

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

+ Crl. L.P. No. 213/2007

% Reserved on : 27.01.2009
Date of decision : 30.01.2009

STATE ...PETITIONER

Through: Mr. Navin Sharma, APP for state

Versus

AVADH KISHORE ...RESPONDENT

Through: Mr. Ved Prakash Trikha, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. | To be referred to Reporter or not? | No. |
| 3. | Whether the judgment should be reported in the Digest? | No. |

MOOL CHAND GARG, J.

1. This order shall dispose of an application filed by the State under Section 378 (1) Code of Criminal Procedure seeking leave to appeal against the judgment dated 04.06.2007 passed by Mr. Sandeep Yadav, M.M., New Delhi. In the application, it has been stated that the grounds of appeal set out in the accompanying appeal be taken as the grounds for grant of leave and that the acquittal of the respondent has resulted in grave mis-carriage of justice.

2. The application has been opposed by the learned counsel appearing for the respondent. Arguments were heard.

3. Briefly stating the facts of this are that an FIR No. 271/2000 was registered under Section 279/337/304A IPC at P.S. Desh Bandhu Gupta Road, New Delhi on the basis of a complaint made by one Mr. Shoukat Ali. In short the case of the prosecution is:

3. That on 22.10.2000 complainant Shoukat Ali along with Md. Khatib were going to New Rohtak Road on a bicycle. At about 10.30 AM when Shoukat Ali and Md Khatib reached in front of compact hotel, a three wheeler scooter no. DL1L 9701 struck the bicycle from behind. As a result of accident Shoukat Ali and Md. Khatib fell down and receive injuries. One person namely Mujahir took both the injured to Ram Manohar Lohia hospital. The respondent i.e., Avadh Kishore also accompanied the injured. On receiving the information about the accident Ct. Ramphal and ASI Ranbir Singh reached the spot where they met ASI Mansa Ram and Ct. Surrender. ASI Mansa Ram handed over the respondent i.e., Avadh Kishore ASI Ranbir Singh. Complainant Shoukat Ali was also at the spot. The bicycle and the three wheeler scooter bearing no. DL1L 9701 were handed over to ASI Ranbir Singh. Both the vehicle along with documents and the driving licence of the respondent i.e., Avadh Kishore were seized by the police. Subsequently, one of the injured namely Md. Khatib died in the hospital.

4. On the statement of Shoukat Ali, FIR was registered. Case was investigated. Site plan was prepared by the I.O. IO recorded statement of witnesses. Postmortem report of the deceased was also obtained by the IO from the hospital. After considering evidence, the Id court framed the notice under Section 279/337/304A IPC against the respondent i.e., Avadh Kishore. The respondent i.e., Avadh Kishore in response to the said notice took the defence that accident took place when he was driving the vehicle but accident happened on account of brake failure. In his statement under Section 313 the respondent i.e., Avadh Kishore again stated that there was no rashness and negligence on his part and because of the failure of breaks of his TSR he was unable to control the vehicle and subsequently, accident occurred.

4. The prosecution to prove its case examined six witnesses including PW1 Shoukat the complainant, but had not examined Avadh Kishore who had taken the injured to the hospital. They have also not examined the investigating officers, namely ASI Mansa Ram and ASI Ranbir Singh. They have also not examined the Doctor who prepared MLC of the deceased who has come

with the injuries to the hospital after he was brought to the hospital by Avadh Kishore.

5. The accused persons have not admitted the allegations of the prosecution and denied that he acted rashly and negligently and stated that the accident took place due to break failure.

6. The Trial Court dealt with the evidence which came on record, in the light of the provisions contained under Section 279/337/304A IPC. The common ingredient of these Sections is that accused must be guilty of causing injuries on the persons of the deceased/injured while driving his vehicle in a rash and negligent manner.

7. In so far as PW1 Shoukat Ali is concerned, he nowhere stated that at the time when they suffered injuries, the accused/respondent was driving the vehicle in a rash and negligent manner. He only deposed that the vehicle was being driven at a very fast speed which does not mean necessarily mean rash or negligent driving. Admittedly, Mujahir who took both the complainant and the deceased to the hospital from the spot was not produced as a prosecution witness by the investigating officers and, therefore, the Court below drew an adverse inference against the prosecution in this regard. None of the investigating officers, namely ASI Mansa Ram and ASI Ranbir Singh were examined in this case which might have explained as to why Mujahir was not examined. Even the doctor who prepared MLC of the injured was also not examined who could have proved

as to how the death of the deceased took place or as to how the injuries were inflicted upon the person of Shoukat. He was the only person who could have connected injuries with the vehicular accident. It was in these circumstances the Magistrate concerned came to a conclusion that in the present case the prosecution failed to prove its charges against the accused/respondent, namely either under Section 279/337/304A IPC and thus, acquitted the accused.

8. I have perused the trial Court record and find that the deposition of the witnesses as has been noticed are borne out from the records.

9. The grounds of appeal which has been pressed in service by the prosecution for seeking the leave to appeal are the following:

- i) Admittedly DL1L 9701 was involved in accident which was driven by the respondent and which hit the bicycle of the complainant and the deceased.
- ii) Deceased Md. Khatib succumbed the injuries on account of injuries sustained in this accident.
- iii) Shoukat Ali who appeared as PW1 stated on oath that his bicycle was hit by TSR driven by Shoukat Ali. He also stated that the TSR was driven at fast speed and that as a result of impact he and Md. Khatib fell down.
- iv) As per the post-mortem exhibit PW6/A the death of Md. Khatib was caused due to cardiopulmonary damage consequent upon blunt force impact on his head.
- v) Non-examination of Mr. Mujahir was on account of

leaving the address known to the prosecution.

- vi) Non-examination of I.O.s was not fatal to the case of the prosecution as there were no material discrepancies in the statement of the prosecution witnesses.
- vii) Similarly, non-examination of the Dr. was also not fatal who prepared MLC.
- viii) The identity of the accused was not in dispute.

10. I have given my thoughtful consideration to the submissions made by the prosecution. However, in the light of the evidence which has come on record I do not find any good reason to interfere into the discretion exercised by the trial Court as even if the evidence is re-appreciated some of the basic facts i.e., rash and negligent act on the part of the respondent cannot be presumed because the person who saw the accident is not before the Court.

11. PW1 Shoukat Ali is not expected to know as to what speed the TSR was being driven as it has hit their bicycle from the back. In any case in his statement Shoukat Ali even if he would have seen the TSR being driven has not stated that the TSR was being driven in rash & negligent act. The two investigating officers who could have been a link between the statement recorded of Shoukat Ali and could have also proved the statement recorded of Mujahir to explain the position with regard to causing of injuries by the respondents as to whether it was on account of driving the vehicle in a rash & negligent manner or was it a case of simple

accident, were again not examined. The case of the prosecution is clarified and is known through the testimony of the investigating officers who are the makers of the case and, therefore, their non-appearance is certainly fatal.

12. Thus, I do not find it a fit case where a leave to file the appeal may be granted to the State. Accordingly, I dismiss CrI.L.P.No.213/2007 and consequently the appeal is also dismissed. Trial Court record, if any, be sent back forthwith.

MOOL CHAND GARG, J.

JANUARY 30, 2009
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