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

+ **CRL.L.P. 296/2022**

STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP
SI Deepak, PS Mundka

versus

THAKUR PRASAD

.....Respondent

Through: Mr. S.K. Kashyap, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

20.02.2025

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1. This is an application filed under Section 378(4) of the Code of Criminal Procedure, 1973 seeking grant of leave to appeal to challenge the judgment dated 20.12.2021, passed by the learned Metropolitan Magistrate - 06, West District, Tis Hazari Courts, Delhi in case titled as "*State versus Thakur Prasad*", whereby the respondent was acquitted for offences under sections 279/304A of IPC, 1860.

2. The case of the prosecution is that on 03.02.2012 at about 6:00 p.m., an information was received at police station, Mundka regarding an accident. The information was recorded and a DD entry was made accordingly. Thereafter, when the police officials reached the spot, they found a dead body of a man, whose head had been crushed, lying in the middle of the road. A constable namely, Mahender, who has been cited as an eye witness stated that the said accident has been done by a tanker



bearing No. HR- 38N- 1582 and the respondent was the driver of the offending vehicle.

3. The statement of the constable was recorded and the FIR No. 25/2012 came to be registered on 03.02.2012 under sections 279/304A of IPC, 1860.

4. After completion of investigation, the chargesheet was also filed under section 279/304A of IPC, 1860.

5. The prosecution examined 8 witnesses and the statement of the respondent was recorded under section 313 of Code of Criminal Procedure, 1973, whereby the respondent pleaded not guilty and stated that he has been falsely implicated in the case, and no such incident took place. The Respondent did not lead any defence evidence.

6. On 20.12.2021, the learned Metropolitan Magistrate, after analysing the entire evidence acquitted the respondent for the offences under sections 279/304A of IPC, 1860.

7. Mr. Singh, learned APP, submits that it is an admitted fact that the tanker caused the accident, resulting in the death of the victim.

8. He further states that the testimony of PW-2, Constable Mahinder Singh, (eyewitness) is clear and cogent. Therefore, leave to appeal must be granted, and the respondent should be held liable for offences under Sections 279/304A of IPC, 1860.

9. In the present case, the findings of the learned MM are contained in Para Nos. 12 - 20 of the impugned judgment dated 20.12.2021 which read as under:



“12. The testimony of PW2 further reveals that he met with the IO / PW7 when he reached the spot along with constable Naveen and handed over the custody of the accused to him. If he was present at the spot, why was his statement not recorded immediately at that time? Why his statement was recorded later on? Why the accused was arrested at 11:50 PM, i.e., after a gap of almost 6 hours from the occurrence? Why he was not arrested immediately after the registration of the FIR? There are a host of such questions which remain unanswered, creating a doubt in the mind of the court as to whether PW2 was really the eyewitness and whether the accident happened in the manner projected by the prosecution.

13. Evaluating the evidence of the eyewitness as a whole, this court can neither place implicit reliance on his testimony nor totally discard his testimony as it can neither be called wholly reliable nor wholly unreliable. Therefore, this court will look for corroboration, direct or circumstantial.

14. The Hon'ble Supreme Court of India while dealing with the different types of witnesses in **Vithal Pundalik Zendge vs State of Maharashtra** decided on 19 November 2008 held as under:-

“8. In Vadivelu Thevar v. The State of Madras (AIR 1957 SC 614) this Court had gone into this controversy and divided the nature of witnesses in three categories, namely, wholly reliable, wholly unreliable and lastly, neither wholly reliable nor wholly unreliable. In the case of the first two categories this Court said that they pose little difficulty but in the case of the third category of



witnesses, corroboration would be required. The relevant portion is quoted as under:

11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way – it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. **It is in the third category of cases that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”**

15. Now let us see if the prosecution has been able to prove that the accident was caused due to rash and negligent driving of the Tanker by its driver?

To prove the rash and negligent driving, prosecution has examined only one witness i.e. the complainant himself.



He testified that while he was on patrolling duty, he saw that one tanker came in a high speed and in a rash and negligent manner, hitting the motorbike of the victim and thus causing his death.

16. Thus, the testimony of complainant shows that accused was driving the vehicle:

a) at a fast speed; and

b) in rash and negligent manner

Now let us discuss these two facts in detail.

Fast speed

*17. The Hon'ble High Court of Delhi in the case of **Abdul Subhan vs State (NCT of Delhi) 133 (2006) DLT 562** observed as under:-*

10. I now take up examination of the question of convicting a person merely on the allegation that he was driving a vehicle at a high-speed. In State of Karnataka v. Satish (supra) the Supreme Court was faced with a similar situation. The Court observed as under: --

3. 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.

4. Merely because the truck was being driven at a "highspeed" 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". "Highspeed" 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".

PW2 has simply stated that vehicle was being driven fast. Though it has come on record that accused was riding at a fast speed, however, no evidence was tendered that he was travelling beyond



the speed limit. Thus the argument, that he was going too fast is therefore not supported by facts.

Rash and negligent driving

18. While PW2 had claimed that the Motorcycle was being driven in rash and negligent manner, he had not explained as to on what basis he had arrived at such a conclusion. It was not a case where the accused was shown to have disobeyed traffic rules, such as, jumping of red light, driving in a drunken state, driving in zigzag manner, etc.

Thus, I am of the view that there is no cogent evidence in respect of the fact that the motor cycle was being driven by the accused either recklessly or negligently except the bald statement of the injured that vehicle was being driven in a rash and negligent manner.

19. The Hon'ble High Court of Delhi in the case of Vinod Kumar vs. State decided on 13th October, 2011 while dealing with the similar type of evidence, has held as under:-

“7. No evidence or any other material was placed on record by the prosecution to show the manner in which the Petitioner was driving the said vehicle to prove the rashness and negligence of the Petitioner. No photographs of the spot or the bus have been taken. PW10 the alleged eye witness to the incident has also not deposed anything in regard to the accident or manner in which the vehicle was being driven by the Petitioner, except making a bald statement that the driver of the bus was driving the bus in a rash and negligent manner which



does not prove the guilt of the Petitioner. There is no evidence placed on record to show the speed of the vehicle or the manner in which it was being driven to show rashness and negligence on the part of the Petitioner, especially when the area was a crowded one.

..”

20. Further, as per PW2/complainant, he apprehended the driver of the offending vehicle when he stopped his vehicle after causing the accident. If the prosecution story is believed to be correct that accused/driver was apprehended by the alleged eye witnesses at the spot, then why the notice under section 133 MV Act was served upon the owner of the said vehicle asking him as to who was driving the vehicle. This is beyond comprehension that when the accused was available at the spot what was the need to serve the notice under section 133 MV Act upon the owner.

Hence, the need to serve notice under section 133 MV Act upon the owner of the offending vehicle with registration number HR-38N-1582 remains an unsolved conundrum, which creates doubt in the prosecution case.

All these factors taken together cast a suspicion upon the warp and woof i.e. texture in the prosecution story.”

10. Consequently, the learned Metropolitan Magistrate while acquitting the respondent was of the view that the prosecution failed to establish a case beyond reasonable doubt and therefore, the respondent was granted the benefit of doubt.

11. In the present case, the complaint was registered at the instance of



PW-2, namely Mahender Singh, who is an eye witness.

12. However, despite being an eyewitness, PW-2 has failed to corroborate as to how the respondent was driving at high speed or in a rash and negligent manner. Furthermore, there are no allegations or evidence on record to suggest that the respondent was driving under the influence of alcohol, in a reckless zigzag manner, or in violation of any traffic laws, such as jumping a red light or exceeding the speed limit.

13. In addition, no public witness has been cited by the prosecution.

14. The prosecution has also failed to explain as to why a notice under Section 133 of the Motor Vehicle Act was issued to the vehicle owner to identify the driver, despite the respondent being arrested at the scene of the incident.

15. For these reasons, I am of the view that the order of the learned Metropolitan Magistrate is well-reasoned and based on proper appreciation of the evidence on record. The learned Metropolitan Magistrate has correctly analysed the material before the court and has justifiably concluded that the benefit of the doubt must be extended to the respondents since the prosecution failed to establish a case beyond reasonable doubt.

16. For the said reasons, the leave to appeal is dismissed. Consequently, the appeal becomes infructuous.

JASMEET SINGH, J

FEBRUARY 20, 2025/sp

[Click here to check corrigendum, if any](#)