

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

% Decided on: 24th January, 2018

+ **CRL.L.P. 163/2016**

STATE OF NCT OF DELHI

..... Petitioner

Represented by: Mr. Amit Gupta, APP for State
with SI Ram Niwas, PS J.P.
Kalan.

versus

ISHWAR SINGH

..... Respondent

Represented by: Mr. Prem Chhetri, Advocate
with respondent in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 4307/2016 (Delay)

1. For the reasons stated in the application delay of 61 days in filing the leave to appeal petition is condoned.
2. Application is disposed of.

CRL.L.P. 163/2016

1. Challenging the impugned judgment dated 5th October, 2015 acquitting the respondent for offence punishable under Sections 279/304A IPC the State seeks leave to appeal.
2. Process of law was set into motion on 15th April, 2007 on receipt of DD No. 4A regarding an accident. HC Satyawar reached the hospital however, the injured was found unfit for statement and also did not find any eye witness in the hospital. HC Satyawar reached the spot however, did not find eye witness there also and thus on the basis of the tehrir got the FIR registered.

3. It is the case of the prosecution that during the course of investigation besides getting the mechanical inspection done of the Maruti car bearing No. HR 26AE 5248 proved by report Ex.PW-1/A, statements of two eye witnesses were recorded, that is, eye witness Sandeep and Ashok Kumar who appeared in the witness box and deposed in favour of the prosecution. However, the learned Trial Court disbelieved the statements of these two witnesses and acquitted the respondent.

4. Learned APP for the State contends that both Sandeep (PW-2) and Ashok Kumar (PW-4) clearly stated that the driver of the offending car drove his car in zig zag manner and hit Om Prakash, the deceased. They also identified the respondent as driver of the vehicle who was residing in the same village. It is contended that the prosecution having led such cogent evidence, the learned Metropolitan Magistrate grossly erred in acquitting the respondent.

5. Ashok Kumar in his deposition stated that he was running a STD shop at Bus Stand Ghuman Hera since 2002. On 14th May, 2007 at about 11.00 PM when he was present at his shop at that time his brother Sandeep and Om Prakash were going from his shop towards their house. Immediately after they left the shop, he heard noise of the accident from the village side and saw Ishwar Singh s/o Sadha Ram was reversing his car bearing No. HR 26 AE 5248 taking his head outside the window, towards the side of phirni. He reached the spot and saw his brother Om Prakash had sustained multiple injuries. He left Sandeep at the spot and went to the village to arrange vehicle to take Om Prakash to the hospital. When he returned back, Om Prakash had already been taken to the hospital.

6. Thus from the testimony of this witness as deposed in his examination-in-chief, it is evident that he only saw Ishwar Singh reversing his vehicle and did not witness the manner in which he was driving and had injured Om Prakash. Therefore, even if the testimony of Ashok Kumar is to be believed it can only be inferred that Ishwar Singh with his vehicle was near Om Prakash, however, Ashok Kumar never saw Ishwar Singh driving the vehicle in a rash and negligent manner.

7. Sandeep deposed that at about 11.00-11.30 PM when he and his cousin brother Om Prakash reached near bank, one Maruti car bearing registration No. HR 26 AE 5248 came from the front side, the driver of the car was driving the vehicle in a zig zag manner, speedily and hit his cousin brother. After hitting his brother, Ishwar Singh slowed down the car and saw the injured. Thereafter he fled away from the spot.

8. Thus according to this witness also Ashok Kumar is not the eye witness and the only eye witness to the occurrence is Sandeep. Sandeep does not explain that on seeing the accident what he did because he did not take the injured to the hospital who was taken by son of the deceased namely Bittu @ Khem Chand. Further when the police officers reached the hospital this witness was not available nor was he available at the spot. In his cross-examination he admitted that they were walking on the patri of the road and he could not read the number of the vehicle. He also admitted that his clothes did not get blood stained.

9. Despite the fact that Sandeep and Ashok Kumar were stated to be eye witnesses, the Investigating Officer examined them after a gap of four months from the date of incident. The presence of Sandeep or Ashok Kumar is neither fortified at the place of occurrence nor at the hospital,

despite the fact that they were the cousin brothers of the deceased and claimed to be eye witnesses. None of the two alleged eye witnesses has taken the deceased to the hospital.

10. Respondent not only examined himself under Section 313 Cr.P.C. but also led defence evidence and proved that there was an old enmity between him and one of the friends of the witnesses namely Nafe Singh and that at the time of the incident respondent was present at a function hosted by his friend Sudhir.

11. Considering the evidence noted above this Court concurs with the view expressed by the learned Trial Court that no reliance can be placed on the testimonies of Ashok Kumar and Sandeep. Hence the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference.

12. Leave to appeal is accordingly dismissed.

13. Trial Court recorded be sent back.

(MUKTA GUPTA)
JUDGE

JANUARY 24, 2018
‘vn’