State vs . Raj Kumar on 21 November, 2022

IN THE COURT OF MS. APOORVA RANA, M.M-10,
DWARKA COURT (SOUTH WEST), NEW DELHI

CNR No. DLSW02-005869-2016

Cr. Case 429553/2016
STATE Vs. RAJ KUMAR
FIR NO. 37/2016
P.S Kapashera

21.11.2022

JUDGMENT

Case No.	:	429553/2016
Date of commission of offence	:	08.02.2016
Date of institution of the case	:	01.06.2016
Name of the complainant	:	Sh.Sanchit Khanna
Name of accused and address	:	Raj Kumar S/o Sh. Triloki Nath R/o Village Durgapur, Mavi, PS Piper Pur, Distt. Sultan Pur, U.P.

Offence complained of or proved : U/s 279/338 IPC and 3/181 MV Act Plea of the accused : Pleaded not guilty Final order : Acquitted Date reserved for judgment : 11.10.2022 Date of judgment : 21.11.2022 BRIEF STATEMENT OF THE FACTS FOR DECISION:

1. The present case pertains to prosecution of accused Raj Kumar (here-in-after referred to as the accused), pursuant to charge sheet filed qua him under Section 279/338 IPC (hereinafter IPC for sake of brevity) subsequent to the investigation carried out at P.S: Kapashera, in FIR no. 37/16.

2. It is the case of the prosecution that on 08.02.2016, at about 12:30 p.m, at Palam Vihar Road, near Nala, Bijwasan, New Delhi, the accused was found driving a truck bearing number DL-1-GC-5963, in a manner so rash or negligent so as to endanger human life and personal safety of others. Due to this act of the accused, his aforesaid truck struck against one scooty (Honda Activa) bearing no. DL-12-SF-0401 of the complainant namely, Sanchit Khanna, which was being driven by the complainant himself with Sumit being the pillion rider, due to which both of them fell down from

the said scooty and the aforesaid truck, being driven at a high speed, ran over the right leg of Sumit, resulting in grievous injury to him. Consequently, an FIR was registered in the present case and after investigation, the police filed the present charge sheet against the accused for commission of offence punishable u/s 279/338 IPC.

3. Complete set of charge sheet and other documents were supplied to the accused. Notice for offence punishable u/s 279/338 IPC & 3/181 of M.V. Act was served upon the accused to which he pleaded not guilty and claimed trial. It is pertinent to mention here that though notice was served to accused for offence u/s 279/338 IPC & 3/181 of M.V. Act, the corresponding order-sheet of the said date, recorded by Ld. Predecessor Judge, indicates that notice was served to accused for offence u/s 279/338 IPC only. Further, even otherwise, the contents/ingredients constituting offence u/s 3/181 MV Act are not mentioned in the said notice dated 08.08.2016, served to the accused.

MATERIAL EVIDENCE IN BRIEF:

4. The prosecution, in support of the present case has examined eleven witnesses in total.

5. PW-1 was W/HC Usha Rani, i.e. the duty officer, who deposed that on 08.02.2016 at about 3:40 p.m, Ct. Parveen brought one rukka for registration of FIR which was sent by ASI Mahender. That, she registered the present FIR and made endorsement on the original rukka and handed over the copy of FIR and original rukka to Ct. Parveen to be handed over to ASI Mahender for investigation. Through the said witness, copy of FIR was exhibited as Ex. PW 1/A(OSR), endorsement on rukka was exhibited as Ex. PW1/B and certificate u/s 65B of Indian Evidence Act was exhibited as Ex. PW 1/C.

6. PW-2 was ASI Kartar Singh, i.e. the MHCM, who deposed that on 08.02.2016, ASI Mahender Singh deposited the case property and the same was mentioned by him in register no.19 at serial no. 1272. Through him, the relevant page of register no.19 was exhibited as Ex PW 2/A.

7. PW-3 was Yogender Kumar Kapil i.e. the registered owner of the offending truck, who deposed that on 08.02.2016 police served him notice u/s 133 M.V. Act and he replied to the same. He further deposed that on the day of accident, his driver Raj Kumar was driving the vehicle no.

DL1GC5963. That, he got his vehicle released on superdari by the order of the court. Through him, his reply was exhibited as Ex PW 3/A.

8. PW-4 was Sh. Puran Chand who deposed that on 09.02.2016, at the request of IO ASI Mahender Singh, he mechanically inspected vehicle no. DL-12SF-0401 (Honda Activa) and truck no. DL-1GC-5963. That both the vehicles were fit for road test. Through him, the reports were exhibited as Ex PW 4/A and Ex PW 4/B respectively.

9. PW-5 was Sh. Chand Singh who deposed that on 08.02.2016, he received information regarding the accident from his son Sumit Solanki through phone of some other person. That, thereafter he went to Columbia hospital where his son was admitted.

10. PW-6 was Sunchit Khanna, i.e. the complainant himself, who deposed with respect to the manner and circumstances in which the incident in question occurred. He also deposed with respect to the liability of the accused with respect to the incident in question. He, inter-alia, deposed that on 08.02.2016, he alongwith his friend Sumit Solanki were coming from Ansal Plaza on his Honda Activa no. DL 12 SF 0401 and when they reached petrol pump, suddenly one truck hit their scooty from behind, due to which he fell down with the scooty on the left side and his friend Sumit Solanki fell down at the right side. That, the said truck was at a high speed and the driver could not control the said truck and ran over the right leg of his friend. That, thereafter he shouted and some passerby gathered there and helped him to take his friend to Columbia hospital. PW-6 further deposed that the truck driver ran away from the spot after leaving the said truck there. That, firstly they contacted the father of Sumit Solanki from the hospital and thereafter they informed his brother through phone. That, after some time father and brother of Sumit reached the hospital and thereafter police came at the hospital and recorded his statement as complaint. Through him, his statement was exhibited as Ex PW 6/A, site plan was exhibited as Ex PW 6/B, seizure memos of scooty and offending vehicle were exhibited as Ex PW 6/C and Ex PW 6/D respectively, arrest memo was exhibited as Ex PW 6/E and photographs of spot and vehicles were exhibited as Ex PW 6/F (colly).

11. PW-7 was HC Praveen Kumar, who deposed that on 08.02.2016 he along with ASI Mahender were on emergency duty. On receiving DD No.16 A he along with ASI Mahender reached at the spot where one scooty no. DL12SF0401 and one truck No. DL1GC5963 were found in accidental condition and complainant Sanchit Khanna told them that he along with his friend Sumit were going towards FIMT College from Palam Vihar side, when suddenly the above said truck hit his scooty from behind. That, injured Sumit was shifted to hospital by his father. He further deposed that thereafter, ASI Mahender went to the hospital while he remained back at the spot. Thereafter, the said witness deposed with respect to the proceedings and investigation in genral carried out by the IO after he returned to the spot. Through him, the seizure memo of documents of the offending vehicle were taken on record as Ex. PW 7/A.

12. PW-8 was Ms. Nidhi Negi, Medical Record Supervisor, Columbia Asia Hospsital, who proved the record pertaining to MLC no. 3383/16 of the injured Sumit as Ex. PW8/A.

13. PW-9 was Smt. Ratti Khanna, who deposed that she was the owner of the scooty bearing No.DL12SF0401, which was seized by the police and that she got the same released from police station on superdari. She proved the superdari order and panchnama as Ex. PW 9/A (colly).

14. PW-10 was Retired ASI Mahender Singh who deposed that around one year back he had suffered brain stroke due to which he suffered memory loss and he did not remember the proceedings carried out by him in the present case. He had just identified his signatures on the various documents prepared by him.

15. Lastly, PW-11 was Sh. Sumit Solanki, who was the injured in the case and who deposed on similar lines as PW6/complainant as regards the occurrence of incident in question and the liability of accused qua the same (the said witness was examined u/s 311 Cr.P.C. read with section 165 of Indian Evidence Act).

16. No other PW was left to be examined, hence, P.E was closed.

STATEMENT OF ACCUSED U/S 313 Cr.P.C.:

17. Statement of the accused u/s 281 Cr.P.C read with Section 313 Cr.P.C. was recorded separately in which all the incriminating circumstances appearing in evidence were put to him. The accused controverted and denied the allegations levelled against him and stated that he has been falsely implicated in the case as the injured had to procure MACT claim. Accused further opted to not lead evidence in his defence, hence, DE was closed.

FINAL ARGUMENTS:

18. Ld. APP for the State has argued that prosecution witnesses have supported the prosecution case and their testimony, particularly that of PW11 / injured Sumit, has remained unrebutted. It has been further argued that on the combined reading of the testimony of all the prosecution witnesses, offence u/s 279/338 IPC has been proved beyond doubt.

19. Per contra, Ld. Counsel for accused argued that the accused has been falsely implicated in the present case and that there is no evidence against him showing his liability in the present case and thus, he is entitled to be acquitted in the present case. It has also been argued that there are material contradictions and lacunae/inconsistencies in the version of the prosecution due to which the prosecution has not been able to prove its case beyond reasonable doubt against the accused.

APPRECIATION OF EVIDENCE AND CONSEQUENT FINDINGS:

20. Arguments adduced by Ld. APP for State and accused have been heard. The evidence and documents on record have been carefully perused.

21. I have bestowed my thoughtful consideration to the rival submissions made by both the parties. Accused Raj Kumar has been indicted for the offence u/s 279/338 IPC. Section 279 IPC provides punishment for offence of driving a vehicle in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person; and section 338 IPC provides punishment for causing grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others. To drive home the guilt of the accused under

section 279/338 IPC in road accident cases, following ingredients are required to be proved:- a). That the accused was the person who was driving the offending vehicle at the time when the accident occurred. b). That the accused drove the vehicle in a rash and negligent manner. c). That grievous hurt to the victim was the direct and proximate cause of the injuries suffered by way of rash and negligent driving of the accused. It must be causa causans - the immediate cause, and not enough that it may be causa sine qua non - proximate cause. (Ref. Suleman Rahiman Mulam v. State of Maharasthra AIR 1968 SC 829; Ambalal D Bhatt v State of Gujarat AIR 1972 SC 1150).

22. A bare reading of the aforesaid provisions indicates that the main ingredient upon which the said offences hinge upon is that the act of the accused should be done in a rash or negligent manner. These words "Rash" and "Negligent" have not been defined in the IPC. However, the meaning of the said terms have been exhaustively delineated by way of various judicial pronouncements. In Empress v. Idu Beg, (1881) ILR 3 All 776, Straight, J. made the following pertinent observations which have been quoted with approval by various Courts, including the Apex Court:

> "Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused.
>
> The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. 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 an individual in particular, which, 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".

Similarly, in Mohammed Aynuddin @ Miyam vs State Of Andhra Pradesh (2000 SC), the Hon'ble Apex Court has inter alia held the following:

> "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 consequences. 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."

Again, it has been held by Hon'ble Supreme Court of India in Rathnashalvan vs State Of Karnataka (2007 SC) that:

> "Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed

> by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused."

23. It is trite law that the burden always lies upon the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence and that the law does not permit the court to punish the accused on the basis of moral conviction or on account of suspicion alone. Also, it is well settled that accused is entitled to the benefit of every reasonable doubt in the prosecution story and such doubt entitles him to acquittal.

24. Adverting to the facts of the present case, it may be noted at the every outset that the entire case of prosecution hinges upon the testimonies of PW6 and PW11, that is the complainant himself and injured Sumit, who deposed that on 08.02.2016, they were coming from Ansal Plaza on a Honda Activa bearing no. DL 12 SF 0401 and when they reached near Ganda Nala, one truck suddenly hit their scooty from behind, due to which the complainant fell down with the scooty on the left side and his friend / injured Sumit Solanki fell down on the right side. That, the said truck was at a high speed due to which the driver could not control the said truck and ran over the right leg of injured Sumit, resulting in injury to him. Now, from perusal of the testimony of the various prosecution witnesses as well as the overall defence taken by the accused in the present matter, including at the time of recording of statement of accused under section 281 Cr.P.C read with section 313 of Cr.P.C., it can be conclusively said that the accident in question had occurred; that the injured Sumit had sustained injuries owing to the said accident; and that the accused was the driver of the offending vehicle at the relevant time. During the entire course of evidence, the aforesaid facts have not even been once denied on behalf of the accused.

25. In such a scenario, where the fact that the accident had occurred resulting in injuries to PW11/injured Sumit, as alleged, and that the accused was the driver of the offending vehicle at the relevant time has been proved, only the following issue remains to be determined:

> (i) Whether the said accident was caused by the rash and negligent act of attributable to the accused by virtue of his being the driver of the offending vehicle at the relevant time.

26. To establish the aforesaid fact, the only witnesses whose testimonies are relevant in this regard are that of complainant / PW6 himself and injured/PW11 Sumit, as they are the sole eye witnesses to the accident in question. However, a careful reading of their testimonies, alongwith testimony of the IO and other prosecution witnesses, brings to light certain glaring inconsistencies and lacunae in the prosecution case, as discussed hereinafter.

a. The most important cog in the wheel of the prosecution case is the manner in which the accident in question is stated to have occurred. As per the complaint of the complainant Ex. PW6/A, on 08.02.2016, when the complainant and his friend Sumit were returning from Ansal Plaza to their college on a scooty (Honda Activa), then at around 12:30 PM, near Ganda Nala, Bijwasan New Delhi, one truck bearing number DL1GC5963 struck against their scooty from behind on its right side, due to which the complainant fell on his left side, while his friend Sumit fell on the right side, and the truck driver while driving the said truck at a high speed and in a negligent manner, ran it over on the right leg of his friend Sumit. During his deposition as PW6, the complainant omitted the earlier stated fact that the truck had hit their scooty on the right side, and simply stated that one truck hit the scooty from behind due to which he fell down with the scooty on the left side and his friend Sumit fell down on the right side. Further, PW11 Sumit, on this aspect averred that one truck suddenly came from behind at a high speed and hit their scooty from behind. If aforesaid manner of occurrence of the accident is to be assumed, it would be appropriate to infer in the normal course of events that the front part of the offending vehicle would have struck against the back side / back right side of the scooty and thus, the damage that would have been sustained by the scooty owing to this collision would have been on its rear end. Or, even if it is to be assumed that after the collision as stated above, complainant/PW6 fell down with the scooty on the left side, then prudence demands that such a fall of the scooty on the left side would have resulted damage on its body on the left side. However, quite surprisingly, and in contrast to the above, the mechanical inspection report of the scooty of the complainant Ex. PW4/A, mentions fresh damage on the front right portion of the scooty and reports no damage as such on its posterior or its left side. In the said report, it has been stated that the front right portion of the scooty was found freshly damaged, including fresh scratches on the support guard. This description of the damage on the scooty as per the mechanical inspection report is irreconcilable with the actual damage which should have been reported on the said vehicle, if the prosecution story, as portrayed, was to be believed. Even the photographs of the scooty placed on record, exhibit no visible damage on its back portion or left side, which ideally should have been found damaged had the accident in question occurred in the alleged manner. In such a scenario, the portrayal of the manner in which the accident is alleged to have occurred is thus, shrouded with a myriad of doubts, and has been thus rendered dubitable. Consequently, a reasonable suspicion has crept in the story of the prosecution as regards the allegations of rashness and negligence on part of the accused driver.

b. Furthermore, the allegations regarding the rash and negligent act on part of the accused appear to have been constituted from the fact that the offending vehicle was being driven by the accused at a high speed. Now, how the complainant or injured/PW11 arrived at this approximation of speed at which the accused was driving the vehicle in question, is obscure. It is not the case of the IO that he had made efforts to observe any skid marks on the accident spot or that he had examined any speed checker/radar installed in/around the spot to ascertain the approximate speed of the offending vehicle at the time of the accident and had thereby concluded that the offending vehicle was being driven at a speed higher than the prescribed limit. In such circumstances, it would be improper to impute allegations to the effect that the offending vehicle was speeding past the limit on the route on which it was being driven. Other than this, the complainant or PW11 have failed to delineate any other manner in which the accused was driving the offending vehicle. In fact, since the contention of the complainant / injured person is that the offending vehicle came and hit them from behind, the

rash and negligent manner of driving by accused could not have even been possibly ascertained or witnessed by the victims. Furthermore, there is not even a whisper of any kind of injury suffered by PW6/complainant due to fall after the alleged collision, which could have indicated the nature of the impact, thus leading to an inference as regards the manner of driving the offending vehicle. In the humble opinion of this Court, the fact that after fall from scooty, the offending vehicle ran over the leg of PW11 cannot ipso facto indicate negligent driving on part of the accused as the same could have been a probable scenario even in a case where the victim had fallen down on the road owing to any other extraneous reason and was run over by a vehicle coming from behind on the same side in a reasonable and normal manner, as it had no time to halt due to such sudden turn of events before it. Now, it is trite law that allegations regarding the offending vehicle being driven at high speed alone, in itself cannot tantamount to act of rashness or negligence. In this regard, it would be apposite to advert to the ruling of the Hon'ble High Court of Delhi in Abdul Subhan Vs. State (NCT of Delhi), 2006 Delhi HC, wherein, the following was observed:-

> "The aforesaid observations of the Supreme Court make it more than clear that a mere allegation of high-speed would not tantamount to rashness or negligence. In the present case also, I find that apart from the allegation that the truck was being driven at a very high-speed there is nothing to indicate that the petitioner acted in a manner which could be regarded as rash or negligent. In any event there is no description or approximation of what was the speed at which the truck was being driven. The expression "high-speed" could range from 30 km per hour to over 100 km per hour. It is not even known as to what the speed limit on Mathura Road was and whether the petitioner was exceeding that speed limit. Therefore, in the absence of material facts it cannot be said, merely because there is an allegation that the petitioner was driving the truck at a high-speed, that the petitioner is guilty of a rash or negligent act. Clearly the petitioner cannot be convicted on the sole testimony of PW 3 which itself suffers from various ambiguities."

It has also been observed by the Hon'ble High Court of Delhi in case titled as Kishore Chand Joshi vs. State (2018 Delhi HC), that:

> "17. A witness can depose as to the manner of driving or speed at which the vehicle was being driven but not render an opinion on "rash and negligent". High speed by itself may not in each case be sufficient to hold that a driver is rash or negligent. Speed alone is not the criterion for deciding the rashness or negligence on the part of the driver."

Therefore, in view of the aforesaid observations made by the Hon'ble High Court, it is amply clear that mere allegation of the offending vehicle being driven at a high speed alone, would not suffice to draw an inference of act of rashness or negligence by the accused. Specific and cogent evidence has to be led by the prosecution in order to drive home this point by establishing the manner in which the offending vehicle was being driven, which is missing in the present case. Also, owing to the discrepancies in the direction of fall of scooty vis-a-vis the damage suffered by it and the absence of any account of injury suffered by the complainant, even the impact of collision in this case cannot

per se be determined with certitude, as would in itself speak of the rash and negligent act of the accused. No other attending circumstances as well are either apparent from record or from testimonies of victims in the case, as would necessarily point to negligence of accused being a logical conclusion rather than it being proved by providing an outright demonstration thereof.

c. Additionally, there is also discrepancy as regards certain events as they have been stated to have occurred immediately after the alleged collision/accident. First and foremost, in his statement Ex. PW6/A given to the police, complainant had stated that after the accident in question had occurred, the accused halted his truck and approached the complainant and disclosed his name as Rajkumar. It has been further stated that after the police arrived at the spot, complainant had handed over accused Rajkumar, along with the truck, to the IO for further proceedings against him. However, in his deposition dated 07.06.2017, complainant digressed from the said statement and stated that the truck driver had run away from the spot leaving behind his truck. Deposition of PW 11/injured Sumit is also conflicting on this aspect as during his testimony, the said witness deposed that the driver of the truck had fled away from the spot but his friend Sanchit had caught him. Again, in the aforesaid complaint Ex. PW6/A, complainant had stated that he had telephonically informed his friend Sumit's father about the accident in question, consequent to which Sumit's father arrived at the spot and took Sumit to the hospital in his car. However, in sharp contrast to this, during his testimony, complainant deposed that he had contacted Sumit's father from the hospital and had also informed his brother telephonically, after which, Sumit's father and brother had reached the hospital. In fact, during his cross-examination, the complainant had also deposed that he had taken Sumit to the hospital by auto rickshaw. Testimony of PW 11/injured Sumit is again highly incongruous vis-a-vis the testimony of complainant on this aspect as quite contrarily, PW 11 deposed that after the accident, he had called his father who came at the spot and took him to Columbia hospital, Gurgaon. To further complicate things, Sumit's father, who appeared as PW5, deposed that on 08.02.2016, he received information regarding the accident from his son from phone of some other person, thereafter which, he went to Columbia hospital where he found his son to be admitted. Moreover, during his cross-examination, complainant stated that he had blacked out for five minutes after the collision and someone from the public had sprinkled water on his face, because of which he regained consciousness. However, not only did the complainant improve his testimony on this aspect, but if this statement of the complainant is believed to be true, then his version as regards the occurrence of events as stated by him is shrouded with clouds of suspicion because in such a scenario, he could not have been aware of the things that happened immediately after the alleged accident, as described by him. If the gravity of the injury sustained by complainant himself would have been such as would have rendered him unconscious for whatever little time, then in normal and reasonable course of things, he too would have had to be taken to the hospital for medical attention, which is not the case presently.

d. Moving on, there is also incertitude with respect to the place where the statement of the complainant was recorded by the IO. During his examination in chief, PW6/complainant deposed that the police came at the hospital and recorded his statement as complaint, Ex. PW6/A, however on the same day, during his cross-examination, the said witness deposed that police had recorded his statement at the police station, while simultaneously also stating that the police had recorded his statement only once. Not only this, even the genuineness and correctness of the preparation of site

plan is clouded with suspicion as though, it appears to be the case of the prosecution that the same was prepared at the spot, the complainant himself on the contrary stated during his cross-examination that the same had already been prepared by the IO and was signed by him at the police station, thus implying that the site plan was not prepared at the instance of the complainant on the spot, which is a material dereliction on part of the IO. In fact when PW7 was questioned in this regard, he stated during his cross-examination that he was a witness to the site plan and had signed the same, however, upon confrontation, it transpired that the same did not bear his signatures. Even the IO could not depose anything in this regard as he, appearing as PW 10, failed to recall anything with respect to the present case due to his illness resulting in memory loss.

e. In addition to the above, even the investigation in the present matter appears to have been conducted in a callous and lackadaisical manner. First and foremost, the site plan seems to have been prepared by the IO in a very perfunctory manner, without disclosing the actual state of affairs as seen by him at the accidental spot. Nowhere does the site plan Ex. PW 6/A show the direction from which the offending vehicle was coming, or the direction in which the vehicle of the complainant was moving, or the place / the direction in which the complainant and his friend fell down after the collision, or the position of the vehicles as found by the IO in accidental condition upon reaching the spot. Additionally, it is not even a document showing the state of affairs as were witnessed by the IO when he reached the spot and found the vehicles in question in an accidental condition. Instead, Mark 'A' on the site plan has been depicted as the place where the accident was reported to have happened. This implies that this report regarding the place where the accident is supposed to have occurred could have only been given by an eyewitness, which in the present case is the complainant himself and PW11/injured Sumit. However, as discussed earlier, the fact that the site plan was prepared at the instance of the complainant has been already rendered dubitable and it certainly was not prepared at the instance of PW11/injured Sumit. Much importance has been rendered to proper preparation of site plan of the spot in cases of accident by various Hon'ble High Courts and the Hon'ble Apex Court, with one such ruling relied upon, being, Abdul Sudhan Vs. State (NCT of Delhi), 2006 Delhi HC.

27. To further add to the woes of the prosecution, the IO failed to join any other public person as a witness in the present case. The accident in question evidently appears to have occurred at a public place and it can be culled out from the testimony of PW6 that public persons had gathered around the spot after the collision. However, no such person has been interrogated / examined during the entire course of investigation, let alone, having been made as a witness in the case. This court is conscious of the legal position that non-joining of independent witnesses cannot be the sole ground to discard or doubt the prosecution case, as has been held in Appabhai and another v. State of Gujarat, AIR 1988 SC 696. However, evidence in every case is to be sifted through in light of the varied facts and circumstances of each individual case. As observed above, material discrepancies have surfaced in the testimonies of prime eye witnesses. In such a situation, evidence of an independent witness would have rendered the much needed corroborative value, to the otherwise uncompelling case of the prosecution, as discussed above. The absence of independent witness of the accident in question further raises suspicion about the genuineness of the allegations and the actual manner of occurrence of the accident due to the rash and negligent act of the accused.

28. As a sequitur to the above, this Court is of the opin- ion that the prosecution has miserably failed to establish the act of rashness or negligence on part of accused in the present case. Though, it appears that the victim has suffered injuries as men- tioned on record, the prosecution has not been able to prove with certitude that the same were a consequence of the accident that had occurred due to rash and negligent act of the accused. In view of the glaring embellishments in the statements of the pros- ecution witnesses, the possibility that the accused has been falsely implicated for the aforesaid offence, cannot be ruled out and prosecution cannot be said to have proved beyond reasonable doubt that the accident in question had occurred due to the rash and negligent act of the accused. At this stage, it is here by reiter- ated that though notice was served to accused for offence u/s 279/338 IPC & 3/181 of M.V. Act, the corresponding order-sheet of the said date, recorded by Ld. Predecessor Judge, indicates that notice was served to accused for offence u/s 279/338 IPC only. Further, even otherwise, the contents/ingredients constitut- ing offence u/s 3/181 MV Act are not mentioned in the said no- tice dated 08.08.2016, served to the accused. Moreover, no alle- gations qua offence u/s 3/181 MV Act are forthcoming on behalf of the prosecution even remotely in the present case, either though documentary evidence or through oral evidence. Accord- ingly, offence u/s 3/181 MV Act is also not proved to be made out against the accused.

29. There is no gainsaying that if two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede to the existence of a reasonable doubt. The aforementioned lacunae in the story of the prosecution render the version of the prosecution doubtful, leading to the irresistible conclusion that the burden of proving the guilt of the accused beyond reasonable doubt has not been discharged by the prosecution. This court is of the opinion that the prosecution has failed to conclusively prove the occurrence of the accident in question due to the rash and negligent act of the accused as there are material inconsistencies in the entire case of prosecution. In the backdrop of the above discussion, one cannot rule out the possibility regarding the suggestion put forth on behalf of accused that the accident as alleged had not occurred on account of any rashness or negligence at the end of the accused. Thus, this court is of the opinion that the prosecution has failed to bring on record any cogent evidence in order to prove the commission of and guilt of the accused for offence u/s 279/338 IPC beyond reasonable doubt, thus, entitling the accused person to benefit of doubt and acquittal.

30. Accordingly, this court hereby accords the benefit of doubt to the accused for the offence u/s 279/338 IPC and 3/181 MV Act and holds the accused not guilty of commission of the said offence. Accused Raj Kumar is thus, acquitted of the offence u/s 279/338 IPC and u/s 3/181 MV Act.

31. Copy of this judgment be given free of cost to the accused.

Announced in the open court
on 21.11.2022, in presence of
accused and Ld. Counsel for

accused.

APOORVA RANA

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(APOORVA RANA)
M.M-10/Dwarka Courts/21.11.2022

It is certified that this judgment contains 24 pages, all signed by the undersigned.

APOORVA RANA
Date: 2022.11.21 16:24:46 +0530

(APOORVA RANA)
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