Ravi Kapur vs State Of Rajasthan on 16 August, 2012

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Bench: Fakkir Mohamed Ibrahim Kalifulla, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1838 OF 2009

Ravi Kapur … Appellant

Versus

State of Rajasthan … Respondent

J U D G M E N T

Swatanter Kumar, J.

1. The present appeal is directed against the judgment of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur, dated 12th August, 2008.

2. The facts giving rise to the present appeal in brief are :

> One Sukhdev Singh, PW2, had informed and made a statement, parcha bayan, Ex.P2, to the police at the police station M.I.A. Alwar on 20th April, 1991 stating that at

> about 9.15 a.m. on that very day, he was going in a jeep to Govindgarh from Alwar to attend the marriage of his brother-in- law, Joga Singh. When they reached Baggad Tiraya, one jeep bearing no. RNA- 638 was also going ahead of his jeep and in the said jeep, his wife, Chet Kaur, daughter Rinki, father-in-law, Lahori Singh, mother-in-law, Gita and paternal uncle father-in-law (Fufi sasur) Niranjan Singh and his wife Kailashwati and his brother-in-law Multan Singh and his son Tinku were travelling. A maruti car was also going ahead of them. Bus No. RNA 339 was coming from Baggad Tiraya side at a very high speed. The driver of the Maruti car immediately turned his car to one side to save himself and the bus crashed into the jeep bearing no. RNA-638. As a result of this fatal accident, Chet Kaur, Rinki, Geeta and the jeep driver died on the spot.

The condition of the other occupants of the jeep, particularly Lahori Singh, Niranjan Singh, Kailashwanti and Tinku was very critical and they were admitted to the hospital where they later died. According to this witness, the bus was being driven by Ravi Kapur who took the bus towards large pits in the agricultural fields and after parking the bus there, he ran away from the spot.

3. On the basis of Ex.P2, a case under Section 304-A of the Indian Penal Code, 1860 (for short, the 'IPC') was registered against the accused Ravi Kapur. The Investigating Officer, PW11, conducted the investigation, prepared the site plan, Ex.P3, and recorded the statement of various witnesses. A chargesheet [report under Section 173 of the Code of Criminal Procedure, 1973 (for short the 'Cr.P.C.')] was filed against the accused under Sections 279, 337, 338 and 304-A IPC. The court framed charges against the accused and he was put to trial.

4. The prosecution examined as many as 11 witnesses including four eye- witnesses, doctors and the Investigating Officer himself. Upon closing of the case of the prosecution, all the incriminating evidence against the accused was put before him and his statement under Section 313 of the Cr.P.C. was recorded wherein he took the stand of complete denial and stated that the case of the prosecution was false. The trial court, vide its judgment dated 11th May, 2006, held that the prosecution has not been able to prove its case beyond reasonable doubt and the accused was entitled to an order of acquittal. Consequently, the Court acquitted the accused Ravi Kapur of all the above-mentioned charges. At this stage itself, we may refer to the relevant extract of the judgment of the trial court, which is the reasoning for acquitting the accused:

> "Now only 3 witnesses remain to be considered in the instant case, viz., P.W.2-Sukhdev Singh; P.W.4-Multan Singh and P.W.11- Sohan Lal who is the investigating officer. The Court has to consider testimonies adduced by these witnesses and has to see whether it is proved from the statements of these witnesses that accused was driving the bus rashly and negligently and hit the jeep or not and whether accused Ravi Kapur was driving the said bus no.RNA-339 at the time of the accident or not? In this regard, P.W.2-Sukhdev Singh who is also the person who lodged first information report has stated in his parcha statement Ex.P2 (sic) that one Maruti Van was gone ahead of jeep which had met with the accident and his jeep was behind the said jeep involved in accident. All these three vehicles were on one side of

the road and were at a distance of 20 Ft. from each other. One bus came no. RNA-339 towards them near Bagar tiraha and this bus was driven rashly and negligently and directly hit the jeep. However, the Maruti car which was ahead of accident jeep and the jeep in which he was travelling and which was behind the accident jeep, escaped in the said accident by bus. Both these vehicles swerved towards kuchha side of the road. This witness has mentioned in his first information report that driver of the Bus no.RNA-339 hit the jeep with intention to kill the persons travelling in the accidented jeep. He has further stated that he identified the driver of the bus and he was accused Ravi Kapur. He was identified by the passers-by also and they also disclosed his name. Therefore, now this Court has to see whether facts disclosed by this witness in his parcha statement – first information report, stand fully proved or not? Conclusion which can be drawn from perusal of examination in chief of this witness is that this witness has stated in statement before court that Maruti car was ahead of all and the jeep in which he was sitting was behind the Maruti car and the jeep which met with the accident was in behind (sic) the above vehicles. Therefore, in the circumstances there is contradiction in the statements of this witness given by him in his parcha statement and in court with regard to fact as to whether the accidented jeep was in front or rear of the aforesaid vehicles. In his statement in court he states that the jeep in which he was sitting was behind the accidented jeep and he himself was sitting behind driver's seat. Therefore, in such circumstances it cannot be safely accepted that this witness has actually seen the accident. Because there are material self-contradictions regarding the fact as to whether the jeep of this witness was ahead or behind the accidented jeep....

...In the circumstances it is not clear from the statements of this witness whether driver of the bus was negligent, what was the speed of the bus and accidented jeep was in its right side of the road. This witness also states that there was one jeep and a maruti car ahead the accidented jeep, but drivers of both these vehicles saved their vehicles from the bus and therefore the bus hit the jeep in which this witness was sitting. Court has to see that if driver of the bus was actually driving the bus rashly and negligently, then why he did not collide with the jeep and maruti car which were plying ahead the accidented jeep and why it collided with the accidented jeep. The court has also to consider whether the accident was due to over-taking of the jeep by the driver of the jeep. Because witnesses who appeared on behalf of prosecution have stated that right side of bus suffered moch. But prosecution has not filed any mechanical expert report nor has produced any expert witness in this regard which could have proved that the bus actually hit the jeep from front. It is also not clear whether any loss was caused to bus in front or not. Conclusion which can be drawn out from perusal of statement made by P.W.11-Sohan Lal/investigating officer in his cross examination, is that accident took place at a place where there was a turn/crossing on road and therefore both the drivers of the bus as well as jeep ought to have been careful and cautious. Moreover it is also not clear from statement of this witness that the bus had actually collided with the front portion of jeep. He has stated that accident could have been caused due to over-taking of the middle vehicle.

> Whereas this witness ought to have been proved that the accident is a head-on collision between bus and jeep. Apart from this, this witness did not conduct identification proceedings of the accused because the persons present at the spot had told him that Ravi Kapur is the accused and he is the owner and driver of the bus. This witness has not clarified as to why he did not send any notice under Section 133 of M.V. Act to the owner of vehicle. Therefore, in these circumstances, it is apparent from statements of this witness that neither notice under Section 133 of M.V.Act was given to owner of the bus nor identification proceedings of accused were held. Although persons at the spot had told that Ravi Kapur was driver of the bus, but prosecution has not produced and examined any such independent witness who was present at the spot at the time of this accident who could have explained that Ravi Kapur was driving the bus no. RNA-339. Infact prosecution ought to have recorded the statements of eye witnesses and produced them in court which could have corroborated statement of P.W.2-Sukhdev that Ravi Kapur was driving Bus No.RNA-339 at the time of accident and also the identification proceedings of accused were very necessary because both the witnesses who have been produced by prosecution, have not identified accused Ravi Kapur or that the accident was caused to rash and negligent driver of the bus by Ravi Kapur. One of the witness has stated that he saw the driver running away from the spot, but he has not stated that he saw the driver of the bus hitting the jeep. Notice under Section 133 of the M.V. Act was very necessary which could have proved that Ravi Kapur was actually driving the bus no.RNA-339 at the time of accident. Moreover, none of the prosecution witnesses have explained that the bus was being driven rashly and negligently....”

5. The above findings recorded by the trial court were reversed by the High Court, which set aside the judgment of acquittal. Upon appreciating the evidence, the High Court, vide its judgment dated 12th August, 2008, came to the conclusion that the judgment of the trial court was incorrect and while particularly dealing with the issue of grant of notice under Section 133 of the Motor Vehicles Act, 1988 (for short, ‘the Act’), the Court held as under :

> “Now so far as notice under section 133 of the Motor Vehicles Act was concerned which was not served upon the owner, because the statement of PW.2 Sukh Dev Singh, Multhan Singh P.W.4 stated that the accused respondent was the driver and they have identified him on the spot as well as in the court also. In such situation, service of notice under section 133 of the Motor Vehicle upon the owner has no relevancy. As such, in the light of the statement of PW.2 Sukh Dev Singh and P.W.4 Multhan Singh no identification parade is necessary. The FIR Ex.P.1 shows that the name of the accused respondent has already mentioned.”

6. The High Court convicted the accused under Section 304-A IPC and awarded him simple imprisonment for two years with fine of Rs.5000/-, in default of payment of fine, to undergo further imprisonment of six months. The Court also convicted the accused for offences under Sections 279 and 337 of the IPC, awarding him six months simple imprisonment with fine of Rs.1000/-, in default of payment of fine to undergo one month simple imprisonment and one month simple

imprisonment with fine of Rs.500/-, in default of payment of fine to undergo 15 days rigorous imprisonment, respectively. Aggrieved from the judgment of conviction and order of sentence passed by the High Court, the present Special Leave Petition has been filed.

7. Mr. Patwalia, learned senior advocate appearing for the appellant, while raising a challenge to the judgment of the High Court, has prayed that the judgment of acquittal recorded by the Trial Court be restored and the judgment of the High Court be set aside. The learned counsel has raised the following submissions:

> (a) It is a settled principle of law that the Appellate Court should normally not interfere with the judgment of acquittal unless it is perverse and contrary to the evidence on record. The scope of an appeal against an order of acquittal is very limited and the High Court, in the present case, has exceeded its jurisdiction in reversing the judgment of acquittal passed by the Trial Court.
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> (b) There is no evidence on record to identify or link the accused with the commission of the offence, i.e., whether or not he was driving the said vehicle. In fact, according to the counsel, there is no direct evidence to show that the accused Ravi Kapur was driving the bus involved in the accident.
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> (c) Even if it is presumed that the accused was the person driving the bus at the relevant time, still there is no evidence to prove that he drove the bus rashly and negligently.

In absence of any evidence on these two counts, the appellant is entitled to acquittal.

8. While refuting the above-said arguments, the learned counsel appearing for the State has contended that there are eye-witnesses to the occurrence who have categorically stated the entire incident. After the case had been remanded by the Court of Special Judge, by order dated 28th October, 1999, in regard to the issue of non-holding the test identification parade and non-examination of the doctor, the Trial Court had disturbed its own earlier judgment of conviction dated 24th June, 1999 vide its above-mentioned judgment dated 11th May, 2006. This subsequent judgment of the Trial Court was challenged before the High Court. The High Court reversed the judgment of acquittal to that of conviction. This itself shows that there were apparent errors and complete lack of proper appreciation of evidence in the later judgment of the Trial Court. Therefore, that judgment should not be restored by this Court. According to him, the statements of PW2, PW4 and PW11 clearly establish the case of rash and negligent driving by the accused. There is no material contradiction between the statements of the witnesses and the parcha statement, etc. The judgment of the High Court does not call for any interference by this Court.

9. Firstly, we would discuss the last contention raised on behalf of the appellant, as it relates to appreciation of evidence by this Court, particularly keeping in view the fact that the impugned judgment is a judgment of reversal against the judgment of acquittal.

10. In order to examine the merit or otherwise of contentions (b) and (c) raised on behalf of the appellant, it is necessary for the Court to first and foremost examine (a) what is rash and negligent driving; and (b) whether it can be gathered from the attendant circumstances. Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to 'rash and negligent driving' within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words 'manner so rash or negligent as to endanger human life'. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

11. 'Negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

12. The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

13. The other principle that is pressed in aid by the courts in such cases is the doctrine of res ipsa loquitur. This doctrine serves two purposes – one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of res ipsa loquitur in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the IPC that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of

'culpable rashness' and 'culpable negligence' into consideration in cases of road accidents. 'Culpable rashness' is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (luxuria). 'Culpable negligence' is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is prima facie evidence of such negligence. This maxim suggests that on the circumstances of a given case the res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct. [Ref. Justice Rajesh Tandon's 'An Exhaustive Commentary on Motor Vehicles Act, 1988' (First Edition, 2010].

14. We have noticed these principles in order to examine the questions raised in the present case in their correct perspective. We may notice that certain doctrines falling in the realm of accidental civil or tortuous jurisprudence, are quite applicable to the cases falling under criminal jurisprudence like the present one.

15. Now, we may refer to some judgments of this Court which would provide guidance for determinatively answering such questions. In the case of Alister Anthony Pareira v. State of Maharashtra [(2012) 2 SCC 648] where the driver of a vehicle was driving the vehicle at a high speed at late hours of the night in a drunken state and killed seven labourers sleeping on the pavement, injuring other eight, this Court dismissing the appeal, laid down the tests to determine criminal culpability on the basis of 'knowledge', as follows :

> "41. Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law—in view of the provisions of IPC—the cases which fall within the last clause of Section 299 but not within clause "Fourthly" of Section 300 may cover the cases of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under Section 304 Part II IPC. Section 304-A IPC takes out of its ambit the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description."

16. Again, in the case of Naresh Giri v. State of M.P. [(2008) 1 SCC 791], where a train had hit a bus being driven by the appellant at the railway crossing and the bus was badly damaged and two persons died, this Court, while altering the charges from Section 302 IPC to Section 304-A IPC, observed :

> "7. Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A.
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> 8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable.

Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practise such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edn.), Vol. 34, Para 1 (p. 3), as follows:

"1. General principles of the law of negligence.—Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some

circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two."

13. According to the dictionary meaning "reckless" means "careless", regardless or heedless of the possible harmful consequences of one's acts. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognising the existence of the risk and nevertheless deciding to ignore it."

17. In the case of Mohd. Aynuddin alias Miyam v. State of A.P. [(2000) 7 SCC 72], wherein the appellant was driving a bus and while a passenger was boarding the bus, the bus was driven which resulted in the fall of the passenger and the rear wheel of the bus ran over the passenger. This Court, drawing the distinction between a rash act and a negligent act held that it was culpable rashness and criminal negligence and held as under :

> "7. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus.
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> 9. A rash act is primarily an overhasty 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."

18. In light of the above, now we have to examine if negligence in the case of an accident can be gathered from the attendant circumstances. We have already held that the doctrine of res ipsa loquitur is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the Court with the aid of proper

evidence may take assistance of the attendant circumstances and apply the doctrine of res ipsa loquitur. The mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence. In cases where negligence is the primary cause, it may not always be that direct evidence to prove it exists. In such cases, the circumstantial evidence may be adduced to prove negligence. Circumstantial evidence consists of facts that necessarily point to negligence as a logical conclusion rather than providing an outright demonstration thereof. Elements of this doctrine may be stated as :

> ? The event would not have occurred but for someone's negligence. ? The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.
>
> ? Accused was negligent and owed a duty of care towards the victim.

19. In the case of Thakur Singh v. State of Punjab [(2003) 9 SCC 208], the petitioner drove a bus rashly and negligently with 41 passangers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of res ipsa loquitur since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down. The Court held as under:

> "4. It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into canal. In such a situation the doctrine of res ipsa loquitur comes into play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part."

20. Still, in the case of Mohd. Aynuddin (supra), this Court has also stated the principle :

> "8. The principle of res ipsa loquitur is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer."

21. It has also been stated that the effect of this maxim, however, depends upon the cogency of the inferences to be drawn and must, therefore, vary in each case. In light of these principles, let us examine the facts of the present case and the evidence on record. The contention raised is that there is not even an iota of evidence to show that either the accused was driving the vehicle or, as alleged, he was driving the same rashly and negligently. The concerned police officer had recorded 'Parcha statement' (Exhibit P2) of Sukhdev, who in Court was examined as PW2. In furtherance to this statement, a First Information Report (FIR) was registered. It was stated in this document that on

20th April, 1991, Sukhdev was going from Alwar to Govindgarh sitting in the jeep to attend the marriage of his brother-in-law. It was at about 9.15 a.m. when they reached near crossing of Bagad Tiraya, ahead of that jeep was one jeep RNA 638 in which his wife and other family members were travelling. One more Maruti van was running ahead of that jeep. A bus RNA 339 was approaching in fast speed from the side of Baggad. Maruti van which having saved itself took to the side and the driver of the Bus with an intention to kill the passengers collided with the jeep RNA 638. Chet Kaur, Rinki, Geeta and the driver died at the spot and the condition of the rest, i.e., Niranjan Singh, Lahori Singh, Kailash, Vainto and Tinku was serious. They were admitted to hospital. At the time of the accident, the bus was being driven by Ravi Kumar (Kapur) who was identified by the passersby who told his name to Sukhdev. Along with him, others sitting in the jeep also identified the bus driver. The driver parked the vehicle beneath the pit on the road and fled away. Upon his examination as PW2, this witness stated that the Maruti van got down on the kachha road side and even their own jeep was pulled to the kachha side but the third jeep collided with the bus from the front side. He identified that the accused person in the Court was driving the bus himself and confirmed his statement in parcha bayan (statement), Exhibit P2. He was subjected to a detailed cross-examination in which he admitted that he did not see the bus driver while sitting in the jeep, though he had seen the accused while the accused was getting down from the bus and that this fact was not in his statement (Exhibit P2) because he did not remember. The passersby had told him the name of the driver which was recorded in Exhibit P2. He stated that Exhibit P3, the site plan, was not prepared in his presence and his signatures were obtained in the hospital.

22. PW1, Ms. Sheela Gupta, stated that Joga Singh and relatives were going in another vehicle ahead of the vehicle in which she was travelling. It collided with the bus. She was unconscious and she did not see anybody or the driver of the bus.

23. PW3, Subhash Chawla, in his examination, admitted the accident but stated that he did not know the name of the driver of the bus and also that the jeep behind him was giving horns and as soon as the jeep in the middle reached the accident took place. He was declared hostile.

24. PW4, Multan Singh, has also similarly stated the facts leading to the accident. He stated that he was sitting in the second jeep. According to him, the bus came with speed from the side of Delhi road. It was a private bus and it hit the jeep. The bus was coming on the wrong side and it hit the front of the jeep. He also got injuries on his head and back. When he got down and stood, he saw the driver running away. Though he was injured, he claims to have seen the driver and confirmed that the said driver was present in Court and identified the accused. In his cross- examination, he stated that on collision, he heard sound like cracker burst.

25. PW11, Sohan Lal, is the investigating officer who confirmed having written the 'parcha statement' in furtherance to which he proceeded to the site and thereafter recorded the FIR No.119/91 under Section 304 IPC. He prepared the site plan, Exhibit P29/P3 of the place of occurrence, prepared inquest reports and seized bus No.RNA 339 vide seizure memo Exhibit P31 and the jeep vide seizure memo Exhibit P32. In his cross-examination, he admitted that the place of occurrence was a turn around. He did not remember whether the jeep hit the front of the bus and it was not recorded in Exhibit P32 as to which portion of the jeep hit the bus. He stated, "I don't know

whether driver Ravi Kapur was present at the spot or not. I don't know whether the bus passengers were there or not. But bus was there. I tried to inquire from the passengers but they had already left. Test identification of accused was not got done from the injured because all the people present at the spot had already told me about the accused".

26. According to the learned counsel appearing for the appellant, there are contradictions in the statements of these witnesses and the site plan Exhibit P29/P3 does not exhibit any negligence on behalf of the appellant. The appellant was not driving the vehicle involved in the accident and as such he is entitled to acquittal.

27. We are not impressed with this contention. Firstly, the bus was seized vide seizure memo Exhibit P31 and was later on given on superdari to the owner of the bus, i.e., the accused. This bus was certainly involved in the accident, in fact, there is no serious dispute before us that the accident between the jeep RNA 638 and the bus RNA 339 took place at the place of occurrence. If one examines Exhibit P29/P3, it is clear that it was a narrow road which was about 18 ft. in width and the accident had occurred at a turning point of the road. The accident took place at point

8. The jeep in which number of people died remained stationed at or around point XA while the point 8 shows mud divider (dam-bandh), the accident had taken place at point 1 and point 8 where the bus was parked was at a distance which clearly show that the bus had been moved after the accident. Applying the principle of res ipsa loquitur, it can safely be inferred that it was a serious accident that occurred at a turning point in which number of people had died. After the accident, the bus driver moved the bus away to a different point. If what is submitted on behalf of the appellant had even an iota of truth in it, the most appropriate conduct of the bus driver would have been to leave the vehicle at the place of accident to show that he was on the extreme left side of the road (his proper side for driving) and the jeep which was trying to overtake the other vehicle had come on the wrong side of the road resulting in the accident. This would have been a very material circumstance and relevant conduct of the driver.

28. All the witnesses, PW1, PW2 and PW4, have so stated. There is consistency in the statement of the witnesses that the accused was driving the vehicle and after parking the vehicle at a place away from the place of occurrence, he had run away. We have no reason to disbelieve the statements of these witnesses which are fully supported by the documentary evidence, Exhibit P2, to which there was hardly any challenge during the cross-examination of PW11. We are unable to notice any serious or material contradiction in the statements of the prosecution witnesses much less in Exhibit P2, the parcha statement of PW2. Minor variations are bound to occur in the statements of the witnesses when their statements are recorded after a considerable lapse from the date of occurrence. The Court can also not ignore the fact that these witnesses are not very educated persons. The truthfulness of the witnesses is also demonstrated from the fact that PW1, even in her examination-in-chief, stated that she was unconscious and did not see the driver. Nothing prevented her from making a statement that she had actually seen the accused. Thus, we have no hesitation in holding that the three witnesses, i.e., PW1, PW2 and PW4 have given a correct eye account of the accident. We find their statements worthy of credence and there is no occasion for the Court to disbelieve these witnesses. It is a settled principle that the variations in the statements of witnesses

which are neither material nor serious enough to affect the case of the prosecution adversely are to be ignored by the courts. {Ref. State v. Saravanan and Anr. [(2008) 17 SCC 587]; and Sunil Kumar Sambhudayal Gupta v. State of Maharasthtra [(2010 13 SCC 657]}. It is also a settled principle that statements of the witnesses have to be read as a whole and the Court should not pick up a sentence in isolation from the entire statement and ignoring its proper reference, use the same against or in favour of a party. The contradictions have to be material and substantial so as to adversely affect the case of the prosecution. Reference in this regard can be made to Atmaram & Ors. v. State of Madhya Pradesh [(2012) 5 SCC 738].

29. In the case of Nageshwar Shri Krishna Ghobe v. State of Maharasthra [(1973) 4 SCC 23], this Court observed that the statements of the witnesses who met with an accident while travelling in a vehicle or those of the people who were travelling in the vehicle driven nearby should be taken and understood in their correct perspective as it is not necessary that the occupants of the vehicle should be looking in the same direction. They might have been attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. The Court held as under :

> "6. In cases of road accidents by fast moving vehicles it is ordinarily difficult to find witnesses who would be in a position to affirm positively the sequence of vital events during the few moments immediately preceding the actual accident, from which its true cause can be ascertained. When accidents take place on the road, people using the road or who may happen to be in close vicinity would normally be busy in their own pre-occupations and in the normal course their attention would be attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. It is only then that they would look towards the direction of the noise and see what had happened. It is seldom — and it is only a matter of coincidence — that a person may already be looking in the direction of the accident and may for that reason be in a position to see and later describe the sequence of events in which the accident occurred. At times it may also happen that after casually witnessing the occurrence those persons may feel disinclined to take any further interest in the matter, whatever be the reason for this disinclination. If, however, they do feel interested in going to the spot in their curiosity to know some thing more, then what they may happen to see there, would lead them to form some opinion or impression as to what in all likelihood must have led to the accident. Evidence of such persons, therefore, requires close scrutiny for finding out what they actually saw and what may be the result of their imaginative inference. Apart from the eye- witnesses, the only person who can be considered to be truly capable of satisfactorily explaining as to the circumstances leading to accidents like the present is the driver himself or in certain circumstances to some extent the person who is injured. In the present case the person who died in the accident is obviously not available for giving evidence. The bhaiya (Harbansingh) has also not been produced as a witness. Indeed, failure to produce him in this case has been the principal ground of attack by Shri Pardiwala and he has questioned the bona fides and the fairness of the prosecution as also the trustworthiness of the version given by the other witnesses."

30. The learned counsel for the appellant, while relying upon the judgment of this Court in the case of Mulla & Anr. v. State of Uttar Pradesh [(2010) 3 SCC 508] and Amit v. State of Uttar Pradesh [(2012) 4 SCC 107], argued that none of the witnesses had actually seen the accused driving the vehicle and, therefore, in absence of the test identification parade, it has to be held that the accused was not driving the vehicle and that he was not identified. In the case of Mulla (supra), relied upon by the learned counsel, the Court had observed that it is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused to avoid any mistake on the part of the witnesses.

31. On the other hand, to contra this submission, the learned counsel appearing for the State relied on the judgment of this Court in the case of Myladimmal Surendran & Ors. v. State of Kerala [(2010) 11 SCC 129] to say that the test identification parade in the facts and circumstances of the case was not necessary and in any case no prejudice has been caused to the accused and holding of test identification parade is not always necessary.

32. In the present case, the accused had been seen by PW2 and PW4. In addition, they had also stated that the passersby had informed them that the accused was driving the bus and, in fact, he was the owner of the bus. One fact of this statement is established that the bus in question was given on superdari to the accused. It is also stated by these persons that after they had seen the accused, he had run away from the place where he parked the vehicle. These witnesses also identified the accused in the Court. It is not the case of the accused before us that he had been shown to the witnesses prior to his being identified in the Court. The Court identification itself is a good identification in the eyes of law. It is not always necessary that it must be preceded by the test identification parade. It will always depend upon the facts and circumstances of a given case. In one case, it may not even be necessary to hold the test identification parade while in the other, it may be essential to do so. Thus, no straightjacket formula can be stated in this regard. We may refer to a judgment of this Court in the case of Shyamal Ghosh v. State of West Bengal [2012 (6) SCALE 381] wherein this Court has held that the Code of Criminal Procedure, 1973 (for short "Cr.P.C.) does not oblige the investigating agency to necessarily hold the test identification parade without exception. The Court held as under :

> "55. On behalf of accused Shyamal, it was also contended that despite the identification parade being held, he was not identified by the witnesses and also that the identification parade had been held after undue delay and even when details about the incident had already been telecasted on the television. Thus, the Court should not rely upon the identification of the accused persons as the persons involved in the commission of the crime and they should be given the benefit of doubt.
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> 56. The whole idea of a Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them

could be cited as eyewitnesses of the crime.

> 57. It is equally correct that the CrPC does not oblige the investigating agency to necessarily hold the Test Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the court for the first time. One of the views taken is that identification in court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions.

Reference can be made to Munshi Singh Gautam v. State of M.P.[(2005) 9 SCC 631], Sheo Shankar Singh v State of Jharkhand and Anr. [(2011) 3 SCC 654].

58. Identification Parade is a tool of investigation and is used primarily to strengthen the case of the prosecution on the one hand and to make doubly sure that persons named accused in the case are actually the culprits. The Identification Parade primarily belongs to the stage of investigation by the police. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court. Thus, it is only a relevant consideration which may be examined by the court in view of other attendant circumstances and corroborative evidence with reference to the facts of a given case."

33. In our considered view, it was not necessary to hold the test identification parade of the appellant for two reasons. Firstly, the appellant was already known to the passersby who had recognized him while driving the bus and had stated his name and, secondly, he was duly seen, though for a short but reasonable period, when after parking the bus, he got down from the bus and ran away.

34. Equally without merit is the contention on behalf of the appellant that the Court should draw adverse inference against the prosecution as the investigating officer did not serve notice under Section 133 of the Act upon the owner of the vehicle. The High Court has rightly rejected this contention on the basis that the driver of the vehicle was identified at the place of occurrence and even passersby had informed the prosecution witnesses that the driver, Ravi Kapur, was the owner of the vehicle. The name of the accused was duly recorded in the FIR itself. This fact remained undisputed. With some emphasis, it was even argued before us that he was not driving the vehicle, though it was not disputed that he is the registered owner of the vehicle in question. If that be so, when the statement of the accused under Section 313 of the Cr.P.C. was recorded by the Trial Court, except denial, he did not state anything further. For reasons best known to the accused, instead of stating as to whom he had given his vehicle for being driven on that date, he preferred to maintain silence and denied the case of the prosecution.

35. It is true that the prosecution is required to prove its case beyond reasonable doubt but the provisions of Section 313 Cr.P.C. are not a mere formality or purposeless. They have a dual purpose to discharge, firstly, that the entire material parts of the incriminating evidence should be put to the accused in accordance with law and, secondly, to provide an opportunity to the accused to explain his conduct or his version of the case. To provide this opportunity to the accused is the mandatory duty of the Court. If the accused deliberately fails to avail this opportunity, then the consequences in law have to follow, particularly when it would be expected of the accused in the normal course of conduct to disclose certain facts which may be within his personal knowledge and have a bearing on the case.

36. In our considered view, no prejudice has been caused to the accused by non-serving of the notice under Section 133 of the Act and, in any case, the accused cannot take any advantage thereof.

37. Lastly, we may proceed to discuss the first contention raised on behalf of the accused. No doubt, the Court of appeal would normally be reluctant to interfere with the judgment of acquittal but this is not an absolute rule and has a number of well accepted exceptions. In the case of State of UP v. Banne & Anr. [(2009) 4 SCC 271], the Court held that even the Supreme Court would be justified in interfering with the judgment of acquittal of the High Court but only when there are very substantial and compelling reasons to discard the High Court's decision. In the case of State of Haryana v. Shakuntala & Ors. [2012 (4) SCALE 526], this Court held as under :

> "36. The High Court has acquitted some accused while accepting the plea of alibi taken by them. Against the judgment of acquittal, onus is on the prosecution to show that the finding recorded by the High Court is perverse and requires correction by this Court, in exercise of its powers under Article 136 of the Constitution of India. This Court has repeatedly held that an appellate Court must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to such accused under the fundamental principles of criminal jurisprudence, i.e., that every person shall be presumed to be innocent unless proved guilty before the court and secondly, that a lower court, upon due appreciation of all evidence has found in favour of his innocence. Merely because another view is possible, it would be no reason for this Court to interfere with the order of acquittal.
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> 37. In Girja Prasad (Dead) By Lrs. v. State of M.P. [(2007) 7 SCC 625], this Court held as under:-
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> "28. Regarding setting aside acquittal by the High Court, the learned Counsel for the appellant relied upon Kunju Muhammed v. State of Kerala (2004) 9 SCC 193, Kashi Ram v. State of M.P. AIR 2001 SC 2902 and Meena v. State of Maharashtra 2000 Cri LJ 2273. In our opinion, the law is well settled. An appeal against acquittal is also an appeal under the Code and an Appellate Court has every power to reappreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true that there is presumption of innocence in favour of the accused and that presumption is

reinforced by an order of acquittal recorded by the Trial Court. But that is not the end of the matter. It is for the Appellate Court to keep in view the relevant principles of law, to reappreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence."

38. In Chandrappa v. State of Karnataka [(2007) 4 SCC 415], this Court held as under:-

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

39. In C. Antony v. K.G. Raghavan Nair [(2003) 1 SCC 1], this Court held :-

"6. This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and

> the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. (See Bhim Singh Rup Singh v. State of Maharashtra1 and Dharamdeo Singh v. State of Bihar.)"

40. The State has not been able to make out a case of exception to the above settled principles. It was for the State to show that the High Court has completely fallen in error of law or that judgment in relation to these accused was palpably erroneous, perverse or untenable. None of these parameters are satisfied in the appeal preferred by the State against the acquittal of three accused."

38. In the present case, there are more than sufficient reasons for the High Court to interfere with the judgment of acquittal recorded by the Trial Court. Probably, this issue was not even raised before the High Court and that is why we find that there are hardly any reasons recorded in the judgment of the High Court impugned in the present appeal. Be that as it may, it was not a case of non-availability of evidence or presence of material and serious contradictions proving fatal to the case of the prosecution. There was no plausible reason before the Trial Court to disbelieve the eye account given by PW2 and PW4 and the Court could not have ignored the fact that the accused had been duly identified at the place of occurrence and even in the Court. The Trial Court has certainly fallen in error of law and appreciation of evidence. Once the Trial Court has ignored material piece of evidence and failed to appreciate the prosecution evidence in its correct perspective, particularly when the prosecution has proved its case beyond reasonable doubt, then it would amount to failure of justice. In some cases, such error in appreciation of evidence may even amount to recording of perverse finding. We may also notice at the cost of repetition that the Trial Court had first delivered its judgment on 24th June, 1999 convicting the accused of the offences. However, on appeal, the matter was remanded on two grounds, i.e., considering the effect of non-holding of test identification parade and not examining the doctor. Upon remand, the Trial Court had taken a different view than what was taken by it earlier and vide judgment dated 11th May, 2006, it had acquitted the accused. This itself became a ground for interference by the High Court in the judgment of acquittal recorded by the Trial Court. From the judgment of the Trial Court, there does not appear to be any substantial discussion on the effect of non-holding of the test identification parade or the non-examination of the doctor. On the contrary, the Trial Court passed its judgment on certain assumptions. None of the witnesses, not even the accused, in his statement, had stated that the jeep was at a fast speed but still the Trial Court recorded a finding that the jeep was at a fast speed and was not being driven properly. The Trial Court also recorded that a suspicion arises as to whether Ravi Kapur was actually driving the bus at the time of the accident or not and identification was very important.

39. We are unable to understand as to how the Trial Court could ignore the statement of the eye-witnesses, particularly when they were reliable, trustworthy and gave the most appropriate eye

account of the accident. The judgment of the Trial Court, therefore, suffered from errors of law and in appreciation of evidence both. The interference by the High Court with the judgment of acquittal passed by the Trial Court does not suffer from any jurisdictional error.

40. For the reasons afore-recorded, we find no merit in the present appeal. The same is dismissed accordingly.

.....J. (Swatanter Kumar) .....J. (Fakkir Mohamed Ibrahim Kalifulla) New Delhi, August 16, 2012