

RAMESH BHARDWAJ VERSUS STATE OF HARYANA

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IN THE COURT OF DANISH GUPTA,
ADDITIONAL SESSIONS JUDGE, YAMUNA NAGAR AT JAGADHRI
(UID No. HR0256)

C.N.R. No. HRYN01-001105-2020.

C.I.S. No. CRA-63 of 2020.

Date of Institution: 17.02.2020.

Date of Decision: 23.07.2026

Ramesh Bhardwaj son of Nanku Bhardwaj, resident of Village Lakauli,
Police Station Dohri Ghaat, Tehsil Ghosi, District Mahu (U.P.).

....Appellant.

Versus

State of Haryana.

....Respondent.

FIR No: 294 dated 14.12.2014.

Under Sections 279, 304-A, 337, 338
and 427 I.P.C.

Police Station: Bilaspur.

Criminal Appeal against the judgment of conviction dated 28.01.2020 and order of quantum of sentence dated 30.01.2020 passed by the Court of Shri Harish Sabbarwal, the then learned Judicial Magistrate First Class, Sub-Division Bilaspur (Yamuna Nagar), in Criminal Case no. 299 of 2015, titled 'State v. Ramesh', vide which the appellant has been

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convicted and sentenced.

Present: None for the appellant.
 Shri Ashwani Batra, Learned Chief Legal Aid Defence
 Counsel for the appellant.
 Shri Kapil Dev, Learned Public Prosecutor for the
 State.

JUDGMENT

The present Criminal Appeal has been filed by the appellant (hereinafter to be referred as the accused) against the judgment of conviction dated 28.01.2020 and order of quantum of sentence dated 30.01.2020 passed by the Court of Shri Harish Sabbarwal, the then learned Judicial Magistrate First Class, Sub-Division Bilaspur (Yamuna Nagar), in Criminal Case no. 299 of 2015, titled '*State v. Ramesh*', vide which the appellant has been convicted and sentenced in the following manner:-

Sections	Imprisonment
279 I.P.C.	The accused shall undergo Rigorous Imprisonment for a period of six months.
304-A I.P.C.	The accused shall undergo Rigorous Imprisonment for a period of two years and pay a fine of ₹ 1,000/-. In default of payment of fine, to undergo Rigorous Imprisonment for a period of ten days.

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337 I.P.C.	The accused shall undergo Rigorous Imprisonment for a period of six months.
338 I.P.C.	The accused shall undergo Rigorous Imprisonment for a period of one year.
427 I.P.C.	The accused shall undergo Rigorous Imprisonment for a period of one year.

Fine paid.

Facts of the prosecution case

2. According to the prosecution's case, Amit (hereinafter to be referred as the complainant) suffered a statement before the police, alleging that on 14.12.2014 at about 01:00 a.m., Sanjeev, Hema, Anmol, Vijay, Parveen, Mannat and Naveen were returning from a religious congregation to Ambala by the car bearing registration no. HR-01R-3440. Naveen was driving the said car. The complainant was riding his motorcycle behind the aforesaid car. On the way, the Truck bearing registration no. HR-38Z-8596, which was being driven by its driver in a rash and negligent manner, hit the aforesaid car. Due to the collision, Naveen died at the spot and the others got injured. Later on, Mannat succumbed to her injuries. The driver of the Truck took advantage of the crowd and fled away from the spot.

3. On the basis of these allegations, the present F.I.R. was registered against the accused. After completion of the usual formalities of

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the investigation, the report under Section 173 Cr.P.C. was prepared and presented in the Court for the trial of the accused.

4. Copy of Challan and other relevant documents were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C.

5. A prima facie case under Sections 279, 304-A, 337, 338 and 427 I.P.C. was found to exist against the accused and he was charge-sheeted accordingly vide order dated 21.04.2015 to which he did not plead guilty and claimed trial.

6. In order to prove its case, the prosecution examined Vijay as PW1, the complainant as PW2, Dr. Manisha as PW3, Dr. Preet Inder as PW4, Dr. Rishu as PW5, Sanjeev as PW6, Hema as PW8, Surender as PW9, Joginder as PW10, Dr. Shama Parveen as PW11, Dr. Chabi Mehta as PW12, Dr. D.S. Gaba as PW13, Dr. Yogesh as PW14, A.S.I. Subhash Chand as PW15, H.C. Joginder as PW16, S.I. (Retired) Brahm Pal as PW17, Inspector Harvinder as PW18, A.S.I. Ram Kumar as PW19, S.I. (Retired) Sarvesh as PW20 and Dr. Vandana as PW21.

PW1 Vijay: He deposed that on 14.12.2014 at about 01:00 a.m., after attending a religious congregation, he along with others was returning to Ambala in a car, which was being driven by Naveen. On the way, the Truck bearing registration no. HR-38Z-8596, which was being driven by the accused in a rash and negligent manner, hit their car from the front. Due

to the collision, Naveen expired at the spot and others got injured. Mannat and Anmol also succumbed to their injuries.

PW2 The complainant: He deposed that on 13.12.2014, after attending a religious congregation, Naveen along with others was returning to Ambala in a car. He was driving his motorcycle behind the car. On the way, the Truck bearing registration no. HR-38Z-8596, which was being driven by the accused at a high speed, hit their car. Due to the collision, Naveen expired at the spot and others got injured. He proved statement Ex. PW2/A and identification memo Ex. PW2/B.

PW3 Dr. Manisha: She proved Rukkas Ex. PW3/A to Ex. PW3/D; application Ex. PW3/E; and M.L.R.s Ex. PW3/F, Ex. PW3/G, Ex. PW3/H, Ex. PW3/J and Ex. PW3/K.

PW4 Dr. Preet Inder: She proved opinion Ex. P1, death report Ex. PW4/A, death summary Ex. PW4/B, P.M.R. Ex. PW4/C, police request Ex. PW4/D and endorsement Ex. PW4/E.

PW5 Dr. Rishu: He proved P.M.R.s Ex. PW5/A and Ex. PW5/B, police request Ex. PW5/C and endorsement Ex. PW5/D.

PW6 Sanjeev and PW8 Hema: They deposed that they do not know as to who was driving the offending vehicle. Thereafter, the witnesses were declared hostile at the instance

of the learned Public Prosecutor for the State, who was allowed to conduct cross-examination upon these witnesses.

PW9 Surender: He proved statement Ex. PW9/A.

PW10 Joginder: He proved statement Ex. PW10/A.

PW11 Dr. Shama Parveen: She proved Rukka Ex. PW11/A and M.L.R. Ex. PW11/B.

PW12 Dr. Chabi Mehta: She proved endorsement Ex. PW12/A and P.M.R. Ex. PW12/B.

PW13 Dr. D.S. Gaba: He proved Rukka Ex. PW13/A, case summary Ex. PW13/B and opinion Ex. PW13/C.

PW14 Dr. Yogesh: He proved Rukka Ex. PW14/A, discharge summary Ex. PW14/B and opinions Ex. PW14/C and Ex. PW14/D.

PW15 A.S.I. Subhash Chand: He proved mechanical reports Ex. PW15/A and Ex. PW15/B.

PW16 H.C. Joginder: He proved seizure memos Ex. PW16/A and Ex. PW16/B.

PW17 S.I. (Retired) Brahm Pal: He proved F.I.R. PW17/A and endorsement Ex. PW17/B.

PW18 Inspector Harvinder: He deposed that on 28.02.2015, after the completion of the investigation, he prepared the final report under Section 173 Cr.P.C.

PW19 A.S.I. Ram Kumar: He proved application Ex. PW19/A.

PW20 S.I. (Retired) Sarvesh: He is the Investigating Officer of the case and proved all the steps taken by him during investigation. He proved identification memo Ex. PW2/B; opinions Ex. PW3/E, Ex. PW13/C and Ex. PW20/E; disclosure statement of the accused Ex. PW14/B; seizure memos Ex. PW16/A and Ex. PW16/B; applications Ex. PW20/A, Ex. PW20/B, Ex. PW20/D, Ex. PW20/F, Ex. PW20/J, Ex. PW20/K, Ex. PW20/L and Ex. PW20/O; police proceedings Ex. PW20/C; receipts Ex. PW20/G, Ex. PW20/M and Ex. PW20/N; site-plan Ex. PW20/H and arrest form Ex. PW20/P.

PW21 Dr. Vandana: She proved discharge summary Ex. PW21/A.

7. Statement of the accused under Section 313 Cr.P.C. was recorded, wherein he denied all the allegations levelled against him and pleaded innocence. No evidence was adduced by the accused in his defence.

Decision of the learned Trial Court

8. On the basis of the evidence led by the prosecution and after hearing the learned Public Prosecutor and the learned defence counsel, the

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learned Trial Court convicted and sentenced the accused in the manner stated above.

Filing of appeal, notice and requisition of record

9. Aggrieved against the impugned judgment of conviction and order of sentence, the accused preferred the instant appeal. The Trial Court record has been requisitioned.

Contentions of the learned counsel for the accused

10. It has been argued by the learned counsel for the accused that the learned Trial Court erroneously convicted and sentenced the accused under Sections 279, 304-A, 337, 338 and 427 I.P.C. It has been further contended that no independent witness was joined by the police. It has been further submitted that the impugned judgment of conviction and order of sentence are based on surmises and conjectures, and the learned Trial Court has erred in convicting the accused. It has been further argued that the FIR was registered on the basis of the complainant's statement and in his statement, the complainant did not disclose the identity of the driver of the offending vehicle. It has been further contended that the Test Identification Parade of the accused conducted by the police was improper. It has been further submitted that the learned Trial Court has passed the impugned judgment without going through the case file carefully and diligently. It has been further argued that there are material contradictions in the statements of the prosecution witnesses, which go to the root of the case and the learned Trial Court has relied upon

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untrustworthy and unreliable evidence of the prosecution. It has, thus, been prayed that the appeal filed by the accused may be accepted, and he may be acquitted of the charges framed against him.

Arguments advanced by the learned Public Prosecutor

11. Per Contra, the learned Public Prosecutor for the State has argued that the learned Trial Court rightly convicted the accused after due appreciation of evidence on record. It has been further contended that there are minor contradictions in the statements of the prosecution witnesses, which do not go to the root of the case. It has been further submitted that the evidence led by the prosecution fully strengthens the prosecution case. It has been further argued that the prosecution by way of adducing cogent and convincing evidence has proved its case against the accused beyond the shadow of reasonable doubt. While making this Court go through the Judgment passed by the learned Trial Court, it has been prayed that the appeal filed by the accused may be dismissed.

12. I have considered the contentions put forth by the learned counsel for the appellant and the learned Public Prosecutor for the State and have gone through the case file meticulously.

Findings

13. Law is well settled that prosecution has to prove its case beyond any shadow of reasonable doubt by adducing cogent and convincing evidence. To prove the offences punishable under Sections 279, 304-A, 337, 338 and 427 I.P.C., the prosecution is required to prove

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the rash or negligent act/driving which is likely to cause hurt or injury to any other person and that the said rash or negligent act/driving of the accused was the proximate cause of the death of the deceased, injuries to the injured and damage to the vehicle. The rashness or negligence which needs to be established is something more than a mere error of judgment.

14. In the present case, the Court has to see whether at the time of the incident, the accused was driving the offending vehicle in a rash or negligent manner and whether the accident in question occurred because of the rash or negligent driving by the accused. However, the case of the prosecution is highly doubtful because of the following reasons:-

15. Firstly, the prosecution has failed to prove the identity of the accused. Since, PW3 Dr. Manisha, PW4 Dr. Preet Inder, PW5 Dr. Rishu, PW9 Surender, PW10 Joginder, PW11 Dr. Shama Parveen, PW12 Dr. Chabi Mehta, PW13 Dr. D.S. Gaba, PW14 Dr. Yogesh, PW15 A.S.I. Subhash Chand, PW16 H.C. Joginder, PW17 S.I. (Retired) Brahm Pal, PW18 Inspector Harvinder, PW19 A.S.I. Ram Kumar, PW20 S.I. (Retired) Sarvesh and PW21 Dr. Vandana did not witness the alleged accident, so, their testimonies do not help the prosecution in proving its case against the accused. In order to prove that the accused was driving the offending vehicle in a rash or negligent manner, the prosecution examined Vijay as PW1, the complainant as PW2, Sanjeev as PW6 and Hema as PW8. During cross-examination, PW1 Vijay deposed that the police did not get the accused identified from him. Further, the

complainant conceded that he saw the accused at the time of his arrest. The perusal of the testimonies of PW6 Sanjeev and PW8 Hema spells out that the said witnesses categorically deposed that they do not know who was driving the offending vehicle. Thereafter, the witnesses were declared hostile at the instance of the learned Public Prosecutor for the State, who was allowed to conduct cross-examination upon these witnesses.

16. On the bare perusal of the file, it transpires that in his statement, the complainant did not mention any description of the driver of the offending vehicle. After scanning the testimonies of PW1 Vijay and the complainant, it becomes crystal clear that the said witnesses have nowhere disclosed how they identified the accused.

17. In order to prove the identity of the accused, the prosecution has staked its claim upon identification memo Ex. PW2/B. However, the complainant's identification of the accused in police custody vide identification memo Ex. PW2/B cannot be relied upon by the prosecution to contend that the accused was duly identified by the complainant during the course of the investigation. This kind of identification of the accused conducted by the police during the course of the investigation, after he was arrested, can by no stretch of imagination be regarded as a Test Identification Parade. A major flaw in the exercise in getting the accused identified by the complainant is the presence of the police itself. Test Identification Parades, as per law, are to be conducted in the presence of a Magistrate after securing orders therefrom. When the identifications are

held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer, in the course of investigation and they fall within the ban of Section 162 Cr.P.C. In this regard, it is pertinent to reproduce paragraph 10 of the judgment rendered by the Hon'ble Apex Court in Chunthu Ram v. State of Chhattisgarh CrI. Appeal No. 1392 of 2011 decided on 29.10.2020, which reads as under:-

“10. The infirmities in the conduct of the Test Identification Parade would next bear scrutiny. The major flaw in the exercise here was the presence of the police during the exercise. When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of section 162 of the Code.”

18. Hence, it can safely be presumed that the identification of accused conducted by the police during the investigation vide identification memo Ex. PW2/B, therefore, is bad in law and does not advance the case of the prosecution in any manner.

19. Secondly, the prosecution has miserably failed to prove that the accused was driving the vehicle in a rash or negligent manner. At the cost of repetition, it may be stated here that during evidence, PW6 Sanjeev and PW8 Hema did not identify the accused. The perusal of the depositions of PW1 Vijay and the complainant shows that the said witnesses testified that the accused was driving the offending vehicle in a

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rash and negligent manner, and at a high speed. There is no cavil over the proposition of law that merely because the vehicle was being driven at a "high speed" that does not disclose that there was negligence or rashness by itself and in this regard, it is pertinent to reproduce the relevant portion of paragraph 4 of State of Karnataka v. Satish (SC) : Law Finder Doc Id # 190796 :1999(2) ACJ 1378 : 1998(8) SCC 493 : 1998 SCC(Cri) 1508, which reads 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. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no

presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". ...”

20. The perusal of the file spells out that there is no definite evidence regarding the rash driving of the accused and in such an eventuality, the accused cannot be presumed or assumed to be driving rashly. Merely stating that the offending vehicle was being driven in rash or negligent manner without explaining the circumstances is not sufficient to attribute the liability on the part of the accused. In the instant case, the prosecution has failed to prove the manner in which the accused was allegedly driving his vehicle. Neither the width of the road nor the speed of the vehicle, nor the speed limit on the said road, nor the density of the traffic on the road is established by the prosecution. Such accidents are now innumerable with the tremendous increase in the traffic but still the negligence or rashness of an accused must be exhibited, explained and proved on record as to what was omitted by the accused which he should have taken care of and as to what act was committed by him which led to the accident.

21. The accused cannot be convicted merely on the basis of conjectures, assumptions and probabilities. The mere allegation of rash and negligent driving with a fast speed would not tantamount to culpability of the accused unless the same is established by leading cogent and convincing evidence. Moreover, high speed is also not any criterion for establishing the rash and negligent act of the accused, as high speed is

a subjective term, and it can only be interpreted after taking into consideration the facts and circumstances of the case. However, in the present case, the surrounding facts and circumstances have not been brought and proved on record to establish whether the high speed, if any, in this case amounted to a rash and negligent act or not. There is no evidence on record to suggest that the accused was rash or negligent in driving his offending vehicle. Merely, because a person died or a person received fatal injuries in an accident does not mean/suggest that he received injury only on account of rash and negligent act of the accused. Rather, the said mens rea of rashness or negligence is required to be established by the prosecution beyond any shadow of doubt.

22. In view of the observations given above and the evidence led on record, this Court is of the view that the prosecution has failed to prove beyond reasonable doubt that the accused was driving the offending vehicle and the accident took place due to rash or negligent driving by the accused. The evidence coming on record entitles the accused to be acquitted.

23. Hence, the learned Trial Court has wrongly and illegally convicted the accused under Sections 279, 304-A, 337, 338 and 427 I.P.C. The findings of the learned Trial Court are not sustainable in the light of the evidence available on the record. Therefore, findings of the learned Trial Court are set aside and the accused is acquitted of the charges framed against him and the appeal filed by the accused is hereby allowed.

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24. Trial court record along with copy of this judgment be sent back whereas appeal file be consigned to record room after due compliance.

Pronounced in Open Court:
Dated: 23.07.2026

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Additional Sessions Judge
Yamuna Nagar at Jagadhri
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Note: Every page of this judgment has been checked and signed by me.

Sanjay

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