

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.A. 78/2007**

Decided on 06.09.2013

IN THE MATTER OF :
STATE

..... Appellant
Through: Mr. Naveen Sharma, APP for State
with ASI Rajinder Kaushik, PS: Kotwali.

versus

VIPIN GUPTA

..... Respondent
Through: Respondent in person.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present appeal has been filed by the State seeking to assail the judgment dated 11.10.2006 passed by the learned MM in case FIR No.597/2000 registered under Sections 279/304-A IPC at Police Station: Kotwali.

2. The case relates to an incident dated 30.10.2000, when one Sarfuddin was admitted in LNJP Hospital as a result of an accident. When the injured Sarfuddin was admitted in the hospital, he was accompanied by two friends, namely, Mohd. Saleem (PW-5) and Sahirul. Mohd. Saleem had made a statement to the police that after having their dinner, when he alongwith the injured and one Sahirul came out from a *Dhaba* situated

at Paltoon Bridge Road, Upper Yamuna Pushta, and were walking down to their Jhuggi, a scooter driven by the respondent came at a very high speed and hit Sarfuddin, who fell down on the spot. Mohd. Saleem (PW-5) and Sahirul had apprehended the respondent with the help of the public persons and thereafter, a PCR van came to the spot and had taken the injured to the hospital. The respondent alongwith the scooter was handed over to the ASI. Based on the aforesaid statement, the subject FIR was registered. After completion of the investigation, a charge-sheet was filed and the respondent was charged under Section 279/304-A IPC, for which he had pleaded not guilty and claimed trial.

3. The prosecution had produced seven witnesses, including the IO, ASI Bhagwan Dass(PW-7), the eye witness, Mohd. Saleem(PW-5), and the Mechanical Inspector(PW-4). In his testimony, PW-7, the IO of the case, had deposed about the manner in which the case had got registered and the respondent had been arrested. He had also deposed about the seizure of the scooter and the receipt of the death information of the deceased on 01.11.2000. Mohd. Saleem (PW-5, the complainant) had deposed about the death of the injured that had taken place on the day after his admission. He had stated in his testimony that he did not remember the complete registration number of the scooter and was not in a position to tell the approximate speed of the scooter, nor could he state

as to whether there was any negligence or rashness on the part of the scooterist, except that the scooter was being driven at a high speed.

4. PW-4, the Mechanical Inspector, had handed over the report in respect of the respondent's scooter that was being driven by him on the fateful day, marked as Ex.PW4/A. After examining the evidence and the documents placed on record, the trial court had held that out of the three ingredients required to be proved in a case relating to the offence under Sections 279/304-A IPC firstly, that the accused was driving the vehicle in question; secondly, while driving the vehicle, he had caused the accident and the death of the deceased and lastly, the vehicle was being driven in a rash and negligent manner, the first two ingredients were found to exist in the present case. As for the third ingredient, i.e., whether the vehicle was being driven rashly and negligently when the accident had taken place, the trial court had relied on the deposition of PW-5 to hold that it was not sufficiently established that the vehicle was being driven by the respondent in a rash and negligent manner, and therefore, the respondent was granted benefit of doubt.

5. Learned APP for the State submits that the learned MM had erred in acquitting the respondent inasmuch as he had failed to appreciate the fact that the respondent was apprehended on the spot and he had not denied the fact that he was not driving the vehicle. As regards the deposition of PW-5, the eye witness, learned APP urges that the very fact that PW-5

had categorically stated that the scooter was being driven at a fast speed was sufficient to infer that the death of the deceased had been caused on account of rash and negligent driving on the part of the respondent.

6. The respondent appears in person and opposes the present petition. He states that he was thirty five years old when the accident had occurred. He contends that he was not driving the scooter in a rash or negligent manner at that time and refers to the deposition of PW-4 and PW-5 to state that the trial court had rightly granted benefit of doubt to him and acquitted him. The respondent further states that on the basis of the judgment passed by the MACT Court on a petition filed by the legal heirs of the deceased, he had paid a compensation of ₹1 lac to his family members. He requests that in the given facts and circumstances, the petition filed by the State is liable to be dismissed.

7. The Court has considered the submissions made by the learned APP in the light of the findings returned in the impugned judgment and has carefully examined the trial court record.

8. On a perusal of the impugned judgment, it is apparent that the learned MM had categorically held that the prosecution has been able to successfully establish the fact that the respondent was driving the vehicle in question on the date and time of the incident and it was in the course of his driving the said vehicle that the accident had been caused, which had resulted in the death of the deceased. Therefore, there is no dispute

that the first two ingredients stood satisfied in the case. As regards the third criteria required to be fulfilled for holding the respondent guilty of the offence under Sections 279/304-A IPC, it was necessary for the prosecution to have established beyond doubt that the vehicle in question was being driven rashly and negligently by the respondent.

9. A perusal of the deposition of the eye witness in the present case, namely, PW-5 reveals that though he had specifically stated in his cross-examination, that the scooter in question was being driven by the respondent and the same had caused the accident, and further he had identified the accused in Court, he did not state that on the date of the accident, the scooter was being driven by the respondent in a rash and negligent manner. Instead, he had simply stated that scooter was being driven at a fast speed. It was noted in the impugned judgment that the accident had occurred at 10 PM in the night when the deceased was hit from behind and thus, PW-5 could not carefully see as to the manner in which the vehicle was being driven and later on, the respondent and the deceased had both fallen down as a result of the accident. As for the mechanical report of the respondent's scooter submitted by PW-4, the Mechanical Engineer, the said witness had stated that the mudguard of the scooter had suffered only bending damages but otherwise, the scooter was declared fit for the road test.

10. Ms. Asma Khatoon, the wife of the deceased, Sarfuddin is present in Court. She states that her husband is survived by her and a son who is presently 11 years old. She confirms the fact that a sum ₹1 lac had been paid to her by the respondent on the basis of the judgment rendered by the MACT. At this stage, the respondent volunteers to pay an additional sum of ₹75,000/- to the family of the deceased towards compensation, which offer is duly accepted by Ms.Khatoon.

11. A perusal of the record reveals that the date of the accident was 30th October, 2000. Over thirteen years have passed ever since the occurrence of said incident. The court had asked the learned APP to verify the antecedents of the respondent. He confirms on instructions that the respondent has clean antecedents and is not involved in any other criminal offence. The respondent is stated to be employed in a private company. He is married and has three school going children, two daughters aged 16 years and 14 years respectively and the youngest one is a son aged 10 years. He also has an aged father and the respondent is the sole earning member of the family.

12. The Court has considered the submissions made by the learned APP for the State and the respondent and upon a careful perusal of the impugned judgment and the evidence that came to be placed before the trial court, it is inclined to agree with the findings returned by the trial court that the respondent is entitled to be given benefit of doubt. The

deposition of PW-5, the eye witness as referred to in the impugned judgment clearly shows that he had stated that neither could he tell the speed of the scooter, nor could he state that the same was being driven in a rash and negligent manner. The aforesaid deposition is corroborated by the report submitted by the Mechanical Engineer(PW-4), marked as Ex.PW-4/A. PW-4 had found that the scooter involved in the accident was road worthy. That apart, he had noted that the damage to the scooter was limited only to the bending of the mudguard. Was the scooter being driven by the respondent in such a rash and negligent manner as is claimed by the prosecution, then it would not have been found to be road worthy after the accident and the damage caused to the scooter by the impact of the accident would have been much greater than mere bending of the mudguard.

13. In the given facts and circumstances of the case and having regard to the fact that the respondent is not involved in any other criminal case, has clean antecedents, and taking into consideration his family background and responsibilities and most importantly, the fact that he has compensated the family of the deceased by voluntarily paying an additional sum of ₹75,000/- over and above the amount of ₹1 lac already paid to them at the end of the MACT proceedings, which amount the deceased's wife has duly accepted, the Court is not inclined to interfere in

the impugned judgment dated 11.10.2006, which does not suffer from the vice of arbitrariness, perversity or misappreciation of facts.

14. As a result, the present appeal is dismissed, while maintaining the judgment of acquittal dated 11.10.2006.

SEPTEMBER 06, 2013
rkb/mk

HIMA KOHLI, J