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

% Judgment delivered on: 11th July, 2011

Crl.L.P.262/2011

STATE

..... Petitioner

Through: Mr. Arvind Kumar
Gupta, APP for State

Versus

LLYAS @ CHHAKAN KHAN

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SURESH KAIT, J. (ORAL)

+ **Crl.L.P.262/2011**

1. This petition is being filed by State against the judgment dated 23.12.2011 whereby the accused has been acquitted by the learned Metropolitan Magistrate , Dwarka, Delhi.

2. The facts in brief of the case are that on 18.11.1998, on information received at PS Jafarpur Kalan vide DD No.23-A, Head Constable Sh.Satya Prakash along with Constable Naresh Kumar

went to spot i.e. Bakkar Garh Mor Bahadur Garh and saw scooter bearing registration No.DL4S-H-5577 lying on the side of the road, he also noticed stains of blood at the spot. On enquiry he came to know that both the injured had been removed to some unknown hospital. No eye witness met him on the spot. Thereafter, he returned to police station.

3. The complainant along with two dead bodies and some persons met him in the Police Station. The statement of complaint Sh.Umed Singh was recorded on 18.11.2010. In his complaint he stated, that on 18.11.1998, after finishing his job he came by bus and got down at Bahadurgarh Mor Bus stand. About 5-6 other persons who were going towards his village on foot, were also along with him. He saw two young boys on a scooter crossed them. At about 06:30 PM a truck being driven in a rash and negligent manner came from Bahadurgarh side and hit the scooter from right side due to which both the boys fell far from the scooter. The people raised shouts of **“PAKRO PAKRO”** but due to darkness, the number of truck could not be noted down. He along with some other persons rushed towards both the boys and saw that the boys had received injuries on their head and feet and blood was also oozing out from various parts of their

body. He saw that one of those boys was of his own son namely, Sh.Jai Singh @ Sonu and other boy namely Devender, S/o Shri Shanti Swaroop belongs to his village.

4. With the help of the other public persons he stopped one tempo and took both the injured to the hospital at Jafarpur. The doctor at the hospital gave injection to both injured and referred them to another hospital. Thereafter, in the same tempo, he took both the injured to Kailash Nursing Home, Najafgarh where after giving some treatment to both the injured, were declared dead.

5. After informing his relatives in the hospital and in village he took both the dead bodies to PS Jafarpur Kalan in the same tempo. He further stated that the said accident took place due to rash and negligent driving of the truck driver. This accident was also witnessed by other public persons.

6. The FIR for the offence under Sections 279/304-A Indian Penal Code got registered on the statement of the complainant. The IO proceeded to investigate the matter. During investigation, the IO prepared a site plan and got the spot photographed. Thereafter the investigation was marked to SI Braham Jeet Singh. During further investigation, SI Braham Jeet Singh, seized the

motorcycle and truck involved in accident and got both of them mechanically inspected and deposited the same in 'Mal Khana'.

7. Thereafter, the post-mortem of both the dead bodies was conducted. IO collected the reports No.3639 and 3638/1998 from the hospital and handed over the dead bodies to their legal heirs. He issued noticed under Section 133 Motor Vehicles Act, to Sh. Virender Singh, the owner of the truck bearing No.HR-38-2558 and arrested the accused. Thereafter he filed the challan under Sections 279/304A Indian Penal Code against the said accused.

8. Vide order dated 01.09.2000, order was framed against the accused under Sections 279/302A IPC, the accused pleaded not guilty and claimed trial.

9. The prosecution examined 14 witnesses and the accused produced one defence witness.

10. PW-1 Head Constable, Sh. Ramesh deposes that on 18.11.1998, he was posted as Duty Officer at PS JP Kalan from 04:00 PM to 12:00 PM. At about 07:00 PM on receipt of information from PCR regarding accident at Bakargarh morh, he

recorded DD No.23 in book No.12364 dt. 18.11.1998 and proved the same as 'Mark A'.

11. PW2 Head Constable, Sh.Kishan deposed that he was posted as Duty Officer on 19.11.1998 at PS J.P. Kalan from 12:00 PM to 08:00 AM. At about 12:17 AM on receipt of rukka from HC Sat Prakash, he recorded FIR bearing No.143/1998, book No.1525 vide DD No. 5 and the carbon copy of the same as Ex. PW2/A.

12. PW3 Sh.Umed Singh who is the complainant in the present case, has deposed that on 18.11.1998, he was coming back from his duty from SDM office, Patel Nagar along with 5-6 persons by bus. He alighted from the bus at Bakargarh morh with those 5-6 persons. At about 06:00 PM two persons came on a scooter and went ahead of them, as they had travelled at a distance of about 200 meters, a truck came from the front side of the scooter, i.e., Bakargarh side at a high speed in a rash and negligent manner and struck against the scooter. He further stated that after the accident, the driver of the said truck ran away from the spot and due to darkness, he could not note down the number of vehicle.

13. PW4 retired SI Lekhi Ram deposed that on 22.11.1198 he had mechanically inspected one scooter bearing No.DL4SH-5577 and truck bearing No. HR-38-2558 on the request of the IO. He proved his report as Ex.PW4/A and Ex.PW3/B respectively.

14. PW8 Sh. Ram Mehar deposed that on 18.11.1998, after finishing his duty hours, he was going to his village Gobbana and in the way at Bakargarh road, he was waiting for some conveyance. Thereafter, he along with some other persons started walking. Then he saw the truck bearing No. HR-38-2558 coming from the front side, and hit a scooter after crossing them. He along with other persons went to the spot for helping the injured but the driver of the truck ran away. He further stated that he did not see the driver of the truck on the spot so he could not identify him in the Court.

15. PW9 Sh. Chand Singh stated that on 18.11.1998, he was going to his house and on the way, he got down at Bakargarh morh, where he heard that some accident had taken place on the approach road which leads to his village. Further he stated that he did not see the accident nor the offending vehicle. He reached the sport later on.

16. PW11 Constable Sh. Naresh Kumar stated that on 18.11.1998, he was posted at PS JP Kalan and on receipt of DD No. 23A, he along with HC Sat Prakash reached at Bakargarh road near Bakargarh Morh at about 11:30 PM where a scooter bearing No.DL4S-H-5577 was found in an accidental condition. He further stated that the injured had already been shifted to private hospital. He left the spot and went to the hospital. He further stated that SI Braham Jeet Singh and HC Satya Prakash came to the spot, scooter was seized by SI Braham Jeet Singh vide Ex.PW10/A and also prepared the site plan Ex.PW12/B.

17. PW12 SI Satya Prakash, is the first IO of the case and he supported the deposition made by PW11.

18. PW13 SI Braham Jeet Singh deposed that on 19.11.1998, he was posted at PS Jafar Kalan and on assignment of further investigation of registration of the FIR of this case, he along with the HC Satya Prakash and complainant Umed went to the sport at about 12:40 AM. He seized the scooter vide memo Ex.PW10/A and prepared the site plan Ex.PW12/B. He further deposed that the dead bodies kept in a tempo were handed over to him by Sh. Umed Singh and he got them preserved at Sabzi Mandi

mortuary, and prepared inquest papers Ex.PW13/1 to PW13/11 and after post-mortem the dead bodies were handed over to the relatives of the deceased, he further stated that he got the spot photographed and proved positive of photographs at mark A-1 to mark A18. Then he served a notice to the owner of the vehicle who produced the accused, being driver of the offending vehicle. He seized the dumper vide memo Ex.PW13/C and Driving Licence. He conducted personal search of accused and proved the same as Ex.PW13/D and Ex. PW13/E and got both the vehicles mechanically inspected. He collected post-mortem report and got recorded judicial TIP of accused in the Court to which the accused refused. He also recorded statements of the witnesses.

19. PW14 Dr. Sarvesh Tandon, who conducted post-mortem on 2 bodies and the deceased, namely, Sh. Jai Singh, S/o Sh. Umed Singh and Sh.Devinder S/o Sh. Shanti Swaroop and proved the report at Ex. PW14/A and PW14/B respectively. He opined that all the injuries were ante mortem in nature and cause of death was cranio cerebral damage due to blunt force impact over the head and time of death was about 18-20 hours earlier.

20. Statement of the accused was recorded under Section 313 of the Cr.PC wherein the incriminating evidence was put up to him. Further the accused deposed that he was falsely implicated in the said case.

21. DW1 Sh.Virender Singh Teja deposed that he was owner of the vehicle bearing No.HR-38-2558. He was doing the work of stone crushing and he had 4-5 trucks. On 21/22.11.2008, he received a phone from Bakargarh plant that he should sent one of his vehicle for verification as some accident had been taken place. He dispatched the truck immediately and thereafter the truck was taken by the SHO managing aforesaid Bhakargarh plant. Thereafter, he was calling PS where SHO told him that truck bearing No.HR-38-2558 was not involved in the accident. He further stated that he was told that the vehicle was required for the further investigation and thereafter the said truck will be returned on the next day. On the next day, he was informed by the SHO that due to public pressure he could release the vehicle. He enquired from his driver Ilyas regarding accident who categorically denied that he caused the accident.

22. On the next date, he went to PS where the many villagers

gathered. He even tried to enquire from them if anyone had seen his truck causing an accident but they did not budge and said that since the truck has been taken into the possession by the police, therefore, this is the only truck which caused accident.

23. After considering the arguments of both the counsels, the Trial Judge has come to the conclusion the most of the witnesses are eye witnesses in the present case. The prosecution had examined PW3 Sh. Umed Singh PW8 Ram Mehar and PW9 Sh. Chand Singh as the eye -witnesses. PW3 Sh. Umed Singh in his examination-in-chief deposed that the accused while driving HR-38-2558 crossed them at a distance, he was driving in a rash and negligence manner which resulted in an accident with a scooter and caused death of his son Jai Singh and one Sh. Devidner Singh. The said witness in his cross-examination stated that he could not note down the number of truck due to darkness, but he indentified the accused as the driver who was driving the offending vehicle.

24. As per the prosecution version, the time is about 06:30 PM in the month of November and during that hour it becomes dark, therefore, the deposition of the witness that he could not note

down the number of the truck due to darkness is believable. There is no evidence that the light inside the truck was on or it was a highly lighted area. It was, therefore, unbelievable that witness who could not note down the number of truck due to darkness, was able to identify the accused as the person who was driving in such darkness.

25. PW3 Sh.Umed Singh in his examination-in-chief stated that name of the accused as Ilyas Khan was known to him from Bakargarh, Haryana, thereafter, this fact supporting the plea of the accused that he has been shown to the witness. Hence, no adverse influence was taken against the accused that he had refused to join the TIP.

26. Moreover, the witness who had seen the accused for the first time, admits darkens and then identified him in the Court for the first time after about four years from the incident. This throws doubt as to veracity of his testimony. The Trial Judge has relied upon on the case of **Munshi Singh Gautan Vs. State of MP 2004 (3) JCC 1816** it has been held by the Hon'ble Apex Court that "*when identifying witness is a total stranger who had just a fleeting glimpse of person identified or who had no particular*

reason to remember the person, accused no much evidentiary value can be attached to such identification in Court, if identification is made for the first time in Court”.

27. The other eye witness Sh. Chand Singh had categorically denied in examination-in-chief that he saw the accident rather he stated that he reached on the spot later on. In his cross-examination, he also denied having made such statement to the police or having identified the accused before the police.

28. PW8 Sh.Ram Mehar who claimed to be an eye-witness has stated that he did not see the truck on the spot so he could not identify the driver of the truck. The testimony of these eye witnesses does not inspire any confidence. Further, PW8 has categorically failed to identify the accused.

29. The testimony of PW3 regarding identification of accused to the effect that he identified the accused in darkness in the absence of any evidence of light being on inside the truck and especially when he could not note down the number of the truck due to darkness appears to be doubtful.

30. Keeping in view of the facts and circumstances of the case,

not even eye-witness present at the spot of the accident said anything against the accused.

31. Therefore, I find no infirmity in the order passed by the Id. Trial Judge on 23.12.2010. Accordingly, Crl. L.P. No.262/2011 is dismissed.

Crl. M.A. No. 7365/2011

Since Criminal LP has been disposed of, this application becomes infructuous.

SURESH KAIT,J

JULY 11, 2011
Neelam/RS