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

% ***Judgment reserved on: 29.04.2026***
Judgment pronounced on: 04.05.2026

\+ **CRL.A. 35/2018**

STATE .....Appellant

Through: Mr. Utkarsh, APP for the State with PSI Manjeet Dhaka, PS Seelampur.

versus

GANGA SHARAN .....Respondent

Through: Mr. Archit Upadhayay, Advocate (DHCLSC) with 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 respondent/State in Sessions Case No. 556 of 2009 on the file of the Metropolitan Magistrate, North East District, Karkardooma Court, Delhi, assails

the judgment dated 05.10.2013 as per which the sole accused has been acquitted of the offences punishable under Sections 279 and 304A of the Indian Penal Code, 1860 (IPC).

2. The prosecution case is that on 04.12.1995 at 09:00 PM at G.T Road, Opposite Gurudwara New Seelampur, the accused drove truck bearing registration no. UP-15D-9150 in a rash and negligent manner so as to endanger human life and personal safety and knocked down one Pawan Kumar Jaiswal who was riding a two-wheeler. When the rider fell on the road, the accused is alleged to have caused his death by running the truck over his head. Hence, as per the charge-sheet/final report, the accused was alleged to have committed the offences punishable under Sections 279, 304A IPC and Section 134 of the Motor Vehicles Act, 1988 (the MV Act).

3. On the basis of Ext. PW3/A FIS/FIR of PW3, given on 04.12.1998, crime no. 709/1999, Seelampur Police Station, was

registered for commission of offences punishable under Sections 299 and 304A IPC by Kamal Kishore, Sub-Inspector (SI). The said SI, conducted investigation into the crime and on completion of the same, filed the charge-sheet/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. The particulars of the offences punishable under Sections 279 and 304A IPC as contemplated under Section 251 Cr.P.C., was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 6 were examined and Exts. PW2/A-D, PW3/A-E, PW4/A-C, PW6/A-B, and Mark X 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.

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 judgement dated 05.10.2015, acquitted the accused under Section 255(1) Cr.P.C. of the offences punishable under Sections 279 and 304A IPC. Aggrieved, the respondent/State has come up in appeal.

9. It was submitted by the learned Additional Public Prosecutor that the impugned judgment is contrary to the facts and circumstances of the case. The incident took place in a crowded

area, which clearly indicates that the accused was under a duty to exercise a high degree of caution while driving. However, the materials on record show that the vehicle was being driven in a rash and negligent manner. It is further submitted that even after realising that the truck had hit the scooter, the accused failed to stop the vehicle, which led to the victim being run over by the truck. Therefore, he submitted that the impugned judgment of acquittal be set aside, and the accused be convicted in accordance with the law.

10. It was submitted by the learned counsel for the respondent/accused that there is no infirmity in the impugned judgment calling for an interference by this Court.

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 judgment 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. Ext. 3/A, the FIS/FIR of PW3 reads thus "…*Today, I was standing at the Seelampur Bus Stand opposite Gurudwara waiting for a bus. At around 9:00 PM, a truck (dumper) bearing registration no. UP-15 D-9150 came from the direction of Shastri Park, being driven by its driver in a very negligent and high-speed manner. On G.T. Road, opposite the Gurudwara, the truck hit a scooter bearing registration number DEB-2618. The scooter rider fell down along with his scooter. The truck driver then ran the front left wheel of the truck over the scooter rider's chest. The scooter rider died on the spot. The truck driver stopped the truck near the bus stand, got out, and fled the scene. When I looked at the deceased, I realised he was my cousin (maternal aunt's son), Pawan Kumar son oflate Shri Ramphal, a resident of Maujpur. Someone called the PCR. I*

can identify the truck driver if brought before me. Legal action be taken against the truck driver…"

14. PW3, when examined, deposed that the incident took place on 04.12.1999. On the said day, he was returning home from his office in a bus. He deboarded the bus at the Seelampur bus stand to change the bus for going to Yamuna Vihar. While he was waiting for the bus at the Seelampur bus stop, a truck bearing registration number UP-9150 came at a very high speed. He was unable to recall the registration number of the vehicle. A scooter bearing registration number 2618, driven by his brother Pawan Kumar, was moving ahead of the truck. The left side of the truck hit the scooter, as a result of which his brother fell onto the road and was crushed under the back tyre of the said truck. The truck driver fled from the spot. Someone from the public called the police. The police arrived at the spot, and the injured was taken to

the hospital. His brother thereafter succumbed to the injuries sustained.

14.1. During the examination-in-chief of PW3, the prosecutor is seen to have requested permission of the trial court to "cross-examine" him. The permission is seen to have been granted by the trial court. On further examination by the prosecutor, PW3 deposed that the accused was driving the truck roughly and at high speed. On being asked by the Court as to what he meant by "rough manner," PW3answeredthat the truck was being driven at a very high speed. According to PW3, the registration number of the truck driven by the accused is UP-15D-9150.

14.2. PW3 in his cross-examination deposed that the deceased was wearing a helmet that broke in the accident. The police officials informed him that his brother had expired on the spot and therefore, he did not accompany his brother to the hospital. The accident had taken place at about 10:30 PM. He had

seen the truck from a distance of about 15 to 20 meters. There was no fog on the date of the incident. He denied the suggestion that construction of a flyover was underway at the scene of the accident. PW3 admitted that several *jhuggies*, tea shops, and an auto stand were there near the scene of the accident. PW3 denied the suggestion that he was not present at the spot of the accident and had merely visited the police station, and that, on the instructions of the police officials, has falsely implicated the accused.

15. PW2, the registered owner of truck no. UP15D-8150, deposed that Ext. PW2/A notice under Section 133 of the Motor Vehicles Act, 1988 (the MV Act)was served on him by the police, to which he replied that it was the accused who was driving the truck at the relevant time.

16. Section 279 IPC deals with the offence of rash driving or riding on a public way. It says that whoever 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, commits the offence under this Section.

17. 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. In **Naresh Giri v. State of Madhya Pradesh (2008) 1 SCC 791**, it has been held that 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.

19. 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.

20. Coming to the facts of the case on hand, PW3, the eyewitness, deposed that the accused was driving the truck in a rough manner. On being asked the meaning of rough manner, PW3 answered that the truck was being driven at a very high speed. As held in **State of Karnataka v. Satish (1998) 8 SCC 493**, there can be no doubt that vehicles are intended to be driven in speed. Merely because the vehicle is being driven at a high speed does not show that the driver was rash or negligent by itself. “High speed” or “over speed” as it is often referred to, is a relative term. It is for the prosecution to bring on record materials 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

favour of the 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" could be drawn against the accused by invoking the maxim "*res ipsa loquitur*".

21. The learned Additional Public Prosecutor submitted that both the vehicles were proceeding in the same direction from west to east, and the truck while trying to overtake the scooter driven by the deceased, knocked down the scooter as a result of which the deceased fell down and the back tyre of the truck ran over his head causing instant death. There is absolutely no materials on record such as the width of the road or whether the road at the time of the incident was crowded or not. Ext. Mark X site plan refers to point 'A' as to the place where the incident took place. However, the site plan is silent regarding the width of the road, the position of the vehicles at the time of the incident,

whether the accused was on the wrong side, what was the amount of traffic at the relevant time. Therefore, evidence is lacking to prove rashness or negligence as contemplated under Sections 279 and 304A IPC.

22. Further, the prosecution relies on the reply, that is, Ext. PW2/A given by PW2 in reply to the notice given by the police under Section 133 of the MV Act. This is apparently a statement given in writing by PW2, a witness, during the course of investigation to the police and hence a statement under Section 161 Cr.P.C and so the bar under the proviso to Section 162 Cr.P.C. is applicable. It is true that PW3 has identified the accused as the driver of the offending vehicle. But as stated earlier, even accepting the prosecution case of the accused having driven the truck, the materials on record are not sufficient to bring home his guilt for the offences charged against him.

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

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

CHANDRASEKHARAN SUDHA
(JUDGE)

MAY 04, 2026
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