

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

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Decided on: 8th January, 2019

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CRL.L.P. 656/2017

STATE GOVT OF NCT OF DELHI

..... Petitioner

Represented by: Mr. Ashok Kumar Garg, APP
for the State with ASI
Bhupender, PS Haus Khaz

versus

JAGESH GUPTA

..... Respondent

Represented by: Mr. Dinesh Malik and Mr.
Retesh Malik, Advocates

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A.No.18769/2017

For the reasons stated in the application, delay of 80 days in filing the petition is condoned. Application is disposed of.

Crl.L.P.No.656/2017

1. Aggrieved by the judgment dated 12th July, 2017, whereby the learned Metropolitan Magistrate acquitted the respondent for the offences punishable under Sections 279/338/427/304A IPC, the State has preferred the present leave petition.

2. Briefly stated, the prosecution case is that on 4th January, 2007 at about 2:30 P.M., on receipt of DD No.39B regarding an accident, ASI Vijay Kumar alongwith Ct. Sukhbir reached the spot i.e. IIT, Haus Khaz where no one met them. In the meanwhile he received a call from the Duty Officer who informed them that the accident had taken place nearby Indian Bank, opposite Aggarwal Sweets, Katwaria Sarai village. At the spot, they found one vehicle bearing number DL-1-LG-4138 and one motorcycle bearing number UP-53-Q-5662 lying in accidental condition. One injured person was also found at the spot. She was taken to the hospital where she was

declared dead. On returning to the spot he met one person namely Alauddin and recorded his statement vide Ex.PW-3/A. He stated that he alongwith his maternal grandmother Ujipa Khatoon had gone to Katwaria Saria to buy medicines. At about 2:15 P.M., when they were crossing Shaheed Jeet Singh Marg, one auto bearing number DL-1-LG-4138 came from Adchini side and hit his grandmother due to which she fell on the footpath. The auto driver after hitting his grandmother also hit one motorcyclist due to which he also fell down on the ground after bumping into the electric poll. On the basis of the aforesaid statement, FIR No. 7/2007 was registered at PS Haus Khaz for offences punishable under Sections 279/338/427/304A IPC.

3. Thereafter, the case was handed over to SI Shiv Kumar for further investigation. He prepared the site plan at the instance of the complainant vide Ex.PW-2/A. The offending vehicles were seized vide seizure memo Ex.PW-2/B and PW-2/C and sent for mechanical inspection. The respondent was arrested vide arrest memo Ex.PW-2/D and his personal search was conducted vide Ex.PW-2/E. Registration Certificate of the vehicle was seized vide seizure memo Ex.PW-2/F. Post-mortem of the deceased was conducted after which the body was handed over to the relatives of the deceased. On completion of investigation, charge sheet was filed.

4. Prosecution examined 12 witnesses.

5. Mohd. Allaudin (PW-3) deposed in sync with his statement made to the police. In his cross-examination he stated that the police never met him in connection with this case. He remained at the spot for about 2-3 hours. Thereafter, he went to call one of his relative and did not make any efforts to call the police. He took his grandmother to AIIMS hospital in a tempo. The police also accompanied him to the hospital. He further stated that there was

no zebra crossing from where he was crossing the road.

6. Mohd. Alam (PW-4) and Sultan Khan (PW-5) deposed that on 5th January, 2007 they went to AIIMS hospital to identify the dead body of Ujibni Khatoon who had met with an accident on 4th January, 2007.

7. Rajbir Singh (PW-11), MRT, AIIMS identified the signatures of Dr. Sanjeet Kumar Pandey on MLCs exhibited as Ex.PW-11/A and Ex.PW-11/B.

8. Dr. Chitranjan Behera, Forensic Medicines, AIIMS stated that he had conducted the postmortem of deceased and opined the cause of death as head injury caused by blunt force which could be possible in road traffic accident.

9. The entire case of the prosecution rests upon the testimony of Mohd. Allaudin who was the sole eye-witness. In his testimony he has simply deposed that the offending vehicle was coming at a high speed. Even if his testimony is taken as it is no rashness or negligence can be proved on the part of the respondent, merely driving a vehicle at a fast speed. Supreme Court in the decision reported as 1998 SCC (Cri) 1508 State of Karnataka v. Satish observed:

"4. Merely because the truck was being driven at a "highspeed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high-speed". "High-speed" is a relative term. It was for the prosecution to bring on record material to establish as to what is meant by "high-speed" in the facts and circumstances of the case. In a criminal trial, the burden of proving everything essential to the establishment of the charge against an accused always rests on the prosecution

and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitor". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The motor vehicle inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case."

10. Furthermore, as per the testimony of Allaudin he accompanied the deceased to the hospital but the MLC of the deceased does not bear the name of Allaudin in the relative/friend column and only the name of the police officer has been mentioned in that column. Moreover the other injured person namely Rahul has not been examined by the prosecution and conviction cannot be based on the sole testimony of Allaudin which suffers from various infirmities.

11. Considering the evidence as noted above findings of the learned Additional Sessions Judge in the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

12. Leave to appeal petition is accordingly dismissed.

13. Trial Court Record be sent back.

(MUKTA GUPTA)
JUDGE

JANUARY 08, 2019