

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

+ **CRL.A. 56/2018**

Date of Decision: 02.11.2022

IN THE MATTER OF:

STATE (NCT OF DELHI)

..... Appellant

Through: Mr Utkarsh, APP for State.

Versus

KARAN SINGH
S/O PORKHI RAM
R/O VILLAGE DRABU
PO SUNDALA
TEHSIL SALONI
DISTT. CHAMBA
HIMACHAL PRADESH

..... Respondent

Through: Mr. Kashmir Singh Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This appeal is directed against the impugned judgment dated 09.12.2015, whereby the learned Metropolitan Magistrate-02, North District, Delhi has acquitted the respondent/accused from the charges of offences punishable under Sections 279/338/304A of the Indian Penal Code, 1860 (IPC).
2. Learned APP for the State submits that the impugned judgment is erroneous and the findings are perverse. He contends that the learned

trial court has committed a grave error while acquitting the respondent. According to him, the evidence available on record has been ignored and the facts and the legal position have not been appreciated in the right perspective. He therefore, submits that in view of the fact that the accused admits that he was driving the vehicle at the given place and time and was apprehended at the spot, there was no reason for the trial court not to believe that the accused has committed the crime in question. He further states that the offending vehicle was seized from the possession of the respondent which further reinforces complicity of the accused.

3. Learned counsel appearing on behalf of the respondent opposed the prayer and according to him the impugned judgement of acquittal is strictly in accordance with law. While taking this court through the evidence of various prosecution witnesses, he emphasized that the prosecution has not been able to prove its case beyond reasonable doubt and therefore, no interference is called for.

4. I have heard the learned counsel appearing for the parties and perused the record.

5. The case of the prosecution is that on 26.04.2001 at about 11:20 AM at *Badli Chowk* near *Senior Secondary School*, Delhi, the accused was driving *Tata Tempo* DL 1L C9324, and caused the death of one *Ms. Maya Devi* not amounting to culpable homicide and has caused grievous injuries to one *Shyamu*. According to the prosecution, the respondent was driving the vehicle rashly and negligently endangering human life and personal safety of others and therefore, he committed offence punishable under Sections 279/338/304A of the IPC.

6. The police after registration of the FIR No.275/2001 carried out the investigation and filed the chargesheet against the respondent. After framing of the charges the respondent/accused pleaded not guilty and claimed trial.

7. The prosecution in order to prove its case, examined four witnesses and various documents were also exhibited. After completion of the prosecution evidence, the entire incriminating material was put to the respondent and he was examined under Section 313 of the Cr.P.C. He pleaded his innocence but did not lead any evidence.

8. Paragraph No.16 of the impugned judgment shows that PW-4, namely, *Shyamu* was the injured witness. In his cross-examination, the said witness stated that he did not give any statement to the police and his signatures were obtained on a blank paper. According to him, he saw the accused for the first time in court. He denied that he had witnessed the incident. He was re-examined by the learned APP for the State. He stood by his version given in the cross-examination to the defence counsel.

9. Another important witness namely, Mahesh Kumar (PW-1), who happens to be the son of the deceased mother, was also examined by the prosecution to prove its case. He stated that the deceased mother used to pick PW-1's son during 11 AM - 12 Noon and on the date of the incident, he was 20-25 paces behind his mother. According to him, when the incident took place, he heard shouting from the public regarding the incident and when he rushed to the spot he saw that his mother was dead and he became unconscious. When he gained consciousness, some statement was made by him but he could not recollect what he had stated in his statement at that time. He had stated that "he saw the accused first

time in court”. In view of the aforesaid, testimony of two material witnesses, the trial court in paragraph No.19 of the impugned judgment has recorded that the case of the prosecution was not proved beyond reasonable doubt. The identification of the accused as the driver of the offending vehicle was not done in accordance with law and in absence thereto, the prosecution has been found to have failed in establishing the case beyond reasonable doubt. The paragraph No.19 of the order passed by the learned Metropolitan Magistrate is being reproduced as under:

“The two public witnesses i.e PW Mahesh and PW Shyamu have created a doubt regarding the identity of the accused by not identifying him as driver of the offending vehicle and it is the cardinal principal of law that the prosecution has to prove its case beyond reasonable doubt and if there is any doubt then benefit of doubt must be given to the accused”.

10. It is settled principle of law that presumption of innocence is further strengthened after passing of the order of acquittal and therefore, there is double presumption in favour of the accused. Under the facts of the case and on the basis of the material available in the present case, no conclusion can be drawn that the respondent was the driver of the offending vehicle at the time of the incident. Presumption cannot be drawn on the basis of the fact that he was apprehended on the spot or the vehicle in question was seized from his possession. The prosecution will have to prove its case beyond reasonable doubt on the basis of substantial material and admissible evidence.

11. The Hon’ble Supreme Court in the matter of ***State Of Maharashtra v. Sujay Mangesh Poyarelar***¹ while considering its earlier pronouncements including the decision in the case of ***Chandrappa &***

¹ 2008 9 SCC 475

*Ors. v. State of Karnataka*² has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is founded and to reach its own conclusion on such evidence. Both question of fact and question of law are open to determination by the appellate court. It has also been held that nonetheless it is not correct to say that unless the appellate court in an appeal against acquittal under challenge is convinced that the finding of acquittal recorded by the trial court is ‘perverse’, it cannot interfere. If the appellate court on re-appreciation of evidence and keeping in view the well established principles, comes to a contrary conclusion and records conviction, such conviction cannot be said to be contrary to law.

12. The Supreme Court in the matter of *Hakeem Khan & Ors v. State of M.P.*³ has again considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the said decision it has been held that if the ‘possible view’ of the trial court is not agreeable for the High Court, even then such ‘possible view’ recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not. The verdict of the trial court cannot be interdicted and the view of the High Court cannot supplant over the view of the trial court.

13. The trial court has found that the prosecution has failed to establish its case beyond reasonable doubt. Moving carefully examined the evidence available on record this court does not find any ground to

² (2007) 4 SCC 415

³ (2017) 5 SCC 715

interfere into the reasoning given by the trial court. Accordingly, the instant appeal stands dismissed.

14. Bail bond stands discharged.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 02, 2022/MJ

