



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 24.08.2026*
Judgment pronounced on: 01.09.2026

CNR No. DLHC011478782016

+ CRL.A. 479/2016

STATE

.....Appellant

Through: Mr. Utkarsh, APP for the State with
SI Parminder, P.S. Nihal Vihar.

Versus

SANJAY

.....Respondent

Through: Respondent in person.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the State in Sl. No. 392/1 on the file of the Metropolitan Magistrate – 08, West District, Delhi, assails the judgment dated 26.08.2013 as per which the sole accused has been acquitted of the offence punishable under Sections 279 and 304A of the Indian Penal Code, 1860 (the IPC).



2. The prosecution case is that, on 12.11.2009, at about 09:15 a.m., PW5 was riding a bicycle with his mother as pillion rider heading towards Kamaruddin Nagar, and when he reached C Block, Naresh Park Extension, the accused, driving tempo bearing registration no. DL 1 LE 2469 from the opposite direction in a rash and negligent manner so as to endanger the human life and safety, knocked them down as a result of which both of them were thrown on to the road. The tempo's right front wheel ran over PW5's mother, crushing her to death on the spot. Hence, as per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 279 and 304A IPC.

3. On the basis of Ext. PW5/A FIS/FIR of PW5, given on 12.11.2009, crime no. 277/2009, Nihal Vihar police station, was registered by PW2, Head Constable (HC). PW10, Assistant Sub-Inspector (ASI) conducted the investigation into the crime and on completion of the same, filed the chargesheet/ final report alleging



the commission of the offences punishable under the aforementioned sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 Cr.P.C. As contemplated under Section 251 Cr.P.C., the particulars of the offences punishable under Sections 279 and 304A IPC was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 11 were examined and Ext. PW1/A-B, PW2/A-C, PW3/A-B, PW4/A, PW5/A-E, PW7/A, PW8/A, PW9/A, PW10/A-F, PW11/A, Mark A, Mark D1 and Ext. P1 to P11 were marked in support of the case.

6. After the close of the prosecution evidence, the accused was 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. The accused submitted that he has been falsely implicated in the case.

7. No oral or 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 judgment dated 26.08.2013, acquitted the accused under Section 255(1) Cr.P.C. of the offences punishable under Sections 279 and 304A IPC. Aggrieved, the State has preferred this appeal.

9. The learned Additional Public Prosecutor, appearing on behalf of the state, submitted that the trial court failed to properly appreciate the ocular and medical evidence available on record. It is further submitted that the testimony of PW5 clearly establishes that the accident occurred due to the rash and negligent driving of the accused.



10. When the appeal was taken up for hearing, the respondent was present in person. However, the counsel was absent. On an earlier occasion also, that is, on 25.03.2026 when the matter was taken up for hearing, the lawyer never turned up. As the appeal is of the year 2016, this Court was not inclined to further adjourn the case. Hence, relying on the dictum in **Bani Singh & Ors. vs. State of U.P., (1996) 4 SCC 720**, this Court is proceeding to consider the appeal on merits after going through the entire records of the case.

11. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.

12. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW5/A FIS/FIR of PW5 recorded on 12.11.2009 in Hindi, translated reads thus:- “...Today, On 12-11-2009, I was taking my mother Smt. Prem, on my bicycle to Kamruddin Nagar, Nangloi



for work. At around 09:15 AM, when we reached C-block, Naresh Park Docks, a tempo bearing No. DL 1L E-2469 came from the opposite direction. The driver (the accused) was driving the tempo at a very high speed in a very rash and negligent manner. I tried my best to avoid the tempo to moving my bicycle to my side but the tempo driver hit my bicycle from the front side. As a result, I fell from the bicycle and landed at some distance from the tempo, while my mother, Smt. Prem, (the deceased) also fell from the bicycle. The right front tyre of the tempo ran over her head and crushed her. Someone informed the police and the PCR Vehicle arrived at the spot and took me and my mother, Smt. Prem to Sanjay Gandhi Hospital, Mangol Puri, Delhi. The doctor at the hospital declared my mother dead. The accident occurred due to the rash and negligent driving of the tempo at a very high speed. The driver left his tempo and fled from the spot. I can identify him if he is produced before me... ”



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12.1. PW5, when examined before the trial court, deposed that on 12.11.2009 at about 09:15 a.m., he was on his way to work with his mother from their house towards Kamaruddin Nagar, Nangloi. He was riding a bicycle, while his mother was the pillion rider. When they reached C Block, Naresh Park Extension, tempo bearing registration no. DL 1 LE 2469 came from the opposite direction and the same was being driven by the accused at a very high speed. He was riding on the left side of the road and, despite his best efforts to save himself, the tempo hit his bicycle, as a result of which he fell at some distance, while his mother fell in front of the tempo. The right front wheel of the tempo ran over his mother's head, causing her head to be crushed on the spot. The accused stopped the tempo at some distance, came towards his mother and, upon seeing her condition, immediately fled from the spot. Someone called the police, whereafter a PCR van arrived and took him and his mother to SGM Hospital, Mangol Puri, where his mother was declared brought dead. According to PW5, the



accident occurred due to the rash and negligent driving of the accused. PW5 further deposed that he visited the spot along with the police officials and that the police had prepared the site plan and seized his bicycle and the offending tempo *vide* Ext. PW5/B and Ext. PW5/C seizure memos respectively.

13. PW5 in his cross examination, deposed that he himself had noted the registration number of the offending vehicle. At the time of the incident, he was riding his bicycle through the left side of the road. He admitted that he had not stated either the exact or approximate speed of the offending vehicle to the police and had only stated that the vehicle was driven at great speed. On being questioned by the Court regarding the approximate speed of the offending vehicle, PW5 answered that he is unable to say as he had never driven any motor vehicle. He had stated to the police that the offending vehicle came from the front side at a high speed and that it was being driven in a rash and negligent manner. PW5 initially stated that he had not visited the scene of occurrence with the



police on the date of the incident after his statement had been recorded. He thereafter deposed that after the incident he did go to the spot with the police officials, though he was unable to recall the number of visits to the scene. PW5 admitted that the site plan had not been prepared in his presence. PW5 denied the suggestion that the incident occurred due to his own negligence or that his bicycle had struck the left side of the tempo and not on the right side of the offending vehicle. PW5 denied having lodged a false complaint to obtain compensation from the owner or Insurance Company of the offending vehicle.

14. PW10, then ASI, the investigating officer (the I.O.) deposed regarding the various steps taken during the course of investigation. On receipt of Ext. PW2/C DD No. 13-A, he along with PW9 Constable went to the place of incident at C-1, Naresh Park Extension, Nihal Vihar, where one tempo bearing registration No. DL-1LE-2469 and one bicycle were found. He came to know that the injured had been taken to the hospital in a PCR van. He



recorded the statement of PW5, which is Ext. PW5/A. Thereafter, he returned to the spot along with PW5 and prepared Ext. PW10/B site plan. He took photographs of the place of incident, which have been exhibited as Ex. P-1 to P-11. He seized the bicycle and the offending tempo bearing registration No. DL-1LE-2469 *vide* Ext. PW5/B and Ext. PW5/C seizure memos. PW3, the owner of the offending vehicle, was served with Ext. PW10/D notice under Section 133 of the Motor Vehicles Act to which he gave Ext. PW3/B reply to the effect that it was the accused who was driving his tempo at the time of the incident. He thereafter arrested the accused *vide* Ext. PW5/D arrest memo and conducted personal search *vide* Ext. PW5/E memo. The documents of the vehicle were seized *vide* Ex. PW9/A seizure memo. The driving license of the accused was seized *vide* Ext. PW10/E seizure memo. On 13.11.2009, pursuant to Ext. PW10/F request, mechanical inspection of the offending vehicle was conducted by PW4 Mechanical Inspector, who gave Ext. PW4/A report.



15. PW4, a diploma holder in Automobile Engineering, deposed that he had inspected the TATA tempo bearing registration no. DL1LE2469 at the request of the IO and had issued Ext. PW6/A report. According to PW4, he found fresh damage, that is, a slight dent on the left side corner of the vehicle.

16. As is evident, the present appeal is from a judgment of acquittal by the trial court. The Appellate Court under Section 386(1) Cr.P.C, may in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused may be retried or committed for trial, as the case may be, or find the accused guilty and pass sentence on him according to law. The general principles regarding the powers of the appellate court while dealing with an appeal against acquittal are:- firstly, the appellate court has the power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. Secondly, the Code puts no limitation, restriction or condition on exercise of such power and an appellate court on the



evidence before it, may reach its own conclusion, both on questions of fact and of law. Thirdly, various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasize the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. Fourthly, an appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused, that is, (i) 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, (ii) the accused having secured his acquittal, the presumption of his innocence is further reinforced,



reaffirmed and strengthened by the trial court. Lastly, 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. (See **Babu Sahebogouda Rudragoudar and others vs. State of Karnataka (2024) 8 SCC 149**, **Rajesh Prasad vs. State of Bihar (2022) 3 SCC 471**, **Chandrappa vs. State of Karnataka, (2007) 4 SCC 415**).

17. As observed by the Apex court in **Ram Kumar vs. State of Haryana, 1995 Supp (1) SCC 248**, the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate



court in reversing a finding of fact arrived at by a judge who had the advantage of seeing the witness. If the main grounds on which the trial court has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.

18. The respondent/accused is alleged to have committed the offences punishable under Sections 279 and 304A IPC. The offence under Section 279 IPC is made out when a person drives or rides any vehicle 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 person. The offence under Section 304A IPC is attracted when death of any person is caused by doing any rash or negligent act not amounting to culpable homicide. To bring a case of homicide under Section 304A IPC, the following conditions must exist, namely, (i) there must be death of the person in question; (ii) the accused must have caused such death; and (iii)



that such act of the accused was rash or negligent and that it does not amount to culpable homicide. The section deals with homicidal death by rash or negligent act.

18.1. As held in **Naresh Giri vs. State of Madhya Pradesh (2008) 1 SCC 791**, Section 304A IPC 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 IPC. Section 304A IPC applies only to such acts which are rash and negligent and are directly the cause of the death of another person. Negligence and rashness are essential elements under Section 304A IPC.

18.2. The criminality as far as rash acts are concerned, lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence occurs when there is gross and culpable neglect or failure to exercise the required care and precaution to guard against injury, either to the



public generally or to an individual in particular, which, having regard to all the circumstances, was the imperative duty of the accused person to have adopted. In other words, negligence is the omission to do something which a reasonable man, guided upon the considerations which ordinarily regulate the conduct of human affairs, would do, or, the doing of something which a prudent and reasonable man would not do.

19. Coming to the case on hand, the presence of the accused at the time of the incident, the fact that he was driving the offending vehicle, and the death of the deceased arising out of the incident are not seen disputed. The only question that remains for consideration by this Court is whether the incident resulting in the death of the deceased was caused by the rash and negligent act of the accused. To establish the aforesaid ingredient, the prosecution has placed reliance solely upon the testimony of PW5, who was riding the bicycle on which the deceased was travelling as a pillion rider. However, his testimony does not establish that the accused



was driving the vehicle in a rash or negligent manner. He only deposed that the accused was driving the vehicle in great speed as well as rashly and negligently. Mere occurrence of a road traffic incident, which results in a fatality, cannot *ipso facto* lead to an inference of rashness or negligence on the part of the driver. According to PW5, when the tempo hit his bicycle, he was also thrown on to the road and he fell at a distance. But he is not seen to have sustained any injuries. This appears highly unlikely, because if a person is thrown on to the road, in all probability there would be some abrasion or contusion. PW5 is also not seen examined by a doctor. The testimony of PW5 is silent as to the manner in which the accused was rash and negligent. PW5 only deposed that the accused was driving his vehicle at a very high speed. Vehicles are intended to be driven in speed. Merely because the vehicle was driven at high speed would not mean that the driver was rash or negligent by itself. '*High speed*' or '*over speed*' are relative terms. It is 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 offences alleged against an accused always rests on the prosecution and there is a presumption of innocence in favour of accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. In the absence of any material on record, no presumption of 'rashness' or 'negligence' can be drawn by invoking the maxim "*res ipsa loquitur*".

20. Further, a perusal of Ext. PW4/A, the mechanical inspection report, read with the testimony of PW4 establishes that the offending vehicle had sustained damage in the form of a slight dent on its left side corner. However, as per the version of PW5, the offending vehicle had come from the opposite side and had hit the bicycle. According to PW5, he was riding through on the left side of the road. If the incident had occurred in the manner deposed by PW5, the impact would ordinarily have resulted in



damage to the right side of the offending vehicle. Contrary to the same, the mechanical inspection reveals damage to its left side. This material inconsistency between the version of PW5 and report of the inspection of the vehicle further renders his version doubtful and weakens the prosecution case regarding the alleged rash and negligent driving on the part of the accused. It is no doubt true that a witness cannot be expected to narrate every minute detail with mathematical precision. Nevertheless, in a case alleging offences punishable under Sections 279 and 304A IPC, the prosecution is required to establish not merely the occurrence of the incident but that the incident was the direct consequence of the rashness or negligence of the accused driving the vehicle. In the present case, the testimony of PW5 does not provide any material from which it can be reasonably inferred that the accused was driving the offending tempo in a rash or negligent manner.

21. Coming to Ext. PW10/B site plan, the same appears to have been prepared in a rather mechanical manner and does not



contain any meaningful description of the scene of occurrence. A perusal of Ext. PW10/B reveals that it is merely a rough sketch depicting the place of occurrence, along with a note given at the foot of the site plan, recorded in Hindi, which translated, reads as follows: *“1. The spot map (site plan) has been prepared without a scale. 2. In the spot map, mark ‘A’ is the place where the accident is stated/reported to have occurred.”*

22. The site plan does not indicate even the width of the road at the place of occurrence. Therefore, there is no material on record to find out whether the accused had in fact strayed into the wrong side of the road. Further, the site plan has also not been proved. PW5 in his cross examination admitted the site plan had not been prepared in his presence. If so, who identified the place of occurrence to PW10, the I.O? PW10 apparently was not an eye witness. In such circumstances, how did he prepare the site plan? No answer is forthcoming from the prosecution.



23. The material(s) on record do not furnish sufficient basis to infer the requisite rashness or negligence on the part of the accused. In such circumstances, I find that the trial court was justified in acquitting the accused. I find no infirmity in the impugned judgment calling for an interference by this Court.

24. In the result, the appeal *sans* merit is dismissed.

25. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

SEPTEMBER 01, 2026
rs/p'ma