

IN THE COURT OF MS. BALVINDER KAUR DHALIWAL, PCS
SUB DIVISIONAL JUDICIAL MAGISTRATE DERA BASSI.

UID NO: PB 0286

CIS NO. CHI/1348/2014.

CNR NO: PBSAB10008912014.

POLICE CHALLAN NO: 124 DATED 28.10.2014.

DECIDED ON: 10.04.2018.

State

Versus.

Arvind Kumar Yadav son of late Sh. Parmanand Yadav, resident of
village Nannu Bigha, Police Station Attri, District Gya, Bihar.

.....Accused.

FIR NO. 293 DATED 17.12.2014.

UNDER SECTIONS: 279, 304-A IPC.

POLICE STATION: DERA BASSI.

Present: Sh. Harvinder Singh, APP for the State.

Accused on bail represented by counsel Sh. Gaurav Kumar

Sammi, Advocate.

J U D G M E N T:

The above mentioned accused has been sent up to face the trial by the Station House Officer, Police Station, Dera Bassi, for the offence under Sections 279, 337, 338 IPC of the Indian Penal Code (hereinafter referred to as IPC).

2. The brief facts of the present case are that on 29.06.2014, HC Angrej Singh alongwith some other police officials reached at GMCH, Sector 32, Chandigarh and got recorded the statement of Phool Chand son of Sh. Chet Singh, resident of House No. 226, Street No. 3, Shakti Nagar, Dera Bassi, District SAS Nagar, wherein, he has stated that he is resident of above said address. He is retired Indian Air Force employee. On 24.06.2014, he was coming back from Air Force Canteen, Barwala on his scooter bearing registration no. CH 03 E 6855 make Bajaj. At about 2.00 PM, when he reached near the Indo Swift factory, in the meantime, one truck bearing registration no. HR 55 Q 2538 being driven by its driver came in a very rash and negligent manner at a very high speed, from the side road and hit into his scooter from wrong side. As a result, he fell down. The driver of the said vehicle stopped his truck little ahead and came down but on seeing his condition, he fled away from the spot. He sustained injury on his left leg and arm. His son

Randhir Singh taken him to Civil Hospital, Dera Bassi, from where he was referred to GMCH, Sector 32, Chandigarh after giving him first aid. **The said occurrence took place due to rash & negligent driving of the vehicle bearing registration no. HR 55 Q 2538. He can identify the driver of the said vehicle, if come present before him.** On the basis of above said statement, an FIR in the present matter was registered and investigation in the matter was started and after completion of investigation, the challan against the accused was presented in the Court.

3. On appearance of the accused facing trial, the copies of report under Section 173 of Cr.P.C and other documents attached herewith were supplied to the accused under Section 207 of Cr.P.C free of costs.

4. Arguments were heard and since there were prima facie sufficient grounds to presume that the accused has committed offence under Sections 279, 338 of the IPC, accordingly he was charged, to which, he pleaded not guilty and claimed trial.

5. In order to prove its case the prosecution examined PW 1 HC Angrej Singh who is the Investigation Officer in this case and in his examination-in-chief, he has deposed as per the version of the prosecution and he proved the the application moved regarding fitness of

injured to make the statement as Ex. P A, endorsement of the doctor as Ex. P B, statement of injured as Ex. P C, police proceedings as Ex. P D, FIR as Ex. P E, endorsement as Ex. P F, seizure memos as Ex. P G and Ex. P H, personal search memo as Ex. P J, memo of arrest and intimation of arrest as Ex. P K, recovery memo of DL as Ex. P L, rough site plan as Ex. P M, recovery memo of documents of complainant as Ex. P N, applications as Ex. PP and Ex. P Q, reports of the offices as Ex. P R and Ex. P S, RC of truck is Ex. P 1, RC of scooter as Ex. P 2, DL of accused as Ex. P 3, DL of complainant as Ex. P 4 and insurance of scooter of the complainant as Ex. P 5. PW 2 Phool Chand is the complainant in this case and in his examination-in-chief, he has also deposed as per the version of the prosecution. PW 3 Bodh Raj has proved the mechanical reports as Ex. PW 3/A and Ex. PW 3/B. PW 4 Manoj Kumar has proved the original RC as Ex. PW 4/A and attested copy of screen report as Ex. PW 4/B, report of the office as Ex. P R. PW 5 Dr. Deepinder Singh has proved the medico legal case summary of injured as Ex. PW 5/A. PW 6 Randhir Singh has corroborated the version of the complainant and he proved the statement as Ex. P C. PW 8 Dr. Neha Chakarwati has proved the report prepared by her as Ex. PW 8/A. PW 9 Mohan Singh has proved the X-ray as Ex. PW 8/A. PW 10 Gurminder Singh has proved the original DL as

Ex. PW 10/A and copy of the register as Ex. PW 10/B and thereafter the evidence of the prosecution was closed.

6. Then statement of accused facing the trial under Section 313 of Cr. P.C was recorded wherein all the incriminating evidence appearing against the accused were put to accused who denied the same and pleaded false implication. The accused preferred to lead defence evidence. However, failed to produce any defence evidence and the defence evidence of the accused was closed.

7. I have heard learned APP for the state and learned defence counsel and have gone through the file with their able assistance.

8. In the given circumstances following point of determination emerged:

“Whether on 24.06.2014 at about 2.00 PM in the area of village Bhagwanpur, Police Station Dera Bassi, the accused drove his truck bearing no. HR 55 Q 2538 in a rash and negligent manner on a public place so as to endanger human life and personal safety of others and while he was driving the above said vehicle in a rash and negligent manner on a public place caused grievous hurt to Phool Chand.

9. The accused has denied the point of determination but

Learned APP for the State argued that the case stands fully proved on record under Sections 279, 338 of the IPC. For this purpose attention of this Court was drawn to the testimony of the prosecution witnesses. As per APP for the State in order to prove their case they have examined PW 1 HC Angrej Singh who is the Investigation Officer in this case and in his examination-in-chief, he has deposed as per the version of the prosecution and he proved the the application moved regarding fitness of injured to make the statement as Ex. P A, endorsement of the doctor as Ex. P B, statement of injured as Ex. P C, police proceedings as Ex. P D, FIR as Ex. P E, endorsement as Ex. P F, seizure memos as Ex. P G and Ex. P H, personal search memo as Ex. P J, memo of arrest and intimation of arrest as Ex. P K, recovery memo of DL as Ex. P L, rough site plan as Ex. P M, recovery memo of documents of complainant as Ex. P N, applications as Ex. PP and Ex. P Q, reports of the offices as Ex. P R and Ex. P S, RC of truck is Ex. P 1, RC of scooter as Ex. P 2, DL of accused as Ex. P 3, DL of complainant as Ex. P 4 and insurance of scooter of the complainant as Ex. P 5. PW 2 Phool Chand is the complainant in this case and in his examination-in-chief, he has also deposed as per the version of the prosecution. PW 3 Bodh Raj has proved the mechanical reports as Ex. PW 3/A and Ex. PW 3/B. PW 4 Manoj Kumar has proved the original RC

as Ex. PW 4/A and attested copy of screen report as Ex. PW 4/B, report of the office as Ex. P R. PW 5 Dr. Deepinder Singh has proved the medico legal case summary of injured as Ex. PW 5/A. PW 6 Randhir Singh has corroborated the version of the complainant and he proved the statement as Ex. P C. PW 8 Dr. Neha Chakarwati has proved the report prepared by her as Ex. PW 8/A. PW 9 Mohan Singh has proved the X-ray as Ex. PW 8/A. PW 10 Gurminder Singh has proved the original DL as Ex. PW 10/A and copy of the register as Ex. PW 10/B.

10. The learned APP for the State referred to the statements of the above said witnesses who supported the prosecution story and stated that case is proved beyond the reasonable doubt and on the basis of oral as well as documentary evidence urged for the conviction of the accused.

11. On the other hand learned defence counsel argued that the case of prosecution is bundle of irregularities and there are lot of material flaws and loopholes and further argued that accused has been falsely implicated in the present case and prayed for the acquittal of the accused giving him benefit of doubt.

12. I have heard learned APP for the State and learned defence counsel and gone through the file with their able assistance.

13. In the present case, accused was charge sheeted on

18.03.2015 under Section 279, 338 of IPC on the allegations that **on 24.06.2014 at about 2.00 PM in the area of village Bhagwanpur, Police Station Dera Bassi, the accused drove his truck bearing no. HR 55 Q 2538 in a rash and negligent manner on a public place so as to endanger human life and personal safety of others and while he was driving the above said vehicle in a rash and negligent manner on a public place caused grievous hurt to Phool Chand.**

14. In order to prove these said allegations that it was due to the driving effect of accused, victim Phool Chand was in fact endangered and death was caused to him. **Under section 279 of Indian Penal Code, two things are required-**

(1) Driving of a vehicle on a public place

(2) Such driving must be as rash and negligent as to endanger human life or to be likely to cause hurt or injury to the any other person.

A rash act is primarily and overhasty act and is thus opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate, is yet done without due deliberation and cautious. In rashness the criminality lies in running the risk of doing an act with recklessness and indifference to consequence. In the present case, prosecution has exam-

ined complainant stepped into witness box as PW 2 who consistently deposed as per prosecution story. He has particularly stated that the registration number of offending vehicle i.e Truck bearing registration no. HR 55 Q 2538. The learned defence counsel for the accused contended that the complainant has failed to identify the accused. However, this argument of the learned defence counsel for the accused is not maintainable in view of the fact that the complainant has consistently deposed as per the version of the prosecution. Moreover, he has specifically deposed about the date, time and place of occurrence and he also deposed about the registration number of the vehicle in question. To rebut this evidence, the learned defence counsel did not lead any evidence to prove that on the date of occurrence he was not present on the spot and was not driving the offending vehicle. At this stage, this Court relied upon the judgment of Hon'ble Supreme Court cited in case titled as **Khuji @ Surender Tiwari versus State of M.P. (1991) 3 SCC 627**, wherein one of the eye witness had supported the prosecution case fully in his examination in chief but in his cross-examination, which was recorded after one month turn hostile regarding the identity of the assailants and claimed that he had not seen the face of assailants at the time of incident but had seen their back only.

The Sessions Court did not accept his testimony but relying upon the other evidence.

15. The **Hon'ble High Court & Hon'ble Supreme Court accepted and endorsed the view that witness had tried to help the accused by changing his statement.**

16. However in the present matter, the complainant Phool Chand who stepped into witness box as PW 2 have fully proved that on 24.06.2014, accused was driving his Truck bearing number HR 55 Q 2538 in a very rash and negligent manner and also proved. At that time, accused instead of being caution, was driving rashly and negligently therefore the act of the accused was recklessness/indifference consequences. His evidence is fully corroborated with the evidence of his son who stepped into the witness box as PW 6 Randhir Singh. There is difference between rashness and negligence, rashness is a graver offence whereas negligence is breach of a duty by the omission to do something which a reasonable man or doing something which such a man would not do having due regard to the facts and circumstances of the case in hand. Bare negligence involving the risk of injury is punishable criminally.

17. These are, in all, the witnesses examined by the prosecution

to prove the allegations that **on 24.06.2014 at about 2.00 PM in the area of village Bhagwanpur, Police Station Dera Bassi, the accused drove his truck bearing no. HR 55 Q 2538 in a rash and negligent manner on a public place so as to endanger human life and personal safety of others and while he was driving the above said vehicle in a rash and negligent manner on a public place caused grievous hurt to Phool Chand.**

18. Further, so far as offence under Section 338 IPC is concerned, the case of the prosecution is that injured Phool Chand suffered grievous injuries in the said accident and in order to prove the same prosecution has examined PW 5 Dr. Deepinder Singh, Senior Resident, Department of Orthopedics, GMCH, Sector 32, Chandigarh **who has proved the MLR of the injured as Ex. PW 5/A. In his opinion, the injured sustained injuries i.e. fractured femur left, tibia left, patella left and thereafter operation performed as open reduction and internal fixation and after that the nature of injury was declared as grievous.**

19. He was cross examined at length by the learned defence counsel for the accused, however nothing favourable has come out from her cross examination. Therefore, in the case in hand prosecution has

proved the offence under Section 338 IPC against the accused beyond the shadow of reasonable doubt. Medical evidence is fully corroborated with oral evidence of complainant.

20. Secondly the plea of non-joining of independent witness is not convincing. There is no mathematical and straight forward formula that whenever independent witness is not joined the prosecution evidence should be rejected. It is known fact of Indian society that people are generally reluctant to come forward and depose before the court fearing unnecessary legal complications and frequent adjournments in the courts due to heavy pressure of work. They also dare not to speak truth to avoid personal enmity with the accused because they believe that their safety is not guaranteed and also general reluctance to involve in the matters of others. The Hon'ble Apex court in plethora of judgments like **State of UP vs Anil Singh AIR 1988 SC 1998** have taken the view that joining of independent witnesses is not an absolute rule to sustain the conviction and in every such like situation it is not proper for trial courts to reject the case of prosecution on the ground of non-joining of independent witness if the case made out is otherwise true and acceptable, which feel in the present case is made out.

21. In view of the above discussion this Court is of the opinion that prosecution has established the case against the accused beyond any doubt under Section 279 and 338 of IPC. The arguments raised by the defence counsel are without any substance and deserves to be rejected. PWs examined by the prosecution have no motive or ill-will or previous enmity against the accused, prompted by which they would like to implicate the accused falsely. Hence, this Court is of the opinion that accused has totally failed to prove his innocence and prosecution has fully proved the case against the accused under Section 279, 338 of IPC. Further the witnesses have been duly cross-examined by the defence counsel at length, but they remained firm on their testimony and contradictions brought to light by defence counsel in their testimonies are result of passage of time and are still not material enough to secure the acquittal of the accused as all the witnesses corroborated each other on the material points and clearly proved the identity of the accused as the driver of the offending vehicle.

22. All these circumstances established beyond all reasonable doubts that it is the accused who was driving the offending vehicle bearing registration no. HR 55 Q 2538 in rash and negligent manner and thereby caused grievous injuries to Phool Chand and proved the case

against the accused u/s 279, 338 IPC. Hence, accused is convicted under section 279 and 338 IPC. Let he be heard on the question of sentence.

PRONOUNCED

ON: 10.04.2018. (BALVINDER KAUR DHALIWAL)
SUB DIVISIONAL JUDICIAL MAGISTRATE
DERA BASSI (UID: PB 0286)

QUANTUM OF SENTENCE:

Present: APP for the State.

Convict in custody represented by counsel Sh. G.K.Sammi,
Advocate.

23. I have heard the learned APP for the State and convict on the question of sentence. The convict stated at bar that he is poor person and there is no other person in his family to look after them. He further stated that he is only bread winner of his family and is first offender and has not been convicted in any offence so far. Lenient view may kindly be taken while passing sentence against him. The learned APP for the State has opposed the plea of the convict stating that the convict has committed the grievous offence and hence he is not entitled to any leniency.

24. Keeping in view the facts and circumstances of the case and the submissions of the convict and after going through the facts and circumstances of the present case and having regard to the gravity of the

offence involved in this case, the convict is not entitled to any leniency and is sentenced as under:-

Name of the convict	Under Section	RI	Fine	In default
Arvind Kumar.	279 IPC	6 months	Rs. 500/-	1 month.
-do-	338 IPC.	2 years	Rs. 1000/-	2 month.

25. All the substantive sentences shall run concurrently.

However, the period of detention, if any, already undergone by the convict shall be set off against the substantive punishment. Previous bail bond and surety bonds are discharged. Fine paid. The file be consigned to the Judicial Record Room, Dera Bassi.

PRONOUNCED

ON: 10.04.2018.

(BALVINDER KAUR DHALIWAL)

SUB DIVISIONAL JUDICIAL MAGISTRATE

DERA BASSI (UID PB 0286).

TYPED BY

SHIV PARTAP,

STENOGRAPHER GR. II/JUDGMENT WRITER.

State vs Arvind Kumar

Present: APP for the State.

Accused on bail with counsel Sh. G.K.Sammi Advocate.

No defence evidence is present. Hence the same stands closed by the order of the Court. Arguments heard. Vide my separate detailed judgment of even date, accused is convicted & sentenced. Fine paid. File be consigned to the Judicial Record Room, Dera Bassi.

PRONOUNCED

ON: 10.04.2018.

(BALVINDER KAUR DHALIWAL)

SUB DIVISIONAL JUDICIAL MAGISTRATE

DERA BASSI (PB 0286).

TYPED BY

SHIV PARTAP,

STENOGRAPHER GR. II/JUDGMENT WRITER.

State versus Arvind Kumar

Present: APP for the State.

Convict in custody represented by counsel Sh. G.K.Sammi,
Advocate.

The convict has filed the present application for suspension of sentence. Heard. The convict has been convicted vide my separate detailed judgment of the even date. The convict has deposited the fine amount imposed upon her. The sentence of imprisonment awarded to the convict does not exceed three years. The convict stated that he want to prefer an appeal against the judgment of this Court. As the convict want to prefer an appeal against the judgment of this Court, therefore, the sentence awarded to the convict is suspended till 09.05.2018, subject to his furnishing personal bonds in the sum of Rs. 20,000/- with one surety in the like amount each. Bonds furnished, which are accepted and attested. The convict is ordered to be released with direction to surrender before this Court on the date fixed in case he failed to obtain order of bail from the Appellate Court. The concerned Ahlmad is directed to put up the rele-

vant papers on the date fixed.

PRONOUNCED IN THE OPEN COURT

ON: 10.04.2018.

(BALVINDER KAUR DHALIWAL),

SUB DIVISIONAL JUDICIAL MAGISTRATE,

DERA BASSI (UID: PB 0286)

TYPED BY

SHIV PARTAP,

STENOGRAPHER GR. II/JUDGMENT WRITER.