

Naresh vs The State on 6 October, 2018

IN THE COURT OF Dr. KAMINI LAU: SPECIAL JUDGE
(PC ACT): CBI-01: CENTRAL DISTRICT:
TIS HAZARI COURTS: DELHI

Criminal Appeal No. 43/2018
Registration No. 328/2018
CNR No. DLCT01-011466/2018

Naresh
S/o Sh. Mathura Bhagat
R/o Village Lokhara,
Post Rasal Pura, PS Sita Madhi,
District Nawada, Bihar

Versus

..... Appellan

The State
Government of NCT of Delhi
Delhi

..... Responden

Date of Institution:	04.09.2018
Judgment Reserved on:	04.10.2018
Judgment Pronounced on:	06.10.2018

JUDGMENT:

(1) This Criminal Appeal has been filed by the appellant Naresh against the impugned Judgment dated 04.07.2018 and order on sentence dated 10.08.2018 passed by the Ld. MM□b4, Central District, Tis Hazari Courts, Delhi whereby the appellant / convict has been sentenced to Rigorous Imprisonment for a period of Two Years for the offence under Section 304□ A I P C ; Rigorous Imprisonment for a period of Six Months for the offence under Section 338 IPC and Rigorous Imprisonment for a period of One Month for the offence under Section 279 IPC and all the sentences were directed to run concurrently. (2) The brief facts of the case are that as per the allegations on 05.04.2009 at about 7:15 PM, at Usha Mata Mandir, Old Rohtak Road, Sarai Rohilla, Delhi the appellant / accused Naresh was driving TATA□407 bearing No. DL□LG□ 2 5 2 7 in a rash and negligent manner so as to endanger human life and personal safety of the others. Further, while driving the aforesaid offending vehicle in a rash and negligent manner, the appellant/ accused Naresh caused grievous injuries to one person namely Vijay Bahadur and also caused the death of Govind Singh Bisht.

(3) After completion of investigation, charge sheet was filed before the Ld. Trial Court against the appellant / convict and in support of its case, the prosecution has examined as many as Fourteen Witness. For the sake of convenience, the testimonies of the various prosecution witnesses are put in a tabulated form as under:

Sr. No.	Details of the witnesses	Deposition
1	Sh. Sunil Bisht (PW1) PW1	Sunil Bisht is the cousin brother of t

deceased Gobind Singh and has proved having identified the dead body of his deceased brother vide memo Ex.PW1/A. He has also proved having received the dead body vide memo Ex.PW1/B. This witness has not been cross examined by the Ld. Counsel for the accused.

2 Sh. Tilak Raj (PW2) PW2 Tilak Raj is the owner of the offending vehicle who in his examination in chief has Naresh Vs. State, CrI. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 2 of 24 deposed on the following aspects:

1. That he is the registered owner of vehicle bearing No. DL-11-LG-2527.

2. That on 08.04.2009 he received a notice under Section 133 of the MV Act on which he went PS Sarai Rohilla and replied to the said notice which is Ex.PW2/A.

3. That on 05.04.2009 at about 7:00 PM at Old Rohtak Road in front of Usha Mata Mandir his driver Naresh (whom the witness has correctly identified in the Court) was driving the above vehicle and caused the accident.

4. That he also took the accused Naresh to Police Station where he was interrogated by the IO and arrested.

5. That on 15.04.2009 he moved an application Ex.PW2/B for releasing the vehicle on Superdari.

6. That on 16.04.2009 the aforesaid vehicle (Ex.PW1) was released vide Superdaranama which is Ex.PW2/C. This witness has not been cross examination by the Ld. Counsel for the accused.

3. HC Hari Singh (PW3) PW3 Hari Singh is a formal witness being the Duty Officer who has proved having registered the FIR in the present case which is Ex.PW3/A and having made an endorsement on the tehrir which is Ex.PW3/B. This witness has not been cross examination by the Ld. Counsel for the accused.

4. Sh. Anil (PW4) PW4 Anil is also a formal witness being the younger brother of the deceased and has proved having identified the dead body of his elder brother Govind Singh vide memo Ex.PW1/B. This witness has not been cross-examination by the Ld. Counsel for the accused.

5. Sh. Vijay Bahadur PW5 Vijay Bahadur is the injured eye witness and (PW5) has deposed on the following aspects : □
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1. That on the date of incident i.e. 05.04.2009 at about 07.00 PM he was going towards Inderlok by his scooter bearing no. DL 6V 9800.

2. That when he reached near Usha Mata Mandir, Old Rohtak Road, he saw one Tata 407 coming from side of Inderlok at a very fast speed and being driven very rashly and on the wrong side of the road and suddenly hit two pedestrian one of whom was a woman and other was male and thereafter struck against him (witness) and thereafter hit the wall of Usha Mata Mandir.

3. That the offending vehicle i.e. Tata 407 was bearing no. DL 1LG 2527.

4. That the impact of the collusion with his scooter was so strong that he was thrown away almost 15 feet and scooter also fell down.

5. That he was in his consciousness when he fell down and he saw the entire incident and clearly observed the face of the driver who was driving the Tata 407. (The witness correctly identified the accused in the court as the person who was driving the vehicle and caused the accident by negligence.)

6. That the pedestrian and he himself were going in proper direction and in proper lane but due to negligence of the accused, the accident took place.

7. That after the accident, many people gathered at the spot and after some time police reached who shifted the two pedestrians to the HR hospital

8. That he was also shifted to the same hospital where he was given treatment and thereafter, he went to St. Stephens hospital along with his family members where he was operated as his knee was fractured and his thigh muscle was also broken.

9. That he identified the offending vehicle and his scooter on the photographs placed on record.

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10. That later on he came to know that two pedestrian were from Railway Colony near his house and the male pedestrian had died later on.

In his cross-examination on behalf of the accused the witness has deposed as under: That the road where the accident took place is without divider and at that time there was less traffic as it was a Sunday.

That he was driving scooter at a speed of 20-30 kmph and was riding alone on the scooter.

That there was sufficient light on the road and traffic was running two way on their respective sides.

That the road is around 45-50 feet and two trucks can pass from there side-by-side. That some portion of the building of Usha Mata Mandir is on the road.

That there is no footpath in front of Usha Mata Mandir.

That the footpath on the opposite side of the said Mandir is occupied by small shops and the pedestrian generally walk on the road as there is no space on the footpath on both side of the road near the said Mandir.

That the road near Usha Mata Mandir is busy with pedestrians and cycle rickshaw on both sides.

That though the offending vehicle was coming from correct side but it suddenly changed to wrong side of the road.

That he does not remember the colour of the said Tata 407.

That he became unconscious and does not know who was driving the offending vehicle.

That he lost his consciousness for some time only but regained it soon.

That the police reached the spot after 5 minutes and no statement was recorded by the police at the spot in his presence.

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In his cross-examination by the Ld. APP for the State, the witness deposed as follows: That though in his examination in chief recorded in 2011, he had identified the accused but now (at the time of recording his cross examination in 2016) he is unable to recollect the identity of accused due to lapse of time of almost 05 years but he can identify the accused if he is again shown to him. (Thereafter, the accused was shown the witness in the court who correctly identified the accused Naresh as the same person who was driving the offending vehicle on the date of incident).

This witness was again cross-examined by the counsel for accused and this time the witness deposed that at the time of incident he did not

know who was driving the offending vehicle and he later on came to know that the accused

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Naresh was driving the vehicle through police persons.

6. Ct. Jagpal (PW6) PW6 Ct. Jagpal has deposed as under: □
That on 05.04.2009 at about 7:30 PM he along with Ct. Girish Kumar reached at the spot i.e. Usha Mata Mandir.

That on reaching there, he saw that the gate of the Mandir was struck by one Tempo bearing No. DL G 2527 make Tata 407 in accidental condition and one dead body was lying under the truck in a very bad condition.

That the dead body was taken out with the help of the public persons and was taken to the hospital by IO SI Ram Kishan That the other injured were sent for treatment in HR hospital and St. Stephens hospitals.

That one scooter bearing no. DL 6S 9800 was also found there.

That IO prepared the rukka which was handed over to him for registration of FIR. That he went to Police Station and got the Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 6 of 24 case registered and came back to the spot. That thereafter the IO seized the offending vehicles Tata 407 and also the scooter no. DL 6S 9800.

In his cross examination by the Ld. Counsel for the accused, the witness has deposed as under: □
That when he reached the spot, the IO was already there but in his presence the IO did not record statement of any witness.

That he remained at the spot for about half an hour and thereafter left the spot at about 10:00 PM.

7. Smt. Maheshwari PW7 Smt. Maheshwari is also injured eye witness (PW7) and has deposed as under: □

1. That on 05.04.2009 at around 7:00 PM, she along with her husband Sh. Govind Singh (now deceased) were going to the local market by foot.

2. That one tempo driven at a fast speed, came from behind and hit them.

3. That the registration number of tempo was 2527, complete number of the vehicle she is unable to recall. (court observed that the witness states that she was having some problem with memory due to the said accident in which she has also sustained injuries).

4. That her husband was also with her and due to the impact, she fell down and got unconscious and does not know as to what happened thereafter and she regained consciousness at the hospital.

5. That she had received injuries at her elbow, on face, eyes and legs.

6. That later on she was informed that her husband had expired in the accident.

7. That she had not seen the person who was driving the vehicle and she cannot identify the tempo.

During her cross examination by the Addl. PP for the State, the witness has deposed as under: □
T h a t t h e n u m b e r o f o f f e n d i n g v e h i c l e w a s
Naresh Vs. State, CrI. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 7 of 24 DL □LG□
2527.

That due to lapse of time she cannot identify the person who caused accident by the tempo bearing no. DL 1LG□2527.

This witness has not been cross examination by the Ld. Counsel for the accused.

8. Sh. Devinder Kumar, PW8 Sh. Devinder Kumar, Retd. ASI (Tech.) has Retd. ASI (Tech.) deposed that as under: □(PW8) 1. That on 10.04.2009 on request made by Io Ram Kishan, he conducted the mechanical inspection of the Scooter bearing No. DL□6SV□9800 make Bajaj and the Tata Tempo bearing No. DL□LG□2527 at Police Station Sarai Rohilla.

2. That his detailed reports are Ex.PW8/A and PW8/B according to which both the vehicles were found not fit for road test.

This witness has not been cross examination by the Ld. Counsel for the accused.

9. Sh. K. V. Singh (PW9) PW9 Sh. K. V. Medical Record Clerk, Hindu Rao Hospital has produced the medical record pertaining to the MLC No. 2317/2009 dated 5.4.2009 of Smt. Maheshwari prepared by Dr. Sanjay Kumar Patedar, which MLC is Ex.PW9/A. This witness has not been cross examined on behalf of the accused despite opportunity.

10. Dr. K. A. Shekhar PW10 Dr. K.A. Shekhar, Hindu Rao Hospital, (PW10) (Department of Anesthesia) has deposed that on 05.04.2009 he examined Vijay Bahadur brought by PCR (S□35) vide MLC No. 2316/09 which is Ex. P W 1 0 / A . According to him, after examining the patient, he referred him to EMO (O) and EMO (S) for further treatment.

This witness has not been cross examined on behalf of the accused despite opportunity.

11. Dr. Rajendra Kumar PW11 Dr. Rajendra Kumar has deposed that on (PW11) 07.05.2009, he was posted at St. Stephens Hospital in Orthopedic department and on that day he had given his opinion about the injuries of Vijay Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 8 of 24 Bahadur as 'grievous' which might be caused due to road traffic accident and his opinion to this effect is Ex.PW11/A. This witness has not been cross-examined on behalf of the accused despite opportunity.

12. Retd. SI Ram Kishan PW12 Retd. SI Ram Kishan is the Investigating (PW12) Officer of this case and has proved the investigations conducted by him and the documents prepared by him i.e. DD No. 26A which is Ex.PW12/A; rukka Ex.PW12/B; seizure memos of both the vehicles i.e. Tata 407 and Bajaj Scooter vide Ex.PW12/C and Ex.PW12/D; dead body identification statement of relative of deceased which is Ex.PW12/E; the notice under Section 133 M. V. Act served upon the offending vehicle which is Ex.PW12/F; arrest of memo of accused which his Ex.PW12/G; seizure memo of insurance papers of the offending vehicle and driving license of accused vide Ex.PW12/H and Ex.PW12/I;

application for getting the vehicle mechanically inspected vide Ex.PW12/J and site plan of the spot of incident at the instance of complainant vide Ex.PW12/L. During his cross-examination on behalf of the accused, the witness has stood by what he has stated in his examination-in-chief on all material aspects.

13. ASI Rattan Singh PW13 ASI Rattan Singh was posted as MHC (M) (PW13) at Police Station Sarai Rohilla and has deposed as under:□

1. That on 06.04.2009 IO SI Ram Kishan had deposed the case property i.e. Tata 407 No. DL-1LG-2527 and scooter No. DL-6SV-9800 in the Malkhana vide entry no. 2674 in register no. 19 which his Ex.PW13/A.

2. That on 16.04.2009, the vehicle no. DL-1LG-2527 was released to the superdar Tilak Raj by order of the court and he made entry to this effect at point A in Ex.PW13/A. Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 9 of 24

3. That on 14.05.2009, the scooter No. DL-6SV-9800 was released to the superdar by order of the court and he made entry to this effect at point B in Ex.PW13/A. This witness has not been cross-examined on behalf of the accused despite opportunity.

14. Dr. B. K. Sharma PW14 Dr. B. K. Sharma has deposed that on (PW14) 06.04.2009 he was posted as CMO at Subzi Mandi Mortuary and at about 12:10 PM, he had conducted the postmortem upon the dead body of deceased Govind Singh Bisht who was brought by SI Ram Kishan with alleged history of RTA/After which postmortem report no. 513/2009 is Ex.PW14/A. This witness has not been cross-examined on behalf of the accused despite opportunity.

(4) After considering the testimonies of the various witnesses and the material on record, the Ld. Trial Court vide judgment dated 04.07.2018 held the appellant / convict guilty of the offences under Sections 279, 338 and 304A IPC and vide order dated 10.08.2018 the Ld. Trial Court has passed the order on sentence impugned before this Court. Being aggrieved by the same, the appellant / convict has approached this Court on the following grounds:

That the ld. MM has failed to appreciate that the sole witness of the case i.e. the complainant Vijay Bahadur (PW5) was totally hostile during his examination and he could not prove that the alleged accident had taken place due to rash and negligence of the appellant.

Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 10 of 24 That Vijay Bahadur (PW5) was cross-examined by the counsel for the appellant wherein various contradictions have come on record and it is clear that the police had planted the said witness just to make out a false case against the appellant and hence the prosecution has failed to prove that the accident in question was caused by the appellant. That the Ld. MM has failed to appreciate that the other witness namely Smt. Maheshwari (PW7) who was allegedly one of the witness of the alleged accident, has turned hostile and claimed that she did not see the person who had caused the accident.

That the deposition of the IO and the complainant show that no such accident was occurred by the vehicle in question and the appellant has been falsely implicated in the present case. That the Ld. Trial Court has erred in not appreciating the fact that the complainant was not present at the spot and was planted as an eye witness.

That the Ld. Trial Court has given undue weightage to the statement of Tilak Raj (PW2), the owner of the tempo who had given false statement before the Court only with a view to get his vehicle released.

That the appellant was working with Tilak Raj (PW2) as a helper for loading and unloading the truck and he had taken the appellant to the Court on the pretext of releasing the said vehicle but he falsely shown the appellant as a driver who had caused the alleged accident.

Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 11 of 24 That the Ld. Trial Court has failed to consider that Tilak Raj (PW2) was not cross-examined by the counsel for the appellant and even the application under Section 311 Cr.P.C.

was allowed by the Ld. MM but the said witness did not come in the witness box for his cross examination and hence, the examination in chief of this witness ought not to have been read and considered.

That the prosecution has totally failed to prove on record the identification of the appellant as the person who had caused the alleged accident and in the absence of any proper evidence regarding the alleged accident, there was no occasion for the Ld. MM to hold that the alleged accident was caused by the appellant.

That the Ld. MM has failed to properly consider the defence statement made by the appellant.

(5) Pursuant to the filing of the appeal, notice was issued to the State.

The Ld. Addl. PP for the State has not filed any reply to the appeal but he has filed his detailed written memorandum of arguments wherein he has argued that the impugned judgment and order on sentence has been passed by the Ld. Trial Court after due appreciation of evidence. It is argued that the prosecution has successfully proved that it was the appellant/ convict who was driving the offending vehicle in a rash and negligent manner at the time of incident and reliance in this regard is placed upon the testimonies of Vijay Bahadur (PW5) and Smt. Maheshwari (PW7) who have sustained injuries in the accident. It Naresh Vs. State, CrI. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 12 of 24 is further

argued that since the appellant/ accused has failed to participate in the TIP, there is an adverse inference against him as per Section 114 of Indian Evidence Act. In so far as the aspect that the witness did not identify the accused during cross examination though he was identified during the examination in chief, the Ld. Addl. PP for the State has placed his reliance upon the judgment in the case of *Khuji @ Surender Tiwari vs. The State of Madhya Pradesh* reported in 1991 AIR 1853. He has also argued that the prosecution has also been able to prove and establish that due to the rash and negligent act of the appellant / accused, two persons namely Vijay Bahadur (PW5) & Smt. Maheshwari (PW7) had received injuries whereas Govind Singh had expired. Ld. Addl. PP has placed his reliance upon the judgments in the case of *Paras nath Vs. State of Delhi* reported in 2004 Cri.L.J. 731; *Anoop Singh Vs. State (Govt. of NCT of Delhi)*, Criminal Revision Petition No. 744/2014, decided on 09.10.2015; *State of Punjab Vs. Balvinder Singh & Ors.* CA Nos. 47-48 of 2012 arising out of SLP (CrI.) No. 7872-7873 OF 2010 and *State of Punjab vs. Saurabh Bakshi* reported in 2015 (5) SCC 182.

(6) I have considered the rival contentions and the grounds raised in the appellant. I have also gone through the Trial Court Record and the testimonies of the various witnesses. At the very Outset I may

observe that in so far as the aspect of identity of the appellant / convict is concerned, the testimony of the eye witness Vijay Bahadur (PW5) and the testimony of owner of the offending vehicle namely Tilak Raj (PW2) are relevant. The eye witness Vijay Bahadur (PW5) has in his Naresh Vs. State, CrI. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 13 of 24 examination in chief specifically identified the appellant/ accused Naresh Kumar in the Court as the person who was driving the offending vehicle. Though in his cross-examination he claimed that he does not know who was driving the offending vehicle but when cross-examined by the Ld. APP for the State he explained that he was not able to identify the accused due to lapse of time and informed that he may be able to identify, if the accused is put to him and thereafter correctly identified the appellant / accused Naresh in the Court. Further, in his cross-examination he claimed that he does not know who was driving the offending vehicle and later on came to know that the accused Naresh was driving the offending vehicle. Here, I may note that perusal of the record reveals that the examination in chief of the witness Vijay Bahadur (PW5) was conducted on 21.04.2011 and was not cross-examined by the accused despite sufficient opportunity. He was thereafter recalled and his cross-examination was conducted on 09.08.2016 i.e. after almost five years of his examination in chief. This explains the reason for not identifying the accused in his cross-examination. The Ld. Trial Court has rightly observed that the answer to the cross-examination conducted by the Ld. Counsel for the accused after his re-examination by the Ld. APP for the State, is confined to the name of the accused and not anything else. Even otherwise, it is a settled law that evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him and the evidence of such a witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a Naresh Vs. State, CrI. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 14 of 24 careful scrutiny thereof. [Ref.: Bhagwan Singh Vs. State of Haryana, 1976 (2) SCR 921; Rabinder Kumar Dey Vs. State of Orissa, 1976 (4) SCC 233; Syed Iqbal Vs. State of Karnataka, 1980 (1) SCR 95 and Khuji @ Surender Tiwari vs. The State of Madhya Pradesh, 1991 AIR 1853]. Further, the testimony of Vijay Bahadur (PW5) finds due corroboration from the testimony of Tilak Raj (PW2) the owner of the offending vehicle, who has specifically deposed that on 05.04.2009 at about 7:00 PM at Old Rohtak Road in front of Usha Mata Mandir, it was the appellant / accused Tilak Raj who was driving the offending vehicle and caused the accused.

In fact, it was Tilak Raj (PW2) who had taken the accused to Police Station where he was interrogated and arrested. The entire testimony of Tilak Raj (PW2) has gone uncontroverted and unrebutted in view of the fact that he has not been cross-

examined by the Ld. Counsel for the accused despite opportunity in this regard. This being the background, I hold that the prosecution has been able to prove the identity of the appellant / accused Naresh as the driver of the offending vehicle. (7) Secondly, in so far as the rashness and negligence so attributed to the appellant / convict is concerned, again the testimony of injured eye witness Vijay Bahadur (PW5) and the testimony of Smt. Maheshwari (PW7) are very relevant. Coming first to the testimony of Vijay Bahadur (PW5) who had also received injuries in the accident. For the sake of convenience his testimony is reproduced as under:

"..... On 05.04.2009 it was Sunday and I was going towards Inderlok from my house at around 7:00 PM. I was going on my scooter and I was driving my scooter Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 15 of 24 No. DL-6V-9800. When I reached near Usha Mata Mandir, Old Rohtak Road, I saw one Tata 407 was coming from the side of Inderlok in a very fast speed and being driven very rashly. The driver of the said vehicle came on the wrong side suddenly and first hit two pedestrian one was woman and other was male and thereafter struck against me all of a sudden. I was driving in the correct lane. Thereafter, the said Tata 407 hit against the wall of Usha Mata Mandir. The registration number of the vehicle was DL-1LG-2527 and it was being driven in a rash and negligent manner and all of a sudden it came on the wrong side and caused the accident. The impact of the collision with my scooter was so strong that I was thrown away almost 15 feet and scooter also fell down. I was in my consciousness when I fell down and I saw the entire incident. After I fell down, I became unconscious after some time. I had clearly observed the face of the driver who was driving Tata 407. I can identify the said driver if he comes before me.

At this stage, the witness has correctly identified the accused who is present in the Court as the person who was driving the vehicle and caused the accident. The accident was caused by negligence of the accused. The pedestrian and myself were going in proper direction and in proper lane but due to negligence of the accused, the accident took place.

After the accident, many people gathered there and after some time, a police car came. Two pedestrian were shifted to HR Hospital first and then I was also shifted to HR Hospital for treatment. I was given treatment at HR Hospital. Thereafter, I went to St. Stephens Hospital along with my family members as treatment of St. Stephens is better. My thigh muscle was broken, knee was also

fractured and I was also operated. I also received other injuries and now I cannot walk properly. Police recorded my statement at Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 16 of 24 St. Stephens Hospital and my statement is Ex.PW5/A bearing my signatures at point A. I can identify the vehicle which caused the accused.

At this stage, the witness has pointed out that the photographs of the offending vehicle, his scooter and the place where the accident took place are correct as in the judicial file and same is Marked A to G. Later on I came to know that two pedestrian were from Railway colony near my house and the male pedestrian had died later on....."

(8) In his cross-examination, the Ld. Counsel for the accused has tried to demolish the testimony of the witness, but the witness Vijay Bahadur (PW5) has clarified that there was sufficient light on the road and the road is quite wide so that two trucks can pass from there side-by-side. He has admitted that the road near Usha Mata Mandir is busy with pedestrians and cycle rickshaw on both the sides but has explained that it was a Sunday and there was very less traffic on the road. (9) Now coming to the testimony of Smt. Maheshwari (PW7), the same is reproduced as under:

"..... On 05.04.2009, I along with my husband Sh. Govind Singh (now deceased) were going to the local market by foot. It was around 7:00 pm. One tempo which was running at fast speed came from behind and hit us. The registration no. of the tempo was 2527. The complete no. of the vehicle I am unable to recall.

Court observation, the witness submits that she is having some problem with memory due to the said accident in which she has also sustained injuries.

The tempo in question was running at a fast speed and hit us from back side. My husband was also with me and due to the impact, I fell down and got Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 17 of 24 unconscious. I do not know as to what happened thereafter. I regained consciousness at the hospital. I received injuries at my elbow, on my face and my eyes, my legs. Later on, I was informed that my husband had expired in the accident. I had not seen the person who was driving the vehicle. I cannot identify the tempo, if it again comes before me.

At this stage, Ld. APP request for asking leading question to the witness as she is not supported the prosecution case. Permission is allowed. Q. It is suggested to the witness that the offending tempo no. is DL1LG2527?

Ans: It is correct.

Q. It is suggested to the witness that the accused

is present in the court today who caused the accident by the tempo bearing no. DL1LG2527?

Ans: I cannot identify due to lapse of time....."

(10) This witness Smt. Maheshwari (PW7) has not been cross examined by the Ld. Counsel for the accused and hence her testimony has gone unrebutted and uncontroverted. Though she has not been able to identify the appellant/ accused in the Court, yet she has specifically deposed that the offending vehicle was being driven at a false speed. (11) Thirdly, both the witnesses Vijay Bahadur (PW5) and Smt. Maheshwari (PW7) are consistent to the effect that offending vehicle was being driven at a fast speed. I may observe that the testimony of an injured witness has its own efficacy and relevancy. The fact that the witnesses Vijay Bahadur (PW5) and Smt. Maheshwari (PW7) sustained injuries on their body would show that they were present at the place of occurrence and had seen the occurrence by themselves [Ref.: Mohar vs. State of UP reported in 2002 AIR (SC) 3279: 2002 Cri.L.J. 4310]. Evidence of injured eye witness cannot be discarded in toto on ground Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 18 of 24 of criminal disposition towards accused or improbability of narrating the details of actual accident. More so, on perusal of evidence tested in light of broad probabilities it can be concluded that eye witnesses are natural witnesses and they could not have concocted a baseless case against accused. Further, in the case of State of Madhya Pradesh Vs. Mansingh & Ors. reported in 2003 (3) Cri. C. C. 559: 2003 (10) SCC 414 the Hon'ble Supreme Court of India held that evidence of injured witness have greater evidentiary value, unless compelling reasons exist. (12) Both the witnesses Vijay Bahadur (PW5) and Smt. Maheshwari (PW7) have corroborated each other on the aspect of rashness and negligent so attributed to the appellant/ accused. There is nothing on record to show that there was any kind of animosity between the eye witnesses and the appellant/ convict nor there is any reason why they would falsely implicate the appellant / convict. Therefore, I hold that the prosecution has been able to prove the rashness and negligence so attributed to the appellant / accused Naresh. (13) Fourthly, I may observe that the doctrine of res ipsa loquitor is applicable to the present case. In the case of Ravi Kapoor Vs. State

of Rajasthan, Crl. Appeal No. 1838/2009 the Hon'ble Supreme Court while applying the doctrine of res ipsa loquitor dismissed the appeal and upheld the conviction of the appellant, which observations I quote as under:

"..... 19. In the case of Thakur Singh Vs. State of Punjab [(2003) 9 SCC 208], the petitioner drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 19 of 24 applied the doctrine of res ipsa loquitor 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 when it fell into canal. In such a situation the doctrine of res ipsa loquitor 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....."

(14) Applying the above principles to the facts of the present case, I may observe that the offending vehicle which was being driven by the appellant / accused hit the deceased Govind Singh and his wife Smt. Maheshwari (PW7) from behind and then hit the scooter of Vijay Bahadur (PW5) and thrown him to a distance of 15 feet after which the vehicle hit the wall of Usha Mata Mandir. The appellant / convict before this Court has failed to explain as to how the accident happened, which onus the appellant has failed to discharge. (15) Fifthly, the witness ASI (Tech.) Devender Kumar has proved the mechanical inspection reports of the Bajaj Scooter bearing No. DL□6SV□9800 and also of the offending vehicle i.e. Tata Tempo bearing No. DL□LG□2527 which reports are Ex.PW8/A and Ex.PW8/B respectively. Coming first to the Mechanical Inspection report of Bajaj Scooter bearing No. DL□6SV□9800 Ex.PW8/A according to which there were fresh damages on front right side body and engine Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 20 of 24 cover was damaged; Clutch Gear System was damaged; Front Body Frame was damaged; Front plastic show broken; Front number plate was dislocated; Handle was broken from the right side; Head Lights were dislocated; Left side body was scratched & dented and Front wheel mudguard was damaged. On

examination of the mechanical system, the engine could not start due to kick lever system damage; brake system was OK; Handle system was damaged and Headlight and Horn system was damaged. The Bajaj Scooter bearing No. DL6SV9800 was not fit for Road Test.

(16) In so far as the offending vehicle i.e. Tata Tempo bearing No. DL1LG1527 is concerned, the Mechanical Inspection Report Ex.PW8/B shows fresh damages on front right side body & body frame was damaged; driver door window damaged; dash board damaged & steering system was damaged; front wind screen glass was broken; front bumper & bonnet was damaged; both head lights damaged; engine radiator and system was damaged and front right side wheel tyre scratched. On examination of mechanical examination, the engine could not start due to system damaged; brake system was OK; Steering system damaged; Headlights were damaged; Horn was not in working order due to dislocation of horn wire and hence the offending vehicle was declared not fit for Road Test.

(17) The above mechanical inspection reports corroborate the version of the injured eye witness Vijay Bahadur (PW5) that the offending vehicle hit his scooter and thrown him to a distance of 15 feet after which the vehicle hit the wall of Usha Mjata Mandir. (18) Lastly, the MLC of the injured Vijay Bahadur (PW5) which Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 21 of 24 is Ex.PW10/A has been duly proved by Dr. K.A. Shekhar (PW10) and the opinion on the injured has been proved by Dr. Rajendra Kumar (PW11) vide Ex.PW11/A according to which the injuries were grievous in nature. Further, the MLC of the deceased Govind Singh which is Ex.PW9/A has been duly proved by K.V. Singh (PW9) and the postmortem report which is Ex.PW14/A has been duly proved by Dr. B.K. Sharma (PW14) according to which all the injuries are antemortem in nature, consistent with Road Traffic accident and the death was caused due to cranio cerebral injuries. (19) This being the background, I hereby hold that there is no illegality in the judgment of the Ld. Trial Court dated 04.07.2018 thereby holding the appellant/ convict guilty of the offences under Sections 279, 338, 304A IPC.

(20) Now coming to the aspect of quantum of sentence, I note that the Ld. Trial Court has vide order dated 10.08.2018 has sentenced the appellant / convict Naresh to Rigorous Imprisonment for Two years for the offence under Section 304A IPC; Rigorous Imprisonment for Six Months for the offence under Section 338 IPC and Rigorous Imprisonment for One Month for the offence under Section 279 IPC, all of which were directed to run concurrently. (21) I have considered the submissions made before me on the aspect of sentence and I may observe that the family of the deceased Govind Singh has already received the compensation of Rs.23.24 Lacs from the Insurance

Company and the injured Vijay Bahadur has received also received the claim of Rs . 3 , 5 0 , 0 0 0 / □ . T h e a c c i d e n t i n Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 22 of 24 question is of the year 2009. The appellant / convict Naresh, who is a daily wager, has no previous involvements and has a family comprising of wife and three minor daughters. Therefore, considering the various mitigating and aggravating facts, I hereby modify the order on sentence dated 10.08.2018 as under:

For the offence under Section 279 IPC the convict shall undergo Rigorous Imprisonment for a period of One Month.

For the offence under Section 304 □ A IPC the convict shall undergo Rigorous Imprisonment for a period of One Year. For the offence under Section 338 IPC the convict shall undergo Rigorous Imprisonment for a period of Six Months.

All the sentences shall run concurrently.

Benefit of Section 428 Cr.P.C. shall be given to the convict for the period already undergone by him during the trial, if any.

(22) The appellant / convict Naresh is directed to be taken into custody to serve the sentence.

(23) The appellant / convict is informed that he has a right to prefer an appeal against this judgment. He has been apprised that in case he cannot afford to engage an advocate, he can approach the Legal Aid Cell, functioning in Tihar Jail or write to the Secretary, Delhi High Court Legal Services Committee, 34 □ 37, Lawyers Chamber Block, Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018 Page No. 23 of 24 High Court of Delhi, New Delhi.

(24) Copy of this judgment be supplied to the appellant / convict free of cost.

(25) Appeal is accordingly Disposed off as party allowed on the aspect of sentence. Trial Court Record be sent back along with the copy of this judgment. Digitally signed by (26) Appeal file be consigned to Record Room. KAMINI KAMINI LAU LAU Date:

2018.10.06 17:46:20 +0530 Announced in the open Court
(Dr. KAMINI LAU) Dated: 06.10.2018 Spl. Judge (P.C. Act) CBI □
01 (Central), Tis Hazari Courts, Delhi
Naresh Vs. State, Crl. Appeal No. 43/2018, Judgment dated 06.10.2018
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