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

Date of decision: 13.02.2025

+ **CRL.L.P. 335/2022**

THE STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Sunil Kumar Gautam, APP

versus

JITENDER SAHNEY

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking grant of leave to appeal challenging the judgment dated 15.12.2021 passed by the learned Additional Sessions Judge: (Central) Tis Hazari Court, Delhi in C.A. No. 279/2019 arising out of F.I.R. No. 46/2010 registered at P.S. Gulabi Bagh under Sections 279, 304A, 465 and 471 of the Indian Penal Code, 1860 ("IPC").
2. *Vide* the impugned judgement, the respondent was acquitted of all the charges.
3. The brief facts of the case are that on 24.06.2010 at about 2:15 am at Gulabi Bagh red light near metro pillar No.1290, the respondent was driving truck bearing No.HR 46A 0733 in a rash and negligent manner and had hit one motorcycle which resulted in death of Vakil Ahmed and Alim, who were riding the said motorcycle.
4. During the course of investigation, the respondent also produced one driving license which was found fake and forged which was used by him



knowingly and dishonestly tried to use it as a genuine document.

5. On 13.07.2011, charges under Sections 279, 304A, 465 and 471 of IPC were framed against the respondent, to which he pleaded not guilty and claimed trial.
6. The prosecution examined a total of 22 witnesses and the statement of the accused/respondent under Section 313 of CrPC was recorded and he did not lead any defence evidence.
7. The learned MM after considering the entire evidence *vide* the judgement dated 30.11.2018 convicted the respondent under Sections 279, 304A and 471 of IPC and *vide* the order of sentence dated 17.12.2018 was sentenced with simple imprisonment for a period of 2 years.
8. Thereafter, the respondent filed an appeal and the learned Sessions Court *vide* the impugned judgement dated 15.12.2021 acquitted the respondent of all charges.
9. Aggrieved by the impugned judgement, the State filed the present appeal.
10. The learned Sessions Court in its impugned judgement has analysed the entire evidence in paragraphs 15 to 20 which reads as under:

“15. It is not a sine qua non for an eye witness account in support of a prosecution for commission of offence under Section 279/304A IPC to incorporate necessarily in his deposition the term "rash and negligent manner". Even where the witness does not specifically use the legal terminology but in so many words describes the manner in which the offending vehicle was being driven and the act(s) /omission(s) that led to



the motor vehicular accident, from the totality of the attending circumstances, as emerging from the ocular account, it is very much capable of being ascertained as to whether the offending vehicle was being driven rashly or negligently. The eye witness account in the present case however, is found deficient on this vital aspect. The eye witness has not affirmed that the truck was being driven at a high speed when the accident took place or that the accident took place because the truck was being driven in high speed. As per the ocular account the truck suddenly hit the motorcycle, the motorcycle fell on the ground with its occupants and in such manner sustained the fatal head injuries. There is no dragging of the accidental vehicle, the accidental vehicle is not thrown to a distance following the impact which in all probability was likely to have occurred if the offending vehicle i.e. the truck was being driven at a high speed. It is in the statement of PW5 that the accident took place at the Gulabi bagh red light, however, the witness has not stated that at the traffic light intersection the signal was green for the motorcyclist and red for the vehicle approaching from the direction of the offending vehicle. It is also not borne out from the record whether the red lights were functioning at the time of the incident nevertheless it is not the case of the prosecution against the accused that the accused had jumped the red light thereby causing the accident by his such rash and negligent act. 16. PW5 in his deposition in Court stated that the left tyre of the truck ran over the stomach of Aleem. This facts surfaces in his



statement for the first time in the course of his deposition in Court There is no mention of any such fact that the offending truck ran over any one of the victims in the first statement of PW5 Islamuddin recorded by the IO as Ex PW5/B upon which the FIR has come to be registered. This improvement made by PW5 in the course of his deposition in Court is also not corroborated by the medical evidence as no such corresponding injury is recorded in postmortem report Ex PW10/A of victim Aleem. All the injuries abrasions, scratches, dislocation, lacerations, contusions are either on the head or the face or the limbs. There is no crush injury of the stomach corresponding to being run over by a truck observed in the postmortem examination of victim Aleem.

17. PW5 in the course of his deposition in Court stated that the offending vehicle was chased by two police officials on a motorcycle who apprehended the accused alongwith the truck at some distance. PW8 HC Mahavir who removed injured Aleem to the hospital in the PCR van at 2.25 am is the first police official to have arrived at the spot following the accident that took place at around 2.15 am has not affirmed to the presence of the offending vehicle .. PW8 HC Mahavir is certainly not the police officer to have chased and intercepted the accidental vehicle. None of the several police officials examined by the prosecution in the present case from PW12 HC Laxman, PW17 Ct. Jai Kanwar, PW18 ASI Pratap Singh, have testified to have chased the offending vehicle and to have



intercepted the vehicle and apprehended the accused in such manner.

In the first statement i.e. Ex PW5/A, the eye witness had stated that the public persons had intercepted the truck, which circumstances is also borne from the contents of the rukka drawn by the PW18. From a perusal of the site plan it emerges that the truck was stopped at a very short distance from the place where the accidental vehicle was lying. From such circumstances emerging from the own document of the prosecution it can safely be inferred that the truck could not have been over speeding if the truck is intercepted at a short distance away from the site of accident by the public persons not necessarily on any vehicle.

18. Inspection report of Truck Dumper No. HR46A0733 records fresh damages on front left side body/fonder corner scratched and dented. On mechanical inspection, engine, brake, steering, head light and horn were found to be in properly working condition. Vehicle was fit for road test. As per inspection report of motorcycle Hero Honda Glamor No. DL 4SBG1704, fresh damages were observed on rear side (plastic) tail body broken, tarail light damaged, right side body parts scratched, silencer front side bend pipe damaged, right side cover dislocated, battery bracket damaged and battery dislocated and battery wiring system damaged, handle bend from right side, headlight damaged, front wheel mudguard and rim damaged and wheel tyre tube cut found damaged, foot



break liver system found damaged, both side mirror glass broken. On examination of mechanical system of the motorcycle, engine not started due to battery dislocation and wiring system found damaged, handle was found damaged and bend, brake pedal system damaged, head light found damaged and horn system found damaged. The motorcycle had suffered extensive damage. The motorcycle fell on the ground from the impact upon being hit from behind by the offending truck. The eye witness PW5 in the course of his deposition in Court stated that the motorcycle parts were scattered on the road. The photographs of the place of accident, however, do not corroborate the allegation that following the accident the parts of the accidental vehicle were scattered on the road. The photographs depict the accidental vehicle next to the victim, there are no parts of the accidental motorcycle photographed lying scattered on the road.

19. The eye witness account does not substantiate that the victims on the accidental vehicles were wearing helmets at the time of the accident. From such narration that Vakeel Ahmed died at the spot as his head had been on the road and his head had been damaged severely, it would be apparent that the driver of the motorcycle was without helmet. PW5 goes on to depose that helmet parts were lying scattered at the spot. The photographs of the place of accident, however, do not support the assertion made by the eye witness. The IO has not seized any pieces of broke helmet from the spot.



20. *The eye witness account therefore, does not sufficiently establish in favour of the prosecution that the offending truck was being driven by accused Jitender Sahney in a rash and negligent manner. The narration that truck bearing no. HR-46A-0733 hit the motorcycle, that the deceased were riding from its left side upon which both of them fell down on the road does not demonstrate that the truck was being given by accused Jitender Sahney in any manner which may be determined as rash or negligent. To bring home the guilt of the accused, to fasten-the criminal liability upon the accused, the prosecution is bound to establish beyond the pale of reasonable doubt that the accident occurred due to rash and negligent driving at the part of the accused. The eye witness account and the attending circumstances emerging from the assessment of the entire ocular testimony and documentary evidence on record is not sufficient to arrive at the inescapable conclusion that the accident occurred due to any rash or negligent act on the part of the accused and that accused Jitender Sahney on 24.06.2010 at about 2.15 am at Gulabi Bagh Red Light near Metro Pillar No. 12930 was driving vehicle ie. Truck being no. HR46A0733 in a rash and negligent manner. As a consequence of the discussion above, the appeal succeeds, the judgment of conviction dated 30.11.2018 and consequently the order on sentence dated 17.12.2018, both are set aside and-for the reasons aforestated as the prosecution has failed to prove beyond reasonable doubt at accused Jitender Sahney on*



24.06.2010 at about 2.15 am at Gulabi Bagh Red Light near Metro Pillar No. 12930 was driving vehicle ie. Truck bearing no.HR46A0733 in a rash and negligent manner Accused Jitender Sahney is acquitted of the charges under Section 279/304A and 479 IPC.”

11. Learned APP appearing on behalf of the petitioner challenges the impugned judgement and submits that in the testimony of PW-5, who is the sole eye witness in the present case, has deposed that on 24.06.2010, he was coming from Punjabi Bagh to his residence in his TSR alone. Vakeel Ahmed @ Wasim was driving the motorcycle bearing No.DL-4S-89-1704 and Aleem was sitting on it as a pillion rider and they were going in front of his TSR just about 7-8 feet. When they reached at about 02:15 am at Gulabi Bagh red light near metro pillar, suddenly the offending vehicle hit the motorcycle and both of them fell down from the motorcycle and due to severe damage on the body, they died at the spot.
12. Learned counsel for the respondent supports the impugned judgement and submits that the testimony of PW-5, who is the sole eye witness in the present case, has several inconsistencies and thus, cannot be relied upon to prove the alleged offences against the accused beyond reasonable doubt.
13. I have heard learned counsel for both the parties and perused the material on record.
14. The learned Sessions Court in the impugned judgement noted the following inconsistencies in the testimony of PW-5:
 - A. PW-5 did not mention that the offending vehicle i.e. truck was driven



at high speed in his initial statement but later claimed it was driven rashly during the court deposition.

- B. PW-5 stated that the left tire of the truck ran over Aleem's stomach, a detail not mentioned in his first statement to the police. The postmortem report did not record any stomach injuries consistent with being run over by the truck.
 - C. PW-5 claimed that police officials chased and apprehended the respondent but the first police officer (PW-8) to arrive at the scene did not confirm this. Other police officials also did not testify to chasing the truck.
 - D. In his first statement, PW-5 indicated that the truck was intercepted by public persons, contradicting his later claim that police officials chased the vehicle.
 - E. PW-5 claimed that the parts of the motorcycle were scattered after the impact upon being hit from behind by the offending vehicle, whereas photographs of the accident scene did not show that motorcycle parts were scattered on the road.
 - F. PW-5 claimed that helmet parts were scattered at the scene, but the photographs did not support this assertion and the IO did not seize any broken helmet pieces.
 - G. Further, the inspection reports indicated that both the truck and motorcycle were in working condition, contradicting any claims of mechanical failure contributing to the accident.
15. On perusal, I am of the view that the prosecution has not been able to make out the case that the offending vehicle was being driven in a rash and negligent manner.



16. The learned Sessions Court was also of the view that the deceased victims were not wearing helmets.
17. The prosecution has also not been able to establish that the respondent along with the offending vehicle had run away and the police personnel chased the offending vehicle to apprehend the respondent.
18. After a detailed analysis of the evidence and documents on record, the learned Sessions Court held that the prosecution has not been able to establish that the offending vehicle was being driven in a rash and negligent manner and or that the accident occurred due to the rash and negligent act of the respondent.
19. Having regard to these overall factors, I am of the view that it has not been proved beyond reasonable doubt by the prosecution that the respondent has committed the alleged offence.
20. For the said reasons, I am of the view that the impugned judgment dated 15.12.2021 passed by the learned Additional Sessions Judge: (Central) Tis Hazari Court, Delhi in C.A. No. 279/2019 under Sections 279, 304A, 465 and 471 of IPC, is well reasoned and does not require any interference.
21. The leave to appeal is dismissed.
22. Consequently, the appeal has become infructuous and is disposed of.

JASMEET SINGH, J

FEBRUARY 13, 2025/sp

(Corrected and released on 20.02.2025)

Click here to check corrigendum, if any