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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. 532 of 2017****Between:-****STATE (NCT OF DELHI)****.....APPELLANT***(Through Mr. Utkarsh, APP for State)***AND****RAJ KUMAR  
S/O RANBIR SINGH,  
R/O B-5/368, SECTOR 5, ROHINI  
NEW DELHI****.....RESPONDENT***(Through Mr. Sahil Malik and Ajay Malik, Advocates)*

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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 31.08.2015 passed by Metropolitan Magistrate, District North West, Rohini Courts, Delhi in connection with FIR No. 59/2008 at PS Vijay Vihar, Delhi for the offence punishable under Sections 279/304A of the Indian Penal Code, 1860 (In short "IPC").

2. The prosecution case in brief is that on 16.11.2008 one Sudhir Maan ('Complainant') was present at his house. On that day at about 8 p.m. his friend namely Rakesh Dabas ('deceased') and Dilbagh (PW-10) came to him at his house. Thereafter, they all proceeded to village Karala

at the house of their friend. They were going to Karala on two motorcycles. The deceased was driving the motorcycle bearing registration No. DL-8SAH-5151 and Dilbagh (PW-10) was on another motorcycle with the complainant (PW-1). The deceased was driving the above said motorcycle ahead of their motorcycle. When they reached at a 100 feet road, one Tempo Traveller bearing registration no. DL-IVA-4233 came from behind at a very high speed and struck against the motorcycle of the deceased due to which the deceased fell down alongwith the motorcycle and came under the said tempo, subsequent to which, the tempo driver namely Raj Kumar ('accused') dragged them for some distance. The complainant (PW-1) and Dilbagh (PW-10) raised alarm but the accused did not stop his vehicle and fled away towards the side of BudhVihar. Thereafter they chased the tempo and apprehended the accused at *Ganda Nala* BudhVihar, Delhi. They deboarded the accused from the said tempo who was found under the influence of liquor. They gave the information to police and police officials came at *Ganda Nala*. Thereafter, they went to the hospital, where, the complainant identified the dead body of the deceased. It is alleged that since the respondent/accused was driving the vehicle rashly and negligently so as to endanger human life or to be likely to cause injury to other persons, FIR for offences punishable under Sections 279/304A of the IPC was registered against him. The Court took cognizance as a *prima facie* case was made out against the accused.

3. The respondent/accused pleaded not guilty. Accordingly, trial was conducted. 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 APP appearing on behalf of the State submitted that the impugned order is illegal and improper. According to him, the testimony

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of Dilbagh Singh (PW-10), categorically mentioned the circumstances, which caused the accident and also identified the accused in court, the same is more than sufficient to convict the accused. The Learned trial court further failed to appreciate and consider that the contradictions in the testimonies were minor in nature, which should not be considered as a ground for acquittal. Additionally, all the statements of the prosecution witnesses had supported the prosecution case and there are no major contradictions in the testimony of the said witnesses. According to him, justice should not be denied for the mistakes of the investigating officer.

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 submission made by the respondent/accused, and the evidence led by appellant is not sufficient to prove the guilt beyond reasonable doubt.

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

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

| PW   | NAME               | ROLE                                           |
|------|--------------------|------------------------------------------------|
| PW-1 | SUDHIR MAAN        | COMPLAINANT                                    |
| PW-2 | RAJESH KUMAR       | OWNER OF TEMPOTRAVELLER/<br>BROTHER OF ACCUSED |
| PW-3 | DEVENDER<br>KUMAR  | IDENTIFIED THE DECEASED                        |
| PW-4 | HC RAJESH<br>KUMAR | HEAD CONSTABLE                                 |
| PW-5 | HC RAVINDER        | HEAD CONSTABLE                                 |

|       |                  |                    |
|-------|------------------|--------------------|
| PW-6  | HC RAJBIR SINGH  | HEAD CONSTABLE     |
| PW-7  | SI KARAN SINGH   | SUB-INSPECTOR      |
| PW-8  | DR.BHAVANA JAIN  | DOCTOR             |
| PW-9  | DR.BALJEET SINGH | DOCTOR             |
| PW-10 | DILBAGH SINGH    | FRIEND OF DECEASED |

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 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 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 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 on the basis of the material available on the record and to establish the negligence or rash driving.

9. The first essential ingredient to be proved is that the accused was driving the offending vehicle at the time of the accident. To establish that, the complainant (PW-1) who is eye-witness deposed in his examination-in-chief that the accused was driving the offending tempo which crushed the deceased and dragged him to some distance. However, in his cross-examination, he contradicted his statement by deposing that he did not see the accident and clarified that he reached the spot after the accident. He further admitted that he did not see the accused while driving the offending vehicle and voluntarily clarified that police officials showed him the accused at police station and told him that the accused was

driving the vehicle at the time of accident. Learned APP for the State re-examined the complainant but could not extract anything in its favour. Hence, the credibility of the complainant has been shattered. PW-2 is the brother of accused who deposed that he has two drivers and he is not aware who was driving the offending vehicle on the date of incident. Moreover, his statement was also not recorded by the police. Second eye-witness is PW-10, who deposed that accident occurred 200-300 meters ahead of their bike, and distance between their bike and that of the victim was 400-500 meters. It is clear that PW-10 saw the accident from a substantial distance. Additionally, it is an admitted position that the complainant (PW-1) was in a better position to see the driver of the offending vehicle and his statement has does not support the prosecution case. Hence, the prosecution has failed to establish the first essential ingredient that accused was driving the offending vehicle on the date of incident.

10. The second essential ingredient that needs to be proved is that the accused was driving the offending vehicle in a rash and negligent manner. It is not in dispute that the alleged incident took place at about 08:40 P.M., during the night hours. As per the prosecution version, the offending vehicle was caught far away from the place of incident by the complainant, whose testimony has already been proved unreliable regarding his seeing the accused as driver of the offending vehicle. PW-10 deposed that he had seen the offending vehicle after overtaking from behind. The very fact that PW-10 was sitting pillion to PW-1 and that the offending vehicle struck the victim from behind after overtaking the bike of PW-1 at a very high-speed shows that the possibility of the PW-10 seeing the driver of the offending vehicle coming from behind at a very high speed is very remote as PW-10 could have hardly got any opportunity to see the face of driver of the offending vehicle who had

overtaken from right side at a very high speed. It is pertinent to mention that in India the vehicles are provided with right hand drive facility and this is also not the case of the prosecution that the offending vehicle was a left-hand drive vehicle. PW-10 further deposed that when they reached at the place of accident the offending vehicle was seen running away from there, which shows that PW-10 never had the opportunity to see the accused and the offending vehicle standing on the spot. Hence, the testimony of PW-10 does not inspire confidence.

11. The complainant and PW-10 are the only eye-witnesses who were riding together on another bike following the bike of the deceased but they have contradicting versions in all material aspects such as seeing the accused while driving the offending vehicle and the accident as well as regarding the number of vehicles present between their bike and that of the deceased. The complainant deposed that other vehicles were present between their bike and the deceased's bike while PW-10 specifically deposed that no vehicles were present between them. These contradictions create grave doubt upon the prosecution version that both these witnesses were present together on the spot which further renders the prosecution version unreliable and not credit worthy. It is, therefore, the case that the foundational facts in issue have not been proved by the prosecution.

12. (PW-10) had also mentioned that there were public persons present on the spot but none of them have joined the investigation at any stage. (PW-10) admitted in his cross-examination that he had accompanied the police at the hospital and had disclosed the identity of the deceased to the duty police officials in the hospital. However, SI Karan Singh (PW-7) deposed that he did not meet any witness in the hospital and the injured was admitted with unknown identity in the hospital. The testimony of PW-7 shows that the aforesaid deposition of (PW-10) is not reliable.

13. The order dated 31.08.2015 of the learned Metropolitan Magistrate indicates that he has considered the case on merits and found that the analysis of testimonies, contradictions, inconsistencies, omissions and discrepancies that overall version of the prosecution and specifically identity of the accused as the driver of the offending vehicle, which is one of the essential elements for fastening criminal liability for the offences punishable under section 279/304A of the IPC, have not been proved beyond reasonable doubt. Therefore, the matter was decided and respondent/accused was acquitted.

14. The Hon'ble Supreme Court in the matter of *State of Maharashtra v. Sujay Mangesh Poyarelar*<sup>1</sup> while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*<sup>2</sup> 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.

15. The Supreme Court in the matter of *Hakeem Khan & Ors v. State of M.P.*<sup>3</sup> has again considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the

<sup>1</sup> 2008 9SCC475

<sup>2</sup> (2007)4 SCC415

<sup>3</sup> (2017)5 SCC715

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 supplant its own view over that of the trial court.

16. 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 learned trial court. Accordingly, the appeal is dismissed.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**JANUARY 18, 2023/C'sha**