

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.L.P. 314/2013 and Crl.M.A. 9680/2013**

Decided on 03.07.2013

IN THE MATTER OF :
STATE

..... Petitioner

Through: Mr. Naveen Sharma, Addl. PP for State

versus

SANJAY GUPTA

..... Respondent

Through: None

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present Criminal Leave Petition has been filed by the State under Section 378(3) read with Section 482 of the Cr.PC against the judgment dated 16.11.2012 passed by the learned Metropolitan Magistrate, Tis Hazari Courts in FIR No.367/2001 lodged under Sections 279/304A IPC at Police Station: Civil Lines, whereunder, the respondent has been acquitted by the court below.

2. Briefly stated, the facts of the case are that on 16.12.2001, on receiving DD No.49B regarding an accident, PW-9, Ct. Chandrapal and PW-12, SI Saket Kumar had reached the place of the incident, i.e., Boulevard Road, near Barakhana Chowk, opposite Ashok Market, Delhi, where the body of an unknown male, aged 30-35 years, whose head had been badly crushed, was found. The police party found the offending

vehicle, a CNG bus, parked nearby. The deceased had already expired before PW-9 and PW-12 had arrived at the spot. On reaching the spot, the respondent/accused was found and his statement was recorded. After taking cognizance of the offence, the respondent was summoned and the matter was taken to trial. The prosecution examined about thirteen witnesses and after the conclusion of the prosecution evidence, the statement of the accused was recorded by the court under Section 313 Cr.PC, wherein he claimed that he was innocent, that he had not been driving the bus in question in a rash or negligent manner and that he had not hit the deceased, allegedly resulting in his death. Instead, it was the stand of the respondent that the body of the deceased was already lying on that stretch of the road, when he had reached and he had been falsely implicated in the case.

3. After examining the evidence adduced by both sides, the learned Metropolitan Magistrate had observed that as per the case set out in the charge-sheet, the accident was solely based on the statement of the eye witness, PW-3 Ct. Ramesh Chand, who was posted as a beat constable at the site of the accident on the date of the incident. The judgment noticed that even though PW-3 had deposed in his examination-in-chief that the accused was driving his vehicle at a high speed and in a rash and negligent manner, the witness had gone on to state that he could not tell as to what was the speed of the offending vehicle. Further, he had deposed that one public person had been joined by the Investigating

Officer in the investigation, but surprisingly, the Investigating Officer had contradicted the said statement and had stated in his cross-examination that he could not remember if any public witness was present at the spot. This is in the teeth of the fact that PW-9 Ct. Chandrapal, who had accompanied the Investigating Officer, had admitted in his deposition that many public persons were present at the spot on the date of the incident.

4. Learned Metropolitan Magistrate has further noted that no such public person was cited as a prosecution witness in the charge-sheet that was filed and there were material contradictions in the testimony of the prosecution witnesses as had been pointed out by the defence counsel. One such blatant contradiction was with regard to the width of the road where the accident had taken place, which as per the complainant, PW-3 was about 3 to 4 feet, whereas PW-12, the Investigating Officer/Inspector Saket Kumar(PW-12) had stated that the approximate width of the said road was about 50 feet. Thus there is a clear disparity between the statements of the PW-3 and PW-12. Another material irregularity as pointed out by the learned Metropolitan Magistrate in the judgment is that the information regarding the incident had been received at Police Station: Civil Lines, which was never proved on record and on a perusal of the copy of the DD that was placed on record, it was revealed that the information regarding the incident was given by one, SI Ranjit of the PCR, whereas the Investigating Officer, PW-12 had deposed that the said information had been passed on by one, Ct. Suresh. While recording his

testimony, when a specific query was posed to the Investigating Officer in this regard, he had given an evasive reply to the effect that the information had initially been received from the PCR but it was handed over to him by Ct.Suresh. The learned MM has further noted that the constable, who had been examined as PW-10 in the case, namely, Ct. Suresh had deposed that the DD entry was made on the information of the PCR but, for reasons best known to the prosecution, SI Ranjit Singh of the PCR had not been examined by the Investigating Officer throughout the investigation.

5. The aforesaid material loopholes and anomalies in the investigation conducted in the present case has been adversely commented upon by the learned Metropolitan Magistrate, who has observed that the case of the prosecution is ridden with reasonable and probable doubt, thus arriving at the conclusion that she was not convinced that the accused had caused the accident on 16.12.2001 by driving his vehicle in a rash and negligent manner, that had resulted in the death of the deceased, Shri Mahender Kumar. As a result, the respondent was acquitted in the present case.

6. Learned Addl. PP for the State submits that while passing the impugned judgment, the trial court had overlooked the testimony of the sole eye witness, PW-3 and had further, disbelieved the version of the police officers deposing before the Court.

7. Having carefully perused the impugned judgment and examined

the conclusions drawn by the learned Metropolitan Magistrate on the basis of the depositions of the prosecution witnesses, this court does not find any material irregularity, arbitrariness or perversity in the impugned judgment which entitles the State leave to assail the same. The impugned judgment is found to be cogent and based on a logical appraisal of the evidence adduced by the parties.

8. In view of the aforesaid observations, leave is declined to the State to assail the impugned judgment. The petition is accordingly dismissed alongwith the pending application.

JULY 3, 2013
rkb/mk

(HIMA KOHLI)
JUDGE