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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Pronounced on:13.12.2017

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CRL.A.436/2017

Dr. Sajjad Alam

..... Petitioner

Through: Mr. Asim Naeem, Advocate

versus

State of NCT Of Delhi & Another Respondent

Through: Mr. Tarang Srivastava, APP for
State SI Gopal Singh, P.S.Mehrali.

Ms.Maldeep Sidhu, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The appellant has assailed the judgment passed by MM (South) 05, Saket Courts, New Delhi dated 10.03.2016 vide FIR No.490/2008 by which respondent no.2 was acquitted for the offences under Section 279 & 338 of the Indian Penal Code, 1860 (in short 'IPC').
2. As per the appellant's case, on 04.10.2008 at about 10:30 AM the respondent no.2 was driving his Maruti Swift car bearing registration no. DL-7CH-1399 in a rash and negligent manner near Vipin Malik Farm House, Satwari, Mehrauli on the wrong side of the road which resulted in a collision of his motorcycle bearing registration no. DL-5SS-7568 with respondent no.2's

car. It is alleged that the respondent no.2 was playing loud music in his car.

3. The appellant claims that subsequent to the collision he lost consciousness for 4-5 minutes and when he regained consciousness, he noticed that some guards had picked him up and laid him on one side of the road and called the police. Respondent no.2 was also present on the spot and his car was badly damaged. The appellant was then shifted to the AIIMS Trauma Centre in a CAT van which was called by the Police. The appellant suffered fractures in his right leg femur shaft, both the wrist bones of his hands and he also sustained injuries on his chest, arms, thighs and bruises all over his body.
4. PW3 SI Murari Lal, the IO, reached the spot where the accident had taken place along with PW2 Ct. Tara Chand. PW3 having found no eyewitnesses at the spot went to the AIIMS Trauma Centre where he met the injured/appellant Sajjad Alam. PW3 recorded the appellant's statement, prepared the *rukka* and handed it over to PW2 Ct. Tara Chand for registration of FIR. PW3 prepared the Site Plan which is Ex.PW1/B, seized the offending vehicle and the appellant's motorcycle. PW3 then got conducted the mechanical inspection of both the vehicles.
5. The accused/respondent no.2 in his statement under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') stated that he was innocent as he driving at a normal speed of about 40 kmph on his side of the road. He stated that the

appellant came from the side of the *gali* towards the main road and at a little distance, there was a pothole and it was the appellant who had swerved his vehicle towards his side of the road in order to avoid a pothole which resulted in the collision. He did not lead any defence evidence during the trial.

6. The prosecution examined four witnesses to bring home the guilt of the accused.
7. Mr. Asim Naeem, learned counsel for the appellant had argued that the impugned judgment was contrary to the settled position of law and was not based on a correct appreciation of facts and therefore was liable to be set aside. However, he added that the appellant had received compensation of Rs.7,50,000/- in his claim petition under Section 166 of Motor Vehicle Act from the insurer of the vehicle driven by the respondent no.2.
8. He argued that the appellant was coming from C-15, Satbari via CKSM and going towards the 100 feet road, Chhattarpur and he was on his left side of the road which as per the Site Plan would be towards the South therefore making it clear that he was driving on his side of the road while respondent no.2 was driving on the wrong side of the road.
9. He further contended that the Trial Court had erred in holding that the appellant was driving his motorcycle on the wrong side of the road. He argued that the accident took place on the South side of the road while the appellant was driving from the East to the West which proves that the appellant was driving on his side

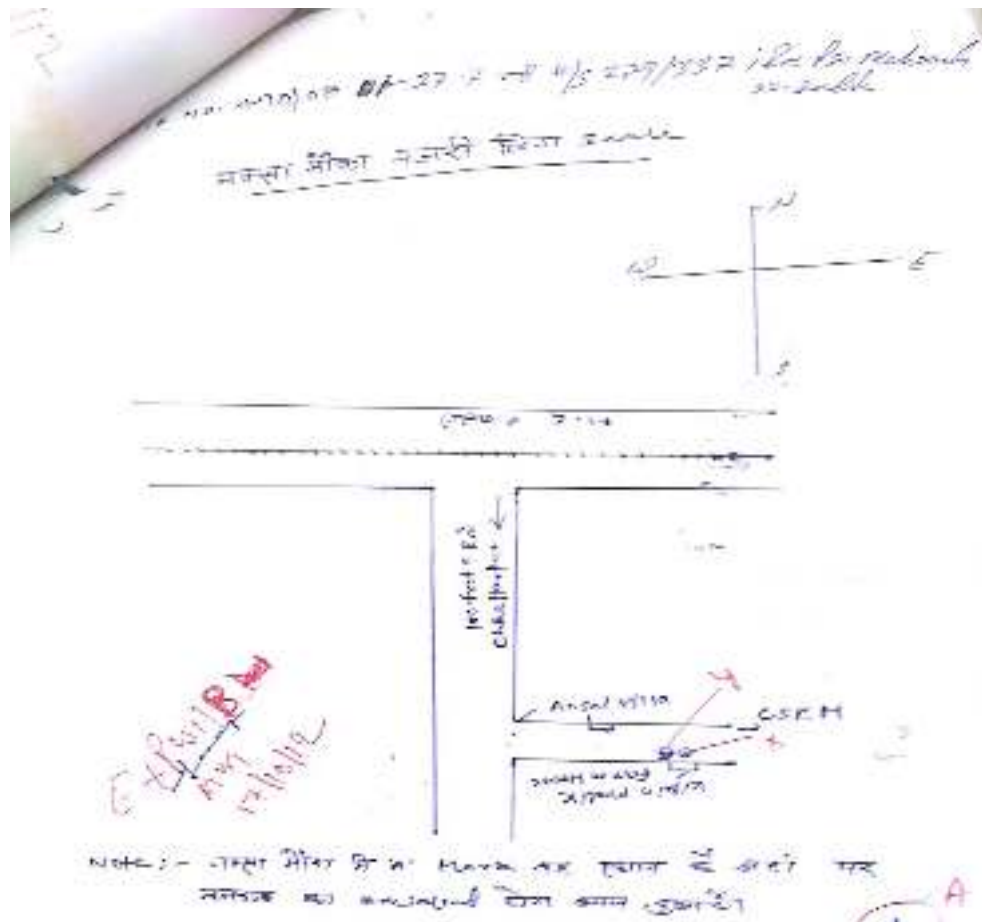
of the road while respondent no.2 was driving on the wrong side.

10. Learned counsel for the respondent no.2 had argued that the impugned judgment is based on the settled proposition of law and correct appreciation of the evidence and therefore does not warrant any interference.
11. He argued that it was the appellant himself who was driving on the wrong side of the road which was the reason for the head on collision and therefore the criminal liability under Section 279 of the IPC is not attracted.
12. I have heard the learned counsel for the parties.
13. The only issue which arises for consideration is whether respondent no.2 was driving his car on the wrong side of the road so as to attract punishment under Section 279 of the IPC.
14. The appellant/PW1 Sajjad Alam in his examination-in-chief deposed that he was driving his motorcycle on the extreme left side of the road. He further deposed that when he reached near Vipin Malik farm house at about 10.00 AM, he saw respondent no.2's car being driven at a high speed while loud music was being played inside the car which was audible outside to him. He further deposed that after respondent no.2's car collided with his motor bike, he lost his consciousness for about 4-5 minutes and when he woke up he saw that he had been laid down on one side of the road by some guards who were present there and respondent no.2 was also present at the scene of

crime. He further deposed that he was shifted to the AIIMA Trauma Centre in a CAT Van called by the police. PW1/appellant had suffered fractures in his right leg femur shaft and both the wrists in the accident. In his cross-examination dated 17.10.2012 PW1/appellant had deposed that the respondent no.2's vehicle was being driven on the wrong side of the road. PW1 further deposed in his cross-examination that the IO/PW3 SI Murari Lal prepared the site plan at his instance and was correct. He deposed in his further cross-examination that he was coming from the side of CKSM and was proceeding towards 100 Feet Road, Chhattarpur which is situated after Ansal Villas.

15. PW2 HC Tara Chand received DD No. 10-A regarding the accident and went to the place where the accident took place along with **PW3 SI Murari Lal**. He deposed in his **examination- in-chief** that when he reached the spot he saw that the **appellant's motorcycle was stationed in an accidental condition on one side of the road while the car of respondent no.2 was stationed in an accidental condition on the other side of the road**. He did not find any eyewitness at the spot. In his cross-examination, **PW2 deposed that the map of the place of incidence which is Ex.PW1/B had wrongly shown both the vehicles as being stationed on the same side of the road**.

16. PW3 SI Murari Lal, IO, testified in his cross-examination that the Site Plan Ex.PW-1/B correctly shows respondent no.2's car as Mark X and the appellant's motorcycle as Mark Y.
17. The map of the place of incidence i.e. Ex.PW1/B is reproduced below to better understand the position of both the vehicles: -



18. The place Mark X in the Site Plan Ex.PW-1/B shows the respondent no.2's car while Mark Y shows position of the appellant's motorcycle. According to this map, the placement of both the vehicle is representative of the position of the vehicles

at the time of collision. This is clear from the note below the map.

19. The appellant (PW-1) in his cross-examination had deposed that the site plan was prepared in his presence and he did not dispute the site plan at any point of time during his testimony. He had simply deposed that respondent no.2's vehicle was coming from the opposite side of the road which is contrary to the site plan according to which it was the appellant who was driving on the wrong side of the road.
20. PW2 HC Tara Chand's testimony contradicts the stand of the appellant. PW2 in his examination-in-chief deposed that when he reached the place of incident he saw both the vehicles stationed on the opposite side of the road to each other. PW2 had further re-iterated his view in his cross-examination where he deposed that the map had incorrectly shown both the vehicles on the same side of the road. PW2's testimony contradicts the appellant's contention that both the vehicles were placed on the same side of the road after the collision.
21. Section 279 of the IPC is reproduced below:

“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.”

22. The sine qua non for a person to be convicted under Section 279 of the IPC is that the accused must have driven his vehicle in a rash and negligent manner. Any common man would agree that any person driving at any speed on the wrong side of the road would in all circumstances constitute a rash and negligent act which is likely to cause an accident. This being said, it is up to the prosecution to prove its case beyond reasonable doubt and if after going through the evidence two views are possible; one which favours the accused and the other which point towards his guilt, the view that favours the accused has to be taken. This principle was reiterated by the **Hon'ble Supreme Court** in ***Anil Kumar v. State of U.P.*, (2004) 13 SCC 257** wherein it held as under:

“9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. **The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.** In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as

to whether any of the accused really committed any offence or not. (See *Bhagwan Singh v. State of M.P*) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*, *Ramesh Babulal Doshi v. State of Gujarat*, *Jaswant Singh v. State of Haryana*, *Raj Kishore Jha v. State of Bihar*, *State of Punjab v. Karnail Singh*, *State of Punjab v. Phola Singh and Suchand Pal v. Phani Pal*.”

23. The Hon’ble Supreme Court in *Bodhraj v. State of J&K*, (2002) 8 SCC 45 held as under: -

“10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan*, *Eradu v. State of Hyderabad*, *Earabhadrapa v. State of Karnataka*, *State of U.P. v. Sukhbasi*, *Balwinder Singh v. State of Punjab* and *Ashok Kumar Chatterjee v. State of M.P*). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* it was laid down that where the case depends upon the

conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.”

24. In the present case, the view that the appellant endorses does not find support in the Site Plan or in the testimony of the official witnesses who prepared the Site Plan and were present at the spot where the accident took place. The Mechanical Inspection Report of both the vehicles show that both the vehicles had sustained damage on the front side thereby making it clear that it was a head on collision. A necessary corollary to this fact will have to be that one of the parties must have been driving on the wrong side of the road, but whether it was respondent no.2 who was driving on the wrong side of the road as claimed by the appellant has not been proved beyond reasonable doubt and therefore the benefit of doubt will have to be given to respondent no.2.
25. In the facts and circumstances of the case, I find no merit in the appeal and the same is dismissed.
26. TCR be returned.

(VINOD GOEL)
JUDGE

DECEMBER 13, 2017

“shailendra”//