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

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\+ **CRL.A. 896/2018**

STATE (NCT OF DELHI) .....Appellant
Through: Ms. Shubhi Gupta, APP for State with SI Jeetendra Kumar, PS Jahangir Puri

versus

NARAIN .....Respondent
Through: Mr. Harsh Prabhakar (DHCLSC), Mr. Dhruv Chaudhary, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred by the appellant/State under Section 378 Cr.P.C., seeking setting aside of the impugned judgment dated 26.03.2015 passed by the learned MM-03, North District, Rohini Courts, Delhi, in proceedings arising out of FIR No. 78/2002 registered under Sections 279/304A IPC at P.S. Jahangir Puri, whereby the respondent was acquitted of all charges. Notably, the leave to appeal was granted vide order dated 27.08.2018.

2. The case of the prosecution, briefly stated, is that on 10.02.2002 at about 02:15 p.m., the respondent herein was driving a bus bearing registration no. DL-1P-8452 at Jahangir Puri main road near D-Block BJRM

Hospital without a valid driving license, in a rash and negligent manner. While doing so, he caused the death of one *Shankar*, not amounting to culpable homicide, and thus committed the offences punishable under Sections 279/304A IPC read with Sections 3/181 Motor Vehicles Act. Charges under the aforesaid Sections were framed against the respondent, to which he pleaded not guilty and claimed trial.

3. The prosecution examined 12 witnesses in support of its case. PW-1/*Naresh Kumar* and PW-3/*Dinesh* were cited as eyewitnesses; however, both did not support the prosecution case and were declared hostile. PW-2 and PW-5 are the father and mother of the deceased respectively and deposed as to identification of the body of the deceased. They were accompanied to the hospital by PW-4. PW-6/SI *Dharampal* was the duty officer at the relevant time who received the *rukka* and registered the concerned FIR. PW-7 is the *Superdar* of the offending bus who also exhibited seven photographs along with their negatives as EXP. P-1. SI *Gian Chand*, the I.O. of the case, was examined as PW-8. PW-11/Ct. *Kishan Ram* assisted the I.O. with the investigation in the present case. PW-9 conducted the mechanical inspection of both the buses in question (reports are Ex. PW-9/A and Ex. PW-9/B). PW-10 is a formal witness who deposed as to the surrender/arrest of the respondent. Dr. *Dhananjay Kumar*/PW-12 conducted the postmortem of the dead body of the deceased *Shankar*, proved his detailed PM report as Ex. PW-12/A, and identified hemorrhage and shock consequent to multiple injuries as the cause of death.

4. The respondent's statement under Section 313 Cr.P.C. was recorded, wherein he controverted and denied all the allegations levelled against him.

He claimed that he was innocent and had been falsely implicated. He did not examine any witnesses in his defence.

5. 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.

6. 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.

7. 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.[1], wherein it was held as under:-

[1] (2000) 7 SCC 72

> *"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.*
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> *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.*
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> *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."*

8. The nature and scope of Section 304A IPC was discussed in Naresh Giri v. State of M.P.[2], 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*

[2] (2008) 1 SCC 791

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."

9. 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 279/304A IPC and Sections 3/181 MV Act. It was noted that though there were two eyewitnesses to the incident, *Naresh Kumar* and *Dinesh*, examined as PW-1 and PW-3 respectively, both of them had turned hostile. PW-1 had deposed that the respondent was driving a bus which was involved in the incident and that someone had sustained injuries; however, there is not even a whisper in his testimony that the respondent was driving the bus in a rash and negligent manner. The other supposed eyewitness, PW-3, was also of no help to the prosecution as he deposed that the accident had already taken place when he reached the spot. He deposed that he was working as helper in a factory at *Titarpur*, Delhi, at the time of the incident. He denied witnessing the incident or the bus involved being driven in a rash and negligent manner and hitting the deceased. No other eyewitnesses were examined. The respondent was not arrested from the spot.

10. It is trite law that an appellate Court must be slow to interfere in an appeal against acquittal unless the findings of the Trial Court are shown to

be perverse. The principle of double presumption of innocence, which operates in favour of an accused after acquittal, is well settled[3].

11. After having carefully examined the record, this Court is of the considered view that the prosecution cannot be said to have established the guilt of the respondent in the present case beyond reasonable doubt.

12. In view of the foregoing discussion, this Court finds that the view taken by the Trial Court is well-founded and does not warrant interference. The present appeal is accordingly dismissed.

13. The personal bond furnished by the respondent stands cancelled and his surety is discharged.

14. A copy of this judgment be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 11, 2025
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[3] Ravi Sharma Vs. State (NCT of Delhi), (2022) 8 SCC 536; and Anwar Ali v. State of H.P., (2020) 10 SCC 166