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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 11.02.2025

+ **CRL.L.P. 591/2022, CRL.M.A. 26804/2022**

STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP with Insp.
Mantosh Kumar, PS Shalimar Bagh

versus

BHUPINDER SINGH

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

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

1. This is a petition seeking grant of leave to appeal to challenge the impugned judgment dated 23.11.2019 passed by learned MM-04, North-West District, Rohini court arising out of FIR No. 747/2000 registered as PS Shalimar Bagh wherein the learned Trial Court acquitted the respondent for the offences under section 279/338 IPC.
2. Brief facts are that on 23.10.2000 at about 10:20 PM at outer ring road near petrol pump, Haiderpur, Badli Red Light, Delhi, a Maruti car bearing No. DL-2CG-1353 was being driven in a rash and negligent manner which resulted in an accident. The said accident caused grievous hurt to Mohan Singh and Amar Singh. Hence the FIR.
3. After completion of investigation, chargesheet was filed against the respondent and charges were framed under section 279/338 of IPC.
4. Prosecution examined total 8 witnesses and the respondent examined only 1 defence evidence and thereafter, the learned Trial Court after analysing the evidences placed on record, acquitted the respondent for



the said offences.

5. The operative portion of the impugned judgment reads as under:

“23.It is also duly noted that as per seizure memo of the car bearing number DL-1CG-1353 i.e. Ex.PW-4/B, the alleged offending car was seized on 24.10.2020 but the mechanical inspection was conducted only after 5 days i.e. on 29.10.2000 but no explanation has been furnished by the IO for delay in such mechanical inspection which raises a possibility that the damages on the vehicle may have been inflicted later on and thus the possibility of fabrication of evidence in the form of dent on the front right side bumper and broken wind shield cannot be excluded the benefit of which accrues to the accused.

24. Hence, in view of the reasons abovemention, it is held that that the prosecution has failed to prove the identity of vehicle bearing no. DL-1CG-1353 as the offending vehicle.

25. Be that as it may, it has also pertinent to note here that identification of the accused as the driver of the abovementioned car has also not been satisfactorily proved by the prosecution since as per testimony of PW7 SI Inder Lal, the accused was identified by both the injured at the hospital on 29.10.2000 but PW8 Amar Singh has not corroborated the same during his evidence since his testimony is conspicuously silent as to him having identified the accused at any point of time prior to the identification of



the accused in the Court. It is duly noted that initially PWB Amar Singh had himself testified that the driver had fled from the spot leaving his car behind and it is only subsequently in his cross-examination by Ld. APP that he testified that after the accident the driver had stopped the car and came near to them but he fled after seeing their injuries but at that time he had seen the face of the driver properly. Hence, the testimony of the injured as to having seen the accused as the driver of the said car before he fled appears to be an improvement and does not inspire confidence of the Court. That being so, it was for the prosecution to lead further evidence to establish the factum of the accused driving the alleged offending car at the time of the accident which the prosecution has failed to do and the benefit of the same also accrues to the accused.

26.It is also. duly noted that it is not doubt true that the act of hitting a vehicle from behind constitutes the rash and negligent act in itself, but it cannot be a lost sight of that mere uncorroborated oral testimony of PW8 Amar Singh as to his scooter having been hit from behind by the alleged offending vehicle as not sufficient for the prosecution to ascribe rashness or negligence to the accused sufficient to discharge its onus since the identify of the offending vehicle has remains unproved as has already been discussed earlier.

27.Similarly, it is also noted that though the factum of



grievous injuries having been sustained by PW8 Amar Singh as well as by one Mohan has been sufficiently proved from MLC Ex.PW-3/B and Ex.PW-3/ A respectively duly corroborated with X-ray report Ex.PW-5/A (colly). However, the mere factum of any injury having been sustained by the injured does not in itself prove that these injuries were sustained as a consequence of an act of rashness or negligence of the accused.”

6. Mr. Singh, learned APP for the State submits that PW-8 has categorically stated that he saw the respondent causing the accident by driving his vehicle in a rash and negligent manner. Further, report of mechanical inspection i.e. PW-6/A reflects damage on the front bumper as well as front windshield which corroborates with the oral testimony of Amar Singh i.e. PW-8.
7. It is true that the evidence of injured witness cannot be merely discarded, the same has greater evidentiary value unless it suffers from major discrepancies which goes to the root of the matter. The Hon’ble Supreme Court in ***Balu SudamKhalde v. State of Maharashtra, (2023) 13 SCC 365*** has observed as under:-

“26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.



- 26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
- 26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
- 26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
- 26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*
- 26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”*
- 8.** Before coming to the testimony of the injured witness, it is relevant to consider that after the alleged incident, the offending car was seized on 24.10.2000 by the police officials. Thereafter, the mechanical inspection was carried out of the said car on 29.10.2000. It is clear that after 5 days, the said inspection was done. The burden to prove that the damages found on the said car as mentioned in the inspection report were in consequence of the alleged offence was on the prosecution.



There is no explanation from the side of prosecution to this effect. It was incumbent on the prosecution to explain the said delay. Hence the said delay raises a doubt about the evidence.

9. Further, in the present case, only one injured witness i.e. PW8 - Amar Singh was examined. It is necessary to refer to the testimony of the said witness which reads as under:-

“On 23.10.2000, at about 10.00 pm, I alongwith my father in law weregoing from Ashok Vihar to Rohini on scooter bearing no. 7164 and when we reached at ring road near Bati Wala chowk, suddenly one car bearing no. 1353 came from my back side and hit against my scooter from behind and as a result, I alongwith my father in law fell down on the road, the driver of the said car ran away from the spot leaving behind his car at the spot itself. After sometime, the police officials who were already present at a little distance on the spot, reached at the spot and thereafter, I became unconscious. In the hospital, police officials recorded my statement. At the spot, on the date of incident, when I was lying on the road, I had seen the face of the driver of the abovesaid car.

The accused is present in the court today and correctly identified by the witness.

XXXXX by Ld. APP for the State.

.....It is correct that after the accident, the driver of the car stopped the same and he came near us and after seeing



our injuries, he ran away from there and at that time, I saw the fact of the driver properly.....”

Emphasis added

10. On perusal, injured witness has stated that the driver of the offending vehicle had fled from the spot leaving his car behind after the accident and subsequently, the said witness stated that after the accident, the driver stopped the car, came near to the injured and fled after seeing his injuries. The same amounts to an improvement in the testimony by the witness and does not inspire the confidence.
11. Further, the said witness has nowhere stated about the identity of the respondent at any point of time prior to the identification of the respondent in Court. On the other hand, PW7 – IO SI Inder Lal in his testimony has stated that both the injured witnesses have identified the respondent on 29.10.2000. The said fact i.e. identification of the respondent has also not been satisfactorily proved by the prosecution.
12. To my mind, learned Trial Court has correctly appreciated that no satisfactory reason has been given as to why the mechanical inspection was conducted after 5 days of the seizure of the vehicle and the identity of the respondent has not been satisfactorily proved. PW-8 has also stated that the offending vehicle was being driven in a rash and negligent manner will not lead to a finding that the vehicle was being so driven in the absence of uncorroborated evidence.
13. For the said reasons, I am of the view that the evidence as well as the facts have been correctly appreciated by the learned Trial Court and needs no interference.



14. The leave to appeal is accordingly, dismissed.
15. Consequently, the appeal has become infructuous and is disposed of.

JASMEET SINGH, J

FEBRUARY 11, 2025/DM