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

+ **CRL.L.P. 114/2022 & CRL.M.A. 20328/2022**

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State
SI Rahul & SI Pradeep,
PS- NFC

versus

SAHID KHAN

.....Respondent

Through: Mr. Altaf Hussain, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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07.07.2025

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 08.01.2020 (hereafter '**impugned judgment**') passed by the learned Additional Chief Metropolitan Magistrate ('ACMM'), Saket Courts, New Delhi in Case No. 89510/2016 whereby the respondent was acquitted of the offences under Sections 279/338 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the case of the prosecution is that on 16.01.2013 at about 10:45 PM at Mathura Road the respondent, while allegedly driving his truck bearing no. HR-38N-4801 in a rash and negligent manner, hit a motorcyclist from behind thereby causing grievous injuries to the victim.

3. The respondent was charged with the offences under Sections 279/338 of the IPC.



4. By the impugned judgment the learned ACMM acquitted the respondent of the charged offences. It was noted that the identity of the respondent, and the fact that the respondent was driving the offending vehicle at the time when the accident took place were not disputed.

5. The learned ACMM noted that the prosecution had failed to establish its case beyond reasonable doubt. It was noted that the testimony of the victim only demonstrated that he was hit from behind. It was noted that the testimony of the victim was otherwise silent on the aspect of the manner in which the offending vehicle was being driven.

6. The learned ACMM noted that during his cross examination, the victim himself stated that the place where the accident took place was jammed, and that the speed of the victim's own motorcycle was merely 5-10 Km/hour. It was further noted that there existed material contradictions in relation to the manner in which the alleged accident took place. It was noted that as per the testimony of the victim, he was hit from behind, however, the Investigating Officer stated that skid marks of the motorcycle appeared on the left side of the truck.

7. It was further noted that there emerged material contradictions in the testimonies of the prosecution witnesses in relation to the presence of the respondent at the spot after the accident took place. It was noted that the victim/PW-1, in his testimony, stated that the respondent had accompanied him to the hospital. As opposed to this, PW-2/brother of the victim, who took the victim to the hospital, in his cross-examination, stated that the respondent had fled the spot. Consequently, considering that the prosecution failed to establish its case beyond reasonable doubt, the learned ACMM acquitted the respondent of the



charged offences.

8. The learned Additional Public Prosecutor for the State submits that the learned ACMM erred in acquitting the respondent of the charged offences. He submits that since the identity of the respondent and the presence of the offending vehicle at the time of the accident were not disputed, it stood established that the respondent was driving the offending vehicle at the time when the accident took place. He submits that the victim/PW-1 deposed that the respondent had hit his motorcycle from behind thereby causing grievous injuries to him. He submits that minor inconsistencies are not fatal to the case of the prosecution and ought to be ignored. He consequently submits that the acquittal of the respondent is manifestly erroneous and perverse and is liable to be set aside.

Analysis

9. It is trite law that the Appellate Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar : (2008) 9 SCC 475*** held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-



section (3) of Section 378 of Cr.P.C. Code. 20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside. 21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappraisal, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

(emphasis supplied)

10. In the present case, in order to establish its case, the prosecution examined 07 witnesses out of which the victim/PW-1 deposed about the manner in which the accident took place, PW-2/brother of the victim deposed about the manner in which the victim was taken to the hospital and the other witnesses deposed regarding the manner of conduction of the investigation, and the medical report of the victim.

11. The victim/PW-1 in his evidence stated that on 16.01.2013



when he was on his way back home at around 10:45 PM, the truck driven by the respondent came from behind and hit his motorcycle as a consequence of which he fell down. The victim stated that the front right-side wheel of the truck ran over his right leg. He stated that thereafter he made a call to his brother/PW-2 who came to the spot and took him to the hospital. The victim alleged that the accident occurred on account of the rash and negligent driving of the respondent. He further stated that the respondent accompanied him to the hospital.

12. On being cross examined by the learned counsel for the respondent, the victim/PW-1 stated that at the time when the accident occurred, he was driving his motorcycle at the speed of 5-10 Km/hour since there was a jam on the road.

13. PW-2/brother of the victim stated that upon receiving a call from the victim/PW-1, he reached the spot and saw the victim/PW-1 lying in an accidental condition. He stated that the respondent was present at the spot. He further stated that he shifted his brother to the hospital with the help of public persons. On being cross-examined by the learned counsel for the respondent, PW-2 stated that when he reached the spot, he found his brother lying on the footpath and that by such time, the respondent had already fled the spot.

14. It is pertinent to note that the respondent has been charged for the offence of rash driving on a public way, and causing grievous hurt by such rash or negligent act. In order to bring home the guilt of the accused under Sections 279/338 of the IPC, the prosecution ought to prove that the accused was driving the vehicle in a rash or negligent manner as a consequence of which the victim sustained injuries. The gravamen of the offences under Sections 279/338 of the IPC, thus, is that the act of the



respondent is done rashly or negligently.

15. While delineating the meaning of the term rashness, the Hon'ble Apex Court in the case of **Mohd. Aynuddin v. State of A.P. : (2000) 7 SCC 72** observed as under:

"9. A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

16. In the case of **Ravi Kapur v. State of Rajasthan : (2012) 9 SCC 284**, the Hon'ble Apex Court while examining the scope of Section 279 of the IPC, and the meaning of the term "negligence" observed as under:

"12. Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to "rash and negligent driving" within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words "manner so rash or negligent as to endanger human life". The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted."

13. "Negligence" means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative



term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the court. In a given case, even not doing what one was ought to do can constitute negligence.”

17. It is trite that for the offences under Sections 279/338 of the IPC, the prosecution must establish that the accused was driving the vehicle in a manner so rash or negligent as to endanger human life or personal safety of others. In the present case, the material on record falls short of establishing rashness or negligence on the part of the respondent beyond reasonable doubt.

18. While the prosecution has sought to base its case on the testimony of the victim/PW-1, it is evident that the same does not establish that the respondent was driving his truck in a manner so rash and negligent so as to endanger human life or personal safety of others beyond reasonable doubt. PW-1/victim, in his evidence, only stated that the respondent came from behind and hit him from the back side. However, as is apparent from the testimony of PW-1/victim, no allegation pertaining to the respondent driving his truck at a high speed was made. Infact, the victim/PW-1 himself stated that the place where the alleged incident took place was jammed and that the victim himself was driving his motorcycle at the speed 5-10 Km/hour. Mere involvement of the accused's vehicle in the incident, thus, without establishing rashness or negligence beyond reasonable doubt, is insufficient to sustain a conviction.

19. Further, as rightly appreciated by the learned ACMM, there emerged contradictions in relation to the manner in which the accident took place. As per the version of the victim, the



respondent hit the victim from behind. However, PW-4/Investigating Officer stated that the skid marks of the motorcycle appeared on the left side of the truck. The same further belied the manner in which the accident took place and cast serious aspersions on the case of the prosecution. Mere allegation that the respondent hit the victim from behind in the absence of attendant circumstances does not suffice to prove that the respondent was driving her vehicle in a rash or negligent manner.

20. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity in the impugned judgment, and the same cannot be faulted with. This Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no arguable ground has been raised to accede to the State's request to grant leave to appeal in the present case.

21. The leave petition is therefore dismissed in the aforesaid terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

JULY 7, 2025