

***IN THE COURT OF Dr.DEEPTI GUPTA, PCS
CHIEF JUDICIAL MAGISTRATE , PATIALA.
(UID No-PB0219)***

CNR NO.	PBPT030026102015
Registration No.	CHI/276/2015
Date of Institution:	08.05.2015
Date of Decision:	24.02.2021

State

Versus

Satwant Singh son of Karnail Singh, resident of ward no.2, Ghanaur, Tehsil Rajpura, District Patiala.

..Accused.

FIR No.365 dated 09.11.2014,
U/s 279, 304-A, 427 of IPC
Police Station Tripuri, Patiala

Present: Sh.Deepinder Singh, APP for State.

Accused on bail represented by
counsel Sh.Sunil Kumar Verma Advocate.

J U D G M E N T

Accused Satwant Singh has been sent up to face trial under sections 279, 304-A and 427 of the Indian Penal Code by Station House Officer, Police Station Tripuri, Patiala on the allegations that on 9.11.2014 at about 4.30/4.45 p.m. in the area near Gurudwara Sahib Virk Colony, Pataila, he drove tractor Swaraj bearing registration No.HR-01-D-8255 with loaded trolley on a public way rashly and negligently so as to endanger human life and personal safety of others, thereby causing death of Amarjit Kaur and in doing so he also damaged the motorcycle no.PB-23G-2939.

2. Adumbrated in nutshell, the facts of prosecution case are that on 09.11.2014 ASI Daljit Singh alongwith HC Manpreet Singh No.967, HC

Sanjeev Kumar No.1312 and C.Sirveshdeep No.3331 in connection with patrolling and checking of bad elements were present Sirhind road bypass, Patiala where complainant Sukhdev Singh met the police party and got recorded his statement to the effect that he is doing private job in Airtel Mobile company. On that day he, on his motorcycle bearing registration no.PB-23G-2939 Super Splendor along with his wife Amarjit Kaur @ Gogi and their son Gurvir Singh aged 5 years were going to the house of Darshan Singh maternal uncle of Amarjit Kaur at Baba Deep Singh Nagar, Patiala. At about 4.30/4.45 PM they crossed railway crossing DMW and reached near Virk Colony Gurudwara at main road where some sewerage work was in progress. Mud and *Bajri* (stones) etc were lying on the road and vehicles were thus moving at a slow speed. Some vehicle were moving ahead of the motorcycle of complainant at a very low speed. Suddenly vehicle which was just ahead of the complainant stopped due to which complainant also stopped his motorcycle. In the meantime a tractor make Swaraj-735 bearing no.PB-11-E-9474 of blue colour loaded with stones (*Bajri*) came from behind which was driven in a rash and negligent manner and without applying brakes it collided with the motorcycle of complainant, due to which complainant and his son fell towards right side of motorcycle whereas his wife Amarjit Kaur fell towards left side and said tractor trolley ran over Amarjit Kaur due to which she succumbed at the spot. Said accident occurred due to rash and negligent driving of the driver of the offending tractor trolley, who fled away from the spot after parking it in street of Virk Colony. Deadbody of Amarjit Kaur was sent to Rajindra Hospital by the relatives of complainant and people who gathered there.

Said statement of complainant was sent to Police Station Tripuri, Patiala through C Sarveshdeep. Investigation was pressed into action. ASI Daljit Singh along with complainant and police party then reached at the spot and prepared rough site plan at the instance of complainant. Photographer was called, who clicked photographs of the place of occurrence. The complainant suffered a supplementary statement to the effect that he disclosed the number of offending tractor on asking of someone but when he himself inquired about the same it surfaced that the actual number of offending tractor was HR-01D-8255. Directions were issued to the complainant to furnish an affidavit in this regard. Accidental motorcycle of complainant bearing no.PB-23G-2939 was taken into police custody vide recovery memo. Then at the instance of complainant, offending tractor No.HR-01D-8255 along with trolley parked about 300/400 sq. yards from the place of occurrence were taken into police custody vide recovery memo. Statements of witnesses were recorded. On return to the police station, case property was deposited in malkhana. On 10.11.2014 after post mortem examination by the doctors at Rajindra Hospital, Patiala, dead body of Amarjit Kaur was handed over to legal heirs. Statements of witnesses were recorded. On 11.11.2014 both the vehicles were mechanically examined by motor mechanic HC Rajinder Kumar, who submitted his reports. Motorcycle no.PB23G-2939 was handed over on sapurdari to the complainant. Photographs from the photographer were taken into police custody vide recovery memo. On 13.11.2014 accused Satwant Singh was arrested and after completion of paper works, he was released on bail. On 24.12.2014 complainant furnished his affidavit before the investigating

officer. Ownership of both the vehicles was verified from the concerned department and relevant record from the hospital was also obtained. Statements of witnesses were recorded. After completion of the investigation the Challan was presented in the court against the accused.

3. The copies of the Challan and documents appended therewith were supplied to the accused, free of costs, as envisaged under Section 207 Cr. P.C.

4. From the perusal of the police report sent by the police under Section 173 Cr. P. C. (Challan) and the documents referred therein a prima-facie case under Sections 279, 304-A & 427 of the Indian Penal Code, was made out against the accused and he was charge-sheeted there under on 08.02.2015. The charge was amended on 13.12.2017, to which he pleaded not guilty and claimed trial. The case then proceeded for recording of prosecution evidence.

5. In order to prove its case, the prosecution has relied upon the following oral and documentary evidence, tabulated in brief as under:

Serial Number of witness	Name of the witness	Documents proved by witness
PW1	HC Manpreet Singh, attesting witness	Recovery memo of offending tractor trolley Ex-PW1/A, Arrest-cum-Information memo Ex-PW1/B
PW2	ASI Daljit Singh, investigating officer	Statement of complainant Ex.PW2A, Police proceedings Ex-PW2/B, FIR Ex-PW2/C, endorsement of FIR Ex-PW2/D, rough site plan Ex-PW2/E, recovery memo of accidental motorcycle Ex-PW2/F, recovery memo of photographs Ex-PW2/G, photographs Ex-P1 to Ex-P8, mechanical test reports of both the vehicles Ex-PW2/H, Ex-PW2/J, sapurdari memo of motorcycle Ex-PW2/K, personal search memo of accused Ex-PW2/L, recovery memo of driving licence of accused Ex-PW2/M, application moved before the DTO for verification of DL of accused Ex-PW2/N, application Ex-PW2/O for verification of RC

		of offending vehicle, case property tractor-trolley Ex-MO1 & Ex-MO2.
PW3	HC Rajinder Kumar, Mechanic MT branch, Police Line, Patiala	Ex-PW2/H and Ex-PW2/J i.e. mechanical test reports of both the vehicles
PW4	Complainant Sukhdev Singh	Statement Ex-PW4/A, affidavit Ex-PW4/B, Motorcycle Ex-MO3
PW5	HC Sanjeev Kumar, attesting witness	-
PW6	HC Hoshiar Singh	-
PW7	Sampuran Singh Clerk RTA Sangrur	Certified copy of record regarding DL of accused Ex-PW7/A and endorsement of their office Ex-PW7/B.
PW8	Anil Kumar Dimple, Photographer	8 Photographs Ex-PW7/A to Ex-PW7/H
PW9	Dr.Kulbhushan Garg	Post Mortem Report Ex-PW9/A, opinion regarding death of deceased Ex-PW9/B
PW10	Gurdev Singh, owner of offending tractor	RC of Tractor HR01D-8255

Thereafter, remaining evidence of the prosecution was closed by order on 11.12.2019 as the prosecution failed to conclude its evidence despite having exhausted sufficient effective opportunities.

6. Statement of the accused under section 313 Cr.P.C was recorded wherein the accused has denied all the allegations leveled against him while carping of false implication.

7. Accused did not opt to lead any oral evidence in defence despite due opportunity. However he tendered certified copies of award dated 6.1.2016 Ex-D1 and investigation report Ex-D2.

8. I have heard learned APP for the State, learned counsel for the accused and have gone through the file carefully. Learned APP has contended with much vehemence that all the prosecution witnesses have deposed in sync qua the commission of offence by the above named accused. The entire ocular and documentary evidence forms a complete

chain of evidence leading to irresistible conclusion of guilt of accused. Not even a morsel of oral evidence has been adduced by the accused in support of his defence; this fact further strengthens case of prosecution. Learned APP further submitted that although accused might have no intention or knowledge to cause death, yet failure on the part of the accused to exercise reasonable care and caution, renders him liable for an offence punishable under section 304-A IPC. The identification and negligence of the driver of tractor trolley bearing no. HR01D-8255 stands duly proved through the ocular account unfolded by the complainant as well as the corroborative documentary evidence on file. There are no discrepancies in the prosecution evidence which may render the prosecution version doubtful in any conceivable manner. The testimony of official witnesses renders the desired corroborative value to the substantial evidence of complainant and other witnesses. Learned APP has thus prayed that as prosecution has been able to prove all the accusations against the above named accused, it renders him liable to conviction and maximum sentence. Per contra the ld.defence counsel has argued assiduously that there is a major inconsistency in respect of the registration number of the offending vehicle inasmuch as the complainant has stated in his first statement to the police that the registration number of the tractor trolley which hit his motorcycle was PB11E-9474 whereas in his supplementary statement he has changed his version by stating that the registration number of the tractor trolley is HR01D-8255. Even the statements of other prosecution witnesses are shaky and inconsistent with regard to the registration number of said tractor trolley. He has further contended that there is no direct evidence of any negligence or

rashness on the part of the accused. Even the identity of the accused has not been proved by the prosecution beyond the shadow of reasonable doubt . The version put forth by the complainant has not been corroborated by an independent witness. On the strength of these contentions, the ld.defence counsel has emphasized that the accused has been falsely implicated by the complainant and investigating agency and as such his conviction is not warranted on the basis of the unreliable and inconsistent testimonies of the prosecution witnesses.

9. The cardinal principle of criminal jurisprudence is that the prosecution must prove the charge against the accused beyond the shadow of reasonable doubt. The onus to prove the guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The prosecution has to stand on its own legs so as to bring home the guilt of the accused conclusively and in an affirmative manner and it cannot take advantage of any weakness in the defence version. Applying these principles to the facts and circumstances of the present case, this court is constrained to hold that the prosecution has miserably failed in its endeavour to slap criminal liability upon the accused, for reasons discussed hereinafter.

10. The vital point to be discerned in the present case is that whether the prosecution has been able to establish that accused Satwant Singh drove the tractor trolley bearing registration no. HR01D-8255 in a 'rash and negligent' manner on a public way and further that the said 'rash and negligent' driving of the vehicle, was the direct and proximate cause of the accident resulting in death of Amarjit Kaur. A conjoint reading of the entire gamut of oral and documentary evidence so adduced on record by the

prosecution reveals that there is a major discrepancy with regard to the registration number of the offending vehicle. Admittedly the complainant, in his first statement to the police on 09.11.2014 Ex PW2/A, had got recorded that the registration no. of the offending vehicle is PB11E-9474 but thereafter on 23.12.2014 in his supplementary statement by way of affidavit Ex PW4/B he stated that the registration no. of the said tractor trolley is HR01D-8255. Noteworthy is the fact that as per the version of the complainant, the driver of the tractor trolley had fled from the site of accident after leaving the offending vehicle at the spot. From this it can be duly inferred that the offending tractor trolley remained at the spot of occurrence for a sufficiently long period of time thereby enabling the complainant to note down its correct and exact registration number. This being so, it is absolutely unexplainable as to why the complainant recorded wrong registration number as alleged by him. It also remains arcane as why for a period as long as one and a half month (i.e. from 09.11.2014 to 23.12.2014) the complainant could not conclusively verify the exact registration number of the offending tractor trolley. The affidavit Ex PW4/B is absolutely silent regarding the reason for delay in reporting the correct registration number of the offending vehicle. Even the complainant in his testimony as PW4 has not been able to explain as to why he remained in such complacency for a period of about one and a half month before suffering his supplementary statement before the investigating agency. It is not a case where the offending vehicle was not bearing a number plate at the time of accident. It is also not a case where the driver fled away with the offending vehicle immediately after the accident. It is also not a case where

the complainant could only gather a fleeting glimpse of the offending vehicle rather it is a case where the complainant had ample opportunity to witness, memorise and even note down the correct registration number of the offending vehicle at the very first instance. Thus all these factors, compel this court to opine that the version put forth by the complainant regarding two different registration numbers vide his statements Ex PW2/A and PW4/B, is a result of an after-thought laced with confabulations and embellishments.

11. Leaving aside the complainant, even the other prosecution witnesses are not consistent with regard to the registration number of the tractor trolley. PW1 HC Manpreet Singh has stated that the registration number of the tractor trolley was PB11E-9474 but during the course of investigation the complainant changed the number of the offending vehicle to HR01D-8255. To similar effect is the testimony of PW2 ASI Daljit Singh. PW3 HC Rajinder Kumar says that he had mechanically tested vehicle bearing registration number HR01D-8255 but PW8 Anil Kumar Dimple photographer says that he had clicked photographs of tractor trolley bearing registration number PB11E-9474. How ever perusal of the file shows that the photographs which have been exhibited in prosecution evidence are that of tractor trolley bearing registration number HR01D-8255. Also it is worthwhile to note that though PW8 has stated that he clicked the photographs of the tractor trolley, motorcycle and dead body on 09.11.2014 at the spot of the accident but he has admitted in his cross examination that the photographs of the tractor trolley i.e. Ex PW7/D and PW7/E have been clicked during day time whereas the remaining photographs have been taken

at night time. Even with an unaided eye it can be gauged that photographs Ex PW7/D and PW7/E have been clicked at a different time whereas the remaining photographs have been taken at some other time. All these factors again lead to one irresistible conclusion that tractor trolley bearing registration number HR01D-8255 has been introduced later on by the complainant and investigating agency for oblique motives, thereby denuding the veracity of the entire prosecution version.

12. To buttress the above opinion, this court also derives fortification from the following findings given by the Motor Accident Claims Tribunal Patiala in Award dated 06.01.2016:

“After considering the above said evidence led by the parties, this court is of the considered view that regarding the accident FIR No.365 of 9.11.2014 was registered at the instance of Sukhdev Singh claimant No.1 and the perusal of this FIR show that the accident was caused by Tractor No.PB-11E-9474 and as per the copy of RC of this tractor the same is registered in the name of father of driver of Satwant Singh. In the FIR No.365 of 9.11.2014 the name of the accused is mentioned as Karnail Singh and not Satwant Singh. Dr. Jaspal Singh, investigator submitted his report as Ex-RW1/B and as per his report the tractor trolley No.PB-11E-9474 was not insured on the day of accident and on that account the said offending tractor trolley was replaced with their insured tractor trolley i.e. HR-01D-8215. The Tractor trolley No.PB-11-E-9474 is owned by the father of he driver Satwant Singh. RW-1 Daljit Singh, Assistant of DTO Office Patiala, brought the summoned record regarding tractor no.PB-11E-9474 and he deposed that as per their respondent tractor no. PB-11E-9474 is registered in the name of Karnail Singh son of Jagar Singh resident of Ghanour. He has also proved on record photo copy of the RC of he above said tractor as Ex-RW1/A. Moreover, the claimants in their evidence also tendered copy of charge sheet dated 8.5.2015, which has been furnished against accused Satwant Singh by Shri Jagmeet Singh, Ld. JMIC Patiala and this charge sheet has been framed against accused Satwant Singh and in which specifically mentioned that accused Satwant Singh drove tractor bearing registration no.PB-11-E-9474 with loaded trolley on the day of accident. The FIR No.365 was registered due to the death of Amarjit Kaur, but, the present claim petition has been filed against the driver of the tractor trolley No.HR-01D-8255

namely Satwant Singha and owner of tractor No.HR-01D-8255 namely Gurdev Singh son of Balkar Singh, but, no explanation has been put forth before the Tribunal that driver and owner of tractor no.HR-01-D-8255 has been prosecuted in the present claim petition. Whereas, in the FIR the name of the driver has not been mentioned and the number of the driver has not been mentioned and the number of the tractor has been got recorded by Sukhdev Singh claimant no.1, as tractor trolley bearing no.PB-11E-9474 driven by unknown driver. As such from the above said circumstances, the claimants have failed to prove that Amarjit Kaur had died in a road side accident due to rash and negligent driving of tractor bearing no.HR-01D-8255 being driven by respondent no.1. As such, this issue is decided against the claimants and in favour of the respondents.”

13. Also there is no evidence with regard to rashness and negligence of the accused. Section 304-A IPC by definition *ipso facto* excludes the ingredients of sections 299 and 300 IPC and encompasses the protection when accused neither has knowledge nor intention to cause death, but nevertheless it makes commission of a rash or negligent act punishable, provided it is the proximate cause of death. The expression “*rash*” or “*negligent*” act has not been defined in IPC. Hon'ble Supreme Court has elaborately explained the terms in **MAHADEV PRASAD VS. STATE OF U.P. 2008(4) RCR(Criminal) 801 (SC)** that negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent man would not do. The standard to be applied for adjudging whether a person charged has been negligent or not, would be that of a man of ordinary prudence, in similarly placed circumstances. Relying upon the observation in the landmark case of **EMPRESS VS. IDUBEG 1881 ILR 3 Allahabad 776**, Hon'ble Supreme Court further observed that rashness is hazarding a dangerous or wanton act with knowledge that it is so and that it may cause injury but without intention to

cause injury or knowledge that it will be probably caused. Criminality lies in running the risk of doing such an act with recklessness or with indifference as to consequences of all the circumstances out of which the charge has arisen. Now in the present case, there is no elaboration as to how the driving of the accused was rash or negligent. There is no evidence of the prosecution to show that the accused was driving the tractor trolley at a high speed or that he was driving in a zigzag manner or that he was driving in an inebriated state or that his vehicle was overloaded or that he was not able to control the maneuverability of his vehicle. Mere bald assertion that the accused was driving the vehicle rashly and negligently is not sufficient to saddle him with penal liability under sections 279 and 304A of IPC.

14. In view of the reasons discussed above, it can be held without any hitch that the prosecution has failed in its endeavour to slap criminal liability upon the accused. Hence, the accused Satwant Singh present in court is hereby acquitted of the charges levelled against him. Bail bonds and surety bonds stand discharged. Case property, if any be dealt with as per rules. File be consigned to the records after due compliance.

Pronounced

Date: 24.02.2021

Amandeep Stenographer Grade-II

(Dr.DEEPTI GUPTA)PCS
Chief Judicial Magistrate,
Patiala.(UID No.PB0219)

