



2025:DHC:8978



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

% Reserved on : 22.09.2025
Pronounced on : 09.10.2025

+ **CRL.A.408/2017**

THE STATE (GNCT OF DELHI)Appellant

Through: Ms. Shubhi Gupta, APP for State with
SI Navdeep, P.S. Baba Haridas
Nagar.

versus

JAIVEERRespondent

Through: Mr. Vipin Panwar, Advocate with
complainant in person.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred by the State against the judgment dated 26.02.2015 passed by the learned Metropolitan Magistrate-05 (South-West), Dwarka Courts in proceedings arising out of FIR No. 36/2012, P.S. Baba Haridas Nagar, registered under Sections 279/337/304A IPC, whereby the respondent was acquitted.

2. The case of the prosecution, briefly stated, is that on 17.02.2012 at about 3:00 p.m. near Sultan Garden Colony on Nangloi-Najafgarh Road, the respondent was allegedly driving a Gramin Sewa Magic bearing No. DL-2W-2937 at high speed in a rash and negligent manner, when he struck against a scooter bearing No. HR-30A-9979 being driven by Jaswant Singh.



On the scooter were his wife Rekha and daughter Gunjan. Due to the impact, Jaswant and Rekha succumbed to injuries, while Gunjan sustained grievous injuries.

3. To prove its case, the prosecution examined around 13 witnesses. PW1 Subhash was the complainant and sole eyewitness. PW2 Kishore Kumar and PW4 Met Ram identified the dead bodies. PW3 Ajay Kumar, the owner of the *Gramin Sewa*, responded to notice under Section 133 MV Act. PW5 Puran Chand conducted mechanical inspection of the *Gramin Sewa* and scooter. PW10 Dr. B.B. Sinha proved the MLCs. PW12 Dr. Parvinder Singh conducted the post-mortem. The remaining witnesses were formal in nature and deposed about the various aspects of investigation.

The accused was examined under Section 313 Cr.P.C. He denied the incriminating circumstances and stated that his vehicle had broken down due to a CNG leak, and that he had parked it on the side of the road and gone to fetch a mechanic. Upon returning with the mechanic, he found the vehicle missing. He claimed false implication and did not lead any evidence.

4. PW1/Subhash is the linchpin eyewitness of the prosecution case. However, his testimony suffers from glaring inconsistencies that undermine its very foundation. In his initial statement exhibited as Ex.PW1/A recorded at the hospital, PW1 stated that the *Gramin Sewa* came from behind at a very high speed, crossed his motorcycle, and struck the scooter with great force, running over all three occupants – Jaswant, Rekha and Gunjan. He also alleged that the driver stopped some distance ahead and then fled. In his examination-in-chief on 14.12.2012, PW1 shifted. He deposed that the *Gramin Sewa* crossed his motorcycle “at a very high speed” and hit the



scooter, as a result of which Jaswant fell on the road and the driver of the *Gramin Sewa* “ruled him” and stopped just ahead of the spot. Nothing has been stated as to what happened to the wife and daughter who were riding pillion. In his further deposition on 16.09.2013, PW1 stated that the scooter was about 150 meters ahead of his motorcycle and that the *Gramin Sewa* was just behind the scooter. This is contradictory to his earlier version that the vehicle had overtaken him before hitting the scooter. He further stated that “many people were gathered there” at the spot. Yet, despite such availability, no independent witness was examined. Importantly, PW1 admitted in cross-examination that after 20 minutes of the accident, he left for the hospital and did not visit the spot thereafter. This is wholly inconsistent with the IO’s testimony that the site plan was prepared at PW1’s instance. The site plan itself bears no signature of PW1.

The accident allegedly occurred at about 3:00 p.m. on 17.02.2012. However, the FIR came to be registered only after 6:00 p.m., with a delay of nearly three hours. PW1 has admitted in his cross-examination that despite being an eyewitness, he did not call the police from the spot nor from the hospital. He stated that a PCR van had removed the injured to hospital. As regard to the manner of driving of the appellant, PW1 merely stated that the *Gramin Sewa* was being driven in “a very high speed.” Nothing has been stated as to show whether the same was being driven in a rash or negligent manner. No evidence has been led to show the speed limit of the road where the accident occurred and the speed of the vehicle in question.

5. Learned APP for the State contended that PW1 had correctly identified both the accused and the offending vehicle, it was urged that the



trial court erred in discarding PW1's testimony merely because he was related to the deceased.

6. *Per contra*, learned counsel for the respondent supported the impugned judgment and submitted that PW1's testimony was wholly unreliable due to material contradictions, the unexplained delay in lodging the FIR, and absence of corroboration. It was argued that there was no independent public witness examined despite the incident having taken place in a public area and the *Gramin Sewa* allegedly carrying passengers. Learned counsel further relied on precedents to contend that "high speed" by itself does not establish rash or negligent driving, and that the trial court had rightly granted the benefit of doubt.

7. To constitute an offence punishable under Section 304A IPC, it is necessary that the element of '*rash or negligent act*' is established. In addition-

- i) there must be death of the person in question;
- ii) the accused must have caused such death; and
- iii) the act of the accused must have been rash or negligent, though not amounting to culpable homicide.

The act of rashness or negligence should be such as to be proximately connected to the cause of death. Criminal rashness is the doing of any act with recklessness or indifference to the possible consequences, albeit without the intention of causing injury. On the other hand, criminal negligence is gross and culpable neglect or failure to exercise reasonable and proper care and precaution to guard against injury either to the public



generally or to a particular individual. In motor accidents, it is not a rule that negligence of the driver would be presumed in every case. *Res ipsa loquitur* would only come into play when the nature of accident and surrounding circumstances would lead to the conclusion that the accident would not have occurred, but for the negligence.

8. The Supreme Court elaborated upon the concepts of culpable rashness, criminal negligence and presumptions of negligence in the case of Mohd. Aynuddin v. State of A.P., reported as **(2000) 7 SCC 72** wherein it was held as under:-

“7. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus.

8. The principle of res ipsa loquitur is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.

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.”



9. The nature and scope of Section 304A IPC was discussed in Naresh Giri v. State of M.P. reported as **(2008) 1 SCC 791**, wherein the Supreme Court held as follows:—

“8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

10. The Trial Court, upon a detailed analysis of the evidence, extended the benefit of doubt to the accused and acquitted him of the offences under Sections 279, 337 and 304A IPC. The Court held that the sole eye-witness PW-1 Subhash was an interested witness whose testimony suffered from material contradictions with respect to the manner of accident, presence at the spot, and subsequent events. Further, no independent public witness, including passengers of the *Gramin Sewa*, was examined. The medical and



mechanical evidence did not conclusively establish rash or negligent driving, and the mere allegation of “high speed” was held insufficient to prove culpability, in line with the decision of the Hon’ble Supreme Court in State of Karnataka v. Satish reported as **(1998) 8 SCC 493**. Inconsistencies between the site plan, photographs, and testimonies of the police witnesses further cast serious doubt on the prosecution version. On these grounds, the Trial Court found that the prosecution had failed to prove its case beyond reasonable doubt and acquitted the accused.

11. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court’s decision in Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, wherein it was observed, as hereunder:

“8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)

“25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.””

12. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC**



166, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179], this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

“... ”

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.’

... ”

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’

13. This Court has carefully examined the impugned judgment and the evidence on record and concurs with the findings of the Trial Court and



proceeds to elaborate that, cumulatively, the contradictions regarding the manner of accident, the inconsistent statements, coupled with the unexplained delay, failure to inform police, render PW1's testimony wholly unreliable. His presence itself at the time and place of occurrence is doubtful.

14. To sustain a conviction under Sections 279/304-A IPC, the prosecution must prove that the accused drove in a manner so rash and negligent so as to endanger human life. Merely because an accident had occurred is not sufficient. In the present case, there is no cogent, credible evidence of rashness or negligence. PW-1's testimony is doubtful and the MLCs do not connect the vehicle nor does the testimony of PW5, who stated the *Gramin Seva* is "fit for road test". Furthermore, no independent passenger or bystander has been examined. Thus, the essential ingredient of rash and negligent driving remains unproved.

15. In view of the above, this Court finds no reason to interfere with the finding of acquittal recorded by the Trial Court. The appeal filed by the State is accordingly dismissed.

16. A copy of this judgment be communicated to the Trial Court and Jail Superintendent concerned.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 09, 2025

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