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

Date of decision: 06.03.2025

+ **CRL.L.P. 110/2018 & CRL.M.A. 2771/2018**

STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP
SI Sunder Singh, PS Nangloi

versus

KAPTAN SINGH

.....Respondent

Through: Mr. Faraz Maqbool, Mr. Chandan
Kumar, Ms. Sana Juneja, Ms. Deepshikha, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

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

1. This is a petition seeking grant of leave to appeal against acquittal vide judgment and order dated 03.11.2017 passed by the learned MM-03, West District, Tis Hazari Courts, Delhi in FIR No. 353/2011 registered at P.S. Naglaoui under Sections 279/338 of IPC.
2. Mr. Singh, learned APP states that in the present case, the learned MM has failed to appreciate the testimony of the PW-5 who is an eye witness who stated that the truck was being driven in a heavy congested area at the speed of 60 km/h.
3. To my mind, the issue needs consideration.
4. For the said reasons, the application for leave to appeal is allowed and disposed of.



CRL.A. / 2025 (TO BE NUMBERED)

5. Let the appeal be registered.
6. Issue notice. Mr. Maqbool, learned counsel accepts notice on behalf of the respondent and requests that the appeal be taken up for hearing today.
7. With consent of parties, the appeal is taken up for hearing today.
8. In the present case, the facts are that on 08.12.2011 at about 2:19 p.m. near Soorajmal Stadium, the respondent (accused) was driving truck bearing registration No. HR 63A 1481 which collided with the *Rehdi* of the victim namely Ram Avtar Mishra.
9. The left foot of the victim came under the truck, as a result, the victim suffered a fracture.
10. It is alleged that the truck bearing registration No. HR 63A 1481 was being driven in a rash and negligent manner to endanger human life and personal safety.
11. After completion of investigation, the charge sheet was filed and the charges were framed under Section 279 and 338 of IPC on 19.02.2013.
12. The respondent pleaded not guilty and claimed trial.
13. In order to bring home the guilt, the prosecution examined 8 witnesses.
14. The testimonies of the PW-3 i.e. the victim and PW-5 i.e. eye witness are important and read as under:-

“PW - 3 Statement of Sh. Ram Avtar Mishra S/o Sh. Suraj Narain (recalled for cross-examination after 07.05.2015).

On SA

XXXXXX by Sh. Hitesh Kumar, Ld. LAC for the accused.



..... I had not shown the place of occurrence to the police and they had prepared site plan as per their own instance. I do not remember whether how many and which other police officials were also present at the spot of incident except PCR officials. I had not called the police. PCR came within 10-15 minutes of incident. I was on the extreme left side of my road at the time of incident. The one side of road after the divider was around 50 feet. It is wrong to suggest that I was positioned at the middle of the road proceeding towards the driver side. There was no proper service road adjacent to that road at that point of time as construction work was going on. It is wrong to suggest that there was proper service road adjacent to the road in question. My Rehdi was filled with rice and wheat at the time of incident and both were around 35 kg in weight and were in plastic kattas. Some portion of wheat and rice were scattered at the spot of incident. I do not remember whether rice and wheat were seized by IO or not. I was never taken to spot of incident by police official. It is wrong to suggest that I sustained injuries due to my fault as I was negligent in this case. It is wrong to suggest that the accused was driving his vehicle properly and in proper manner and incident happened only due to fact that I was going in middle of the road. It is correct that one red-light was near to the spot of incident. It is correct that there remains huge traffic and the vehicles are generally at low speed. No public person was requested by police in my presence. It is wrong to suggest that the accused was not rash and negligent in driving his vehicle. It is wrong to suggest that I am deposing falsely that I have seen the accused driving the vehicle. It is further wrong to suggest that I have also not seen the vehicle at the time of incident because I was unconscious. It is wrong to suggest that I am deposing falsely.



PW - 5 Statement of Ct. Bhagwan Singh, No.737/W, PS Uttam Nagar, New Delhi.

On SA

On 08.12.2011, at about 12:00 pm, I was on patrolling duty in beat No. 01 vide DD No.29B. I was standing near Surajmal Stadium metro station, a truck bearing registration number HR63A-1481 came in a high speed from the side of Bahadurgarh and hit one Rehdey puller and cross his left foot. The Rehdey puller fell there. Thereafter, I stopped the truck at the spot and apprehended accused Kaptan Singh truck driver at the spot. Accused present in the court today (correctly identified by the witness). In the meantime, someone had called at 100 number and PCR van also reached at the spot and took the injured Ram Avtar to the SGM Hospital. In the mean while, SI Ashok and Ct. Satyavrat also reached at the spot.

XXXXXX by Sh. Hitesh Kumar, Ld. LAC for the accused.

My duty hours were from 9:00 am to 05:00 pm. I had made the DD entry no.29B of my patrolling duty. I do not remember the gate number of Suraj Mal stadium metro station. I was standing on the side of Bahadurgarh towards Delhi. Red light of about 200 meter away from where I was standing. It is correct that there was heavy traffic on the road. The vehicle were going at the speed of 60 KMPH, It is correct that service road was there. I cannot tell the exact width of the road, but it was three lane road. It is correct that traffic is moving in all the three lane. The rehdy was at the third lane. The site plan was made in my presence by the IO. The accident happened in the



third lane. It is wrong to suggest that I was not present at the spot at the time of accident that is why, I am falsely deposing that the accident happened in the third lane. It is correct that I did not see the truck before the accident. I cannot tell the exact speed of the truck. There were no articles on the said rehdey. There was no articles lying nearby the rehdey. After felling down the rehdey puller, he become semi-conscious. It is correct that no statement of rehdey puller was recorded in my presence and no inquiry was made from him at the time of accident. I do not know who made the PCR call. There were 3 police officials in the PCR van. I cannot tell their names and designations. I cannot tell the number of the PCR van. I was on personal motorcycle. Travel expenses of a personal vehicle was not reimbursed. I was on patrolling duty on my personal bike because official vehicle was not available. The police officials from PS reached at the spot after 15-20 minutes. It is wrong to suggest that the documents were prepared at the spot. It is wrong to suggest that I was planted as a witness as I was on patrolling duty in that area. It is wrong to suggest that injured suffered injuries due to his own negligence and not due to the negligence of accused. I cannot tell whether the accused has changed the lane. It is wrong to suggest that offending vehicle was standing straight after the accident. I left the spot at about 05:00 pm., IO and Ct. Satyawrt left the spot along-with me. It is wrong to suggest that the entire proceedings were conducted while sitting at PS. At the time of accident, no traffic police was present at the spot. I do not remember whether IO requested the public persons to join investigation. I do not know by which vehicle Ct. and IO reached at the spot or whether they had come on foot. Ct. Satyawrt took the rukka from the spot. He came back at the spot at about 05:00 pm. Accused was arrested in my presence, but I cannot tell the whom the information of arrest was given. Accused was arrested at about 06:00-pm. The owner



of the truck did not come at the spot in my presence. Accused was released on bail in the PS, but no in my presence as I was in malkhana. I do not remember whether I have signed the site plan or not and as to who had signed at the site plan.

Question: Is it correct that if police official did not support the case of prosecution, then there is provision of departmental inquiry against him.

Question is disallowed being irrelevant.

The vehicle papers were given by the accused to the IO but I cannot tell the particulars of the said documents as it is in the file. It is wrong to suggest that I cannot tell because I was not present at the time of seizing of documents. It is wrong to suggest that I am deposing falsely.”

15. The respondent did not lead any evidence.
16. Mr. Singh, learned APP states that in the present case, the testimony of the PW-3 as well as PW-5 are clear and unambiguous and hence, the order of the learned MM must be set aside and the respondent should be held guilty under Sections 279/338 of IPC.
17. Mr. Maqbool, learned counsel opposes and supports the judgment.
18. He states that the site plan was made with the assistance of PW-5 (Ct. Bhagwan Singh) and PW-3 (Sh. Ram Avtar Mishra) i.e. the victim and eye witness.
19. In the cross-examination, the PW-3 states that he was never consulted for making of site plan.
20. I have heard learned counsel for the parties.
21. In the present case, the testimony of PW-8 (SI Ashok Kumar) records as under:-



“PW - 8 Statement of SI Ashok Kumar, No.D-4464, Security Unit, Vinay Marg, New Delhi.

On SA

On 08.12.2011, I was posted as SI at PS Nangloi. On that day, I was on emergency duty from 08:00 am to 08:00 pm. On that day, DO assigned me DD No.19A regarding accident. After receiving the DD, I along-with Ct. Satyawrat went to the spot ie. Surajmal Stadium, Metro station. The attested copy of DD is already on record, same is Ex.PW8/A.

.....

I prepared the site plan at the instance of Ct. Bhagwan, Ex.PW8./C, bearing my signature at point 'A'. After some time, Ct. Satyawrat returned back to the spot along-with original rukka and copy of FIR and handed over the original rukka and copy of FIR to me for further investigation.

.....

Thereafter, I called one private photographer to take the photographs of the spot, who on my directions, took the photographs of the spot and both the vehicles.

The photographs are already Ex.P-2.

.....

At this stage, witness is shown seven photographs of truck bearing registration number HR-63A-1481, who correctly identifies the same as seized by him. The four of the photographs are already Ex.PW2/B (colly) during the testimony of PW2 and three of the photographs are already Ex.P-2 (colly) during the testimony of PW3. The truck is



already Ex.PX-1. The rehdy is Ex.PX-2.

XXXXXX by Sh. Hitesh Kumar, Ld. LAC for the accused.

I went to the spot on my private motorcycle (Hero Honda) at about 12:25 pm. When I reached at the spot, some persons have already gathered there. When I reached at the spot, the offending vehicle and the Rehdy were already removed to the side of the road by the people. There is no service road to the main road at the spot. The main road is very wide however, I cannot tell the exact width of the same. It is correct that when I reached at the spot, the traffic was moving there. The site plan was prepared at the instance of complainant after inspection of the spot. The accident had occurred at the place shown in the site plan. I do not remember whether there was any mark on the road at the spot to indicate that plying rehdy on road is not permissible. I do not remember as to who had made call at 100 number. I had inquired from Ct. Bhagwan about the call to 100 number, however, I do not remember whether I had mentioned this factum in the charge-sheet or not. I do not remember whether any official from PS, apart from me, Ct. Satyawrat and Ct. Bhagwan came at the spot. The redhy involved in the present accident was having four wheels and it was Thela-rehdy. The 1 rehdy was empty at the time when I reached at the spot. I do not remember whether any rice or wheat was lying beside the rehdy. I asked public persons to join investigation, but none of the them agreed and they all left the spot without disclosing their names and addresses. It is correct that I had not served any notice on those persons. Vol. They had left the spot immediately. It is wrong to suggest that I had not requested the public persons to join the present investigation. Today, I cannot recall the name of photographer. I do not remember who had given the charges to the photographer. I had not obtained any receipt or negative from the



photographer. It is wrong to suggest that no photographs were clicked at the spot on that day. No construction was going near the spot at that time. I had gone through the mechanical inspection report. However, I do not remember the contents of the same as of now. It is wrong to suggest that I had not seen the mechanical inspection report.

.....

22. The accident had occurred at the place shown in the site plan. However, the PW-3 in his cross-examination categorically states that “*I had not shown the place of occurrence to the police and they had prepared site plan as per their own instance.*”
23. Hence, the document i.e. Ex. PW 8/C is itself a suspect. Additionally, PW-5 who is the eye witness has stated that the truck was being driven at the speed of 60 km/h. On the other hand, the PW-5 also states that it was a congested area and the traffic was moving in all 3 lanes. Additionally, PW-3 has stated that there remains huge traffic on the road and the vehicles are on low speed.
24. In one instance, the PW-5 states that the truck was being driven at the speed of 60 km/h and in the second part, he states that he cannot tell the speed at which the truck was being driven. There is a clear contradiction in the testimony of PW-3 and PW-5.
25. Additionally, it has not been stated by any of the prosecution witnesses that the offending vehicle was being driven in a rash and negligent manner. It is also nowhere on record as to how the offending vehicle was being driven in such manner. There is no evidence to the fact that the offending vehicle had jumped the red light or was being driven in a



zigzag manner. There was also heavy traffic on the road.

26. I am of the view that it is highly improbable that the vehicle would be travelling at the speed of 60 km/h.
27. All the said facts have been correctly appreciated by the learned MM and also it has been correctly held that the prosecution has failed to establish the guilt of the respondent beyond reasonable doubt.
28. Consequently and correctly, the learned MM has granted the benefit of doubt to the respondent.
29. For the said reasons, the appeal is without merit and hence, is dismissed.

JASMEET SINGH, J

MARCH 6, 2025 / (MS)

(Corrected and released on 12.03.2025)