IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Judgment reserved on: 22.12.2025***
Judgment pronounced on:20.02.2026

\+ **CRL.L.P. 286/2018**

STATE .....Petitioner

versus

SABU ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ritesh Kumar Bahri, APP for the State with Ms. Divya Yadav, Adv. with SI Pavan Kumar Yadav, PS Sunlight Colony.

For the Respondent : Ms. Vrinda Bhandari, Adv. (DHCLSC) with Ms. Nitya Jain, Adv.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. By the present petition, the petitioner seeks leave to appeal against the judgment dated 12.02.2018 (hereafter '**impugned judgment**'), passed by the learned Metropolitan Magistrate ('**MM**') in the case arising out of FIR no. 497/2016 dated 21.11.2016, registered at Police Station Sunlight Colony.

2. Briefly stated, it is alleged that on 20.11.2016, the respondent was driving a truck on a public road in a rash and negligent manner. It is alleged that while driving the said truck, the respondent struck against a motorcycle from behind and caused the death of the victim,

who was driving the motorcycle.

3. The learned MM *vide* judgment dated 12.02.2018 acquitted the respondent for the offence under Section 279 of the IPC and convicted the respondent for the offence under Section 304A of the IPC. The relevant portion of the impugned judgment in regard to the respondents reads as under:

> *"20 As far as the offence made punishable u/s. 279 IPC is concerned, before the accident, it is not clear as to how or in what manner did the accused act in a rash and negligent manner by driving the truck in question. As per PW1, the accused herein was driving his vehicle at a speed of about 40 kms per hour. The same cannot be said to be too excessive a speed. PW2 claims that the speed of the truck was 60 kms per hour. That to cannot be said to be too high. Thus before the accident how and in what manner did the accused drive the truck, to call such driving as rash and negligent to endanger human life is not clear from the evidence before this court. Accordingly, accused is acquitted of the said charge made punishable u/s. 279 IPC."*

4. The learned Additional Public Prosecutor for the State submitted that the learned MM has committed a grave error in acquitting the respondent for the offence under Section 279 of the IPC. He submitted that the findings of the learned MM are perverse and are not based on correct appreciation of the evidence. He submitted that the learned Magistrate has failed to appreciate that PW1 and PW2 have explicitly stated that the truck was being driven rashly in a *zig zag* manner.

5. He submitted that the learned Magistrate has overlooked the admission by the respondent that the truck was loaded with 8000

bricks weighing 32000Kg and the weight of the truck was about 7000Kg, which establishes his negligence as the heavy load was 2.5 times over the permissible allowed weight. He submitted that despite the heavy truck load, the respondent drove negligently and hit the victim.

6. He submitted that the respondent has been convicted for the offence under Section 304A of the IPC for causing death by rash and negligent driving, whereby, the acquittal for the offence under Section 279 of the IPC on account of rash and negligent act not being proved is manifestly erroneous.

7. The learned counsel for the respondent submitted that there is no infirmity in the respondent's acquittal for the offence under Section 279 of the IPC and the respondent has already challenged his conviction under Section 304A of the IPC, which is pending consideration before the learned Court of Sessions.

ANALYSIS

8. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the

case of ***State of Maharashtra v. Sujay Mangesh Poyarekar*: (2008) 9 SCC 475** held as under:

> *"**19.** Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.*
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> ***20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.***
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> ***21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits.** But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted."*
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> (emphasis supplied)

9. In the present case, the prosecution examined three witnesses to establish its case, that is, two eye witnesses and the Investigating Officer, while the defence only examined the respondent as a witness.

10. The prosecution has essentially assailed the respondent's acquittal on two grounds– that the learned Magistrate has failed to

appreciate the material on record in determining the rashness and negligence, and that having found the respondent to be guilty of the offence under Section 304A of the IPC, the respondent shouldn't have been acquitted of the offence under Section 279 of the IPC.

11. A bare perusal of the impugned judgment reflects that although the learned Magistrate found that the respondent had caused the death of the victim by hitting the rear side of his vehicle in a rash and negligent manner so as to warrant his conviction for the offence under Section 304A of the IPC, however, the respondent was acquitted for the offence under Section 279 of the IPC as it was unclear as to how or in what manner the accused acted by driving the truck *prior* to the incident. It appears that the only factor which weighed the learned Magistrate was that the speed of the vehicle as per both PW1 and PW2 was not too high or excessive.

12. Before proceeding further, this Court considers it apposite to take note of the offences under Section 279 of the IPC and Section 304A of the IPC, which read as under:

> *"**279. Rash driving or riding on a public way.**—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*
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> ***304A. Causing death by negligence.**—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either*

description for a term which may extend to two years, or with fine, or with both."

13. In the case of ***The State of Arunachal Pradesh v. Ramchandra Rabidas @ Ratan Rabidas &Anr.*** **:Criminal Appeal No. 905 of 2010**, the Hon'ble Apex Court had discussed the penal provisions under IPC in relation to road traffic accidents. The relevant portion of the judgment is as under:

"5.9 Section 279 IPC falls under Chapter XIV – "Offences affecting Public Health, Safety, Convenience, Decency And Morals", and provides for offences relating to rash and negligent driving which endanger human life.

Section 279 IPC makes rash driving, or riding on a public road, punishable if such rash driving or riding endangers human life, or is likely to cause hurt or injury to any person. ***It is the rash or negligent manner of driving or riding which endangers human life, or is likely to cause hurt or injury to any person, which constitutes an offence under Section 279 IPC.***

5.10 Sections 304 Part II, 304A, 337 and 338 IPC fall under Chapter XVI – "Offences Affecting the Human Body" which makes provision for offences relating to culpable homicide not amounting to murder, causing death by negligence by doing any rash or negligent act, and causing hurt or grievous hurt, by endangering the life or personal safety of others.

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5.12 Where the rash or negligent driving, results in the death of a person, without the knowledge that the said act will cause death, Section 304A IPC would be applicable. In other words, Section 304A appliesto cases where there is no intention to cause death, and no knowledge that the act done in all probability will cause death. Negligence and rashness are essential elements of Section 304A.

The three ingredients of Section 304¬A, which are required to be proved are: (1) the death of a human being; (2) the accused caused the death; and (3) the death was caused by the doing of a rash or negligent act, though it did not amount to culpable homicide of either description *[Alister Anthony Pareira*

v. State of Maharashtra (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953]

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5.14 Sections 279, 304A, 337 and 338 IPC may be invoked only if the act of the accused is a negligent or rash act."

(emphasis supplied)

14. In the case of ***Braham Dass v. State of Himachal Pradesh* : (2009) 7 SCC 353**, the Hon'ble Apex Court had observed as under:

> *"**8.** Section 279 deals with rash driving or riding on a public way. A bare reading of the provision makes it clear that it must be established that the accused was driving any vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person. Obviously the foundation in accusations under Section 279 IPC is not (sic) negligence. Similarly, in Section 304-A the stress is on causing death by negligence or rashness. Therefore, for bringing in application of either Section 279 or 304-A it must be established that there was an element of rashness or negligence…"*

15. The statutory provisions as well as the said judgment makes it clear that both the offences share the common aspect of commission of a rash or negligent act, and the offence under Section 279 of the IPC is fulcrumed on endangerment of human life or likelihood of causing hurt or injury to another.

16. The learned Magistrate has laid much emphasis on the absence of material *prior* to the incident. Pertinently, in the facts of the present case, it does not appear that the prosecution sought to distinguish between the rashness and negligence prior to the accident and during the accident. Even otherwise, once it is found that the accused rashly and negligently caused death of the victim while driving on a public

way, the requisite ingredients to constitute the offence under Section 279 of the IPC are met as it is the act of endangerment which is criminalized in the aforesaid provision.

17. It is the prosecution's case that the respondent was driving in a rash and negligent manner on a public way when he struck the motorcycle of the victim. Although the learned Magistrate appears to have discerned the aspect of rashness and negligence from the sheer fact of collision on the rear end of the victim's motorcycle, no deference has been paid to the other material on record, including evidence of PW1 and PW2, who have stated that the truck was driven by the respondent in a zig zag manner. The said aspects require consideration.

18. The only specific observation made by the learned Magistrate is in reference to the speed of the vehicle as per the witnesses. Undisputably, high speed is not a *sine qua non* to constitute the offence under Section 279 of the IPC.

19. *Prima facie*, possibility of rashness and negligence by a driver cannot be negated on mere account of low speed, especially when it is alleged that the respondent was driving a heavy vehicle, carrying material over the permissible weight limit, in a zig zag manner prior to the accident.

20. In view of the aforesaid discussion, this Court is of the opinion

that the State has been able to make out a case for grant of leave.

21. The present leave petition is thus allowed and leave to appeal is granted.

Crl. A. _____ (to be numbered)

22. At this juncture, it is apposite to note that the respondent's petition against his conviction for the offence under Section 304A of the IPC is still pending before the Court of Sessions. Considering the intertwined allegations of rashness and negligence in the present case, it would not be appropriate for this Court to delve into the said aspect on merits when the appeal is pending before the Court of Sessions.

23. In the opinion of this Court, it would be expedient for the ends of justice to transfer the appeal filed by the respondent against the impugned judgment, pending before the Sessions Court, to this Court, in order to ascertain that both the appeals can be heard and decided together.

24. In view of the above, this Court considers it apposite to exercise its power under Section 447 of the BNSS (erstwhile Section 407 of the CrPC) and transfer CA No. 130/2018, titled *Sabu Vs State*, pending before the learned Additional Sessions Judge, South-East, Saket Courts, New Delhi to this Court forthwith.

25. The learned District and Sessions Judge is directed to transmit

the papers and proceedings of the aforementioned appeal to this Court.

26. A copy of the order be communicated to the learned District and Sessions Judge for necessary information.

27. List on 20.03.2026.

AMIT MAHAJAN, J

FEBRUARY 20, 2026
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