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IN THE HIGH COURT OF DELHI AT NEW DELHI**BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

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CRL. A. No. 190 of 2018**Between:-****THE STATE (GNCT OF DELHI)APPELLANT***(Through Mr. Utkarsh, APP for State along with SI Naveen Kumar, PS I.P.Estate.)***AND****AZAD SINGH
S/O SH MAHA SINGH
R/O VILL. & P.O. NATHU PUR,
PS RAI, DISTT. SONIPAT
(HARYANA)****.....RESPONDENT***(Through Mr T.C. Yogi., Advocate)*

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Pronounced on : 18.01.2023

J U D G M E N T

1. This appeal under Section 378 of the Code of Criminal Procedure, 1973 (in short, "Cr.P.C.") is directed against the judgment of acquittal dated 03.07.2015 passed by the Metropolitan Magistrate-03 (Central), Tis Hazari Courts, New Delhi in connection with FIR No. 74/2002 registered at Police Station IP Estate, Delhi for offence punishable under Sections 279/304A of the Indian Penal Code, 1860 (In short, "IPC").
2. The prosecution story in brief is that on 07.03.2002, Head Constable Sunil Kumar ("Complainant") was on duty at Anti Snatching Point alongwith Constable Ombir (PW-6) and at about 5:45 PM, he saw

that one person was crossing the road from Ambedkar Stadium towards LNJP Hospital. At that time one Dak Van No. DL-1-LB-0735 (“offending vehicle”) came from the side of ITO, BSZ Marg towards Delhi Gate and hit against that pedestrian who had reached in the middle of the road. They rushed towards the spot and found that injured had sustained injuries on his head resulting in his death. The complainant (PW-1) handed over the custody of the accused/driver of the offending van to PW-6 and went to LNJP Hospital alongwith the injured. In the hospital MLC of injured was prepared and the statement of the complainant was recorded. Later on, after reaching the spot, the offending vehicle was taken into possession. At the complaint of the complainant, the present case was registered and after completion of investigation, chargesheet was filed against Azad Singh (“accused”) for the offence under Sections 279/304-A of the IPC. Thereafter, accused was summoned and notice was served upon the accused for offence under Sections 279/304A of the IPC.

3. The accused pleaded not guilty and claimed trial. The learned trial court after appreciating the entire evidence and material available on record, acquitted the respondent/accused. Hence, the State is in appeal.

4. Learned counsel appearing on behalf of the appellant/State submits that the impugned order is based on conjectures and is against the facts and law. According to him, the learned trial court failed to appreciate the testimony of two eye-witnesses, who have duly given their evidence and supported the case of the prosecution including one of them having identified the accused as well as offending vehicle even during the cross-examination on 03.12.2010. The learned trial court further failed to appreciate that PW-6 in his evidence stated that the deceased was hit by the vehicle in question which was being driven at a high speed. The minor difference in the statement of the complainant and (PW-6)



regarding the volume of traffic on road or whether the deceased was running or walking on the road at the time of the incident, should not have been considered as major inconsistencies.

5. On the other hand, learned counsel for the respondent/accused vehemently opposed the submissions and submitted that the offences have not been committed by the respondent/accused and, therefore, the learned trial court has rightly acquitted him. He submitted that the learned Metropolitan Magistrate has considered all the submissions made by the respondent/accused, and the evidence led by the appellant which are not sufficient evidence to prove his guilt beyond a reasonable doubt.

6. I have heard the learned counsel for the parties and perused the record.

7. The prosecution has examined eleven witnesses to prove the charges against the respondent/accused out of which PW-1 and PW-10 are the only two eye-witnesses. The accused examined two defence witnesses :-

PW	NAME	ROLE
PW-1	SUNIL KUMAR	COMPLAINANT
PW-2	HARI CHAND	HEAD CONSTABLE
PW-3	SURAJ BHAN	SUPERVISOR, MAIL MOTOR SERVICES
PW-4	VIJENDER SINGH RANA	INSPECTOR OF VEHICLE
PW-5	RAJENDER SINGH	CLERK, MAIL MOTOR SERVICES
PW-6	OMBIR	HEAD CONSTABLE
PW-7	RAM BABU	CONSTABLE
PW-8	RAKESH KUMAR	HEAD CONSTABLE
PW-9	SUNIL	DOCTOR
PW-10	SATYENDRA	DOCTOR

	KUMAR	
PW-11	RISHI RAJ	CONSTABLE
DW	NAME	ROLE
DW-1	LEKHRAJ PATHAK	MAIL PEON, GPO KASHMERE GATE
DW-2	RAJ NARAYAN THAKUR	PUBLIC RELATION OFFICER, GPO KASHMERE GATE

8. In order to prove the case of prosecution, the essential ingredients of Sections 279 and 304A of the IPC had to be proved. Section 279 of the IPC requires 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 of the IPC 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. For Section 304A of the IPC, a direct nexus between the between the death of the person and the rash or negligent act has to be established. Presence of either rash actions or negligent actions are sufficient to attract the Section and its punishment. Burden lies on the prosecution to prove the material on record to establish the negligence or rash driving.

9. In the decision of *Emperor v. Omkar Rampratap*¹, Sir Lawrence Jenkins, speaking for the court, summed up the legal position in the following words:

“...to impose criminal liability Under Section 304A, Indian Penal Code, it is necessary that the act should have been the direct result of a rash and 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.”

The aforesaid statement was affirmed in the decision of ***Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra***², ***Suleman Rahiman Mulani v. State of Maharashtra***³, ***Rustom Sherior Irani v. State of Maharashtra***⁴, ***Bhalchandra @ Bapu and Anr. v. State of Maharashtra***⁵, ***Kishan Chand v. State of Haryana***⁶, ***S.N. Hussain v. State of A.P.***⁷, ***Ambalal D. Bhatt v. State of Gujarat***⁸ and ***Jacob Mathew vs. State of Punjab and Anr.***⁹

10. It is not disputed on behalf of the accused that he was not driving the offending vehicle *i.e.*, Dak Van at the time of the incident or regarding the identity and existence of the offending vehicle. Therefore, it is established, as admitted, that at the time of the incident, the accused was driving the offending vehicle.

11. The issue in dispute is that whether the accused was driving the aforesaid vehicle in rash and negligent manner and whether the accident in question occurred due to rash and negligent driving of the accused. The complainant stated in the complaint that he saw the accused was driving the offending vehicle in a rash and negligent manner at the time of the incident; however, in his statement before the court, he has nowhere stated that the accused was driving the offending vehicle in a rash and negligent manner. He did not even state that the offending vehicle was at a high speed. Additionally, in his cross-examination he admitted that some vehicles were ahead of the offending vehicle and some were behind

² (1965) 2 SCR 622

³ (1968) 2 SCR 515

⁴ 1969 ACJ 70

⁵ (1968) 3 SCR 766

⁶ (1970) 3 SCC 904

⁷ (1972) 3 SCC 18

⁸ (1972) 3 SCC 525

⁹ 2005 SCC (Cri) 1369

it. The complainant in his cross-examination was also not sure whether the other eye-witness, namely, Ombir (PW-6) had seen the incident or not. PW-6 could not even identify the accused. He did not even state the number of offending vehicle in his examination-in-chief. However, later on, he told the registration number of the vehicle and identified the accused during cross-examination by learned APP when these facts were put in the form of leading questions. PW-6 also nowhere stated that the offending vehicle was being driven in rash & negligent manner.

12. There are also contradictions in the statements of both the eye witnesses. The complainant in his cross-examination stated that there was no heavy traffic on the road, whereas, PW-6 admitted that at that time there was heavy traffic on the road. The complainant stated that the offending vehicle had hit the deceased from its left front side. On the other hand, PW-6 stated that the front right portion of the offending vehicle hit the deceased while he was crossing the road. PW-6 also could not tell that whether the deceased was running or walking on the road at the time of the incident. He admitted that there was no zebra crossing at the spot.

13. Mr. Lekhraj Pathak (DW-2) who appeared from the office of GPO, Kashmere Gate, Delhi stated in his chief-examination that DW-1 is a mail peon who discharged the duty of transaction of mail bags in the mail motors and used to sit beside the driver's seat, regarding production of attendance register of the date in question. He produced the official orders pertaining to the destruction of the relevant record being more than 5-year-old. DW-1 stated that at the time of the incident, he was sitting in the offending vehicle with the accused and the speed of the offending vehicle was about 20 km/ph. He stated that the deceased was running across the road in hurry and after having an accident by some other vehicle collapsed in front of the offending vehicle. Furthermore, he

clarified that there was no fault of the accused in the said accident. There is no reason to disbelieve the version of DWs only because of the fact that they were examined as defence witnesses, despite the fact that their statements otherwise seem reliable.

14. Rash and negligent factor on the part of the driver of the offending vehicle is a basic ingredient to put the accused liable under the offence alleged against him. In the case of ***Mahadeo Hari lokre v. State of Maharashtra***,¹⁰ the Hon'ble Supreme Court in paragraph No.4 held as under:

"...If we agree with the sole eye witness in the case Dayanand P.W.1 that at the time of the impact Ravikant was actually crossing the road from West to East. That would mean that if Ravikant suddenly crossed the road from West to East without taking, note of the approaching bus there was every possibility of his dashing against the bus without the Driver becoming aware of his crossing till it was too late. If a person suddenly crosses the road the Bus Driver, however, slowly he may be driving may not be in a position to save the accident. Therefore, it will not be possible to hold the Bus driver was negligent."

15. The order dated 03.07.2015 of the learned Metropolitan Magistrate indicates that he has considered the case on merits, analysed the testimonies, contradictions, inconsistencies, and overall version of the prosecution. The essential elements for fastening criminal liability for the offences punishable under Sections 279/304A of the IPC have not been proved beyond a reasonable doubt. Therefore, the matter was decided and respondent/accused was acquitted.

16. The Hon'ble Supreme Court in the matter of ***State of Maharashtra v. Sujay Mangesh Poyarelar***¹¹ while considering its earlier pronouncements including the decision in the case of ***Chandrappa &***

¹⁰ (1972) 4 SCC 758

¹¹ 2008 9 SCC 475

*Ors. v. State of Karnataka*¹² 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 and reweigh at large the evidence on which the order of acquittal is relied 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 the well established principles, comes to a contrary conclusion and records a conviction, such conviction cannot be said to be contrary to law.

17. The Supreme Court in the matter of *Hakeem Khan & Ors v. State of M.P.*¹³ has again considered the powers of the appellate court for interference 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 be supplanted over the view of the trial court.

18. 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

¹² (2007)4 SCC415

¹³ (2017)5 SCC715

other than the view which has already been taken by the learned trial court. Accordingly, the appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 18, 2023/*C'sha*

