

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

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Judgment delivered on: 05.09.2019

+ **CRL. L.P. 431/2016**

**STATE**

..... Petitioner

Versus

**RAJESH KUMAR**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Amit Gupta, APP for State

For the Respondents : Mr. Sumit Sharma, Advocate

**CORAM**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The State has filed the present application seeking leave to appeal against a judgment dated 16.12.2015, whereby the respondent was acquitted of the offence under Section 279 read with Section 304-A of the Indian Penal Code, 1860 (IPC). The Trial Court held that there were significant contradictions in the statements of the material witnesses and further that the testimonies did not conform in material aspects. In view of the above, the Trial Court held that the prosecution had failed to prove the guilt of the accused. The Trial Court also held that the prosecution had failed to prove that PW-7, Smt Munni Devi, who was stated to have witnessed the incident, was an eye-witness as in her cross-examination, she had deposed that she had heard the noise of the impact

of the accident and had turned back to see the victim lying on the road. This indicated that she had not witnessed the accident.

2. It is the prosecution's case that there is no ambiguity in the testimony of PW-7. PW-7 had, unequivocally, deposed that she and the deceased were walking on the outer ring road towards their home, and on reaching the red light crossing at C-Block, Saraswati Vihar, they had attempted to cross the road towards Saraswati Vihar, New Delhi. While, they were doing so, a scooter rider came at a high speed, in a rash and negligent manner, and struck the victim due to which she fell down, sustained injuries and became unconscious. She stated that the accused (respondent) had stopped the scooter and disclosed his name. She had stated that he, along with PW-7, took the injured to the hospital. The Learned APP submitted that this testimony clearly established that PW-7 was an eye-witness. The learned APP also drew the attention of this Court to the transcripts of the cross-examination, wherein PW-7 had reiterated that she had seen the accused riding on a scooter. She also stated that she had seen the accident and the respondent colliding with the victim while on his scooter.

3. The respondent was charged with committing an offence under Section 279, read with Section 304-A of the IPC. It was alleged that on 03.11.2001, at about 3.10 p.m., the respondent was riding a motor vehicle (riding a scooter) bearing No. HR-29J-3540, in a rash and negligent manner, so as to endanger human life and personal safety of others. It is alleged that he caused the death of Smt Sidhanta Devi. The prosecution's case rested essentially on the statement of PW-7, Smt

Munni Devi. FIR no. 817/2001 (relating to the incident was registered on the basis of the statement of one Smt Munni Devi (PW-7). She had stated that on the date of the incident, she and the deceased were walking back home by the outer ring road and when they reached the red light at C-Block, Saraswati Vihar, they crossed the road at the red light towards Saraswati Vihar. While they were crossing, a scooter rider, who later identified himself as Rajesh Kumar (respondent), riding the scooter bearing no. HR-29-J-3540 approached at a very fast pace and in a negligent manner, hit the deceased. The deceased fell down and became unconscious. She stated that the scooter stopped and she and the respondent took the deceased to the hospital.

4. In her testimony, which was recorded on 28.07.2011, Smt Munni Devi (PW-7) broadly reiterated the incident. She reiterated that she and the deceased were returning back home on foot and the incident happened while they were crossing the road at the red light located at C-Block, Saraswati Vihar. She reiterated that the scooter rider, who was riding the scooter at a fast speed and in a rash and negligent manner, struck Smt Sidhanta Devi (deceased) due to which she fell down and sustained injuries and became unconscious. She reiterated that the scooter rider (the respondent) stopped and disclosed his name. She also identified the respondent. She reiterated that she, along with the respondent, took Smt Sidhanta Devi to Saroj Hospital. However, she also stated that she is illiterate and could not depose as to the registration number of the scooter. She further deposed that the police had come to the hospital and had recorded her statement (Ex. PW-7/A), which bore

her thumb impression. On the request of the learned APP appearing for the State, he was allowed to cross-examine PW-7. In her cross-examination, she reiterated that she was illiterate and could not read or write. She stood by her testimony that she could not say anything about the registration number of the two-wheeler in question. She stated that some persons had gathered at the location and they might have disclosed the registration number of the scooter. She also stated that the site plan, where the accident is stated to have occurred, was not prepared by the Investigating Officer at her instance or in her presence. She was subsequently confronted with her statement, as recorded on 03.11.2001 (the date of the incident), and the same was read over and explained to her. However, she denied having made any such statement.

5. Thereafter, PW-7 was cross-examined by the learned counsel appearing for the accused. In her cross-examination, she stated that her statement was recorded by the Investigating Officer at her home. This was in variance with her statement recorded earlier. She stated that the incident had taken place about half a kilometer ahead from the red light and there was no zebra crossing at the spot. She stated that at the time of the crossing the road, the deceased was walking five to six metres behind her. When she heard the noise of impact, she turned back and saw that the victim was lying on the road. She stated that the deceased was taken to the hospital in a car which was present on the spot. However, at another point she stated that she had seen the accused coming on a scooter and had also seen that he had struck the deceased (Smt Sidhanta Devi) with his scooter. She had stated that she had

remained in the hospital after getting Smt Sidhanta Devi admitted, and had returned home when the husband of the deceased came to the hospital. She further stated that the police had called her to the Ahlmad room and made inquiries from her. It is material to note that she also stated that after returning from Saroj Hospital, she never visited the police station in regard to the case.

6. A plain reading of the testimony of PW-7 indicates that it is at variance with the statement which is stated to have been recorded on 03.11.2001. While the statement recorded on 03.11.2001 records the registration number of the scooter, PW-7 has emphatically responded that she is illiterate and could not state anything about the registration number of the two wheeler. In addition to the above, there is also inconsistency in certain material aspects between her testimony and her statement recorded on 03.11.2001.

7. In her examination-in-chief, PW-7 had stated that she and the deceased were walking back home. However, in her cross-examination, she has stated that the deceased was walking five to six metres behind her. PW-7 had also stated that she and the deceased were crossing the road at the red light located in C-Block, Saraswati Vihar. However, in her cross-examination, she had stated that the accident had taken place half a kilometer ahead from the red light. Her testimony is also inconsistent on the question whether the deceased was crossing the road at a zebra crossing. At one point in her cross-examination, she had stated that there was no zebra crossing at the spot. However,

subsequently, she denied the suggestion that the deceased was crossing the road without red light and zebra crossing.

8. A plain reading of the testimony indicates that there is ambiguity regarding the spot where the accident had taken place. However, it does appear that the victim was not crossing the road at a red light. There is no certainty as to whether the deceased was crossing the road at a red light and at a zebra crossing, or whether the deceased was crossing the road at another point, half a kilometer away, where there was no zebra crossing.

9. The prosecution has sought to establish the location of the incident on the basis of a site plan (Ex. PW-10/B). The said site plan was prepared by ASI Lala Ram (PW-10). He deposed that he had gone to the hospital and had recorded the statement of PW-7 and thereafter he, along with PW-7, had returned to the accident site to prepare the site plan – Ex. PW-10/B. The site plan also bears PW-10's signature. However, it is relevant to note that the site plan does not bear the signature of Smt Munni Devi. She has unequivocally stated that she did not accompany any police official to the accident site after the incident. On the contrary, she had asserted that she remained in the hospital after admitting the deceased till the husband of the deceased arrived; thereafter, she returned back home. The testimonies of PW-10 and PW-7 ran contrary to each other in this regard.

10. It is, thus, clear that there are material inconsistencies in the testimonies of PW-7 and PW-10. PW-10 had affirmed that he had

prepared the site plan at the instance of PW-7(Smt Munni Devi). This clearly does not appear to be correct as PW-7 has emphatically stated in her testimony that she did not accompany any police official to the site.

11. The ambiguity as to the location of the incident is material. This is so because the allegation against the accused is that he was riding the scooter in a rash and negligent manner, which had resulted in the accident.

12. Clearly if it was established that the victim was crossing the road at a zebra crossing while the light was red; negligence on part of the respondent would be established. This would not be so if the deceased was crossing the road at any other point. It is difficult to accept that negligence on part of the respondent has been established beyond any reasonable doubt. PW-7 had at one point stated that she had seen the accused riding the scooter in a fast and negligent manner and striking the deceased. However, in her cross-examination, she stated that the deceased was walking five to six metres behind her and she had turned back on hearing the noise of the impact. Thus, clearly, she could not have witnessed the respondent riding the scooter in a fast and negligent manner, as deposed by her. The site plan (PW-10/B) indicates that the incident had taken place at a T-Junction and it has been affirmed that there was a zebra crossing at the road. However, the testimony of PW-7 is inconsistent in this regard. Although, at one point she had stated that the deceased and her were crossing the road at the red light, she had also stated that there was no zebra crossing at the spot where they were

crossing the road. In her cross-examination she had stated that the deceased and her were crossing the road about half a kilometer ahead from the red light. In view of the inconsistencies in the testimony, the prosecution has been unable to establish that the accident had taken place while the deceased was crossing the road at the zebra crossing.

13. Keeping in view the totality of evidence, it is clear that the prosecution has been unable to establish beyond reasonable doubt that the accident in question had been caused due to rash and negligent driving on part of the respondent.

14. Even if it is accepted that the deceased had died on account of being struck by the scooter ridden by the respondent, there is no material to establish that the same was on account of rash and negligent driving on part of the respondent.

15. In view of the above, the present petition is dismissed.

**SEPTEMBER 5, 2019**

pkv

**VIBHU BAKHRU, J**