



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 22<sup>nd</sup> January, 2026*  
*Pronounced on: 16<sup>th</sup> March, 2026*

+ **CrI.A.109/2026**

**STATE NCT OF DELHI** .....Petitioner  
Through: Mr. Shoaib Haider, APP for State.

versus

**SHIV SHANKER**  
S/o Sh. Manoj Dass  
R/o H.No.2207, Apni Colony,  
Alipur Gardhi, Delhi. ....Respondent

Through:

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. A Criminal Appeal under Section 378(1)(b) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed on behalf of the **Appellant/State** to challenge the Judgment dated 24.12.2019, whereby learned CMM-04 (North), Delhi has acquitted the Accused/Respondent, Shiv Shankar for the offence under section 279/304A of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) in case FIR No.420/2012 registered at P.S. Alipur, Delhi.

2. The **facts in brief** are that on 05.12.2012 at about 11 A.M., one child, Veer @ Aditya, aged about 2 years was run over allegedly by the TATA Ace Truck bearing registration No. DL 1LP 6713, which was being driven in a rash and negligent manner, by the Respondent. The child was taken to



SRHC Hospital immediately by his mother, Babli and other neighbours, but the child was declared “*dead*”.

3. On receipt of information about the accident *vide* DD No.15. SI Satbir Singh who along with Const. S.K. Jahangir, reached the spot where the respondent and the offending truck were standing.

4. ASI Omender Kumar took over the investigations. He reached the spot Const. Sunil Kumar was left on the spot and he went to the Hospital, where the child had already been declared dead. He recorded the statement of eye witness, Sh. Ashok Kumar, father of the child, and got the FIR No.420/2012 P.S. Alipur, registered.

5. During the investigation, statements of witnesses were recorded. ***On completion of investigations, the Chargesheet was filed in the Court.***

6. ***Charge*** under Section 279/304A IPC was framed against the Accused/Respondent on 12.05.2014, to which he pleaded *not guilty* and claimed trial.

7. During the investigation, statements of *PW1, Ashok Kumar*, father, *PW2, Ram Das Dhimar, the Uncle and PW4, Babli, mother* were recorded, who deposed about the manner of the accident.

8. The statement of *PW3, Manoj Dass, owner* of the TATA Ace Truck was also recorded who was served with a Notice under Section 133 M.V. Act Ex.PW3/A. wherein he stated that the vehicle was being driven by his son, who had been apprehended on the spot.

9. *PW11, SI Satbir Singh*, along with *PW10, Const. S.K. Jahangir*, had reached the spot on receiving the information about the accident *vide* DD No.15.



10. PW7, ASI Omender Kumar was the I.O., who conducted the investigations, and was joined by PW11, SI Satbir Singh and Const. Sunil.
11. The Chargesheet was filed against the Respondent under Section 279/304A IPC.
12. The *Statement of the Accused* was recorded under Section 313 Cr.P.C., wherein he denied all the incriminating evidence and the material put to him. However, he explained that he had parked his vehicle on the side of the road and had gone to a nearby school, for delivering food. When he returned from the school and started his vehicle, he noticed that a child had come beneath the Truck. He, did not examine any witness in support of his defence.
13. The **learned CMM** considered the testimony of PW1, Ashok Kumar, PW2, Ram Das Dhimar and PW4, Babli and concluded that they were not the eye witnesses and there was no evidence brought on record by the Prosecution, to show that the vehicle indeed was being driven in a rash and negligent manner by the Respondent. *Consequently, benefit was given to the Respondent who was thereby, acquitted.*
14. Aggrieved by the acquittal, the State has preferred the present Appeal. The **grounds of challenge** are that the evidence recorded before the Trial Court, has not been appreciated correctly. It was a crystal-clear case about the identity of the Accused and the offending vehicle. The Accused was the person who was driving the offending vehicle and the death of the child, were established. The Prosecution, therefore, successfully proved that the vehicle was being driven in a rash and negligent manner.
15. PW1, Ashok Kumar the eye witness fully supported the case of the Prosecution. The testimony of PW1 has not been appreciated correctly, to



conclude that he was not an eye witness. The evidence on record, proved that the child was crushed under the tyre of the offending vehicle, which in itself is indicative of negligence and indifference to the consequence of such driving, on the part of the Respondent.

**16.** The *Post-Mortem Report* shows that the cause of death of the child was due to *cranio-cerebral* damage, consequent upon head injury possible due to run over by a vehicle.

**17.** The testimony of PW1, 2 and 4, has been erroneously discarded by the Police. PW3, Manoj Das owner of the Truck, had admitted that the Truck was being driven by his son the Respondent at the time of accident. Even a mild brush with a big vehicle like truck, is likely to result in the loss of life of a person.

**18.** Reliance is placed on *Ravi Kapur vs. State of Rajasthan* (2012) 9 SCC 284 wherein the Apex Court has held that in order to prove an offence under Section 279 IPC the preliminary conditions are: (i) the manner in which the vehicle was driven; (ii) it being driven either rashly or negligently; and (iii) such rash and negligent driving should be such so as to endanger human life. Once, the ingredients are established, the penalty contemplated under Section 279 IPC, is attracted. Even if the driver of the vehicle is driving at slow speed, but in a reckless and negligent manner, it would amount to rash and negligent driving.

**19.** The legal maxim '*res ipsa loquitur*' (things speak for itself), as a rule of evidence is very much applicable in the present case, when the nature of accident and attending circumstances would reasonably lead to the conclusion that in absence of negligence, the accident would not have occurred. The maxim serves a two-fold purpose; firstly, where an accident



is caused by negligence for which the opposite party is responsible and secondly, it is applied even in cases where the complainant is able to prove the accident but cannot prove how the accident occurred.

20. The Respondent in his Statement under Section 313 Cr.P.C, wherein he has admitted that the child came beneath his vehicle. There is thus, overwhelming evidence, to prove the offence under Section 279/304 A IPC.

21. The learned CMM while ignoring the incriminating evidence produced by the Prosecution, has erroneously absolved the Respondent. *It is, therefore, submitted that the Judgment of acquittal dated 14.12.2019 be set aside and Respondent be convicted and sentenced.*

22. The **learned counsel for the Respondent** had opposed the Appeal and had submitted that there was no error in the Judgment and the Appeal was liable to be dismissed.

**Submissions heard and record perused.**

23. It is an unfortunate case where a two-year child came under the wheel of the offending Truck and died. The Respondent/Shiv Shankar has been acquitted under Section 279 IPC (*Rash driving or riding on a public way*) and Section 304A IPC (*Causing death by negligence*).

24. For fastening criminal liability under Sections 279/Section 304A IPC, the prosecution is required to prove beyond reasonable doubt, that the accused was driving the vehicle *in a rash or negligent manner* and that *such rashness or negligence was the direct and proximate cause of the death.*

25. In the case of *Braham Dass vs. 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. ....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 ...”*

26. The essential facts to be established, in order to prove an offence under Section 279 IPC, were explained by the Apex Court in Ravi Kapur, (supra) as: (i) the manner in which the vehicle was driven; (ii) it being driven either rashly or negligently; and (iii) such rash and negligent driving should be such so as to endanger human life. Once, the ingredients are established, the penalty contemplated under Section 279 IPC, is attracted.

27. *In the light of the aforesaid, the Prosecution’s case may be considered.*

28. The information of the accident was received *vide* DD No.14A dated 05.12.2012, Ex.PW5/A wherein it had been recorded that an information had been received at 11:20 A.M. that a two-year child has been injured in the accident. PW11, SI Satbir had admittedly, immediately reached the spot, where he met PW7, ASI Omender Kumar, who handed over the Accused along with the offending vehicle.

29. The Respondent, who was the driver of the offending vehicle, was apprehended on the spot along with the offending vehicle. This is corroborated by the testimony of **PW3, Manoj Das** who deposed that he was the owner of the offending vehicle which was being driven by his son, Shiv Shankar/Respondent. He disclosed this fact in his Reply, Ex.PW3/A to the Notice under Section 133 M.V. Act that was served upon him by PW7, ASI Omender Kumar.



30. The Respondent, as well admitted that he was driving the vehicle, at the time of accident and a child came under his vehicle.

31. The factum of demise of the child in the road accident is also confirmed by *MLC, Ex.P1* which records that the child was brought to the Hospital at 11:10 A.M by the mother Babli and was declared *dead on account of the injuries suffered by the child*. In the *Post-Mortem Report of the child, Ex.P2* it is mentioned that *the death was due to cranio-cerebral damage consequent upon head injury possible due to run over by a vehicle, as alleged*.

32. The aforesaid Prosecution evidence, therefore, established that the accident took place with the offending vehicle which was being driven by the Respondent at 11 A.M. on 05.12.2012, in which one child aged about two years, died.

33. The sole question that therefore, remained for determination was: *whether the accident occurred due to rash and negligent driving of the offending vehicle by the Respondent*.

34. The first material witness examined by the Prosecution was *PW1, Ashok Kumar*, father of the child who was cited as the eye witness. He had deposed that on 05.12.2012 at about 11 A.M., while he was standing outside his house, he saw that his son who was sitting on the side of the road was crushed under the tire of the offending vehicle. He along with the public persons apprehended the vehicle and the driver. Subsequently, on his statement, *Ex.PW1/A*, the FIR was registered. The Respondent/*Shiv Shankar* was arrested *vide* Memo, *Ex.PW1/B*. This witness was cross-examined in *extenso*, who explained that while he was employed and the duty hours in his factory were from 9 A.M. to 6 P.M., but on the date of



accident, he on account of his illness, had not gone to the factory. He further deposed that he along with his wife, Babli had taken his son to SRHC Hospital, where he was declared dead. He further explained that his brother, Ram Das who lives in a village had been visiting their house and was also present at the time of the accident.

**35.** *Essentially, there is not much which emerged in his cross-examination, to show that he was not an eye witness to the accident.* The testimony of PW1 stood through cross-examination and there was nothing to disbelieve his testimony. Moreover, PW7, ASI Omender has also stated that Ashok Kumar was present and his statement was recorded at about 01:40 P.M. on which the FIR was registered.

**36.** The accident may have taken place at 11 A.M., but PW1 had deposed that he was unwell and had not gone to the office that day, which has not been discredited in any manner.

**37.** The other ground for disbelieving his testimony was that the name of the mother, Babli and not of Ashok Kumar, was mentioned on the MLC, but that does not lead to any inference that he was not present at the time of the accident. This is more so, when not only he deposed that he along with his wife had rushed the child to the hospital, but was accompanied by the wife Babli, whose name was admittedly, mentioned on the MLC.

**38.** His testimony is fully corroborated by **PW4, Babli** who also deposed that she was present inside the house, when the accident occurred. She also deposed that she was accompanied by her husband who had apprised the Doctor about the matter while she was carrying the son in her hands. However, PW2, Ram Das Dhimar had stayed back at the house.



39. She may not have seen the accident actually happening, but she is a witness to the circumstances which happened immediately after the accident, when they had taken the child to the Hospital, at 11:20 A.M. Her testimony fully corroborated that she along with her husband, had gone to the Hospital, establishing his presence, at the time of accident. The name in the MLC, could have only been of one person, which happened to be that of the mother; but the mere non-mentioning of name of father but of mother, is absolutely, no reason to disbelieve the presence of the father at the time of the accident.

40. Another aspect to disbelieve that PW-1 was an eyewitness, is that his statement was recorded at 1:40 P.M., while the accident had occurred at 11:00 A.M., thereby reinforcing that he was in the office at the time of the accident and was called subsequently. Merely because the statement of PW1, Ashok Kumar was recorded at 01:40 P.M., it cannot be held that Ashok Kumar was not present at the spot. Some hours would have been definitely taken up in the medical examination and the child being shifted to Mortuary after being declared dead. Such time of about 2 hours taken to register the FIR, therefore, is understandable and explainable and cannot be considered as the reason to disbelieve the presence of PW1, at the time of the accident.

41. The learned CMM discredited the testimony of PW-1 Ashok, the father as an eye-witness, solely on the basis of the testimony of **PW2, Ram Das Dhimar**, brother of Ashok Kumar who had admitted in his cross-examination that Ashok, his real brother, was in the factory at the time of the accident and he was subsequently informed by the neighbours. He, however,



admitted that his statement was not recorded on the same day, but was recorded on 06.12.2012.

**42.** There is overwhelming evidence by way of the testimony of PW1 and PW4, to prove the factum of accident. PW1, the father has deposed being the eye witness, that the offending Truck had run over his son. Pertinently, this fact has been admitted by the Respondent in his *Statement under Section 313 Cr.P.C.* wherein he had stated thus:

*“I have been falsely implicated in this case. I had parked the said vehicle on the side of the road and had gone to the nearby school for delivering the food. Thereafter, when I returned and started my vehicle for going back, but as soon as I started my vehicle, I noticed that a child had come beneath my TATA Ace. I cannot say as to how and from where the said child came beneath my vehicle”.*

**43.** *It is, therefore, established beyond reasonable doubt that the Respondent was the driver of the offending vehicle and the child came under the truck, and died.*

**44.** The only question for determination is: *whether the accident had taken place due to rash and negligent driving of the offending vehicle by the Respondent.*

**45.** At the outset, it may be observed that rashness and negligence are proved not merely by assertion, but are the facts to be established and reflected from the facts proved on record.

**46.** In this regard, the testimony of PW-1, Sh. Ashok proved that while the child was sitting on the road side, when he was hit by the offending Truck, which is corroborated by the admission of the Respondent in his



Statement under Section 313 Cr.P.C. However, the most significant document relied upon by the Prosecution is the *Site Plan, Ex.PW1/F* which had been prepared at the instance of PW1, Ashok Kumar. The authenticity of the Site Plan, Ex.PW1/F, has not been questioned. Moreover, it clearly reflects the manner in which the accident took place.

**47.** The Site Plan clearly shows that the main road was of 10 ft. which had 5 ft. empty area, on the either side of the road. The child was sitting on the road side, which was alongside the main road and it did not form the part of main road. The Truck had deflected from the other side of the road, and come to the wrong side of the main road and had gone to this 5 ft. empty area where the child was sitting and the child came under the tire of the Truck, which stopped at a distance, indicated as Point B in the Site Plan.

**48.** The correctness of the Site Plan, Ex.PW1/F, has not been challenged either in the cross-examination of PW-1 at whose instance it was prepared, or PW-7, ASI Omender, who had prepared it and indicated the place of accident and the spot where truck was found parked, after the accident. It is actually a case of *res ipsa loquitur*, where the circumstances itself speak of negligence of the respondent.

**49.** Moreover, the Respondent himself had stated in his statement under Section 313 Cr.P.C. that he *had parked the said vehicle on the side of the road and had gone to the nearby school for delivering the food*. The School in front of which the truck was parked, was on the other side of the road, while the accident occurred on the wrong side of the road.

**50.** It was for the Respondent to have explained as to why after leaving the school which was on the opposite side, his Truck went on the wrong side



of the road and the reason why it left the main road and got deflected to the road side.

**51.** It had been rightly contended on behalf of the Prosecution that it is a clear cut case not only of negligence, which is brought forth by the testimony of the witnesses but also from the Site Plan, Ex.PW1/F which depicts the manner which itself speaks of the negligence on the part of the Respondent. Pertinently, the statement under Section 313 Cr.P.C. of the Respondent, also does not refute the manner on accident, which blatantly establishes the negligence of the respondent.

**52.** The learned CMM, therefore, fell in error in ignoring the overwhelming evidence of the Prosecution and the admission of the Respondent, to conclude that the Prosecution had failed to prove its case.

**53.** The Prosecution has successfully proved its case under Section 279/304A IPC. Consequently, the impugned Judgment dated 24.12.2019 is hereby, set aside and the Respondent is convicted for the offence punishable under Section 279/304A IPC.

**54.** List for Sentence on 01.04.2026, on *top of the board*.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**MARCH 16, 2026**

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