

CR Cases 9737/2016
STATE Vs. SUKH DEV @ SUKHA
FIR No. 108/2012
(Geeta Colony)

29.04.2025 at 2:00 PM.

Present: Ld. APP for the State.

Accused with Ld. counsel Sh. Ankush Kumar.

Judgment could not be dictated as the regular stenographer of the court has left the court after threatening the court that he will commit suicide.

Accordingly, relist for pronouncement of Judgment on **09.05.2025**
at 2:00 PM.

(NEHA GARG)
JMFC-02 (East)/KKD/Delhi-29.04.2025

**IN THE COURT OF MS. NEHA GARG, JUDICIAL MAGISTRATE
FIRST CLASS-02, DISTRICT EAST, KARKARDOOMA COURTS,
DELHI**

**State vs. Sukhdev@ Sukha
FIR No. 108/2012
PS. Geeta Colony
U/S. 279/304-A of IPC**

JUDGMENT

- | | | |
|--|---|--|
| 1.) CR No. of the case | : | 9737/16 |
| 2.) The date of commission
of offence | : | 09.04.2012 |
| 3.) The name of the complainant | : | HC Narender
PCR East Zone |
| 4.) The name & parentage
of accused | : | Sukhdev @ Sukha,
S/o Sh. Balbir Singh,
R/o H. No. 665, Sunlight
Colony No.2, Ashram,
New Delhi. |
| 5.) Offence involved | : | 279/304-A of IPC |
| 6.) The plea of accused | : | Not guilty |
| 7.) Reserved for Judgment on | : | 05.04.2025 |
| 8.) Final order | : | CONVICTION |
| 9.) The date of order | : | 09.05.2025 |

BRIEF FACTUAL MATRIX OF THE PRESENT CASE:-

01. The case of the prosecution is that on 09.04.2012, at about 05:50 AM, in front of Shamshan Ghat, Pusta Road, Geeta Colony, Delhi within the jurisdiction of PS Geeta Colony, the accused was found driving vehicle (truck)

bearing no. HR-55J-1919 in rash and negligent manner so as to endanger human life and personal safety of others and while driving the said vehicle in the said manner, the accused hit the motorcycle bearing no. DL-7SBB-5830 thereby causing the death of its driver Akash Kashyap and thus, accused has committed offences punishable under Section 279/304-A of Indian Penal Code, 1860 (in short 'IPC').

PROCEEDINGS BEFORE THE COURT:-

02. Upon completion of investigation, charge sheet for the offences punishable under Section 279/304-A of IPC was filed by the IO. The cognizance of the offence was taken by this Court and the copy of chargesheet was supplied to the accused. Thereafter, notice for commission of offences punishable under Section 279/304-A of IPC was framed upon the accused on 19.08.2014 to which he pleaded not guilty and claimed trial. Thereafter, prosecution witnesses were examined, cross-examined and discharged and prosecution evidence was closed. Statement of accused u/s. 313 read with Section 281 of Cr.PC was recorded on 26.03.2025 to which accused stated that he has been wrongly arrested and implicated in the present case. Accused has stated that he has not committed any accident and his truck was standing near Shamshan Ghat, Geeta Colony at the time of the incident. Accused has further stated that he had gone for nature's call at the relevant time and he is innocent and has been falsely implicated in this case and that witnesses have deposed falsely against him. He further stated that he does not want to lead defence evidence. Thereafter, the matter was listed for final arguments.

03. I have heard the rival submissions and have carefully perused the record.

EVIDENCE OF THE CASE:-

04. In order to prove the case of prosecution, prosecution got examined PW-1 Sh. Rajesh Kashyap, PW-2 Sh. Naveen Kumar Kashyap & PW-2 HC Narender Kumar (*it is to be noted that two witnesses have been examined as PW-2*), PW-3 Sh. Harjeet Singh, PW-4 Ct. Karlus Toppo, PW-5 SI Rajender Singh, PW-6 T.U. Siddiqui, PW-7 ASI Munish Kumar, PW-8 Retired SI Kuldeep Singh and PW-9 SI Ved Prakash. The remaining prosecution witnesses namely Dr. Ajeet Pal Singh, Dr. Kul Bhushan Goyal, DO/HC Rampal Singh, HC Amar Singh and DO/HC Bhagat Singh were dropped from the list of prosecution witnesses as accused had admitted in his statement recorded u/s. 294 of Cr.P.C dated 28.07.2022 that he shall not dispute preparation of MLC No.722/2012 dated 09.04.2012 Ex.PX1 & Post Mortem Report Ex.PX2 without admitting the contents of the same and the factum of registration of DD No. 13A, FIR No.108/2012 Ex.PX3, DD No. 4 dated 09.04.2012 Ex.PX4 and DDs No. 8A & 9A dated 09.04.2012 Ex. PX5 and Ex.PX6.

05. In the instant case, the case of the prosecution hinges on the testimony of the two police officials namely PW-2 HC Narender and PW-8 Retired SI Kuldeep Singh, who were on PCR duty at the spot of the incident. PW-2 HC Narender has deposed in his examination-in-chief that on date of the incident he was on PCR duty and he was present at Base, Geeta Colony Shamshan Ghat when at about 05:50 AM, the vehicle bearing No. HR-55J-1919 (the offending vehicle) came from the side of Shakarpur being driven in a rash and negligent manner and in front of Shamshan Ghat Red Light, the driver of the offending vehicle hit it against a black colour motorcycle make Apache (TVS), number of which he does not remember. PW-2 has further deposed that the motorcyclist along with motorcycle had fallen down on the road and after hitting the motorcycle, the driver of the truck fled away from the spot. PW-2

has deposed that thereafter he followed him in his PCR van and the driver stopped the truck at some distance. PW-2 has deposed that after stopping the truck, the accused came down from the truck and fled away towards Yamuna Khadar. PW-2 has further deposed that thereafter, he again followed the accused, who was apprehended.

06. PW-2 has deposed that thereafter, accused was taken at the spot, where another PCR who was also present which had shifted the injured to the hospital. PW-2 has deposed that he called PCR Control Room with regard to the incident pursuant ASI Rajender Singh reached at the spot. PW-2 has proved his statement Ex.PW2/A recorded by ASI Rajender, the photographs of the offending vehicle Ex.PW/P2 (colly) and photographs of the motorcycle Ex. PW2/P3 (colly) lying in accidental condition at the spot, the search memos of accused Ex. PW2/B and Ex.PW2/C, the seizure memos of the vehicles Ex.PW2/D and Ex.PW2/E. PW-2 has deposed that the incident took place as the offending vehicle had hit the motorcycle bearing no.D-7SBB-5830. PW-2 has identified the accused as the driver of the offending vehicle.

07. PW-2 has deposed in his cross-examination that he cannot tell if the motorcycle of the deceased was in motion or was stationary when it was hit by the offending vehicle or the direction in which the motorcycle was being driven. PW-2 has further deposed that he had not seen the motorcycle before the incident but he saw the same after it was hit by the offending vehicle and that he had apprehended the accused from Yamuna Khadar about 100-150 meter away from the spot.

08. The other eye witness PW-8 Retired SI Kuldeep Singh has deposed that on 09.04.2012, he was also on PCR duty and the checking officer had

called him at Shamshan Ghat Pusta Road, Geeta Colony, Delhi where the other PCR Romeo R-26 was already present. PW-8 has deposed that at around 05:50 am, one truck bearing no. HR-55-J-1919 came from the side of Shakarpur and was going towards Shamshan Ghat Geeta Colony at high speed when it hit the same against one motorcycle make Apache bearing no. DL-7SBB-5830 from behind due to which, the rider of the motorcycle fell down from the motorcycle and received injuries on his person. PW-8 has deposed that as a result of accident, the said motorcycle also got damaged and the truck driver tried to flee away with the offending vehicle towards Gandhi Nagar and the staff of PCR Romeo 26 chased him and apprehended the driver of the offending vehicle at some distance. PW-8 has deposed that he long with other police staff took the injured to SDN Hospital in PCR R-28 vehicle where the injured was declared brought dead. PW-2 has proved the photographs of the offending vehicle Ex. P2 (colly) and photographs of the motorcycle Ex. PW2/P3 (colly) lying in accidental condition at the spot. PW-8 has identified the accused as the driver of the offending vehicle.

09. PW-8 has deposed in his cross-examination that he was checking the vehicles along with other PCR Vehicle Romeo R-26 for about 20-25 minutes before the incident and the information regarding the present incident was given in the PS by the staff of PCR Romeo R-26. PW-8 has further deposed that he had seen the offending vehicle coming in high speed and hitting the same against the said Apache motorcycle from behind.

10. PW-5 SI Rajender Singh, who has conducted the initial investigation in the case, has deposed that he reached the spot i.e., Pusta Road, Near Shamshan Ghat, Near Red light, Geeta Colony along with Ct. Karlus Toppo after he was marked DD No. 8 A. PW-5 has deposed that HC Narender

with other police officials were present at the spot and the motorcycle make Apache DL-7SBB-5830 was on the side of the road in accidental condition. PW-5 has deposed that HC Narender informed him that truck bearing no. HR-55J-1919 was at a distance of 10-15 steps away from accidental motorcycle and it has hit the motorcycle. PW-5 has deposed that the driver of offending vehicle was apprehended by the PCR officials and he interrogated the accused about his particulars. PW-5 has deposed that he was informed by the Duty Officer on call that the injured was taken to SDN Hospital by one PCR R-28 and he instructed Ct. Karlus Toppo and other PCR Staff to remain at the spot with driver of the offending vehicle. PW-5 has deposed that thereafter he went to SDN Hospital, where received MLC no. 722/2012 (Ex. P1) in which the injured was shown as brought dead. PW-5 has deposed that at the hospital, he met the maternal uncle of the deceased namely Naveen, who informed him that the name of the deceased is Akash Kashyap. PW-5 has deposed that ASI Ved Prakash along with HC Manish, MACT Cell (East) reached the spot and further investigation in the present case was conducted by ASI Ved Prakash. PW-5 has proved the statement of HC Narender recorded at the spot, *tehrir* Ex.PW2/A, seizure memos Ex.PW2/D & Ex.PW2/E, the photographs of offending vehicle Ex.PW2/P3 (colly) and the photographs of accident motorcycle Ex. P2-Ex. P5. PW-5 has identified the accused in Court. PW-4 Ct. Karlus Toppo, who has accompanied PW-5 IO/SI Rajender Singh to the spot of the incident, has also deposed on similar lines as that of PW-5.

11. The second IO of the case, PW-9 IO/SI Ved Prakash has also corroborated the testimony of PW-5 SI Rajender Singh and he deposed about the investigation conducted by him in the present case. PW-9 has proved the seizure memos Ex. PW2/E, PW9/C & Ex. PW7/A, site plan Ex. PW9/A, arrest memo Ex. PW2/B, personal search memo Ex. PW2/C, the notice u/s. 133 of

MV Act Ex. PW3/A, bail bond Ex. PW9/B, dead bond identification memo Ex. PW1/A, dead body handing over memo Ex. PW1/B and *superdarinama* Ex. PW3/A. PW-9 has identified the photographs of the offending vehicle Ex. P-2 (colly) and the photographs of the accidental motorcycle at the spot Ex. PW2/P-3 (colly).

12. PW-9 has deposed in his cross-examination that the distance between the spot and the place where the offending vehicle was standing, was about 200-250 meter. PW-9 has deposed that ASI Rajender had informed him about the incident and had got verified the facts as informed to him by ASI Rajender. PW-7 HC Munish, who has accompanied PW-9 IO/SI Ved Prakash to the spot of the incident, has also deposed on similar lines as that of PW-9.

13. PW-1 Sh. Rajesh is the father of the deceased, who has proved his statement of identification of dead body Ex. PW1/A and the handing over memo of dead body Ex. PW1/B. PW-2 Sh. Naveen Kashyap is the maternal uncle of the deceased, who has proved the statement of identification of dead body Ex. PW2/A and the handing over memo of dead body Ex. PW1/B. PW-3 Sh. Harjeet Singh is the owner/*superdar* of the offending vehicle and he has proved the notice u/s. 133 of the MV Act Ex. PW3/A and *superdarinama* Ex. PW3/B. PW-3 has deposed that the accused was in possession of the offending vehicle on the day of the incident in question. PW-6 Sh. T.U. Siddiqui is the Mechanical Inspector, who has proved the Mechanical Inspection Reports of the vehicles Ex. PW6/A and Ex. PW6/B.

LAW UNDER CONSIDERATION:-

14. For deciding the present case, this Court deems it fit to reproduce and discuss the relevant provisions which have been attracted in the present

case as per the chargesheet:

I. Section 279 IPC has been defined in the code as:

“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.”

II. Additionally, the accused has been charged with section **304A IPC** which lays:

“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.”

15. Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case and in light of the attending circumstances. 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. In the case of **Beda Kanta Phukan vs. State of Assam 1992 Cri. L. J. 1197** it was held as under:

“6. To bring home a charge under Section 279 IPC, prosecution has to prove not only the fact that the accused was driving the vehicle on a public way, but has also to prove that such driving was so rash, or negligent as to endanger human life or to be likely to cause hurt or injury to any other person.”

16. The Hon'ble Supreme Court of India in **Bala Chandra vs. State of Maharashtra 1968 SC1319** has emoted of the term 'criminal negligence' in the following terms:

“Criminal Negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen. Culpable rashness is acting with the consciousness that the 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 immutability arises from acting despite the consciousness.”

17. In order to bring home the guilt of the accused u/s. 279/304A of IPC, the prosecution should establish the necessary ingredients for attracting culpability under the above-mentioned sections. In a criminal trial, the onus remains on the prosecution to prove the guilt of accused beyond all reasonable doubts and benefit of doubt, if any, must necessarily go in favour of the accused. It is for the prosecution to travel the entire distance from may have to must have. If the prosecution appears to be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused.

ARGUMENTS ADVANCED:-

18. Ld. Counsel for accused has submitted that in the instant case, the prosecution has not examined any public witnesses and the entire case of the prosecution is premised on the testimony of police witnesses i.e., PW-2 HC Narender and PW-8 Retired SI Kuldeep Singh. Ld. Counsel for the accused while relying on the judgment in **Mustakeem@ Bhura vs. State (Govt. of**

NCT of Delhi) decided on 02.11.2020 in **Crl.A. 419/2018** has argued that the failure of the prosecution to join any public witnesses raises serious doubts on the case projected by the prosecution. Ld. Counsel for the accused has further argued that as per record, all the police witnesses have given a different version as to where the offending vehicle was standing which further raises serious doubt on the presence of the police officials at the spot of the incident. Ld. Counsel for the accused has also submitted that as per the version of the prosecution, the offending vehicle was being driven at a high speed and therefore, it is not possible for the PCR Van to chase it and apprehend the accused. Ld. Counsel for the accused has submitted that the aforesaid discrepancies in the case of the prosecution raises doubt about the case projected by the prosecution and benefit of doubt should be given to the accused. Ld. Counsel for the accused has relied on the judgment in **Suresh Chandra and Another vs. State of Uttar Pradesh Criminal Appeal No.1283/2024** in support of his submissions.

19. Per contra, Ld. APP for the state has submitted that the prosecution has been able to establish a complete and conclusive chain of circumstances to prove the guilt of the accused beyond reasonable doubt.

REASONS FOR THE DECISION:-

20. As stated earlier, the prosecution has examined two police officials namely PW-2 HC Narender and PW-8 Retired SI Kuldeep Singh as eye witnesses to the incident in question. Both the said witnesses have deposed that they were on PCR duty in PCR Romeo 26 and PCR Romeo 28 respectively at the spot of the incident i.e., Shamshan Ghat Pusta Road, Geeta Colony, Delhi on 09.04.2012 when at about 05:50 AM, the offending vehicle came from the side of Shakarpur being driven by the accused in a rash and negligent manner

and in front of Shamshan Ghat Red Light, the accused had hit the offending vehicle against motorcycle of the deceased from behind due to which the deceased along with his motorcycle had fallen down on the road. Both the witnesses have consistently deposed that after hitting the motorcycle, the accused fled away from the spot. Both the witnesses have further deposed that thereafter PW-2 followed him in his PCR van. PW-2 has deposed that after stopping the truck at some distance, the accused came down from the truck and fled away towards Yamuna Khadar and thereafter, he again followed the accused, who was apprehended. PW-8 has deposed that he long with other police staff took the injured to SDN Hospital in PCR R-28 vehicle where the injured was declared brought dead. Both PW-2 and PW-8 have proved the photographs of the offending vehicle and photographs of the motorcycle Ex. PW2/P3 (colly) lying in accidental condition at the spot.

21. Perusal of MLC dated 09.04.2012 Ex. PX1 at 06:10 AM of the deceased shows that the deceased was brought dead to SDN Hospital, Shahdara and the perusal of Post Mortem report Ex. PX2 of the deceased shows that injuries to the deceased are reported to have been blunt force trauma and are possible in road side accident. Furthermore, the Mechanical Inspection Report of the offending vehicle Ex. PW6/A reveals that the front bumper of the offending vehicle was dented/pressed, its left side head light was damaged and its left side front show panel was dented/pressed. Also, the Mechanical Inspection Report of the TVS Apache Black Colour Motorcycle bearing no. DL-7SBB-5830 shows that its back light, two rear indicators, rear handle and rear mudguard was damaged and its rear wheel rim was broken and its rear shocker was damaged. The Mechanical Inspection Report of the bike of the deceased reflects excessive damage to its rear side. The afore mentioned Mechanical Inspection Reports support the testimonies of PW-2 and PW-8 to

the effect that the offending vehicle had hit the motorcycle of the deceased from behind.

22. It is worthwhile to mention here that accused has stated in his statement recorded u/s. 313 of Cr.P.C that his truck was standing near Shamshan Ghat, Geeta Colony at the time of the incident and he had gone for nature's call at the relevant time. Therefore, it is an admitted fact that the accused was present at the spot of the incident with the offending vehicle. If the defence of the accused as stated by him in his statement recorded u/s. 313 of Cr.P.C is accepted *per se*, then the accused has been unable to explain in his statement recorded under Section 313 of Cr.P.C, as to how the front bumper of the offending vehicle was dented/pressed, its left side head light was damaged and its left side front show panel was dented/pressed. The damage caused to the offending vehicle, as reflected from the Mechanical Inspection Report Ex.PW6/A, supports the version of the Prosecution that the offending vehicle has caused the accident in question.

23. It is clear from the foregoing discussion that the Prosecution has been able to bring on record sufficient evidence which supports the hypothesis of guilt of the accused. The submission of Ld. Counsel for accused that since the Prosecution has not joined any public witnesses, conviction cannot be premised solely on the testimony of police witnesses, cannot be accepted. As noted in **Mustakeem@ Bhura (Supra)**, *"There is no view of law or evidence, which lays down that unless and until the testimony of the police officials is corroborated by some independent evidence, the same cannot be believed. But it is a rule of prudence, that a more careful scrutiny of the evidence of the police officials is required, since they can be said to be interested in the result of the case projected by them"*. Also, the time-honored principle is that

evidence has to be weighed and not counted and the Court can and may act on the testimony of a single witness provided he is wholly reliable.

24. In the instant case, the testimonies of the eye witnesses PW-2 and PW-8 are corroborated by the Mechanical Inspection Reports Ex. PW6/A & Ex. PW6/B, the Post Mortem report Ex. PX2 and the other record of the case. Accordingly, on conscientious perusal of the record, this Court finds the testimonies of police eye witnesses to be reliable and trustworthy and mere non-examination of other public witnesses is not fatal to the case of the prosecution.

25. Ld. Counsel for the accused has also argued that as per record, all the police witnesses have given a different version as to where the offending vehicle was standing which further raises serious doubt on the presence of the police officials at the spot of the incident. In order to appreciate the aforesaid defence of the accused, it is pertinent to point out the following relevant evidence of the case:-

- (a) PW-2 HC Narender has deposed that he had apprehended the accused from Yamuna Khadar about 100-150 meter away from the spot;
- (b) PW-5 SI Rajender Singh has deposed that HC Narender informed him that truck bearing no. HR-55J-1919 was at a distance of 10-15 steps away from accidental motorcycle;
- (c) PW-9 SI Ved Prakash has deposed in his cross-examination that the distance between the spot and the place where the offending vehicle was standing, was about 200-250 meter; and
- (d) Site plan Ex. PW9/A shows the spot of the incident at point A and the spot where the offending vehicle was parked at point B.

26. It is to be noted that although in every case, there may appear inconsistencies in the deposition of a witness however, the deposition has to be taken as a whole. Minor inconsistencies, which do not affect the main substance of the case, are to be taken in correct perspective along with the other evidences. In the considered opinion of this Court, the aforesaid inconsistencies appearing in the testimonies of PWs, as noted above, as to distance where the offending vehicle was standing from the spot of the incident are only minor in nature, which can easily creep up due to the lapse of time between the date of the incident and the date of recording of the testimonies of the witnesses and the same does not affect the substance of the main case, specially in light of the fact that the spot of the spot of the incident and the spot where the offending vehicle was parked are clearly reflected in the site plan Ex. PW9/A and it has been admitted by the accused in his statement recorded u/s. 313 of Cr.P.C that his truck was standing near Shamshan Ghat, Geeta Colony at the time of the incident and he was present at the spot of the incident.

27. The last leg of the submission of Ld. Counsel for the accused is that the version of the prosecution, the offending vehicle was being driven at a high speed and therefore, it is not possible for the PCR Van to chase it and apprehend the accused. The aforesaid submission made by the Ld. Counsel is neither here nor there as PW-2 has clearly deposed that after hitting the motorcycle of the deceased, accused fled away from the spot in the offending vehicle. PW-2 has deposed that he followed the accused in his PCR van and that the accused alighted from the truck after stopping it at some distance, and he fled away towards Yamuna Khadar from where he was apprehended. Therefore, it is to be seen that accused was been chased by PW-2 in PCR Van and he was apprehended after he was trying to flee from the spot on foot after parking his truck near Yamuna Khadar.

28. From the foregoing discussion it is clear that the prosecution by has been able to prove beyond reasonable doubt that the accused was driving truck bearing no. HR-55J-1919 in rash and negligent manner so as to endanger human life and personal safety of others and while driving the said vehicle in the said manner, the accused hit the motorcycle bearing no. DL-7SBB-5830 thereby causing the death of its driver Akash Kashyap.

FINAL ORDER:-

29. In view of the foregoing discussion, it is clear that the prosecution has been able to prove its case beyond reasonable doubt and therefore, the accused **Sukhdev @ Sukha S/o Sh. Balbir Singh** is **convicted** for the offences **under Sections 279 and 304A of Indian Penal Code, 1860.**

**Announced in open court
on 09.05.2025**

**(NEHA GARG)
JMFC-02 (East)/KKD Courts/Delhi**

NOTE: This judgment contains 15 pages and each page has been signed by me.