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

% ***Date of decision: 22nd April, 2025***

+ **CRL.L.P. 261/2017**

STATE

.....Petitioner

Through: Mr. Yudhvair Singh Chauhan, APP for
the State with SI Bharti, PS JP Kalan
and ASI Devender.

versus

YASHPAL @ DHOLU

S/o Sh. Jagram

.....Respondent

Through: Mr. Harsh Prabhakar, Advocate
(DHCLSC) with Mr. Dhruv
Choudhary, Mr. Shutham Sourav,
Advocates with Respondent.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.A.7246/2017 (Condonation of delay)

1. An Application under Section 5 of the Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*) has been filed on behalf of the Petitioner/State for condonation of delay of 92 days in filing the accompanying Leave to Appeal.
2. For the reasons stated in the Application and in the interest of justice, the delay of 92 days in filing the accompanying Leave to Appeal, is condoned and the Application is allowed.
3. The Application is disposed of accordingly.

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4. Criminal Leave Petition under Section 378(3) of Cr.PC, has been filed on behalf of the Petitioner/State, against the impugned Order dated 24.10.2016, passed by the learned Metropolitan Magistrate-06, Dwarka Courts, Delhi in FIR No. 22/2013 under Section 279/338 of the Indian Penal Code, 1860, registered at Police Station J.P Kalan.

5. Learned APP for the State, submits that the learned Trial Court itself has concluded not only that the accident took place, but also identified the Respondent as the person driving the vehicle, despite which the learned Trial Court has acquitted the Respondent.

6. Considering the reasons given above, the Leave to Appeal is allowed.

CRL.A...../2025 (to be numbered)

7. Appeal under Section 378 of CrPC has been filed on behalf of the Petitioner/State against the impugned Judgment and Order dated 24.10.2016, whereby the Respondent has been acquitted by the Ld. MM for the offences punishable under Section 279/338 of the *Indian Penal Code, 1860* in FIR No. 22/2013 Police Station JP Kalan.

8. Learned APP for the State, submits that the impugned Order dated 24.10.2016 be set-aside.

9. The **grounds** of challenge of the impugned Judgment dated 24.10.2016 acquitting the Respondent under Section 279/378 IPC, is are essentially that the testimony of the PW-4, Mr. Yogesh, the injured, has been completely ignored. It has not been appreciated that he identified the Respondent in the Police Station on 26.03.2013 and in the Court in his testimony on 28.09.2015, as it was he who took him to the hospital and he



had ample opportunity to identify him. Moreover, he also deposed that the vehicle was being driven in a rash and negligent manner.

10. No comprehensive cross-examination has been done on these aspects and his testimony has remained practically unrebutted. The manner of accident is also corroborated by the Mechanical Inspection Report, Ex.PW-3/A. It is, therefore, submitted that the impugned Judgment is liable to be set-aside.

11. ***Learned counsel for the Respondent (accused)*** has submitted that the learned Metropolitan Magistrate has rightly appreciated that the name and address of the Respondent/Accused and the registration number of the offending vehicle was given by him on 10.03.2013, while he could not recall these details on the earlier date i.e. 05.03.2013. Furthermore, he had deposed that he was taken to the hospital by the Accused, but the MLC of the injured was not prepared on that day. In ordinary course, if any person suffers injury in a road traffic accident, he would be taken to Emergency/Casualty section of the hospital. Therefore, noting these discrepancies, the learned Metropolitan Magistrate has rightly acquitted the Respondent.

12. **Submissions heard and the record perused.**

13. The case of the prosecution is that on 02.03.2016 at about 09:35 am, the Respondent/Accused while driving the vehicle (Gramin Seva) bearing registration No. DL 2W 4284 in a rash and negligent manner, hit the motorcycle bearing registration No. DL 9SW 4602, being driven by the injured, Mr. Yogesh and thereby causing grievous injuries to him.

14. Notice under Section 279/338 IPC was framed against the Respondent on 20.02.2014, to which he pleaded not guilty.



15. The Prosecution in support of his case, has examined six witnesses wherein the injured, Mr. Yogesh Yadav was examined as PW-4. Mr. Rambir, the owner of the offending vehicle, was examined as PW-1.

16. The statement under Section 313 CrPC of the Accused/Respondent was recorded wherein he pleaded his innocence and did not adduce any evidence.

17. The learned Trial Court in his Judgment while noting that the Respondent/Accused had taken injured to the Hospital, who had identified him, had acquitted the Respondent by observing thus:

8. WHETHER THE INJURED / COMPLAINANT SUFFERED INJURIES IN THE ROAD TRAFFIC ACCIDENT AS ALLEGED?

The injured PW4 stated that he was hit by the offending vehicle due to which he received injuries. In this regard his MLC is Ex.PW5/A. As per the MLC Ex. PW5/A the complainant / patient was taken to Ortho Care Hospital on 05.03.2013. At that time, the patient (injured) is reported to be conscious, cooperative and oriented. In the alleged history it is mentioned that the injured sustained injuries due to road traffic accident, however, the name of the accused or the registration number of the offending vehicle is not mentioned. During his examination-in-chief, the complainant has nowhere explained why the name of the accused and the registration number of the offending vehicle was not mentioned in the MLC Ex. PW5/A. This omission gains significance, in view of the fact, that on 10.03.2013 at the time of recording of his statement (see the date of dispatch of the rukka) Ex. PW4/A the complainant is able to recall the name and address of the accused as well as the registration number of the offending vehicle.



8.1 If the complainant could recall the name and address of the accused and registration number of the offending vehicle on 10.03.2013, there was no reason why he could not recall these details on 05.03.2013. In this regard also there is no explanation in the examination-in-chief of the complainant PW4. The complainant PW4 stated that he was taken to the hospital by the accused but the MLC of the injured was not got prepared. In the ordinary course, any person suffering from road traffic accident trauma would be taken to the emergency/ casualty section of the hospital. In such circumstances, reasonably speaking, there is no chance / occasion for the accused to avoid the preparation of the MLC of the injured.”

18. The first aspect of challenge is the identity of the respondent. The entire case of the Prosecution rested on the Statement of the injured, PW-4, Mr. Yogesh Yadav. He deposed that on the fateful date i.e. 02.03.2013, at about 09:30 am, while he was driving his motorcycle to his Office, the offending vehicle came from the opposite side and immediately took a U-turn in front of the gate of Chaudhary Brahm Prakash Hospital and it collided with the motorcycle on the front side. He fell and suffered injuries. He was semi-conscious. The Accused/Respondent took him in his Gramin Seva to RTRM Hospital. The Respondent got him admitted in the Hospital but succeeded in not getting an MLC prepared. He left the hospital. Thereafter, he was taken to Ortho Care Hospital on 05.03.2013 where he remained admitted till 14.03.2014. The Police was then informed and his Statement Ex.4/A was recorded. The testimony of the injured was not challenged by the Respondent in cross-examination.



19. The injured, PW-4, Mr. Yogesh Yadav had identified the respondent as the accused since it is the respondent who took the injured to the Hospital and he had ample opportunity to identify him. This aspect of testimony has not been challenged by the respondent.

20. Furthermore, the testimony of the injured is fully supported by the Site Plan, Ex.PW-4/B, which shows that the accident occurred in front of the Hospital as has been deposed by the injured.

21. Pertinently, it is being deposed by the injured that he was taken to the RTRM Hospital by the Respondent, which again has not been disputed. However, the MLC was not prepared in RTRM Hospital on the date of accident. Subsequently, he was admitted to Ortho Care Hospital on 05.03.2013 wherein it has recorded that on 02.03.2013, he had gone to RTRM Hospital where he was diagnosed to have suffered post fracture and dislocation of his left hip and thereafter, came to the Ortho Care Hospital on 05.03.2013. His injuries were certified as grievous. The comprehensive evidence on record clearly proves that the accident occurred due to rash and negligent driving of the vehicle by the Respondent.

22. The testimony of the Complainant is corroborated by PW-1, Mr. Rambir, owner of the offending vehicle, who deposed that in response to Ex.PW-1/A Notice under Section 133 Motor Vehicle Act, 1988 (*hereinafter referred to as 'M.V. Act'*) he gave a Reply that on the day of accident, the vehicle was in possession of the Respondent, to whom he had given since 2011. He also produced the vehicle, which was seized by the Police *vide* Memo Ex.1/B. Subsequently, he got released the vehicle on superdari by furnishing the *superdarinama* Ex.PW-1/C.



23. Again, there is no challenge to the testimony of PW-1 and the Respondent nowhere denied that he was not driving the vehicle at the time of accident. Interestingly, while in his Statement under Section 313 of the M.V. Act, at one place he has denied that he was driving the vehicle at the time of accident, but in the subsequent question has admitted that he has been regularly driving the said vehicle.

24. The other material witness is *the Investigating Officer/PW-6, Head Constable, Devender*, who deposed that he along with the Constable, Paramvir, on getting the information from Ortho Care Hospital on 07.03.2013, went to the Hospital where he met the injured and collected his MLC. *The Respondent was arrested on the identification of the Complainant vide Arrest Memo Ex.PW-4/D. The witness also identified the Respondent in the Court.*

25. The learned Trial Court fell in error in ignoring these facts and giving the benefit to the Respondent. It is hereby, held that the Prosecution has successfully proved that the injured had suffered grievous injuries on account of rash and negligent driving of Gramin Seva by the Respondent.

26. The impugned Judgment dated 24.10.2016 is hereby set-aside and the Respondent is convicted under Section 279/338 IPC.

27. **Arguments heard on Order on Sentence.**

28. It is submitted on behalf of the Respondent, who is present in the Court, that he is 53 years old. He had regularly faced trial since 2013 and had regularly appeared before the learned Trial Court. The Respondent is no longer working since last 5-6 years. He has a wife to support. His two



daughters have been married. Considering his age and circumstances, leniency may be adopted while sentencing the Respondent.

29. Considering the totality of circumstances and that he has been facing trial since 2013 and has shown good conduct, he is granted benefit of probation for a period of one year and shall submit the personal bond in the sum of Rs.10,000/- with one surety of the like amount before the learned Trial Court.

30. The Appeal is allowed and disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 22, 2025/RS