

**In the Court of Sh. Satnam Singh,
Judicial Magistrate - Ist Class, Pathankot**

CNR No. PBPO030012992019



Case No. CHI/135/2019

Presented on : 10-04-2019

Registered on : 10-04-2019

Decided on : 29-01-2026

State

versus

Ashiq Hussain Dar son of Bashir Ahmed Dar, R/o Muni Bagh, District
Anatnagh, J & K.

..... (Accused)

FIR No.13 dated 09.03.2019
Under sections: 304-A, 279, 427 of IPC
P.S. Sujanpur, Pathankot.

Present: Sh. Moninder Singh Ld. APP for State.
Accused on bail with counsel Sh. Rajesh Kapoor
Advocate.

JUDGMENT:

1. Accused Ashiq Hussain has been forwarded for trial by
SHO PS Sujanpur for alleged commission of offences punishable under
sections 304-A, 279, 427 of Indian Penal Code, 1860 (hereinafter
referred to as 'IPC').
2. Version of the prosecution, as unfolds from final report
under section 173 Cr.P.C. is that on 09.03.2019 ASI Balwinder Kumar
along with PHC Sucha Singh, Ct. Gulshan Kumar, PHG Kamal Singh

in connection with patrolling were present at bridge No. 5 Sujampur. At that complainant Sourav came at the spot and got recorded his statement to ASI Balwinder Kumar that on 08.03.2019 at about 07:00 PM, he on his scooty activa bearing No. PB-35-G-1232 along with his uncle Suresh Chander on scooty make TVS Jupiter without number are going to Pathankot from their village via Malikpur for some personal work. After completing the work, complainant and his uncle were standing on the side of the road on their respective scooties, a truck number bearing No. JK-03-E-8863 was seen coming from Sarna side at a very high speed, struck his truck into the scooty of uncle of complainant, due to which uncle of complainant fell down along with the scooter and the truck driver dragged my uncle along with the scooter and took him a long way, due to which uncle of complainant died. The truck driver tried to run away from the spot but was apprehended by complainant near the petrol pump Gupta Pathankot. On asking accused disclosed his name as Asik Hussain Dar, son of Basir Ahmed Dar, resident of Muni Bagh, District Anantnag (J&K). On the statement of complainant, case was registered under Sections 304-A, 279, 427 IPC. Investigation conducted and completed. The statements of the witnesses were recorded.

3. On above said statement, inquiry was conducted and after inquiry FIR was registered against the accused person. Site plan was prepared and accused was arrested. Investigation was carried out. Statements of witnesses were recorded and after completion of

investigation challan was presented against the accused u/s 304-A, 279, 427 of IPC.

4. On appearance of accused in the Court, copies of the challan etc. as relied upon by the prosecution were supplied to them, free of costs as envisaged under Section 207 of the Cr.P.C.

5. After hearing the learned Assistant Public Prosecutor for the State and the learned defence counsel and after going through the report under Section 173 Cr.P.C along with the accompanying documents, charge was framed against the accused Under Section 304-A, 279 of the IPC, to which he pleaded not guilty and claimed trial.

Prosecution Witnesses:

6. In order to bring home the guilt of accused under aforesaid sections, prosecution examined Sourav as PW1, he deposed and proved on record his statement Ex.P1, memo of identification of accused Ex.P2. **PW-2 Harjeet Kumar** who deposed and proved on record his statement Ex.PW2/A, **PW-3 Dr. Shelly Verma** who deposed and proved on record carbon copy of PMR Ex.PW3/I, computerized copy of PMR Ex.PW3/2, **PW-4 Ct. Gulshan Kumar**, who deposed and proved on record request letter to SMO CH, Pathankot Ex.PW4/1, memo of possession of scooty jupitor without number Ex.PW4/2, memo of possession of truck bearing No. JK-03-E-8863 Ex.PW4/3, arrest memo of accused Ex.PW4/4, personal search memo Ex.PW4/5, memo of identification Ex.PW4/6.

7. **PW-5 ASI Balwinder Kumar**, who deposed and proved on

record statement of complainant Ex.P1, ruqa Ex.PW5/A, FIR Ex.PW5/B, endorsement on ruqa Ex.PW5/C, site plan Ex.PW5/D, form No. 25 35 Ex.PW5/E, short description of case Ex.PW5/F, statement of Ajit Kumar Ex.PW2/A, statement of Deepak Ex.PW5/G, application to SMO Civil Hospital Pathankot Ex.PW4/1, receipt of dead body of deceased Ex.PW5/H, memo of possession of scooty without number Ex.PW4/2, memo of possession of truck bearing No. JK-03-E-8863 Ex.PW4/3, RC Ex.PW5/I, memo of identification of accused Ex.PW4/6, Driving license Ex.PW5/J, memo of possession of DL Ex.PW5/K, personal search memo of accused Ex.PW4/5, arrest memo of accused Ex.PW4/4, RC Ex.PW5/L, DL Ex.PW5/M, screen report Ex.PW5/N, mechanical test report Ex.PW5/O. **PW-6 Retired SI Surinder Kumar**, who deposed and proved on record mechanical test report Ex.PW5/10.**PW-7 Jasbir Singh**, who deposed and proved on record RC Ex.P1 and certificate under Section 63(4) (c) BSA is Ex.P2.

8. However, as prosecution failed to conclude its entire evidence despite availing numerous opportunities, evidence of prosecution was closed vide order of Court.

9. On conclusion of prosecution evidence, statement of the accused was recorded under section 313 Cr.P.C., wherein all the incriminating circumstances were put to them to which accused pleaded false implication and has stated that he is innocent. He further stated that neither he was the driver of the offending vehicle nor the truck bearing No. JK-03-E-8863 is involved in the accident.

ARGUMENTS ON BEHALF OF THE PROSECUTION

10. Learned Assistant Public Prosecutor for the State has contended that the prosecution has successfully proved the guilt of the accused beyond reasonable doubt. It is argued that PW-1 Sourav, who is the complainant as well as eye-witness of the occurrence, has fully supported the prosecution case and has categorically deposed that the offending truck was being driven by the accused at a very high speed and in a rash and negligent manner and that the truck struck against the scooter of the deceased and dragged him for a considerable distance, resulting in his death. It is further submitted that the accused was apprehended at the spot by the complainant immediately after the accident, which rules out any possibility of mistaken identity.

11. Learned APP further submits that the testimony of PW-1 stands duly corroborated by the medical evidence. PW-3 Dr. Shelly Verma proved the post-mortem report which shows that the death occurred due to injuries sustained in the road traffic accident. The mechanical inspection report and the memos of possession of the truck and scooter also support the occurrence. It is further argued that the chain of circumstances clearly establishes that the accused was driving the offending vehicle rashly and negligently and his act directly resulted in the death of the deceased. It is contended that the prosecution witnesses have remained consistent and nothing material has been elicited in their cross-examination to discredit their testimonies.

12. On these grounds, learned APP has prayed that the accused be convicted for the offences punishable under Sections 279, 304-A 427 IPC.

ARGUMENTS ON BEHALF OF THE DEFENCE

13. Per contra, learned defence counsel has vehemently argued that the accused has been falsely implicated and that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. At the outset, it is submitted that the alleged incident occurred on 08.03.2019, whereas the FIR came to be registered only on 09.03.2019. This delay in registration of the FIR has not been satisfactorily explained by the prosecution. It is contended that such delay provides scope for deliberation, consultation and embellishment of the prosecution story and thus casts a serious doubt on the authenticity of the version put forth by the complainant. Reliance in this regard has been placed upon **Harilal vs. State of Madhya Pradesh**, wherein it has been held that when there is delay in lodging the FIR without proper explanation, the Court must be cautious and scrutinize the prosecution evidence with greater care to rule out the possibility of fabrication.

14. Learned defence counsel has further argued that the presence and identity of the accused at the place of occurrence is itself doubtful. No Test Identification Parade (TIP) was conducted during investigation to establish that the accused was the driver of the offending vehicle at the relevant time. It is submitted that the accused

was allegedly apprehended and shown to the witnesses, and therefore any subsequent identification in Court loses its evidentiary value. Reliance has been placed upon **Ahmed Bin Salim vs. State of Andhra Pradesh (1999)**, wherein the Hon'ble Supreme Court held that *identification parade where the accused has already been shown to the witness holds no evidentiary value*. Further reliance has been placed upon **Ramkishan Mithanlal Sharma vs. State of Bombay (1954)** and **State of Haryana vs. Suraj Pal**, wherein it has been held that *Test Identification Parade is a vital safeguard and absence of proper identification seriously weakens the prosecution case*.

15. It is further contended that although the alleged occurrence took place on a public road and near a petrol pump, no independent or public witness has been joined or examined by the prosecution. The entire case rests solely upon the testimony of the complainant, who is admittedly related to the deceased and therefore an interested witness. Non-examination of independent witnesses, without any justification, casts doubt upon the fairness of the investigation and the veracity of the prosecution case.

16. Learned defence counsel has also submitted that the prosecution has merely alleged that the truck was being driven at a "high speed". It is argued that high speed by itself does not constitute rashness or negligence unless the prosecution establishes specific acts showing reckless or negligent driving. Reliance in this regard has been placed upon **State of Karnataka vs. Satish (1996)**, wherein the

Hon'ble Supreme Court held that *merely driving a vehicle at high speed does not automatically prove rash or negligent driving and that the burden lies upon the prosecution to establish negligence through cogent evidence*. On the strength of the aforesaid submissions and legal propositions, learned defence counsel has prayed that the prosecution having failed to prove the essential ingredients of Sections 279 and 304-A IPC, the accused deserves to be acquitted.

17. Upon consideration of the record and the rival submissions addressed by the learned Assistant Public Prosecutor for the State and the learned defence counsel, the following points arise for determination:

1. *Whether on 08.03.2019 at about 07:00 PM near Malikpur Chowk, the accused Ashiq Hussain was driving truck bearing No. JK-03-E-8863 in a rash or negligent manner so as to endanger human life and thereby caused the death of Suresh Chander, not amounting to culpable homicide, and committed offences punishable under Sections 279 and 304-A of the Indian Penal Code?*

2. *Relief.*

18. After thoughtful consideration of the rival submissions and careful perusal of the entire record, this Court is of the considered opinion that the prosecution has successfully established the guilt of the accused beyond reasonable doubt.

19. At the outset, the testimony of **PW-1 Sourav Kumar**,

who is the complainant as well as the sole eyewitness to the occurrence, inspires confidence. Nothing material could be elicited in his cross-examination to discredit his presence at the spot. His deposition regarding the manner of accident, the rash and negligent driving of the offending truck and the identity of the accused has remained consistent, natural and trustworthy. His presence at the place of occurrence appears most natural as he was accompanying the deceased, who was his uncle.

20. The defence has attempted to assail the prosecution case on the ground of delay in lodging the FIR. However, the explanation furnished by the prosecution appears plausible and convincing. It is a normal human conduct, particularly in Indian society, that when a serious accident occurs involving a close family member, the immediate priority of the relatives is to rush the injured to the hospital rather than to approach the police station. In the present case, the accident occurred at about 7:30 PM and the victim was taken to the hospital and attended to till late night. Thereafter, on the next morning, the statement of the complainant was recorded and the ruqa was sent, leading to registration of FIR. Such delay is neither abnormal nor suggestive of any concoction and thus does not adversely affect the prosecution case.

21. The contention regarding non-holding of Test Identification Parade is also devoid of merit. It is well settled that Test Identification Parade is only a rule of prudence and not a rule of law. It

becomes material only when the identity of the accused is doubtful or the accused is previously unknown to the witnesses. In the present case, the accused was apprehended at the spot by the complainant immediately after the accident and was identified by PW-1 who was the eyewitness to this incident. Therefore, the identity of the accused stands firmly established and absence of Test Identification Parade is inconsequential.

22. Further, the medical evidence fully corroborates the ocular version. The post-mortem report proves that the death of the deceased was the result of injuries sustained in the accident. The mechanical inspection reports of the truck and the scooty also show damage consistent with a forceful collision, thereby lending additional corroboration to the prosecution story.

23. The defence has also argued that no independent witness has been examined. However, it is settled law that conviction can safely be based even on the testimony of a single reliable eyewitness if it is corroborated by other evidences. Quantity of witnesses is immaterial; quality of evidence is what matters. The testimony of PW-1 is cogent, credible and inspires confidence and also corroborated by the other evidence.

24. So far as the argument that the vehicle was merely at “high speed” is concerned, it is correct that high speed alone may not constitute rashness. However, in the present case, the evidence shows not only high speed but also that the accused struck the scooter and

dragged the deceased for a considerable distance, which clearly establishes reckless and negligent driving endangering human life. Thus, the ingredients of Sections 279, 304-A and 427 IPC stand fully satisfied.

25. It is also significant to note that the defence has failed to provide any alternative version of the occurrence or to establish absence of the accused from the place of occurrence. No suggestion has been put to the prosecution witnesses that the accused was present elsewhere at the relevant time. The accused has neither led any evidence in defence nor produced any material to show that he was not driving the offending vehicle or that he has been falsely implicated. No plea of alibi has been taken or substantiated. Except for a bald denial in his statement under Section 313 Cr.P.C., no explanation has been furnished to rebut the consistent and cogent prosecution evidence. It is well settled that once the prosecution establishes a credible chain of circumstances pointing towards the guilt of the accused, the burden shifts upon the accused to at least probabilise his defence, which the accused has failed to discharge in the present case.

26. Minor discrepancies, if any, are bound to occur due to lapse of time and normal errors of observation and memory and are not of such magnitude as to shake the core of the prosecution case.

27. Accordingly, this Court is satisfied that the prosecution has proved beyond reasonable doubt that the accused, by driving the offending truck in a rash and negligent manner, caused the accident

resulting in the death of Suresh Chander and damage to the vehicle.

Hence, the accused is held guilty for the commission of offences punishable under Sections 279, 304-A and 427 IPC.

**Pronounced in Open Court on this;
29th Day of January 2026**

Pankaj sG-II

**(Satnam Singh), PCS
Judicial Magistrate, Ist Class
Pathankot.UID/PB0792**

Order on Quantum of Sentence

Present: Sh. Moninder Singh Ld. APP for State.
Convict with counsel Sh. Rajesh Kapoor Advocate.

I have heard the learned Assistant Public Prosecutor for the State and the learned counsel for the convict on the question of quantum of sentence and have thoughtfully considered the facts and circumstances of the case.

It is submitted on behalf of the convict that he is a poor person, sole breadwinner of his family and has no previous criminal antecedents and, therefore, a lenient view may be taken. However, the prayer has been strongly opposed by the learned APP on the ground that the act of the convict resulted in the loss of a precious human life and calls for deterrent punishment.

Before imposing the sentence, this Court is conscious of the settled principles governing offences under Section 304-A IPC. The offence of causing death by rash and negligent driving is not a mere technical or trivial offence. With the alarming rise in road accidents due to reckless and careless driving, the Courts are expected to adopt a stern approach so as to send a strong message to society and to deter such negligent conduct.

The Hon'ble Supreme Court in **Dalbir Singh vs. State of Haryana, 2000(2) RCR (Criminal) 817**, *has categorically held that offences under Section 304-A IPC should not ordinarily attract the benevolent provisions of the Probation of Offenders Act and that Courts must play an effective role in curbing the increasing number of deaths*

caused by callous driving of motor vehicles.

Further, in **B. Nagabhushanam vs. State of Karnataka, 2008**

(3) RCR (Criminal) 50, *it has been reiterated that keeping in view the galloping trend of road accidents and the devastating consequences suffered by victims and their families, criminal courts should not lightly extend the benefit of probation to such offenders.*

In the present case, the convict, by driving the truck in a rash and negligent manner, struck the scooty of the deceased and dragged him, resulting in his death. The manner of the accident clearly reflects gross negligence and utter disregard for human safety. A valuable human life has been lost and the family of the deceased has suffered irreparable loss. In such circumstances, this Court finds that the convict is not entitled to the benefit of probation and that a deterrent sentence is warranted.

At the same time, considering the age of the convict, the fact that he has faced trial for a considerable period and has no previous criminal record, a balanced approach is adopted while determining the quantum of sentence. Accordingly, the convict is sentenced as under:

Sr. No.	Under Section	Sentence	Fine
1	279 of IPC	To undergo Simple Imprisonment for 2 months and to pay fine of Rs. 1,000/- , in default thereof to further undergo S.I. for 7 days	Paid
2.	304-A	To undergo Simple Imprisonment for 2 years and to pay fine of Rs. 2,000/- , in default thereof to further undergo S.I. for 1 month	Paid
3.	427	Fine of Rs. 500/-	Paid

All the sentences shall run concurrently.

The period of detention already undergone by the convict, if any, during investigation, inquiry or trial shall be set off under Section 428 Cr.P.C.

Case property, if any, be disposed of as per rules after expiry of the period for filing appeal/revision or subject to the outcome thereof. File be consigned to the Record Room after due compliance.

**Pronounced in Open Court on this;
29th Day of January 2026**

Pankaj SG-II

**(Satnam Singh), PCS
Judicial Magistrate, Ist Class
Pathankot.UID/PB0792**