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

Date of decision: 10.02.2025

\+ **CRL.L.P. 240/2022 & CRL.M.A. 10294/2022**

STATE .....Petitioner

Through: Mr. Aashneet Singh, APP
SI Santosh, PS Mukherjee Nagar
ASI Umesh Kumar, PS S.P. Badli

versus

DILIP KUMAR KHANNA .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

CRL.L.P. 240/2022

1. This is a petition seeking leave to appeal against the judgment dated 13.11.2019 passed by learned ACMM, (North), Rohini Courts, Delhi, in C.C. No. 5281159/2016 arising out of F.I.R. No. 377/2009 dated 14.11.2009 registered at P.S. Mukherjee Nagar, wherein the respondent was acquitted for offences under Sections 279 and 304A of Indian Penal Code, 1860 ("*IPC*").
2. The brief facts of the case are that on 14.11.2009 at about 08.00 PM, the respondent was driving a motorcycle bearing registration no. DL-4S-AL-7777 and allegedly struck one bicycle as a consequence of which the cyclist (deceased) sustained fatal injuries.
3. The F.I.R. was registered on the complaint of the son of the deceased.

After the completion of the investigation, a charge sheet was filed against the respondent for alleged commission of offences punishable under Sections 279 and 304A of IPC to which the respondent pleaded not guilty and claimed trial.

4. The prosecution examined a total of 9 witnesses and the statement of the accused/respondent under Section 313 of CrPC was recorded, wherein he claimed himself to be innocent and having been falsely implicated in the case by a police official. The respondent also examined 1 witness in his defence.

5. The learned ACMM after considering the entire evidence, acquitted the respondent under Sections 279 and 304A of IPC.

6. Aggrieved by the impugned judgement, the State has filed the present appeal.

7. Mr. Singh, learned APP appearing on behalf of the petitioner challenges the impugned judgement and submits that in the present case, PW-4 and PW-10 are the eyewitnesses who have deposed that the respondent was driving his motorcycle in a rash and negligent manner being driven at the speed of 60 km/ph, which resulted in the death of the motorcycle rider (deceased). Thus, the prosecution has proved the case beyond reasonable doubt against the respondent.

8. Learned counsel for the respondent supports the impugned judgement and submits that the prosecution has not led any cogent evidence to prove its case against the respondent and the presence of the both the eye witnesses of the prosecution at the spot of occurrence is doubtful, in view of the fact that the both the eye witnesses have made several mutually contradictory statements about the manner in which the

offending vehicle was being driven at the time of occurrence of the alleged accident in the present matter.

9. I have heard learned counsel of the parties and perused the material on record.

10. The operative paragraph of the impugned judgment reads as under:

"21. In the light of afore-cited provisions of section 279/304A of IPC, it can be safely concluded that in order to hold any person guilty for the commission of offences punishable under section 279/304A IPC, firstly, it is imperative for prosecution to establish the identity of the offending vehicle and its driver beyond reasonable doubt. Secondly, prosecution is required to establish that the offending vehicle was being driven in a rash and negligent manner by the accused. Thirdly, prosecution is expected to prove that the act of the accused of driving his vehicle in a rash and negligent manner was the proximate and most immediate cause of the fatal injuries sustained by the victim of the accident in question. In other words, prosecution is expected to prove that the fatal injuries detected on the person of the victim had emanated from the act of the accused of driving his vehicle in a rash and negligent manner.

22. In the present case the two material witnesses of the prosecution, that is, PW-4 Ct. Sunil and PW-10, HC Gambhir Kumar have correctly identified the offending motorcycle as well as accused Dilip Kumar Khanna to be the person who was driving the said motorcycle at the time of occurrence of the accident in question. However, there are several material

contradictions, inconsistencies and other shortcomings in the depositions by these two eye witnesses which are enumerated herein below.

23. Firstly, it is pertinent to mention that PW-4 Ct. Sunil Kumar has not attributed any specific rash and negligent act upon the driver of the offending motorcycle and has made rather vague statements regarding the manner in which the offending vehicle was being driven at the time of collision with the bicycle of the victim. In this context PW-4 Ct. Sunil Kumar has merely stated in his examination in chief that a Hero Honda splender coming from the side of the Kingsway Camp in rash and negligent manner had hit against one cyclist coming from the side of Burari. Specific extract of his deposition is reproduced below in this context :-

> *"**While I was performing my duty at about 8 am I saw when motorcycle bearing registration no. DL 4S AL 7777 make as Hero Honda Splender came from the side of Kings way Camp in a rash and negligent manner and dashed into one cyclsit who coming from the side of Burari.**"*

Thus, from a persual of the above-cited extract of testimony of PW-4 Ct. Sunil Kumar, it is evident that he has merely made a vague statement to the effect that the offending vehicle was being driven in a rash and negligent manner at the time of occurrence of the accident in question and has not explained the exact rashness and negligence of the accused during the

course of his deposition recorded in the court.

24. Secondly, it is noteworthy that the other eye witness PW-10 HC Gambhir Kumar had also not attributed any specific act of rashness and negligence upon the driver of the offending vehicle. In fact, he had not stated anything about the manner in which the offending vehicle was being driven in his examination in chief and subsequently on being asked leading questions by learned APP for State, he had expressed his inability to tell anything about the act of rashness or negligence committed by the accused on the pretext that he was at some distance from the spot of occurrence. On being cross examined by learned APP for State he had admitted that the offending vehicle was being driven at a high speed and in a rash and negligent manner by the accused, however, he had once again failed to disclose any specific act of rashness or negligence committed by the accused while driving his vehicle on the pretext that he was at a distance from the spot. Specific extract of depositions is reproduced below in this context :-

> *"**I cannot tell about the exact manner of rashness or negligence on the part of accused as I was at some distance from the spot..... It is correct that the accused was driving the abovesaid motorcycle at a high speed and in a rash and negligent manner at the time of incident.....It is wrong to suggest that I am deliberately not stating the exact manner of***

rashness and negligence of the accused or wrongly taking the stand that 1 was at some distance from the place of incident due to which I cannot tell about the exact manner of rashness or negligence on the part of the accused.*"*

From a perusal of the above-cited extract of testimony of PW-10 HC Gambhir Kumar, it is evident that he had himself not stated anything about the manner in which the offending vehicle was being driven in his examination in chief. Subsequently, on being asked certain leading questions by the learned APP for State he had once again failed to attribute any specific act of rashness or negligence upon the accused and had rather pleaded ignorance about the manner in which the offending motorcycle was being driven by taking a plea that he was standing at a place about 15 feet far off from the spot of occurrence. Thereafter, in his cross examination by learned APP for State, PW10 had admitted the suggestion of learned APP for State to the effect that the offending motorcycle was being driven in rash and negligence manner and at a high speed. He had, however, neither disclosed the approximate speed of the offending vehicle nor disclosed anything about the condition of the road or density of traffic at the spot of occurrence at the relevant time.

25. Thus, PW-10 HC Gambhir Kumar had not imputed any rash and negligent act upon the driver of the offending motorcycle in the course of his deposition recorded in the court

whereas PW-4 Ct. Sunil had merely levelled a vague allegation of rash and negligent driving upon the accused. Although, PW-4 had stated at one place in his cross examination that the offending motorcycle was being driven at a speed of 60 KM per hours, however he had himself stated elsewhere in his cross examination that the picket at which they were performing their duty had blocked half the road on either side and as a consequence vehicles could not pass through the picket at a fast speed. Specific extract of deposition of PW-4 Sunil Kumar is reproduced below in this context -

> *"**Picket blocked the half road don either side. It is correct that on account of the picket vehicle cannot pass through the picket at the fast speed.**"*

In the light of my foregoing discussion it can be safely concluded that, none of the two eye witnesses examined by the prosecution had made any reliable incriminating statement against the accused. Although, PW-4 Ct. Sunil Kumar had disclosed the approximate speed of the offending motorcycle as 60 kmph. however. he has at the same time stated that the picket installed by the police near the spot of occurrence had blocked half of the road on either side as a consequence of which it was not possible for drivers passing through the barricades to drive their vehicles at a fast speed. Moreover, PW4 Ct. Sunil Kumar had not stated anything about the condition of the road and the density of traffic etc. at the spot of occurrence so as to enable this Court to arrive at a finding as

10 whether the act of the accused of driving his vehicle at a high speed was a rash and negligent act or not.

Thus, none of the two eye witnesses have attributed any specific act of rashness and negligence upon the accused and rather the two eyewitnesses have made bold assertions to the effect that the offending motorcycle was being driven in a rash and negligent manner and at a high speed without disclosing either the approximate speed of the offending vehicle or the attending circumstances such as the condition of the road on which the accident in question had occurred or the density of traffic on the said road so as to aid this court in arriving at a finding as to whether an act of high speed driving on the road in question could be classified as a rash and negligent act or not."

11. The learned ACMM in the impugned judgment noted the following inconsistencies in the testimonies of PW-4 and PW-10:

A. PW-4 made vague assertions about rash driving without detailing specific actions of the respondent. PW-10 did not mention any specific acts of rashness or negligence initially and later admitted to high speed of the motorcycle without specifics.

B. PW-4 stated that the motorcycle was traveling at approximately 60 km/h but also claimed that the police picket blocked half the road, suggesting that high speed was not possible. PW-10 did not provide an approximate speed and only acknowledged high speed during his cross-examination.

C. PW-10 claimed that he was at a distance from the spot, which limited his ability to observe the manner of driving, yet he still

stated the motorcycle was driven in a rash manner.

D. Further, neither witness provided clear information about the road conditions or traffic density at the time of the accident, which is crucial for assessing rashness and negligence.

12. On perusal, I am of the view that PW-10 has not stated anything regarding the manner of the incident i.e. how the offending vehicle was being driven in a rash and negligent manner. He could neither disclose the speed of the vehicle nor the condition of the road nor the density of the traffic at the time of the incident. He has only stated that the respondent was driving the offending motorcycle at high speed and in a rash and negligent manner.

13. Similarly, PW-4 has levelled vague allegations regarding rash and negligent driving of the offending vehicle by the respondent. He has also not stated anything regarding the condition of the road or the density of the traffic at the time of the incident.

14. Thus, the learned ACMM has correctly analysed that the eye witnesses have not attributed any specific act of rashness or negligence upon the respondent of the offending vehicle. The eyewitnesses have alleged that the offending motorcycle was being driven in a rash and negligent manner and at a high speed without disclosing either the approximate speed of the offending vehicle or the attending circumstances. Therefore, the Court is unable to arrive at a finding as to whether the alleged act of high speed driving on the road could be classified as a rash and negligent act or not.

15. Therefore, the learned ACMM has rightly granted the benefit of doubt to the respondent on the ground that the prosecution has not led any

clinching reliable evidence against the respondent in the present case.

16. For the said reasons, I am of the view that the impugned judgment dated 13.11.2019 passed by learned ACMM, (North), Rohini Courts, Delhi, in C.C. No. 5281159/2016, wherein the respondent was acquitted for offences under Sections 279 and 304A of IPC, is well reasoned and does not require any interference.

17. The leave to appeal is dismissed.

18. Consequently, the appeal has become infructuous and is disposed of.

JASMEET SINGH, J

FEBRUARY 10, 2025/sp

(Corrected and released on 18.02.2025)

Click here to check corrigendum, if any