truck ran over the deceased. The driver of the truck had run away from the spot after causing accident. The deceased was removed to Jaipur Golden Hospital where she was declared dead. The prosecution also examined other police officials who remained connected and participated in the investigation including PW6 Investigating Officer SI Srinivasan. The respondent admitted the post-mortem report of the deceased, MLC pertaining to the deceased and PW1/Sumit Kumar, Mechanical Inspection Reports of the truck bearing registration no. DL-1GB-3046 and the scooter bearing registration no. DL-4S-7576



and other documents. The statement of the petitioner was recorded under section 313 of the Code wherein he pleaded innocence and false implication. The respondent preferred not to lead defence evidence.

2.2 The trial court vide the impugned judgment had acquitted the respondent for the offences punishable under sections 279/337/304A IPC by observing as under:-

15. PW1 is the sole eye witness in the case in hand. It is clear from testimony of PW1 who was eye witness that on 02.11.2001, he alongwith his sister Sonia were going on a motorcycle to drop the Sonia at her hostel. Aforesaid motorcycle was being driven by PW1 and deceased Sonia was sitting as a pillion rider. PW1 further deposed that at around 8.00 AM, when they reached between Deepali Chowk and Madhuban Chowk one truck came from the back side which was being driven at a fast speed and in a rash manner and struck against their scooter. Due to impact of striking by aforesaid truck he fell on the left side and his sister fell down on the other side and the back when of the truck ran over her sister and the driver ran away from the spot. PW1 further stated that he took her sister to Jaipur Golden hospital where she was declared dead.

16. It is clear from aforesaid testimony of prosecution witnesses that PW-1 was the eye witness in this case and as per his testimony he was riding the scooter and deceased was sitting as a pillion rider when offending vehicle came in a high speed and in negligent manner and struck against his motorcycle from back side. PW-1 further deposed that he took his sister to hospital where she was declared dead. It is clear from testimony of PW-1 that foundation of allegation against accused is that he was driving the



offending truck at fast speed and in negligent manner and hit against the scooter which was driven by PW-land on which deceased was sitting a pillion rider. It is relevant here to note that there is no evidence as to what this "fast speed" was. PW-1 has also not stated in his testimony how he came to conclusion that accused was driving aforesaid offending vehicle in negligent manner. Siteplan which is Ex.PW6/A is also inconclusive to come to finding regarding negligence of accused. Aforesaid Siteplan is also unscaled. It is also relevant here to refer observation of Hon'ble Supreme Court in the case reported as State of Karnataka Vs. Satish 1998 SCC (Cr.) 1508. In the aforesaid case Hon'ble Supreme Court had observed that merely because a vehicle was being driven at a high speed does not speak of either negligence or rashness by itself. Hon'ble Supreme Court further observed that higher speed is a relative term and it was for the prosecution to bring on record material to establish as to what is meant by higher speed in the facts and circumstances of the case. Hon'ble Supreme Court further cautioned that in a criminal trial the burden of proving everything essential to the establishment of charge against the accused always rests on the prosecution and that there is presumption of innocence in favour of the accused until the contrary is proved.

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18. In the case at hand also it is not known what was the speed on concerned road. The volume of traffic at the relevant time is also not known Site plan produced by prosecution is also of unsatisfactory nature. Site plan is also not drawn on scale. It is also not clear from site plan what was the exact point of impact and what was the path of movement of offending vehicle Photographs of the surrounding areas where accident took place was also not filed by prosecution, therefore, topography of surrounding areas are also not clear in these circumstances court is left with sole option of drawing presumption of "rashness or negligence" against the accused on the basis of aforesaid testimony of eyewitness which is full of subjectivity. But in



a criminal trial the burden of proving everything essential to the establishment of charge against an accused always rest on prosecution and prosecution must prove guilt against accused beyond reasonable doubt. It is also a settled law that criminality is not to be presumed subject of course to some exception. There is one such statutory exception pleaded in present case. In the absence of any material on record na such presumption of rashness or negligence could be raw or the basis of surmises and conjectures. In the present case also there nothing or record to establish that accused was driving offending vehicle antly or negligently except subjective and vague statement of eyewitness out any corroboration from objective material.

19. Therefore, court is of considered opinion that prosecution has failed to establish beyond reasonable doubt that hurt or death was occasioned by either rash or negligent driving of the vehicle by accused. Accused is therefore entitled to benefit of doubt. Benefit of doubt is hereby given to accused and accused is acquitted for charges of commission of offence under sec 279/337/304A IPC.

3. The petitioner/State challenged the impugned judgment on the grounds that the impugned judgment is not sustainable in the eyes of law and is based on imagination, presumption, conjectures and surmises. The trial court did not appreciate the evidence placed on record. The trial court has not properly applied its mind to the facts of the case. The trial court has not appreciated the statement of the eye-witness PW1who deposed that the offending vehicle hit the scooter from behind. The mechanical inspection report which was admitted



by the respondent in the statement under section 294 of the Code also corroborated the testimony of the eye-witness PW1. It was prayed that the impugned judgment be set aside. The Additional Public Prosecutor also advanced arguments on basis of the grounds of appeal. The counsel for the respondent argued that mere driving of the truck at a high speed does not in itself constitute rashness and negligence on part of the respondent.

4. It is reflecting from the impugned judgment that the trial court has discussed the testimony of PW1 who is stated to be the sole eye-witness of the incident. The trial court opined that it is reflecting from the testimony of PW1 that the main allegation against the respondent was that he was driving the offending vehicle at a fast speed and in a negligent manner and struck against the scooter being driven by PW1. The trial court observed that there was no evidence as to what was the 'fast speed' and there was no evidence to draw the inference that the respondent was negligent while driving the offending vehicle. The trial court also did not rely upon the site plan Ex.PW6/A prepared during the investigation. The trial court was of the opinion



that merely driving the vehicle at high speed was not sufficient to constitute negligence or rashness on the part of the driver.

5. The Supreme Court in **State of Karnataka V Satish**, 1998

SCC (CrI) 1508 observed as under:-

Both the trial court and the appellate court held the respondent guilty for offences under Section 337, 338 and 304A IPC after recording a finding that the respondent was driving the truck at a "high speed". No specific finding has been recorded either by the trial court or by the first appellate court to the effect that the respondent was driving the truck either negligently or rashly. After holding that the respondent was driving the truck at a "high speed", both the courts pressed into aid the doctrine of res ipsa loquitor to hold the respondent guilty.

Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what is meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of proving everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favor of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitor".



5.1 This Court in **Abdul Subhan V State (NCT of Delhi) 2006** SCC OnLine Del 1132 also observed that a mere allegation of high speed would not tantamount to rashness or negligence. This court in **Kishore Chand Joshi V State**, Crl. Rev. P. 627/2016 decided on 12.11.2018 also observed as under:-

A witness can depose as to the manner of driving or speed at which the vehicle was being driven but not render an opinion on "rash and negligent". High speed by itself may not in each case be sufficient to hold that a driver is rash or negligent. Speed alone is not the criterion for deciding the rashness or negligence on the part of the driver.

6. It is reflecting from the quality and quality of the evidence led by the prosecution that the respondent was driving the offending vehicle at a high speed which in itself is not sufficient to constitute rashness and/or negligence on the part of the driver in the absence of any other corroborating or supporting evidence. There is no evidence to draw the inference that the respondent was rash and negligent while driving the offending vehicle except that the respondent was driving the offending vehicle at high speed which is not sufficient to constitute rashness and/or negligence on the part of the respondent. The trial court has passed the impugned judgment after proper appreciation of the evidence led by the prosecution. The impugned



judgment does not call for any interference. Hence, the appeal is dismissed.

DR. SUDHIR KUMAR JAIN
(JUDGE)

NOVEMBER 22, 2023

Sk/am