

**In the Court of Ms. Parminder Pindu,
Judicial Magistrate - Ist Class, Pathankot**

CNR No.
PBPO030012982019



Case No. CHI/136/2019

Presented on : 10-04-2019
Registered on : 10-04-2019
Decided on : 06-03-2025

Detail of FIR/Crime and Police Station

FIR No.64 dated 27.06.2018
Under section 279, 337, 338, 188 of IPC
P.S. Sujanpur, Pathankot

Complainant	State of Punjab
Represented by	Ms. Jasbir Kaur Ld. APP for State.
Accused	Jagtar Singh son of Talwinder Singh, Resident of Village Budho Nangalm P.S. Ghuman District, Gurdaspur.
Represented by	Advocate Sh. Satish Saini

Charge Sheet U/Ss: 279, 337, 338, 188 of IPC

Date of Offence and FIR	27.06.2018
Date of Charge Sheet	10.04.2019
Date of framing of Charges and Commencement of evidence	31.10.2019
Date on which Judgment is reserved and sentencing order	06.03.2025

**State vs Jagtar Singh son of Talwinder Singh, Resident of Village
Budho Nangalm P.S. Ghuman District, Gurdaspur**

Present: Ms. Jasbir Kaur Ld. APP for State.

 Accused on bail with counsel Sh. Satish Saini Advocate.

JUDGMENT:

Accused Jagtar Singh has been sent by SHO of Police Station Division No.1, Pathankot, for facing trial under Section 279, 337, 338, 188 of IPC.

1. Briefly, the facts of the case as mentioned by the complainant Nagar Singh Salaria that on 27.06.2018 at about 06:00 PM in the area village Sunderchak (Bani Lodhi) in front of Puto Hardware, Pathankot accused Jagtar drove Truck bearing no. PB-02-CA-8989 on public way i.e. road in negligent manner and struck the said truck against nephew of complainant namely Ganesh Kumar @ Deepu and caused serious injures to him and disobeyed the order of the District Magistrate, thereby accused committed an offence punishable u/s 279, 337, 338, 188 of the IPC. On the basis of the statement of complainant, present FIR lodged, investigation was commenced, statements of witnesses were recorded and after the completion of necessary formalities of investigation, challan against the above named accused was presented in the Court under section 279, 337, 338, 188 of IPC.

2. On the presentation of the challan in the court, copies of documents were supplied to accused free of cost as required under section 207 Cr.P.C. After perusal of the documents, a prima facie case under Section 279, 338, 188 of IPC was found to be made out against accused, and he was charge sheeted on 31.10.2019 accordingly, to which he pleaded not guilty and claimed trial.

3. In order to prove its case, the prosecution has examined **PW-1 Nagar Singh Salaria, PW-2 Anil Kumar, PW-3 Retired Inspector Surinder Kumar, PW-4 Munish Kumar, PW-5 ASI Angrej Singh, PW-6 ASI Balwinder Kumar, PW-7 Vikram Singh, PW-8 Shiv Kumar, PW-9 Dr. Krishan Kumar, PW-10 Manmohan Singh, PW-11 MHC Punit Saini** and thereafter Ld. APP closed the prosecution evidence on 05.02.2025.

4. After the closure of prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded, in which, all the incriminating evidence was put to him, but he denied the same and pleaded his false implication.

5. I have heard the learned APP for the state and learned counsel for accused and have gone through the case file carefully.

Arguments on behalf of State

6. Learned APP for the State argued that charge framed against accused has been duly proved on record on the basis of categoric deposition made by the prosecution witnesses. It is argued that from the testimonies of prosecution witnesses, it is duly proved that accident was taken place due to the rash and negligent driving of accused, in consequence of which Ganesh Kumar @ Deepu received grievous injuries. It is argued that PW-1 Nagar Singh Salaria fully stand in his testimony and further eye witnesses also supported the version of the complainant. Therefore, he prayed for conviction and sentence of the accused for the charge levelled against him.

Arguments on behalf of Accused

7. On the other hand, learned defence counsel have vehemently argued that accused have been falsely implicated in this case. It is argued on behalf of the accused that the prosecution has failed to connect the accused with the alleged offence. He further argued that complainant did not support the case of prosecution during her cross-examination. It is argued that accused has not committed any offence but he has been falsely implicated in the case. It is argued that injured of the present FIR has not examined by the prosecution and no medical record has been proved. It is argued that PW-1 complainant in his cross examination admitted the fact that he did not disclosed the age and height of the accused to police. It is further argued that there are material contradiction in the statements of prosecution witnesses. Thus, in the end, he prayed that accused be acquitted.

8. From the submissions made by the opposite counsels and the record, the following point is required to be determined:-

1. ***Whether on 27.06.2018 at about 06:00 PM in the area of village Sunder Chak Bani Lodhi, accused was found driving a vehicle Truck bearing no. PB-02-CA-8989 and thereby committed an offence punishable Indian Penal Code?***

2. *Whether the accused while driving the said vehicle in rash and negligent manner struck against the Ganesh Kumar @ deepu nephew of complainant as a result of which Ganesh Kumar @ deepu sustained injuries?*
3. *Whether the prosecution has been able to prove the guilt of the accused beyond all reasonable doubt?*

Discussion on Points of determination

9. All the points are taken together to avoid repetition of discussion. As it is a settled principle of law that in criminal law the prosecution has to prove its case beyond reasonable doubt. In the present case, in order to drive home the imputations levelled on accused, the prosecution has relied upon the ocular testimony corroborated by the medical evidence.

10. In the present case, accused have been charged with the offence that due to rash and negligent driving caused the grievous hurt to Ganesh Kumar @ Deepu. To prove the charge against accused, prosecution examined following witness:

1) **PW-1 Nagar Singh Salaria complainant** proved on record his statement Ex.PW1/A, supplementary statement Ex.PW1/B, identification memo Ex.PW1/C.

2) **PW-2 Anil Kumar** deposed and stated that on 27.06.2018 at about 06:00 PM Ganesh Kumar @ Deep when reach in

front of hardware shop at village Sunderchak, a truck bearing No. PB-02-CA-8989 whom he can identify struck the truck into Ganesh Kumar due which the leg of Ganesh Kumar was got fractured. He further stated that accused ran away from the spot.

3) **PW-3 Retired Sub Inspector Surinder Kumar** proved on record mechanical test report Ex.PW3/A. **PW-4 Munish Kumar** proved on record complaint Ex.PW4/1 and PW4/2. **PW-5 ASI Angrej Singh** proved on record identification memo Ex.PW1/C, DL of accused Ex.PW5/B, arrest memo of accused Ex.PW5/C.

4) **PW-6 ASI Balwinder Kumar** proved on record statement of complainant Ex.PW1/A, ruka Ex.PW6/A FIR Ex.PW6/B, site plan Ex.PW6/E, recovery memo of truck Ex.PW5/A, RC of the truck Ex.P6, supplement statement of complainant Ex.PW1/B, DDR entry Ex.PA, identification memo of accused Ex.PW1/C, DL of accused Ex.PW5/B, arrest memo of accused Ex.PW5/C, personal search memo Ex.PW6/D, order of DC Ex.PW4/1, complaint under Section 195 of Cr.P.c Ex.PW4/2, mechanical test report Ex.PW3/E.

5) **PW-7 Vikram Singh** deposed and stated that on 27.06.2018 he saw the accident at Sunder Chak Adda. He also identify accused present in the Court.

6) **PW-8 Shiv Kumar** proved on record RC of the vehicle bearig No. PB-02-CA-8989 Ex.PW8/A. **PW-9 Dr. Krishan**

Kumar proved on record original treatment record of patient Ex.PW9/
A. **PW-10 Manmohan Singh** proved on record RC of the truck bearing
No. PB-02-CA-8989 E.xP6. **PW-11 MHC Punit Saini** proved on
record register No.19 Ex.PW11/A.

11. The version of the prosecution in the present case is that
accused Jagtsr Singh had caused the accident on 27.06.2018 at about
0600 PM in the area Village Sunder Chak, Bani Lodhi, Pathankot and
caused injuries to nephew of complainant namely Ganesh Kumar @
Deepu by driving truck on the public road in a rash and negligent
manner as to endanger human life or personal safety. The only
question which is to be determined by the Court is that whether the
prosecution has established beyond reasonable doubt that the accident
took place because of rash and negligent driving of the accused or
whether the prosecution has established beyond reasonable doubt the
identification of the accused who has caused the said accident with
rash and negligent manner.

12. In the present case, to sustain the conviction of the
accused, statement of eyewitnesses is most crucial. It is a settled law
that testimonies of all the eyewitnesses have to be scrutinized more
carefully. Firstly coming to the deposition of PW-1 Nagar Singh
Salaria complainant/eye witness of the accident who deposed that
that the offending vehicle was being driven by accused and hit his
nephew Ganesh Kumar @ deepu due to which he sustain serious
injuries, this witness did not elaborate any other relevant aspect such

as about whether the vehicle was being driven in rash and negligent manner further width of road or the side of road on which the vehicle was plying and merely deposing that a vehicle was being driven by accused without even mentioning the speed would not be sufficient to draw any inference about rashness or negligence on the part of accused. He in his cross-examination stated that except the offending vehicle there was no other vehicle present on the spot. He further stated that police did not prepare any site plan in his presence on 27.06.2018 nor recorded the statement of Anil Kumar. PW-2 Anil Kumar on 15.11.2022 in his examination in chief has submitted that on 27.06.2018 at about 06:00 PM a truck bearing PB-02-CA-8989 which was driven by an old man with white beard on very high speed struck against Ganesh Kumar due to which left leg of Ganesh Kumar @ deepu was got fractured. But in his cross-examination he has stated that he has not seen the accused on the spot. He further stated that accused was already present on the chowk. In his cross-examination he further stated that he did not disclose the name of accused in his statement. He was further examined in chief in which he stated that he did not see accused at the spot. It is a settled law that it is incumbent upon prosecution to establish categorically the rash and negligent driving of the accused beyond any shadow of doubt, however, keeping in view the aforesaid discussion, about the inconsistencies and gaping loop holes in the deposition of the eyewitnesses examined, the rash or negligent aspect in driving of the accused remained unproved.

13. Now, I would like to place reliance upon [Abdul Subhan Vs State](#) [133 (2006) DLT 562, Delhi High Court] where in it was observed that merely coming to a conclusion that a vehicle was being driven at a high speed does not in itself mean the accused was driving a vehicle rashly or negligently. It laid emphasis upon many questions such as were the traffic light working or not? What is meant by high speed? Why there is no evidence with regard to tyre skid marks? What was the speed of the motorcyclist? It was held that in a criminal trial, burden of proving everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favor 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*”.

14. A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still, a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequence. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in

particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.

15. Further, I would also like to emphasize on the judgment ***Ram Avtar Vs. State of Rajasthan, II (2006) ACC 438, passed by Rajasthan High Court*** wherein it is held that: Thus, the essential ingredients for offence under [section 279 IPC](#) is that the vehicle should be driven in rash and negligent manner. The concept of rashness and negligence is borrowed from the law of tort into the criminal law. But in criminal law for rashness the criminality lies in running the risk of doing an act with recklessness or indifference to consequences. On the other hand, criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to the individual in particular, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

16. Hence, the prosecution has to prove the existence of these two elements to bring home the offence under [Section 279 IPC](#). However, the mere fact that accused was driving vehicle at high speed may not attract provision of [Section 279 IPC](#). For, speed of the vehicle is not always determinative of the question whether vehicle was driven in a rash and negligent manner. One has to consider the

surrounding circumstances of the case to conclude whether the driving was done in rash and negligent manner or not?

17. In the case of [Badri Prasad Tiwari Vs. The State I \(1994\)](#) *ACC 476: 1994 Cri. LJ 389 (Qri.)*, the *Hon'ble Orissa High Court* has held that “In order to constitute an offence under [Section 279](#) IPC, it must be established that the accused was driving the vehicle on a public way in a rash and negligent manner to endanger human life or to likely cause hurt or injury to any other person”.

18. Further Ld. Counsel for the accused argued that in the present case main victim has not been examined by the prosecution who is the relevant witness to depose the exact accident. But prosecution is silent in this regard.

19. Further, the Hon'ble High Court has laid down certain requirements which are to be meted out in an accident case by the investigating officer, the case of “*Tarsem Singh Vs State of Haryana, 2007(4) RCR(Criminal) 605(P&H)*”. The Hon'ble Court observed that it is expected from the investigating officer handling the investigation to take the following necessary steps:

- a) To visit the spot promptly without wasting any time.
- b) To carefully inspect the place of occurrence, note down the material points with exact measurements in the site plan.

c) To make measurements of the roads, kacha berms and to make mentioned of the turnings and bridges, if any, at the place of accident.

d) To have photographs of the dead body, situation of the vehicles, extent of the damage to the vehicles and part of the vehicle which has been damaged without any delay. He would not leave it to the machinery, which it may be carrying prior to or at the time of accident (at a later stage).

e) To note down the skid marks, if any, at the spot, join the expert to have opinion about of the speed of the vehicles.

f) To make mentioned of the documents or other articles which were recovered from the spot or from the vehicles involved in the accident.

g) To get the place of occurrence examined by an expert, if he deems it appropriated.

20. In case in hand, the above said factors were to be considered by the investigating officer, so as to reach to conclusion as to who was rash and negligent. But investigating officer did not do the needful nor he has been examined by the prosecution. In such eventuality, this Court cannot reach to the conclusion that accident took place due to rashness and negligence of the accused.

21. In these circumstances, it becomes apparent that the prosecution has failed to establish the identification of the accused beyond the shadow of reasonable doubt. PW-2 in his examination in

chief deposed that truck was driven by an old man with white beard on a high speed in rash and negligent manner whom he can identify. But in his cross-examination he deposed that he has not seen the accused on the spot. He further stated that police never called him to police station regarding the present case.

22. I am of the view that there is a much difference between the standard of proof in criminal cases and civil cases. In civil cases, a decision can be given on a mere preponderance of probability. But in criminal cases a much higher degree of proof is necessary to prove the guilt of the accused. In criminal cases, the presumption is that the accused is presumed to be innocent till the contrary is established. It is a common law in criminal cases that it is better that ten guilty man should escape than that one innocent should suffer. As such, one cannot be held liable mere on the basis of conjecture and surmises and if there is an element of reasonable doubt as to the guilt of the accused the benefit of that doubt must go in favour of accused person. Therefore, the element of rashness and negligence cannot be attributed to the present accused. Hence, the ingredients of any of the Sections under which the accused is charged are not made out. In a criminal trial, the burden is on the prosecution to prove the guilt of the accused beyond reasonable doubt. This burden casts a heavy onus on the prosecution to prove its case by leading unimpeachable evidence. However, in the present case, from the discussion above, the Court is left with no option but to give the benefit of doubt to the accused.

23. As such, this point of determination is decided against the prosecution and in favour of the accused. Hence, the accused is acquitted of the charges against framed him. Case property be returned to rightful owner as specified under Section 452 Cr.P.C. File be consigned to the Judicial record room Pathankot after due compliance.

Pronounced in open Court

Dated: 06.03.2025

Pankaj (JW)

**(Parminder Pindu), (PCS)
Judicial Magistrate 1st Class,
Pathankot.UID No. PB0674**