

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

% Decided on: 19th February, 2019

+ **CRL.L.P. 456/2016**

STATE (NCT OF DELHI)

..... Petitioner

Represented by: Mr. Ashok Kumar Garg, APP
for the State with Inspector
Dara Singh, PS Okhla
Industrial Area.

versus

PAWAN KUMAR

..... Respondent

Represented by: Mr. Anukalp Jain, Advocate

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No.13503/2016 (Delay)

For the reasons stated in the application delay of 197 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 456/2016

1. Aggrieved by the judgment dated 17th October 2015, whereby the learned Metropolitan Magistrate acquitted the respondent for the offences punishable under Sections 279/304A IPC, the State has preferred the present leave petition.
2. Briefly stated, the prosecution case is that on 16th September 2008, at about 5:36 P.M., DD No.26 regarding a road traffic accident was received and marked to HC Ami Chand. He alongwith Ct. Krishan Kumar reached

the place of the incident on the main road in front of B-86, Okhla Industrial Area Phase-II where they found a three-wheeler TSR/Minidor bearing registration number DL-1-LJ-7065 in accidental condition. One person namely Trilok produced the respondent and informed him that the child namely Mohit had sustained injuries in the accident who was taken to the hospital by his father. In the meanwhile, HC Naeem Ahmed reached the spot with DD No.33 regarding admission of the injured persons at AIIMS Trauma Centre. Thereafter, he went to the hospital and collected the MLC of the injured wherein the doctor had declared him brought dead. He recorded the statement of Jagan, father of the deceased who stated that on 16th September 2008 he along with his 8-year old son Mohit was going for some work to B-Block Okhla Industrial Area. While crossing the road he saw one three-wheeler coming from Puri Chowk side in high speed. While driving in a rash and negligent manner the driver hit his son due to which his son fell on the road and came under the tyre of the vehicle. He sustained injuries on his chest due to which lot of blood oozed out. One person namely Trilok Chand came there and with the help of public persons they caught hold of the driver of the vehicle namely Pawan Kumar. Thereafter, he took his son to Trauma Centre AIIMS, who succumbed to his injuries on the way. The public persons present there wrote down the number of the TSR on a piece of paper and gave it to him. On the basis of the aforesaid statement, FIR No. 409/08 was registered at PS Okhla Industrial Area for offences punishable under Sections 279/304A IPC.

3. Thereafter, he went to the spot with the father of the victim and seized the offending vehicle vide seizure memo Ex.PW-1/B. The case was handed over to ASI Nizamuddin for further investigation. He recorded the statement

of Trilok Chand and prepared the site plan at his instance vide Ex.PW-1/G. The slip pertaining to the number of the offending vehicle was seized vide seizure memo Ex.PW-1/C. The respondent was arrested vide arrest memo Ex.PW-1/E and his personal search was conducted vide Ex.PW-1/F. the driving license of the respondent was seized vide seizure memo Ex.PW-1/D. On completion of investigation, charge sheet was filed. Charge was framed for offences punishable under Sections 279/304A IPC.

4. Prosecution examined 7 witnesses.

5. Jagan Singh (PW-1) father of the deceased deposed in sync with his statement made to the police. In his cross-examination he stated that he had not seen his son riding the bicycle on the date of incident. He heard from Trilok that his son had met with an accident. He knew Trilok as he was a scrap dealer in that area. He further denied the suggestion that the offending vehicle was in a stationary condition and that his son was riding a bicycle which hit against the stationary offending vehicle resulting in fatal injuries.

6. Trilok Chand (PW-2) deposed that he doesn't remember the exact date of the incident but the same had taken place in the month of May or July. At the time of the incident, he was eating food at a street vendor in Sanjay Colony, Okhla Industrial Area when he saw one vehicle coming from the side of Puri Chowk. Jagan and his son were coming from the opposite direction and the respondent was driving the vehicle bearing number DL-1-LJ-7065 at very high speed due to which he hit Jagan's son from the front side and the rear tyre of the vehicle rolled over his chest. Public persons gathered at the spot and apprehended the TSR driver. The injured boy was taken to Trauma Centre AIIMS in a TSR. In his cross-examination he stated that he was doing the business of selling waste cloth

with Jagan Nath. He was standing 20-25 feet away from the place of the accident. The road on which the vehicle was going was a two-way road which was separated by a divider. Divider was in depilated condition. There was a street opening at the place where the accident took place.

7. Motor Vehicle Inspector T.U. Siddiqui (PW-7) stated that on 18th September 2008 he inspected the TSR Minidor bearing number DL-1-LJ-7065 and prepared the report vide Ex.PW-7/A wherein the following damages were noticed on the vehicle:

- i. Front wind screen glass broken/cracked*
- ii. Brakes OK.*
- iii. Vehicle on Road*
- iv. Front guard slightly pressed.*

8. Respondent in his statement recorded under Section 313 Cr.P.C. stated that he was not driving the offending vehicle at the time of the accident.

9. The entire case of the prosecution rests upon the testimony of Jagan Singh and Trilok Chand who were the eye-witnesses of the incident. Jagan Singh in his complaint to the police and examination in chief stated that he was crossing the road along with his son and had witnessed the accident. In his cross-examination he deposed that he was not present at the spot with his son but was rather at home and was informed about the incident by his friend Trilok Chand. However, Trilok Chand in his testimony has stated that Jagan and his son were coming from the opposite direction at the time of the accident.

10. Even though Trilok Chand's presence at the spot has been established by the testimony of HC Ami Chand, his version regarding the details of the

incident is at variance. Apprehension of the respondent at the spot can at the most establish that he was the driver of the offending vehicle. However, the fact that the respondent was the driver of the offending vehicle that caused the fatal accident is not sufficient to convict him for the offence unless the prosecution establishes that he was driving the vehicle in a rash and negligent manner. The prosecution has also failed to mention the width of the road, speed of the vehicle or the speed limit on the road to establish its case and prove the manner in which the offending vehicle was being driven. Moreover, the site plan does not show the material details with respect to the distance of accident from the pavement, skid marks etc.

11. Considering the variations in the statement of Trilok Singh coupled by the fact that his version is not corroborated by independent evidence, finding of the learned Metropolitan Magistrate in the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

12. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 19, 2019
‘vj’