



2025:DHC:1137



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

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Date of decision: 31st January, 2025

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CRL.L.P. 195/2021

STATE

.....Petitioner

Through: Ms. Menakshi Dahiya, APP for the
State with SI Sachin Panwar,
P.S.Fatehpuri and SI Rajender
Kumar, P.S.North Avenue.

versus

SUDHIR PHAGAAT

S/O SH.RAMESHWAR SINGH PHAGAAT,
R/O H.NO. 421/3, CHATTARPUR EXTENSION,
MEHRAULI, NEW DELHI

.....Respondent

Through: None.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Leave to Appeal is sought against Judgement dated 22.09.2020 acquitting the respondent of the offences under Section 279/337/338 of the *Indian Penal Code, 1860* ('IPC' hereinafter) arising out of FIR No. 50/2015 P.S. Fatehpur Beri.

2. The grounds on which the impugned acquittal of the Respondent has been challenged which are essentially that the evidence of the prosecution witnesses have not been considered in the right perspective and it has been erroneously concluded that no case under Section 279/337/338 IPC, was made out.



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3. **Submissions Heard.**

4. For the reasons stated in the Application, the Leave to Appeal is hereby allowed.

Crl. Appeal No...../2025 (to be numbered by the Registry)

5. Appeal under Section 378(3) of the *Code of Criminal Procedure, 1973* ('Cr.P.C' hereinafter) has been filed against the judgment dated 22.09.2020 *vide* which the Respondent-Sudhir Phagaat has been acquitted for the offences under Sections 279/337/338 IPC in FIR No.50/2015, P.S. Fatehpur Beri.

6. Briefly stated, the Respondent was alleged to have been driving his vehicle bearing No. DL-3CBV-8433 in a rash and negligent manner on the wrong side of the road and struck against an Accord Car bearing No. DL-2CM-5193 resulting in simple injury to Tushar Arora, driver of Honda Accord vehicle and grievous injury to Vipin Dagar, co-passenger travelling with the Respondent Sudhir Phagaat, in his Swift Dzire car.

7. FIR No.50/2015 was registered against the Respondent. After investigation the chargesheet got filed on 29.10.2015. *Charges under Sections 279/337/338 IPC* was framed to which the Respondent pleaded not guilty. The prosecution examined 10 Prosecution witnesses in all which included two eye witnesses. PW.2, Sh. Tushar Arora categorically deposed about the manner of accident and narrated that the Respondent was driving his vehicle on the wrong side of the road and caused the accident. PW-3, Sh. Vipin Dagar



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identified the Respondent correctly as being the driver of the offending vehicle.

8. The *grounds of challenge to the acquittal* of the Respondent are that the observations made by the learned M.M are not commensurate to the evidence led by the prosecution. The judgment is based on presumptions, surmises and conjectures and do not stand the scrutiny of law. The testimony of PW-2 has not been appreciated correctly. He had fully supported the case of the prosecution about the vehicle being driven in a rash and negligent manner by the Respondent at a speed and causing the accident by hitting into the Accord car.

9. The testimony of PW-2, eye witness was fully corroborated by his medical record which also has not been considered. The testimony of PW-2 & 3 was fully corroborated by other prosecution witnesses, despite which the benefit has been given to the Respondent who has been acquitted.

10. It is contended that Section 279 IPC uses the phrase "*in a manner so rash or negligent so as to endanger human life*" which implies that the act of the accused can be rash or negligent and both are not required to be present simultaneously. The testimony of PW-3 Vipin Dagar clearly establishes that the vehicle was being driven at a high speed despite him having told the driver Respondent to drive it slowly. He also admitted that the road was slippery due to the rain. He denied the suggestion that the vehicle was being driven at a normal speed. It is clear from the testimony of PW-3 that due to rain the roads



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were not in a condition to drive in the manner in which the Respondent was driving, who despite being conscious of the precarious condition of the road still neglected his duty to drive with reasonable care and utmost diligence. Furthermore, he had been warned by PW-3 to slow down the speed considering the condition of the road to which he did not pay any heed, meaning thereby that he took a deliberate, conscious, unjustified risk which he could have easily foreseen and should have avoided taking such risk to endanger human life.

11. Furthermore, the Respondent has failed to examine himself to corroborate his defence or to examine any defence witness. Even in the cross-examination of the prosecution witnesses, no defence has been suggested to them. PW-6, Ashwani Kumar has unequivocally deposed that *"I found that car number DL 3CBV 8433 was standing on the wrong side of the road"* which corroborates the testimony of PW-3 that the Respondent was driving the vehicle on the wrong side of the road.

12. The learned Trial Court while acquitting the Respondent observed that *"the vehicle of the accused was found on the wrong side of the road remains unsubstantiated due to absence of any site plan"* is totally arbitrary and unjustified in the light of the testimony of the prosecution witnesses. In fact, the site plan was duly prepared and exhibited as PW-6/B.



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13. Therefore, the learned Trial Court has grossly erred in concluding that no negligence has been proved by the Respondent. In the present case, high speed was not the sole criterion to establish rashness and negligence, but also the precarious conditions of the road contributed to the negligence of the Respondent who failed to pay any heed to the advice of PW-3.

14. The Supreme Court in the case of Ravi Kapoor vs. State of Rajasthan, AIR 2012 SC 284 had observed that while driving a vehicle on a public way, there is implicit duty case on the drivers to see that their driving does not endanger the life of right users of the road whether vehicular or pedestrians. They are expected to take sufficient care to avoid danger to others.

15. The doctrine of *res ipsa loquitor* should have been applied by the learned Trial Court as has been held by the Apex Court in the case of Thakur Singh vs. State of Punjab, 2003(9) SCC 208 and Ravi Kapoor (Supra). This doctrine serves two purposes: *firstly*, that an accident may by its nature be more consistent with it being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is *prima facie* evidence of the negligence; *secondly*, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred.

16. It is thus, submitted that the aforesaid judgment of acquittal is contrary to the testimony of the prosecution witnesses and the



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documents. Therefore, a prayer is made that the judgment dated 22.09.2020 be set aside and appropriate Orders be accordingly made.

17. The ***Respondent in his Reply*** has taken a *preliminary objection* that the Appeal is liable to be dismissed as it is barred by limitation. In terms of Section 378(5) Cr.P.C., the leave to Appeal could be filed in 60 days from the date of acquittal. The Appeal has been filed on 06.12.2021 i.e. after more than one year and is, therefore, barred by limitation.

18. It is further submitted that the Order of acquittal has been passed after due appreciation of evidence in accordance with law and does not call for any interference. It is contended that the present Appeal is an abuse of process of law and is liable to be dismissed with costs.

19. *On merits*, all the averments are denied. It is submitted that the learned M.M has rightly appreciated the evidence in the light of the law laid down by the Apex Court and there is no merit in the present Appeal which is liable to be dismissed.

20. **Submissions heard and record perused.**

21. The Notice under Section 251 Cr.P.C had been given to the Respondent under Section 279/337/338 IPC.

22. The first material witness examined by the prosecution was PW-2, Sh. Tushar Arora who was a driver of the Honda car and had suffered injuries in the accident. He deposed that on 25.01.2015 at about 11.40-11.50 PM he was returning home from his job in his



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Honda car which he was driving in its own lane. The offending vehicle which was being driven at a high speed by its driver, who was drunk. He left his lane and came to his side and hit the car from the right side. He made a call at number 100 and PCR van came to the spot and took him to Fortis Hospital.

23. In his cross-examination he deposed that the offending car started turning towards his vehicle at a distance of 80-100 meters. He was not having enough time to react as the speed of the car of the Respondent was high. The *site plan* was prepared in his presence and photographs were also taken of the scene of crime after about 10 minutes of the accident. His statement was recorded by the police in the Police Station.

24. The testimony of PW-2 is fully corroborated by PW-3, Vipin Dagar, the co-passenger in the car driven by the Respondent. He deposed that after attending a marriage, he was coming back with Respondent who was driving the Swive Dzire car. There was heavy rain because of which the vehicle lost its balance at the curve of Jona Pur and the vehicle went towards the wrong side and hit the Honda car. He became semi conscious and was taken to Fortis Hospital. He identified the photographs of the offending vehicle which were exhibited as P-1 collectively.

25. In his cross-examination he deposed that he had cautioned the driver/Respondent to drive the car slow as he was driving it at a high speed. He clarified that there was no traffic on the road at the time of



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the accident, but admitted that the road was slippery due to rains.

26. The testimony of both PW-2 & 3 can be best appreciated in the light of the Site plan Exh.PW-6/B wherein it is depicted that the Honda Accord car was being driven on its own side while the offending vehicle left its side and came towards the lane of the Honda Car and hit it from the right side. The circumstances clearly depict that the car of the Respondent came on the wrong side to hit the car of the injured, which is also not denied by the Respondent.

27. However, the question which is most material for adjudication is *whether it was a case of accident or was there any rashness or negligence attributable to the Respondent.*

28. The *first aspect* which emerges is that PW-3, Sh.Vipin Dagar has claimed that the vehicle was being driven at a high speed, but merely so claiming is not sufficient to establish the rashness or the negligence on the part of the driver. High speed is a relative term and depends upon the road on which the vehicle is being driven, to establish if it is being driven at a high speed or at a normal speed.

29. *Secondly*, while claiming that the vehicle was being driven at a high speed, the speed of the vehicle has not been specified anywhere. The speed being a relative factor cannot in the light of the vague assertions of PW-3, be held as the sole factor to hold that Respondent was rash or negligent in driving the vehicle.

30. In the case of *Paras Nath vs. State of Delhi*, 2004 Cri.L.J.731 a Coordinate Bench of this Court had held that merely because the



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witnesses did not use the word ‘rashness or negligence’ in his testimony but instead used the word high speed, cannot be taken that the vehicle was not being driven in a rash or negligent manner. What is important is to find if the driver of the offending vehicle had driven the vehicle in a rash and negligent manner so as to endanger human life.

31. Therefore, mere deposition that vehicle was being driven at a high speed, per se without anything further, is not sufficient to conclude that offending vehicle was being driven in a rash and negligent manner.

32. The *next pertinent fact* which merits consideration is that admittedly the road was slippery on account of heavy rain as admitted by PW-3. Sh. Vipin Dagar in his cross-examination. This is significant in the light of the admissions of PW-2 Tushar Arora, driver of the Honda Car in his cross examination that the offending car started turning towards his vehicle at a distance of 80-100 meters. He was not having enough time to react as the speed of the car of the Respondent was high. This also establishes that it was a case of pure accident and both the car drivers, because of the slippery road were unable to apply brakes in time to avoid collision. It is a case of pure accident, without there being any rashness or negligence on the part of the respondent.



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33. The Ld. MM has rightly concluded that rashness and negligence could not be proved by the prosecution beyond reasonable doubt, and acquitted the respondent.

34. Therefore, in light of the totality of circumstances, it is held that there is no infirmity in the Order of Acquittal passed by the learned M.M.

35. There is no merit in the Appeal which is hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 31, 2025/rk