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

+ CRL.L.P. 611/2016

STATE

..... Petitioner

Through: Mr. Rajat Katyal, APP for the State.

versus

ANIL KHATRI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

18.11.2016

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Crl.M.A. No.17964/2016

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.L.P. 611/2016 and Crl.M.A. No. 17963/2016

3. The aforesaid leave petition has been filed to assail the judgment dated 23.04.2016 passed by the learned MM-01, North District, Rohini Courts, Delhi in the case titled *State Vs. Anil Khatri* in case FIR No.604/06 under Section 279/ 304A IPC registered at PS – Narela, whereby the learned Magistrate held that the prosecution failed to prove the case against the

accused beyond reasonable doubt and, therefore, acquitted him of the charges levelled against him.

4. The case of the prosecution was that on 02.10.2006, at about 09:15 p.m. at Narela Bawana Road near Ghonga Dairy Gate, Narela, Delhi within the jurisdiction of PS Narela, accused was found driving the Maruti Zen while colour bearing No.DL-8CK-4030 in such a rash and negligent manner so as to endanger human life and personal safety of others and while driving the said vehicle, accused struck against scooter bearing No.DL-3S-W-0384, which was driven by the deceased Shyam Singh S/o Surat Singh, causing his death amounting to culpable homicide.

5. The star witness of the prosecution was PW-3 Constable Venkatesh, who was the complainant and the eye-witness to the incident. He deposed that at the time of the incident, he was at beat duty near the spot and saw the offending car driven by the accused coming from Narela side to Bawana side in very rash and negligent manner and the said vehicle struck the two wheeler coming from Bawana side, due to which scooter rider/ victim sustained injuries. PW-3 further deposed that the car stopped after some distance on which he ran towards car and apprehended the accused. Somebody had called the PCR and the injured was shifted to the hospital. He deposed that he handed over the accused to the I.O., on his arrival, and gave his complaint and visited the hospital after which I.O. photographed the spot and the damaged vehicles. The accused was identified as the driver of the offending vehicle.

6. PW-3 was thereafter cross-examined by the defence. The drift of the

said cross-examination primarily was that PW-3 was not an eye-witness to the accident and that he was not even present at the spot when the accident took place. According to the defence, PW-3 was a planted witness since there was no other eye-witness, who was willing to depose against the accused because the accused was not at fault in respect of the said accident.

7. The Trial Court by placing reliance on the cross-examination of PW-3 as also the fact that PW-3/ complainant did not join the proceedings, namely, the arrest of the accused; the seizure of the vehicles, etc., concluded that the defence had been able to create a doubt whether PW-3/ the star witness, who also claimed that he was an eye-witness, was indeed present at the spot when the accident took place. The Trial Court also relied upon the location of the vehicles at the time of the accident on the road and the fact that the victim was carrying an LPG gas cylinder with him on the scooter, to hold that evidence did not support the charge of rash & negligent driving by the accused and that the defence of the accused that the accident occurred due to negligence of scooter rider/ victim, was probablised.

8. The submission of learned counsel for the petitioner Mr. Katyal is that the Trial Court has laid much emphasis on the fact that PW-3 did not call the number 100 from his mobile phone even though he claimed to have witnessed the accident. He submits, that by itself, cannot be the basis to doubt the presence of PW-3 at the spot as an eye-witness to the accident. He points out that PW-3 had instead called the police station to report about the incident when he learnt that someone had already made a call to the PCR. Thus, it was not necessary for PW-3 to himself make a call on number 100.

9. Having heard learned counsel for the petitioner, perused the impugned judgment as well as the statement of, inter alia, PW-3, the star witness of the prosecution, I am of the view that the reasoning contained in the impugned judgment is sound and does not call for interference.

10. The learned MM has correctly held that the defence had been able to create doubt about the presence of PW-3 at the spot where the accident took place since despite being the beat constable and allegedly present at the site, he failed to answer material questions during his cross-examination. He did not join the proceedings as a witness inasmuch as he did not sign the arrest memo of the accused, or the seizure memo of the vehicles. Though it was claimed that PW-3 was present at the site of the accident as he was on beat duty, no record in support of this case of the prosecution was produced. The learned MM found that not only did the PW-3 not call number 100 but even at the police station the call of accident was already recorded before the PW-3 made his call. No record relating to the receipt of the call made by PW-3 at the police station was produced. No explanation was given by PW-3 as to why he did not join the proceedings for arrest of the accused or seizure of the vehicles. The Trial Court has also analysed minutely the case of the prosecution with regard to making of the call at number 100 and thereafter the making of the alleged call by PW-3, and on that basis, raised a doubt about the claim of the prosecution with regard to presence of PW-3 at the accident site.

11. The Trial Court has also appreciated the evidence with regard to the location of the offending vehicle driven by the accused and the scooter driven by the victim at the time of the accident and found that it was the

scooter driven by the victim which was on the wrong side of the road and the vehicle driven by the accused was being driven by the accused in his own lane.

12. In the light of the aforesaid, it cannot be said that on the basis of evidence brought on record the Trial Court gravely erred in returning its findings. There is no perversity pointed out in the impugned judgment calling for interference by this Court by grant of leave. The relevant discussion in the impugned judgment reads as follows:

“7. Ct. Venkatesh/PW3 is the only witness of the prosecution for whom it is claimed that he had not only seen the accident happening but also apprehended the accused. The defence submits that PW3 cannot be believed to have been present at the spot because he has failed to answer material questions in the cross examination and except complaint Ex.PW3/A, he is not witness to any other proceedings viz arrest of accused and seizure of vehicles etc. Therefore, he is a planted witness to frame accused.

8. It is, however, not in dispute that the car of accused had met with accident with the two wheeler of the deceased. The claim of defence is that the accused was not rash and negligent and the accident happened due to wrong driving of two wheeler as he was carrying gas cylinder with him.

9. PW3 has claimed that he was present at the spot as he was on beat duty. However, prosecution has not brought any such record. He claims to be the eye witness yet he did not make call at 100 no. He explains that he made call at PS but as per his cross examination, the call of accident was already recorded. Again, there is no record of receiving any call at PS from PW3 informing the accident. As questioned by defence, it is very strange that the I.O. while arresting the accused did not make PW3 the witness of the arrest as well as the seizure memo

of the case property. When this fact was brought in cross examination of PW3, he did not give any explanation why he did not witness the arrest of accused and seizure memos. Even I.O./PW6 failed to give any explanation.

10. The information in the PS was received vide DD No. 13 A/ Ex.PW4/A at about 10.17 am but as per PW3 the accident occurred at about 9:50 am. Although a witness cannot be expected to depose accurately about the time of an event after lapse of certain period what concerns is that the complaint Ex.PW3/A record the time of incident as 9:50 am. If it was the actual time of accident, then, the conduct of PW3 in not making call at 100 number for 27 minutes is highly questionable. He may have made call at PS but by that time PS had the information of the incident through DD no. 13 A. He was having mobile phone with him. The questions regarding presence of PW3 at the spot and witnessing the incident appear to be reasonable.

11. As the accident is not disputed, other material on the record is also required to be referred to before passing judgment on prosecution case. The other material which can throw light on the events at the spot are the site plan Ex.PW6/B, mechanical inspection reports Ex.PW6/D and Ex.PW6/E and the photographs Mark A1 to A8.

12. Technically, since a doubt has been raised on presence of PW3 at spot, a site plan claimed to have prepared at his instance cannot be relied. Still, it can throw light on the position of the vehicles on the road which was also witnessed by I.O. The mechanical inspection report is not authored by the I.O. but by Retd. ASI/Tech Devender Singh and prosecution has failed to bring this witness to prove the reports. Similarly, the photographs are not proved as per law that is why they were not exhibited.

13. The cross examination of I.O. reveals that the car was on its correct side of the road and the deceased was carrying a cylinder in his scooter, as a cylinder was lying on the road.

There was no divider in the road. This position is reflected in photographs Mark A1 to A8 and the Scooter is lying on the wrong side of the road. The debris of the damaged scooter is also on the side where the car is stationed. These facts give force to the suggestion of defence that as the accident occurred due to negligence of of Scooter rider no public witness agreed to give false statement against accused therefore PW3 was planted.”

13. In the light of the aforesaid, I find no merit in this petition and dismiss the same.

VIPIN SANGHI, J

NOVEMBER 18, 2016

B.S. Rohella