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

Reserved on: 09th December, 2025
Date of Decision: 12th December, 2025

\+ CRL.A. 721/2003

STATE .....Appellant

Through: Mr. Mukesh Kumar, APP for State with Mr. Sunil Singh Rawat, Ms. Meenakshi Rawat, Mr. Arsalan Naik, Mr. Siddharth Goyal and Ms. Swati Pandit, Advocates.

versus

GARIBULLAH .....Respondent

Through: Mr. Sazid S.R. Shah, Advocate (through VC).

CORAM:
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

1. The present appeal has been preferred by the state against the judgment dated 5th February, 2000 (hereinafter referred to as the *"impugned judgment"*) passed by the trial court in FIR bearing no. 195/96 registered at P.S. Shakarpur, whereby the respondent has been acquitted under Sections 279/304A of the Indian Penal Code, 1860 (hereinafter referred to as the *"IPC"*).

2. The prosecution case, in brief, is that on 29th May 1996, at 4:00 p.m. near Hathi Shala, J.J. Camp, Vikas Marg, Laxmi Nagar, Delhi, the respondent was driving CRPF Bus no. DBP 7919 in a rash and negligent manner so as to endanger human life or personal safety of others and has hit

against a cyclist Chander Prakash, who died at the spot.

The FIR was registered on the statement of the eyewitness Sh. Ram Phar Rai. During investigation the bus and the bicycle of the deceased was seized. The post mortem of the deceased was done. After investigation, the chargesheet was filed under Sections 279/304A of the IPC.

3. Notice under Sections 279/304A of the IPC was given to the respondent to which the respondent pleaded not guilty. The prosecution in order to prove its case, examined 06 witnesses. The statement of the respondent has been recorded under Section 313 Code of Criminal Procedure, 1973 in which he denied the case of the prosecution.

4. I have heard the learned APP for the State and the learned counsel for the respondent and have examined the record.

5. PW1 Sh. Ram Phar Rai, is the eyewitness of the accident and has deposed that on 25th May 1996, he alongwith Sh. Chander Prakash (deceased) was coming from Delhi Gate Exchange on their bicycles at about 4:00 p.m. When they reached near Hathi Shala at Vikas Marg, the deceased was going ahead of him. In the meanwhile, one CRPF Bus no. DBP 7919 came from ITO side at very high speed and driven in a rash and negligent manner and hit from behind against the bicycle of deceased. He fell down the bus crushed him on the road and the bus stopped after 10 feet. The accident was caused due to the negligent driving of the respondent. Police had recorded his statement which is Ex PW1/A

PW2 Dr. Rajesh Gupta, has proved the post-mortem report of the deceased as Ex PW2/A.

PW3 S.I. Kedar Nath, conducted the mechanical inspection of the CRPF Bus no. DBP 7919 and proved his report as Ex PW3/A.

PW6 S.I. Kartar Singh is the investigating officer of the case and has proved the site plan of the spot of incident as Ex PW6/B and seizure memo of the bus and the bicycle as Ex PW5/A and Ex PW5/B respectively.

6. Learned APP for the State has argued that the trial court has passed the impugned judgment on the basis of surmises and conjectures which is against the evidence on record. From the evidence on record, it is proved beyond reasonable doubt that the respondent was driving the bus at a very high speed which is a negligent act and thereby hitting the bicycle of the deceased and causing his death. It is prayed that impugned judgment be set aside and the respondent be convicted under Sections 279/304A of the IPC.

Per contra, learned counsel for the respondent has argued that the trial court has passed the impugned judgment after properly analysing the evidence on record as the "high speed" by itself does not establish rash or negligent driving. There is no infirmity in the impugned judgment. The appeal is liable to be dismissed as it is without any merits.

7. Before adverting to the facts of the case, it would be apposite to refer to the relevant statutory provisions, that are Sections 279/304 A of the IPC, which provide as follows: -

> *"**279 - Rash driving or riding on a public way:** Whoever drives any vehicle, or rides, 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 other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."*
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> *"**304 A - Causing death by negligence:** Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with*

imprisonment of either description for a term which may extend to two years, or with fine, or with both."

8. In motor accidents, it is not a rule that negligence of the driver would be presumed. The principle of *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.

In this respect, it is relevant herein to mention the observations of the Hon'ble Supreme Court in ***Mohd. Aynuddin v. State of A.P. (2000) 7 SCC* 72**, which are reproduced as follows: -

"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. As per the case of the prosecution, PW1 is the only eyewitness to the accident. Perusal of the testimony of PW1 shows that apart from his bare statement that the bus was being driven at a very high speed, no evidence has been come on record to establish that there was any rash or negligent act on the part of the respondent. No evidence has been led on behalf of the prosecution to show the speed limit of the road where the accident had occurred and the approximation of what was the speed at which the bus was driven.

On the point of convicting a person merely on the allegation that he was driving the vehicle at a high speed, the Hon'ble Supreme Court in the case of ***State of Karnataka v. Satish, (1998) 8 SCC 493***, has held as under: -

> *"4. Merely because the truck was being driven at a "high speed" 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". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved..."*

Similarly, a Co-ordinate bench of this Court in the case of ***Ram***

Chander v. State, 2017 SCC OnLine Del 11763, held as under: -

> *"15. A reading of aforesaid Section shows that to constitute an offence under Section 279 IPC. It must be shown that the person was driving the vehicle in a rash or negligent manner. Criminal negligence or criminal rashness is an important element of the offence under Section 279 IPC. Mere fact that the accused was driving the vehicle at high speed may not attract the provisions of Section 279 IPC and the prosecution is required to bring on record such negligence and rashness. High speed by itself may not in each case be sufficient to hold that a driver is rash or negligent. Speed alone is not the criterion for deciding rashness or negligence on the part of the driver."*

10. To prove the offence under Sections 279/304A of the IPC, the prosecution has to prove that the respondent drove the vehicle in a rash or negligent manner so as to endanger human life. As discussed above, merely because accident has taken place is not sufficient to convict the respondent. There is no credible, cogent evidence on record to prove that the respondent was driving the bus in a rash or negligent manner. Clearly, therefore the respondent is not liable to be convicted under section 279/304A of the IPC.

11. In view of the above, this court finds no reason to interfere with the findings of acquittal recorded by the trial court. Therefore, the present appeal filed by the State is accordingly dismissed. All pending application(s), if any, also stand disposed of.

RAJNEESH KUMAR GUPTA
JUDGE

DECEMBER 12, 2025/*sds/isk*