

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

CRL.REV.P. 723/2019, CRL.M.(BAIL) 1199/2019 and
CRL.M.(BAIL) 1400/2019

Reserved on : 20.08.2019

Date of Decision : 11.09.2019

IN THE MATTER OF:

AKASH TOMAR

..... Petitioner

Through: Mr. Ashutosh Dubey and
Mr. Abhishek Chauhan,
Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Dr. M. P. Singh, APP for State
with SI Ichha Ram, PS Tilak Marg

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present revision petition has been filed challenging the judgment dated 03.06.2019 passed by the ASJ, New Delhi District, Patiala House Courts, New Delhi in Criminal Appeal No.06/2018 arising out of FIR No.487/2005 initially registered under Section 279/337 IPC at P.S. Tilak Marg, New Delhi whereby the petitioner's conviction and sentence under Section 304A IPC was upheld.

2. The Metropolitan Magistrate vide judgment dated 22.12.2017 had convicted the petitioner for the offence punishable under Section 304A IPC and vide order on sentence dated 23.12.2017, sentenced him to undergo SI for six months with a fine of Rs.5,000/- in default of which he was directed to undergo SI for a period of 15 days.

3. The brief facts of the prosecution, as noted in the impugned judgment, are:

“On receiving DD No.25A dated 19.11.2005 ASI Nar Singh along with Ct. Om Prakash reached the spot, i.e. railway pul near Bhairo Road, Ring road crossing where found one motorcycle USA 2224 Royal Enfield in an accidental condition. One Ct Anand was also found there and on enquiry came to know that injured was already taken to RML hospital by PCR. At RML hospital, MLC of injured Raja was collected however opined unfit for statement, no eye witness was also found at the hospital. Pursuant to the present FIR u/s 279/337 IPC was registered.

3. Vide order dated 29.08.2006 charges were framed against the accused however accused not pleaded guilty and claimed trial.

4. Prosecution for substantiating its case, examined 13 witnesses, the summary details of their testimonies is recorded as under:-”

4. I have heard learned counsel for the petitioner as well as learned APP for the State and have gone through the trial court record. Learned APP for the State has submitted that the testimony of Shri Veer Bahadur, the eye witness is reliable, as he has supported the prosecution case in his examination-in-chief.

5. Learned counsel for the petitioner contended that the petitioner was not involved in the accident, however, on seeing the injured he stopped only to help him. He contended that in order to solve a blind case, the petitioner has been falsely implicated in the present FIR. He further contended that the testimony of the alleged eyewitness is not credible. In support of his submission, learned counsel for the petitioner has placed reliance on the decision rendered in Vijayee Singh and Others Vs. State of U.P. reported as (1990) 3 SCC 190, Ram Briksh Singh and Ors. Vs. Ambika Yadav and Ors. reported as (2004) 7 SCC 665 and Venkatesan Vs. Rani and Ors. reported as (2013) 14 SCC 207. He also

urged that the mechanical inspection report shows only a damage to the front ring of the head light, which cannot be possible if the accident had occurred on account of rash and negligent driving of the motorcycle by the petitioner.

6. During the trial, the prosecution had examined total of 13 witnesses. As per the case set up by the prosecution, the accident happened in the evening of 19.11.2005 at about 5:20 p.m. On receipt of the information about the accident, SI Nar Sing (PW-12) and Ct. Om Prakash (PW-5), who were on a patrolling duty, reached at the spot.

7. As per the testimony of SI Nar Sing, he found one motorcycle no. USA 2244 in an accidental condition on the spot. He also met Ct. Anand (PW-11) there. Thereafter, SI Nar Sing went to RML Hospital and collected the MLC of the injured. He did not find any witness in the hospital. He came back to the spot and prepared the *Rukka* (Ex.PW12/A) and handed over the same to Ct. Om Prakash for registration of the FIR. Ct. Om Prakash went to P.S. Tilak Marg, got the FIR registered and came back to the spot and handed over a copy of the FIR as well as the original *Rukka* to SI Nar Sing. At that time, SI Nar Sing met Rashid Khan (PW-13) and Shiv Pujan Mehto (PW-7) at the spot. He recorded their statements and prepared the site plan (Ex.PW12/B). He also seized the offending motorcycle vide seizure memo (Ex.PW11/A). He also seized the RC of the motorcycle vide seizure memo (Ex.PW11/B). The petitioner was arrested vide arrest memo (Ex.PW11/C). The personal search of the accused was conducted vide memo (Ex.PW11/D).

8. Ct. Om Prakash was examined as PW-5. He deposed that he accompanied SI Nar Sing to the spot on 19.11.2005 and took the *Rukka* to the police station and got the FIR registered.

9. Ct. Anand was examined as PW-11. He deposed that on 19.11.2005, he reached the spot and met the I.O., who prepared the seizure memos of the motorcycle and the RC of the motorcycle. The I.O. also arrested the accused in his presence vide arrest memo (Ex.PW11/C). He further stated that all the written documents were prepared by the I.O. at the spot.

10. A perusal of the trial court record reveals that all the exhibits in the present case were prepared on 20.11.2005. The FIR, seizure memos of the motorcycle as well as the RC, the arrest memo and the personal search memo were all prepared on 20.11.2005. Even the *Rukka* though stated to be sent on 19.11.2005 rather bears the date of 20.11.2005 and time 8:00 a.m.

11. The above blatant inconsistency in the actual date on which the proceedings were conducted (as stated in the testimony of the aforementioned witnesses) and the date which appears on the exhibited documents, raises a strong doubt on the prosecution case. If all the writing work was done on 19.11.2005, how come the FIR & other documents bears the date 20.11.2005.

12. SI Nar Sing also deposed that when, after visiting the hospital, he came back at the spot he met Rashid Khan and Shiv Pujan Mehto and recorded their statements.

13. Rashid Khan was examined as PW-13. He did not support the prosecution case at all. He was confronted with his statement recorded under Section 161 CrPC, the same was marked as 13X. A perusal of the said statement reveals that the same is dated 20.11.2005 and not 19.11.2005.

14. Shiv Pujan Mehto was examined as PW-7. He did not depose that he met SI Nar Sing on 19.11.2005 at the spot.

15. None of the documents prepared by SI Nar Sing relating to seizure of case property were signed by either of the aforementioned witnesses' i.e, Rashid Khan or Shiv Pujan Mehto, alleged to be present at the spot. As per the statement of SI Nar Sing, both were available at the spot.

16. The prosecution had examined Veer Bahadur (PW-8) as an eyewitness. However, the presence of the said witness on the date of the incident was not stated by any of the police officials, who stated to have reached the spot immediately after the accident. The testimonies of SI Nar Sing, Ct. Anand and Ct. Om Prakash are silent about the presence of the said eyewitness. The name of the said witness did not even find mention in any of the documents prepared at the spot or in the medical documents including the MLC & the death report of the deceased.

17. ASI Digambar Dutt (PW-3), the PCR official, who removed the injured to the hospital also did not mention about the presence of the said eyewitness at the spot. On the contrary, his testimony is contradictory to the other police officials in so far as he had deposed that he took the two injured persons including the motorcyclist to the RML Hospital. Per contra, SI Nar Sing and Ct. Anand have stated that only the deceased was shifted to hospital by the PCR official and the motorcyclist was

available at the spot. In view of such contradictions, the presence of Veer Bahadur at the spot & being an eyewitness is not free from doubt.

18. The dead body was identified by Shiv Pujan Mehto and another person namely, Naval Kishore (nephew of the deceased). A perusal of the trial court record shows that the said Naval Kishore though, was cited as an eyewitness, but not examined.

19. The accused did not deny his presence at the spot, however, his defence was that he stopped only to help the injured. The mechanical inspection report did not record any damage to the steering handle bar or any other part of the body except damage on the ring of the front head light.

20. In the case of Prithipal Singh Etc Vs. State of Punjab & Anr. Etc reported as **(2012) 1 SCC 10**, it was held as under:-

“49. This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.”

21. No doubt, as per the above enunciation of the law, the conviction can be based on the sole testimony of an eyewitness provided the same has as a ring of truth and is credible.

22. As stated above, the presence of Veer Bahadur, the alleged eyewitness, is not mentioned in any of the documents prepared at the spot. Even the police witness, who had visited the spot on the day of the incident do not mention about his presence.

23. The presence of Veer Bahadur at the spot is doubtful and his testimony cannot be trusted. He is a partisan witness who is interested in the conviction of the accused. Even otherwise, there are glaring and blatant contradictions in the testimony of the witnesses and the exhibited documents on the date of the preparation of the documents. Further, the delay of about 15 hours in registration of the FIR has not been explained by any of the witnesses.

24. Accordingly, looking at all of the above facts, I am of the view that the prosecution has failed to prove its case against the petitioner. Resultantly, the conviction of the petitioner is set aside and he is directed to be released. The petitioner shall, however, comply with the requirements of Section 437A Cr.P.C.

25. A copy of this order be communicated to the petitioner through the Jail Superintendent, Tihar.

26. Trial Court Record be returned alongwith a copy of this judgment.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 11th, 2019/na