



2025:DHC:10211



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

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Date of Decision: 13.11.2025

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CRL.A. 1202/2024

STATE

.....Appellant

Through: Mr. Pradeep Gahalot, APP for
State with SI Vikram, PS Timarpur

versus

DAYA SHANKAR

.....Respondent

Through: Mr. R.S. Maurya, Mr. Raj Kumar,
Mr. Harish, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal filed under Section 378(1)(b) Cr.P.C, the appellant/State seeks to set aside the judgement dated 30.08.2019 passed by MM-02(Central), Tis Hazari Courts, Delhi, in proceedings arising out of FIR No. 149/2015 registered at P.S. Timar Pur, Delhi, whereby the Trial Court acquitted the Respondent under Sections 279/338/304A IPC.

2. Briefly put, the case of the prosecution is that on 05.03.2015, at about 05:45 PM, under the *Wazirabad* flyover, the respondent was allegedly driving a D-Van bearing no. DL-1LQ-7989 in a rash and negligent manner. While doing so, he hit two pedestrians, namely *Shweta* and *Sheela*, who were in the process of crossing the road. As a result of the impact, *Shweta* sustained grievous injuries, while *Sheela* received injuries which



subsequently proved fatal, as she succumbed to them the following day. It is further alleged that the respondent was apprehended at the spot and handed over to the police. On his arrest, the present FIR was registered.

3. The prosecution examined 11 witnesses in support of its case. The material witnesses included an eyewitness, *Deepak Kumar*, son of deceased *Sheela*, examined as PW-1. The registered owner of the vehicle, *Vasudev Thakur*, was examined as PW-4. Dr. *Sati Rani Biswas*, who treated *Sheela*, examined as PW-5, Dr. *Rakshit Garg*, who treated *Shweta*, examined as PW-6. Retd. ASI *Gurudeep Singh*, the Mechanical Inspector, who conducted the mechanical inspection of the vehicle involved, was examined as PW-7. The remaining witnesses were formal in nature and deposed with respect to various aspects of the investigation.

The statement of the respondent was recorded under Section 313 Cr.P.C., wherein he denied all allegations and claimed false implication. He further stated that he did not even know how to drive a motor vehicle.

4. Learned APP for State submits that the learned Trial Court erred in acquitting the respondent by placing undue emphasis on minor contradictions in the testimonies of PW-1. He further submits that the Trial Court should have appreciated the testimony in its entirety, especially because PW-1 consistently identified the respondent as the driver and narrated the occurrence in material particulars as the respondent to be driving negligently and rashly which caused the injuries and death in question.

5. *Per contra*, learned counsel for the respondent supports the impugned judgment and submits that the contradictions highlighted by the Trial Court are not minor or peripheral, but material, going to the very root and genesis



of the incident. It is argued that PW-1's testimony suffers from serious inconsistencies regarding the time of accident, his own presence at the spot, the persons accompanying him, and the sequence of events leading up to the alleged apprehension of the accused. These contradictions, when read cumulatively, cast substantial doubt on the reliability and presence of PW-1 as an eyewitness.

6. I have considered the submissions advanced by the learned APP for the State, as well as the learned counsel appearing for the respondent and examined the evidence on record.

7. The son of the deceased, *Deepak Kumar* was examined as PW-1, he deposed that on 05.03.2015 at about 4:45 PM, he along with his mother and niece were going towards *Peer Baba*. His mother and niece were crossing the road from under the flyover and were about ten steps ahead of him. In the meantime, one vehicle came from the side of *Majnu Ka Tilla* at a fast speed and hit his mother and niece. He stated that he managed to get the vehicle stopped and apprehended the driver. PW-1 identified the respondent in Court and deposed that the respondent was the one driving the said vehicle and had disclosed his name as *Shankar*. He further deposed that the police reached the spot within ten minutes, and in the meantime, his relatives also arrived and took his mother and niece to the hospital in a TSR. PW-1 handed over respondent to the police, and his statement was recorded at the spot. He also stated that the site plan was prepared in his presence, and he identified the offending vehicle from the photographs.

In his cross-examination, PW-1 stated that he always carries his mobile phone with him but admitted that he did not make the PCR call from his number. He denied the suggestion that he was not present at the scene



and had received information about the accident later. He stated that he went to the hospital from the spot, and that his sister had taken his mother and niece to the hospital. He admitted that he was present when his mother was admitted and that his statement was recorded at about 5:00 PM. He denied the suggestion that he identified the respondent at the police station after seeing his photograph. He further admitted that the site plan was not prepared in his presence.

8. The case of the prosecution rests entirely on the testimony of PW-1. However, his testimony contains materially contradictory statements which go to the root of the prosecution's case. The trial court rightly disbelieved his testimony, as PW-1 falsely claimed himself as the sole eyewitness and appears to be a planted witness, given the inconsistencies in his statements. Although PW-1 stated the time of the accident as 5:45 PM in the *rukka* as well as in the FIR, during both his examination-in-chief and cross-examination he deposed that the accident occurred at 4:45 PM. He further stated that his statement was recorded at 5:00 PM, whereas DD No. 61B and 62B were recorded by the police at 5:50 PM and 5:55 PM respectively.

Further, PW-1 also claimed in his examination-in-chief that only he was accompanying his mother and niece at the time of the incident, but in cross-examination he stated that his elder sister and grandmother were also present with them. Additionally, while PW-1 stated in his chief examination that the site plan was prepared at his instance, he contradicted himself in cross-examination by stating that the site plan was not prepared in his presence. These contradictions collectively cast serious doubt on the very presence of PW-1 at the spot. Moreover, if PW-1's version that the accident occurred at 4:45 PM is accepted, the injured ought to have been admitted to



the hospital much earlier than 6:15 PM, the time of admission recorded in the MLCs.

9. Further, the technical inspection report also favours the respondent. PW-7, the Mechanical Inspector, categorically stated in his testimony that he was not sure whether the accident had been caused by the said vehicle.

10. These inconsistencies, coupled with the technical inspection report, undermine the credibility of the prosecution version and create serious doubt as to whether the respondent's vehicle was involved in the accident at all. These contradictions go to the root of the prosecution case and render the testimony of PW-1 unreliable, indicating that he is a planted witness.

11. At this stage, it is also apposite to note that an order of acquittal carries with it a double presumption of innocence and the benefit of doubt extended to the respondent in the present case is not liable to be interfered with unless the Trial Court's view is perverse. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage, after his acquittal by the Trial Court, is settled. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as (2022) 8 SCC 536, wherein it was observed, as hereunder:

"8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)

"25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the



accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.””

12. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as (2020) 10 SCC 166, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

“ ...

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.’

...

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.



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(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

13. Considering all the aforesaid, this Court is of the considered view that the contentions put forth by the APP for the State are not convincing enough to warrant setting aside of the impugned judgment, and the same is accordingly upheld.

14. The present appeal is dismissed.

15. A copy of this judgement be communicated to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 13, 2025

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