



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

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Judgment Reserved on: 18.02.2026

Judgment pronounced on: 23.02.2026

+ **CRL.A. 308/2017**

STATE

.....Appellant

Through: Mr. Utkarsh, APP for the State with
SI Shivam.

versus

SANTOSH CHOUDHARY

.....Respondent

Through: Mr. Alok Sharma and Mr. Aditya
Sharma, Advocates.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the State in Case No. 661/2012 on the file of Metropolitan Magistrate, North East Delhi, assailing the judgment dated 14.10.2013 as per which the sole accused has been acquitted of the offences under Sections 279 and 304A of the Indian Penal Code, 1860 (the IPC), giving him the benefit of doubt.

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2. The prosecution case is that on 16.02.2002, at about 07:45 A.M., at T-point, GT Road, Delhi, the accused drove bus bearing registration no. DL-1PA-7989 in a rash and negligent manner so as to endanger human life. The accused lost control of his vehicle and knocked down Shameem, the mother of PW3 and PW4 and fled from the spot. Shameem thereafter succumbed to injuries on the same date at 01:15P.M. Hence, as per the charge-sheet/final report dated 03.04.2002, the accused was alleged to have committed the offences punishable under Sections 279 and 304A IPC.

3. On the basis of Exhibit PW7/A FIS of Shameem, given on 16.02.2002, Crime no. 39/2002, Seelampur Police Station, i.e., Exhibit PW8/B FIR was registered by PW8, Woman Sub-Inspector. PW7, Sub Inspector (SI) was entrusted with the investigation of the case. PW7 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final



report dated 03.04.2002 alleging commission of the offences punishable under the aforementioned sections.

4. On appearance before the trial magistrate, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.P.C. On 07.05.2003, the substance of the accusation as contemplated under Section 251 Cr.P.C. was read over and explained to him to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 10 were examined and Exhibits PW7/A-J, PW8/A-D and PW9/B were marked in support of the case.

6. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence.

7. On behalf of the accused, DW1 and DW2 were examined. No documentary evidence was adduced by the accused.



8. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgement dated 14.10.2013, acquitted the accused under Section 255(1) Cr.P.C. of the offences punishable under Sections 279 and 304A IPC. Aggrieved, the State has come up in appeal.

9. It was submitted by the learned Additional Public Prosecutor that the impugned judgment dated 14.10.2013 passed by the learned Metropolitan Magistrate is bad in law and liable to be set aside. The trial court failed to appreciate that the respondent was driving the offending bus in a rash and negligent manner, as a result of which the accident occurred causing fatal injuries to the deceased. The finding of acquittal is contrary to the materials available on record and suffers from non-appreciation of the evidence led by the prosecution.

10. *Per contra*, it was submitted by the learned counsel for the respondent/accused that the impugned judgment is well-



reasoned, based on proper appreciation of the evidence on record and settled principles of criminal jurisprudence, and does not suffer from any infirmity calling for an interference by this Court. The findings of the trial court are neither perverse nor contrary to law, and therefore, the appeal deserves to be dismissed.

11. Heard both sides and perused the records.

12. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgement calling for an interference by this court.

13. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Exhibit PW7/A FIS of the deceased dated 16.02.2002 reads thus:- "...Today, at around 7:45 AM, I was going to JPN Hospital. When I reached a little ahead of the T-Point in Seelampur towards Delhi, a bus, the number of which was noted by the PCR (Police) as DL-1PA-7989, came from the front. The driver was driving very fast, recklessly, and negligently. He hit me from the side,



causing me to fall on the ground and sustain injuries. The bus is currently parked at the spot, but the driver has fled. The PCR vehicle brought me to the hospital.”

14. PW1 deposed that on 17.02.2002, he was posted in the Department of Forensic Medicine, GTB Hospital, Delhi, and that he had conducted the post mortem examination of the deceased. The cause of death was “*haemorrhagic shock due to ante mortem fracture of the hip bone produced as a result of blunt force impact*”. Exhibit PW1/A is the post mortem report.

15. PW5, Head Constable-in-Charge of PCR van, North East Zone B-57, Delhi, deposed that on 16.02.2002 he along with his PCR Van staff was standing at T-Point, Seelampur, GT Road, when at about 7:45 AM, he saw a bus bearing No. DL-1PA-7989 coming from the side of Delhi, being driven in a rash and negligent manner by its driver. The bus hit a pedestrian, who was walking through the side of the road, as a result whereof she sustained injuries. He immediately tried to apprehend the driver of the



aforesaid bus, however, the driver fled from the spot. Another PCR Van, arrived at the spot at about 7:50 AM and its in-charge, an ASI whose name he does not recollect, took the injured lady to GTB Hospital. Police officials thereafter arrived at the spot and prepared Mark-X site plan on his instance. He had asked four or five passengers of the aforesaid bus to join the investigation, however, none of them joined on one pretext or the other.

16.PW10, the owner of the bus bearing registration no. DL-1PA-7989, deposed that the aforesaid bus was driven by the accused on the date of accident, i.e. 16.02.2002. He denied the suggestion that the bus was being driven by one Subhash. He denied the suggestion that he had employed two drivers for his bus. He further denied the suggestion that he had called the accused on the pretext of getting the bus released as the original driver Subhash fled from the scene. He further deposed that if at all any conductor was employed, it was only for the accused to disclose the details.



17. On behalf of the accused, DW2 was examined. The accused offered himself as a witness and hence was examined as DW1. DW1 deposed that on the date of the accident he was on rest and at about 11:00 AM, PW10, the owner of the bus called him to Seelampur Police Station and told him that an accident had been caused by his bus. He was assured by PW10 that he would merely be required to visit the Court and nothing material would ensue, as it was driver Subhash who was driving the bus at the relevant time and further assured him that he would take care of everything. Thereafter, the instant case was instituted against him. PW10 got himself discharged as surety in the case, as a result of which he had to remain in Tihar Jail for two days, until his family members bailed him out.

17.1. DW1, in his cross examination, admitted that he was arrested at about 11:00 AM on the date of the incident itself. He further admitted that he had not lodged any complaint before any authority regarding his false implication by PW10 and that he did



not have any proof to show that Subhash was also a driver of PW10.

18.DW2, by occupation a driver, deposed that though he does not remember the exact date, it was between 7:00 AM and 8:00 AM when he was working as a helper in bus No. DL-1PA-7989 belonging to PW10. On being questioned by the trial court as to who was driving the bus on the date of accident, DW2 deposed that one Subhash was driving the bus at the relevant time, though the accused also used to drive the said bus.

19. Section 279 IPC postulates that the accused must have been driving the vehicle on a public way in a manner so rash or negligent as to endanger human life or likely to cause hurt or injury to any other person. Section 304A IPC requires proof that the death of a person was caused by a rash or negligent act of the accused, and that there existed a direct and proximate nexus between such act and the death in question, the act being the immediate and operative cause of death without the intervention of



any independent or supervening factor. The prosecution is, therefore, required to establish: (i) the factum of death; (ii) that the accused was driving the offending vehicle; and (iii) that such driving was rash or negligent and directly resulted in the death. In the present case, the factum of death stands proved through the testimony of PW1. Thus, the first ingredient stands satisfied. The prosecution has also been able to establish that the accident was caused by the driver of the bus bearing registration No. DL-1PA-7989.

20. Regarding the crucial ingredient pertaining to identity of the driver and proof of rashness or negligence, the prosecution has primarily relied on the testimony of PW5, Head Constable, the sole eye witness. A perusal of his testimony shows that he stated that the bus was being driven “not in a proper way” and “in a rash and negligent manner”. Beyond this general assertion, there is no elaboration as to the speed of the vehicle, the traffic conditions, the portion of the road through which the deceased pedestrian was



walking, whether she suddenly crossed the road, or the precise act or omission attributable to the driver. The testimony is bereft of particulars that would enable the Court to objectively assess culpable rashness or negligence. Mere use of the expressions “rash” and “negligent” is, in law, insufficient unless supported by concrete facts demonstrating the manner of driving. Further, the presence of PW5 at the spot does not find corroboration in the testimony of PW2, who had accompanied the Investigating Officer to the scene. PW7, the Investigating Officer, has admitted that when he initially reached the spot, no eye witness met him, and that PW5 surfaced subsequently. This aspect casts a shadow on the reliability of the sole ocular witness.

21. The prosecution has also relied upon the statement of the injured recorded by PW7, which formed the basis of registration of the crime. This brings the Court to the second aspect requiring consideration, namely, whether Exhibit PW7/A FIS of the deceased can be treated as a dying declaration in the absence of



any further statement before her death. Under Section 32(1) of the Indian Evidence Act, 1872, a statement made by a person as to the cause of her death, or as to any of the circumstances of the transaction which resulted in her death, is relevant when the cause of that person's death comes into question. The law does not mandate that a dying declaration must necessarily be recorded by a Magistrate, or that it must be in any particular format. A statement given by an injured person, if subsequently she succumbs to the injuries and the statement relates to the cause of her death, can be treated as a dying declaration(See **Damodar Prasad v. State of U.P., AIR 1975 SC757** and **Lalita v. Vishwanath and Ors. , 2025 SCC OnlineSC 370**). In the present case, PW7 has deposed that he recorded the FIS of the injured at the hospital after she was declared fit for statement by the doctor. The said statement, which formed the basis of registering the crime, refers to the bus coming at high speed and hitting her. Since the maker of the statement expired due to injuries sustained in the accident, the statement is



admissible under Section 32(1) of the Evidence Act and can be treated as a dying declaration.

22. However, Exhibit PW7/A merely states that the bus was being driven in a rash and negligent manner and that it hit her. It does not disclose the identity of the driver. It does not describe any specific act such as swerving, overtaking, ignoring traffic signals, or mounting the footpath. The statement attributes the accident to the bus but does not name or identify the respondent as the driver. Thus, while the statement proves that the deceased sustained injuries in an accident involving the said bus and that the injuries ultimately led to her death, it does not establish the identity of the accused as the person driving the vehicle at the relevant time. The prosecution has sought to bridge this gap through the testimony of PW10, the owner of the bus, who stated that the bus was being driven by the accused on the date of the accident. According to PW10, the accused was not his salaried employee. On the other hand, he had entrusted the bus to the accused based



on a agreement like a lease. However, he admitted that there are no documents to support the said case. The defence has set up a specific plea that one Subhash was driving the bus on that day, and DW2 has supported the said version, which version has not been discredited. Therefore, the doubts arise regarding the identity of the person who was driving the vehicle at the relevant time.

23. It is settled that where, upon appreciation of the evidence on record, two views are reasonably possible, one pointing towards the guilt of the accused and the other towards his innocence, the view favourable to the accused must be adopted.

24. Upon a consideration of the entire materials on record, this Court is of the view that the trial court has correctly appreciated the materials on record. The prosecution has proved the occurrence of an accident and the resultant death. It has also proved involvement of the bus. However, it has failed to establish beyond reasonable doubt that the respondent was the driver at the relevant time and that he was driving the vehicle in a manner as



rash or negligent as to attract criminal liability under Sections 279 and 304A IPC.

25. In the result, the appeal is dismissed. The judgment of acquittal dated 14.10.2013 passed by the trial court is affirmed. Application(s), if any, pending, shall stand closed.

CHANDRASEKHARAN SUDHA
(Judge)

FEBRUARY 23, 2026/RN