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

Decided on : 4th May, 2017

+ CRL.L.P. 638/2015

STATE NCT OF DELHI

..... Petitioner

Through: Mr. Akshai Malik, APP for the
State with ASI Om Prakash, PS
Hauz Khas.

versus

HARI NANDAN PRASAD

..... Respondent

Through: Mr. Kunal Malhotra, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the basis of evidence and report submitted under Section 173 of the Criminal Procedure, 1973 on conclusion of investigation into first information report (FIR) No. 385/2008 under Sections 279/338/304-A of Indian Penal Code, 1860 (IPC) of police station Hauz Khas, the Metropolitan Magistrate took cognizance on 22.12.2008 and summoned the respondent, eventually putting him on trial on 15.07.2009 through notice under Sections 251 Cr.P.C. on the accusations that on 27.10.2008 at about 3.15 p.m. he was the driver of car bearing No. DL9CH1802 (hereinafter referred to as "the car") and that he had driven it on Shaheed Jeet Singh Marg, Near Qutub Hotel, Katwaria Sarai, New Delhi within the jurisdiction of police station Hauz Khas in rash or negligent manner thereby endangering human life and in that process had caused an accident by colliding against a

three wheeler scooter (TSR) No. DL1RF1964, driven by one Ram Jofu carrying two passengers Vishal (PW-3) and G.V.S. Sai Ram (PW-4), as a result of which the Ram Jofu died while the said two passengers suffered grievous injuries.

2. The trial resulted in judgment dated 31.8.2013 of the court of Metropolitan Magistrate (05), South District, Saket, New Delhi whereby the respondent was held guilty and convicted, as charged, for offence punishable under Sections 279/338/337/304-A IPC, the injuries of PW-3 having been found to be simple in nature. By subsequent order dated 5.9.2013, punishment was awarded by the Metropolitan Magistrate in the form of simple imprisonment for six months, eight months, six months and one year for offences punishable under Sections 279/338/337/304-A IPC, with directions to pay compensation.

3. The respondent challenged the said judgment of conviction and order on sentence by criminal appeal No. 167/2013 which was allowed by the Court of Sessions by judgment dated 17.3.2015 thereby acquitting the respondent.

4. The State has come up with the petition at hand seeking leave to appeal under Section 378 (1) Cr.P.C.

5. On notice, respondent has appeared through counsel. The learned counsel on both sides have been heard and the trial court record has been perused with their assistance.

6. The factum of the respondent being the driver of the car at the relevant point of time is not in dispute. It even otherwise was brought

out clearly by the evidence led. There is no doubt either about the collision about the car and the TSR at the date, time and place referred to above and the said event having led to the death of Ram Jofu and injuries being suffered by Vishal and G.V. S. Sai Ram. What, however, has rankled as point of dispute is the issue as to whether the accident had occurred due to rash or negligent driving of the car by the respondent. While the Metropolitan Magistrate accepted the prosecution case in this regard holding the respondent guilty and convicting him, the learned Sessions Court in appeal entertained doubts primarily on the basis of scrutiny of the evidence of the three crucial witnesses, they being Vishal (PW-3), G.V. S. Sai Ram (PW-4) and Vinod Kumar (PW-5), in addition to the evidence of the investigating officer ASI Mainuddin (PW-7), besides constable Satpal (PW-6) who was assisting the investigating officer at the relevant point of time.

7. PW-3 and PW-4 were undoubtedly travelling as passengers in the TSR and both had suffered injuries. Both were undoubtedly in a good position to narrate the sequence of events which would have led to collision between the two vehicles. But, the manner in which they deposed left much to be desired. While PW-3 would only talk of collision between the two vehicles coming from opposite directions, his examination in chief not bringing out any further fact on which negligence or rash driving on the part of the respondent could be inferred, PW-4, in contrast, stated that the car was driven “rashly and negligently”. Mere use of the expression “rash” or “negligent” in

relation to driving is at the most opinion of the person so stating. It has to be remembered that criminal jurisprudence depends not on opinion but on evidence. The witness should have been called upon to explain as to why, in his opinion, the manner of driving of the car by the respondent was rash or negligent.

8. PW-5 is the witness on the basis of whose statement (Ex.PW-5/A), the FIR was registered. In the said statement, the witness would not disclose any connection between him and the persons travelling in the TSR. It was projected in his statement as if he were a chance witness, or a bystander, he also being a TSR driver by avocation, one who happened to be present at the scene when the occurrence took place. Noticeably, he is a resident of Garhwal Colony, Mehrauli which is a locality at some distance from the place of occurrence. It was only during his cross-examination that it was brought out that he is real brother of the deceased TSR driver. There is no explanation as to why this close relationship was not disclosed in the first instance. Even the investigating officer (PW-7) in his statement would show surprise and admit that the fact of relationship was not revealed to him by the witness.

9. Though PW-5 would claim that he had accompanied his brother who had died in the accident to the hospital, his word is belied by the medico legal certificate (MLC), it (page 191 of the trial court record) indicating the deceased had been taken to the hospital accompanied by police control room (PCR) official namely ASI Surender who was not examined. There is no reference to the presence of PW-5 at any stage

of the proceedings prepared in the course of medical examination of the deceased TSR driver. It also may be added that if PW-5 were actually present at the scene with his own TSR, which he would ply, having seen his own brother mortally wounded in accident he would not have waited for the police control room van to take him for immediate medical assistance. Instead, the natural reaction for him would be to rush his brother to the hospital and also the other persons who had been wounded, in his own vehicle, which was readily available. The fact that he took no such steps, with no explanation for such inaction offered adds to the reasons why his evidence would not inspire confidence in the given fact situation.

10. The investigating officer, during his testimony, proved site plan (Ex.PW-7/C). The site plan also leaves much to be desired. It does indicate by arrow marks the movement of the two vehicles. But, there is no legend explaining as to the direction taken by either of them. The collision is shown somewhere in the middle of the road by reference point "A". It is not explained by the site plan as to which vehicle had come into wrong lane.

11. Questions were raised during the cross-examination of the witnesses. It was conceded by PW-3 that the TSR was near midline (yellow line). His uncle (PW-4) tried to shift the TSR away from that midline stating that it was at a little distance. Better light on this could have been thrown by the investigating officer who unfortunately was not very expressive. During his cross-examination, he conceded that photographs of the two vehicles had been taken but then also admitted

that the vehicles were not subjected to photography in the accidental state and that this was done subsequently, presumably more to preserve evidence about the damage caused to each of them.

12. In above facts and circumstances, the doubts on the basis of which the learned sessions court accorded benefit and acquitted the respondent cannot be said to be imagined or not reasonable.

13. There is no good reason for interference. The petition is dismissed.

R.K.GAUBA, J.

MAY 05, 2017

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