

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1904 of 2005(O&M)
Date of Decision:28.03.2025

Narinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR. JUSTICEHARPREET SINGH BRAR

Present: Mr. Manuj Nagarath, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (Oral)

1. The present revision petition is preferred against judgment dated 26.09.2005 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana whereby appeal against judgement of conviction and order of sentence dated 30.04.2004 passed by learned Judicial Magistrate First Class, Ludhiana in FIR No.105 dated 22.12.1998 registered under Sections 279 and 304-A of Indian Penal Code (hereinafter IPC) at Police Station Dakha, Ludhiana, was dismissed. The petitioner was sentenced as under:

Offence Under Section	Sentence
279 IPC	Rigorous imprisonment for a term of three months and fine of Rs. 500/-, in default to undergo rigorous imprisonment of seven days.
304-A IPC	Rigorous imprisonment for a term of one year and fine of Rs. 1000/-, in default to undergo rigorous imprisonment of ten days.

2. Succinctly, the facts of the case, as alleged, are that on 22.12.1998, in the area of village Mandiani near Dakha, the petitioner, while



driving a car make Ambassador bearing registration No.PB-10V-6671 struck one Swaran Kaur, and caused her death. Consequently, FIR(*supra*) was registered.

3. After assessing the material available on record, the learned trial Court convicted the petitioner vide judgment dated 30.04.2004 and sentenced him to imprisonment, as mentioned above. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court, which was dismissed vide judgment dated 26.09.2005.

4. Learned counsel for the petitioner *inter alia* contends that the statements of the prosecution witnesses are full of discrepancies and hence, no reliance can be placed on them. Further, the prosecution has failed to prove the post-mortem report as it did not examine the doctor who conducted the same. Furthermore, there is no evidence proving that the petitioner was driving the vehicle rashly and negligently. In fact, the accident was caused on account of bursting of a tyre. As such, there was no criminal act, intention or knowledge that could be attributed to the petitioner. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in ***State of Karnataka vs. Satish (1998) 8 SCC 493, Javob Mathew vs. State of Punjab and another (2005) 6 SCC 1, Braham Dass vs. State of H.P. AIR 2009 SC 318.***

5. *Per contra*, learned State counsel opposes the prayer made by learned counsel for the petitioner and submits that he has been convicted by the learned trial Court on correct appreciation of the facts and the law. Moreover, the conviction has been upheld by the learned lower Appellate Court, as such interference by this Court is not warranted.



6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that it is the case of the prosecution that the car in question went off to the *kacha* path of the G.T. road where three ladies were present. The car hit one of the ladies namely Swarn Kaur, causing her death, while the other two narrowly escaped. It has also been stated that following this incident, the car struck the wall of the telephone department building.

7. A proper adjudication of the case requires a study of Sections 279 and 304-A IPC, which are reproduced below:

Section 279. Rash driving or riding on a public way.—

*Whoever drives any vehicle, or rides, on any public way in a manner so **rash or negligent** as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

Section 304A. Causing death by negligence.—

*Whoever causes the death of any person by doing any **rash or negligent act** not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

A bare perusal of the abovementioned provisions indicates that the most crucial aspect to invoke these offences is- negligence on part of the accused. A two Judge bench of the Hon'ble Supreme Court in ***State of Karnataka vs. Muralidhar (2009) 2 SCC(Cri) 502***, elaborated on the meaning of 'negligence' and speaking through Justice Arijit Pasayat, opined as follows:

“6. Section 304A speaks of causing death by negligence. This section applies to rash and negligence acts and does not apply to cases where death has been voluntarily caused. This section obviously



does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death. It only applies to cases in which without any such intention or knowledge death is caused by what is described as a rash and negligent act. **A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species.** It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not. Lord Atkin in *Andrews v. Director of Public Prosecutions* (1937) AC 576 at p.583 : 2 All E.R. 552) observed as under :

"Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence ; and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied 'recklessness' most nearly covers the case. It is difficult to visualise a case of death caused by reckless driving in the connotation of that term in ordinary speech which would not justify a conviction for manslaughter; but it is probably not all embracing, for 'recklessness' suggests an indifference to risk whereas the accused may have appreciated the risk and intended to avoid it, and yet shown in the means adopted to avoid the risk such a high degree of negligence as would justify a conviction."

7. **Section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death.** The provision is directed at offences outside the range of sections 299 and 300 Indian Penal Code. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. **Negligence and rashness are essential elements under Section 304A.** Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. **In criminal cases, the amount and degree of negligence are determining factors.** A question whether the accused's conduct amounted to culpable rashness

**CRR-1904 of 2005 (O&M)**

or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.” (emphasis added)

8. Further, a mechanic namely Chhange Lal had prepared a report (Ex. PW6/A) assessing the condition of the vehicle. He also appeared as PW6 and proved the said report which states that the cause of the accident was abrupt bursting of a tyre. The learned trial Court dismissed this argument by merely stating that the appellant was an experienced, skilled driver. Irrespective of one's advanced skill, it cannot be said that they would be able to deal with all sudden and unexpected scenarios. Such an approach discounts the fact that the appellant-driver would also have been caught off guard due to the sudden tyre burst. As such, one cannot unequivocally state that the appellant was negligent in his handling of the vehicle, which further caused the accident.

9. Moreover, a request (Ex. PJ) for post-mortem was made, however, the doctor who conducted the same was not examined. As such, it remains unproven that the injuries sustained by the deceased in the accident were the cause of her death. As such, in view of the discussion above, this Court is of the considered opinion that the case of the prosecution does not stand proven beyond reasonable doubt.

10. In view of the facts and circumstances of the case, the instant revision petition is allowed and impugned judgment dated 26.09.2005 passed

**CRR-1904 of 2005 (O&M)**

6

by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana and, judgment of conviction and order of sentence dated 30.04.2004 passed by learned Judicial Magistrate Ist Class, Ludhiana are hereby set aside qua the petitioner. The petitioner stands acquitted of the charges framed against him. His bail/surety bonds stand discharged.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

28.05.2025
manisha

(HARPREET SINGHBRAR)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No