

State vs. Hemant Soni

FIR No. 266/2016

PS: Mundka

U/sec. 279/304-A IPC

Earlier all the matters were adjourned en-bloc pursuant to the directions passed by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no. 26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

29.08.2020

Present: Learned APP for the State

Learned counsel for the accused through V/C

Accused *Hemant Soni* through V/C

Court is convened through V/C (CISCO WEBEX).

Heard. File perused.

Perusal of the file reveals that the sole eye witness has not supported the prosecution case regarding the identity of accused as perpetrator of the crime. Rest witnesses are formal in nature and the guilt of accused cannot be established from their testimonies, inasmuch as, the incident was neither caused in their presence nor it is the case of the prosecution. Thus, no useful purpose would be served by examining the rest of the witnesses, who are formal in nature. No prejudice would be caused to the prosecution if the evidence is closed as there are no chances of successful prosecution in view of paucity of evidence to prove the charges. Therefore PE stands closed and request of the learned APP for the State to examine the remaining witnesses is declined. In this regard reference may be made to a Division Bench judgment of the Hon'ble Delhi High Court passed in the case of **Govind & Ors vs. The State (Govt. of NCT of Delhi) 104(2003) DLT 510** wherein it was held that

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“...In cases where ultimate chance of conviction is very bleak or there is no prospect of the case ending in conviction in such cases no useful purpose is likely to be served by allowing a criminal prosecution and trial to continue. It is advisable to truncate or snip the proceedings and save valuable time of the courts. The trial should not be continued only for the purpose of formally completing the proceedings to pronounce the conclusion on a future date.....”

Since there is no incriminating circumstance against the accused, recording of his statement under section 313 of the Code is also dispensed with.

I have heard the learned counsel for the accused and the learned APP for the State and have perused the records very carefully.

Vide separate judgment of even date, accused **HEMANT SONI** is **ACQUITTED** of the crime charged.

Considering the COVID-19 pandemic situation, earlier bail bond of the accused is treated as one under section 437-A of the Code.

File be consigned to record room after due compliance.

(Babita Puniya)
MM-06, West District,
Tis Hazari Courts/ Delhi/29.08.2020

**IN THE COURT OF MS. BABITA PUNIYA: METROPOLITAN
MAGISTRATE-06, WEST DISTRICT,
TIS HAZARI COURTS, DELHI**

State vs. Hemant Soni

**FIR No. 266/2016
U/sec. 279/304-A IPC
PS: Mundka**

**Date of institution of the case: 02.01.2017
Date on which judgment is reserved: Not reserved
Date on which judgment is delivered: 29.08.2020**

Unique I. D. No. 321/2017

J U D G M E N T

- a)** Date of commission of the offence :19.06.2016
- b)** Name of the complainant :HC Manjeet Singh
- c)** Name of the accused and his parentage :Hemant Soni @ Monu,
S/o Sh. Ashok Kumar,
R/o. H. No. 240, Bank Colony,
Najafgarh Road, Bahadurgarh,
Haryana
- d)** Offence complained of :Sec. 279/304-A IPC
- e)** Offence charged of :Sec. 279/304-A IPC
- f)** Plea of the accused :Pleaded not guilty
- g)** Final order :Acquitted
- h)** Date of such order :29.08.2020
- i) Brief reasons for the just decision of the case:**

Succinctly stated, the facts of the prosecution case are that on 19 June 2016, information was received in police station *Mundka* from Control Room regarding accident near *H. P. Petrol Pump, Mod Bus Stand, Main Rohtak Road, Mundka*. This information was recorded vide DD No. 35-A in the police station and the matter was entrusted to Head Constable *Manjeet* for necessary action. Thereafter, he along with Constable *Dharambir* reached the spot, however, neither any eye witness nor any vehicle was found there. Therefore, the DD entry was kept pending.

On 4 July 2016, information was received regarding admission the injured in Delhi Hospital, Bahadurgarh, Haryana. This information was recorded vide DD entry No. 29-B. Thereafter, IO/HC *Manjeet* went to the hospital and collected the MLC of the injured "*Shyam Sunder*" whereby the injured had been referred to PGIMS *Rohtak*. Consequently, on the basis of DD Entry, present FIR was registered at police station *Mundka* against the driver of unknown vehicle.

During the course of investigation, IO/HC *Manjeet* recorded the statement of the son of injured under section 161 of the Code of Criminal Procedure, 1973 (herein after referred to as the Code) wherein he claimed himself to be an eye witness to the alleged manner of accident. He also disclosed the registration number of the offending vehicle. Thereafter, a notice under section 133 of the Motor Vehicles Act was served upon the owner of the offending vehicle namely *Hemant Soni* asking him to inform the police as to who was driving the vehicle at the time of accident. In reply to the notice, the owner stated that he himself was riding the motorcycle at the time of accident. Consequently, accused *Hemant Soni* was arrested on the identification of the alleged eye-witness.

After completion of the investigation, charge-sheet under sections 279/304-A IPC was filed before the court against accused *Hemant Soni*. Consequently, he was summoned to face the trial. On his appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to him as per norms.

Thereafter, the charge under sections 279/304-A IPC was framed against the accused to which he pleaded not guilty and claimed trial.

With a view to connect the accused with the crime, the prosecution has examined as many as five witnesses including the eye witness to the alleged manner of accident.

PW1/Ashish Kumar was the son of the deceased. He was projected as an eye witness to the alleged manner of accident. Therefore, he was called to testify about the incident. He testified that his father *Shyam Sunder* (deceased) was working at HP Patrol Pump, *Tikri Border, Delhi*. On 19.06.2016, his father asked him to come at Patrol Pump for some work. Therefore, he was going to Patrol Pump. At about 8:45 p.m., when he reached near patrol pump, he saw his father crossing the road. In the meantime, one motorcycle no. HR-13K-3711 came from *Nangloi* side in rash and negligent manner and hit his father due to which his father fell down on the road. He immediately reached there.

He further stated that his father was removed to Civil Hospital, *Bahadurgarh* from where he was shifted to Delhi Hospital, *Bahadurgarh*. Later on, he was referred to PGI *Rohtak* where on 04.07.2016, he succumbed to injuries.

He testified that he did not see the driver of the motorcycle as he reached there when his father was lying on the road. After the death of his father, police recorded his statement.

He stated that he identified the dead body of his father in the hospital vide *Ex. PW1/A* and after postmortem, dead body was handed over to them.

He stated that accused was not arrested in his presence. He stated that he saw the accused along with two other persons at the spot as well as in Delhi Hospital, however, he denied having seen the accused while riding the motorcycle.

Since the witness resiled from his previous statement purportedly given to the Investigating Officer during the course of investigation, he was cross-examined by the learned APP for the State with the permission of the court and confronted him with his previous statement *Mark X1*.

He during his cross-examination by the learned APP for the State denied the suggestion that he along with his father was coming from HP *Patrol Pump, Tikri*

order, however, he admitted the suggestion that one motorcycle no. HR-13K-711 came from the side of Nangloi and hit his father. He denied having told the police that motorcycle rider also fell down on the road with motorcycle after the accident who disclosed his name as Hemant Soni. He was confronted with his previous statement Mark X wherein it was so recorded. He denied that suggestion that the accused, present in the court, was the same person who was driving the motorcycle that he his father. He voluntarily stated that he did not see the driver of the motorcycle at the time of accident. He admitted the suggestion that he signed the arrest memo and personal search memo Ex. PW1/B and Ex.PW1/C respectively at point A, however, he denied the suggestion that accused was arrested in his presence. He also denied the suggestion that accused present in the court was riding the motorcycle and that he intentionally avoiding to identify him as he had been won over by him.

PW2/SI Dalbir Singh was the 3rd IO of the case. He got conducted postmortem of the dead of the deceased.

PW3/HC Manjeet was the 1st IO of the case.

PW4/HC Virender was the Duty Officer. He has proved the DD Entry No. 35-A as Ex.PW4/A.

PW5/SI Pradeep Rathi was the 2nd IO of the case.

Since the sole eye witness had not supported the prosecution regarding the identity of the accused, PE was closed by the order of the court as no useful purpose would be served by examining the rest of the witnesses, who are formal in nature and the request of the learned APP for the State to examine remaining witnesses was declined. In this regard reference may be made to a Division Bench judgment of the Hon'ble Delhi High Court passed in the case of **Govind & Ors vs. The State (Govt. of NCT of Delhi) 104(2003) DLT 510** wherein it was held that

“...In cases where ultimate chance of conviction is very bleak or there is no prospect of the case ending in conviction in such cases no useful purpose is likely to be served by allowing a criminal prosecution and trial to continue. It is advisable to truncate or snip the proceedings and save valuable time of the courts. The trial should not be continued

only for the purpose of formally completing the proceedings to pronounce the conclusion on a future date.....”

Since there was no incriminating circumstance against the accused *Hemant Soni*, recording of his statement under section 313 of the Code was also dispensed with.

I have heard the learned counsel for the accused and the learned APP for the State and have perused the records very carefully.

Arguments

Learned counsel for the accused had taken this court through the entire evidence and submitted that the prosecution version regarding the incident is highly doubtful since the correctness of the statement made by the alleged eye witness PW1 to the police is itself doubtful because he himself has disowned it and refused to identify the accused in the court as the wrongdoer.

He further submitted the identity of the accused is an essential element of any offence. In continuation, he submitted that PW 1 has failed to identify or recognize the accused in the dock as the wrongdoer, whereupon he was declared hostile and cross-examined by the APP for the State but nothing could be elicited from him which could indicate complicity of the accused in the crime. Thus, according to him, prosecution has miserably failed to establish the identity of the accused as well as the ingredients of offence alleged beyond reasonable doubt.

He, therefore, prayed that the accused *Hemant Soni* may be acquitted of the charge leveled against him.

Decision and brief reasons for the same

All persons are presumed to be innocent and no person can be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, sent behind the bars pending investigation or trial or charged for an offence gives rise to no inference of his guilt at trial. The law does not require an accused to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the accused, unless

the court is satisfied beyond a reasonable doubt of accused's guilt on appreciation of prosecution evidence.

Now let us examine the case in hand.

Undisputedly, it is a case of a motor vehicular accident. The only issue is whether it was the accused *Hemant Soni* who caused the accident while riding the motorcycle either negligently or rashly?

Identity of accused as driver of the offending vehicle

Since accused *Hemant Soni* was not apprehended from the spot, his identify is in issue.

A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity.

In the absence of proof beyond reasonable doubt as to the identity of the culprit, the accused's constitutional right to be presumed innocent until the contrary is proved is not overcome, and he is entitled to an acquittal, though his innocence may be doubted. The constitutional presumption of innocence guaranteed to every individual is of primary importance, and the conviction of the accused must rest not on the weakness of the defence he put up but on the strength of the evidence for the Prosecution.

Onus is, thus, on the prosecution to prove beyond reasonable doubt that the person facing the trial is, in fact, the same person who committed the offence.

The Hon'ble High Court of Delhi while dealing with the identity of the accused in the case of *Ashraf vs State* held as under:-

*"....However, in case a witness is completely **hostile with regard to identity of the accused** even in his examination-in-chief and nothing could be elicited from him to show the involvement of the accused in*

the offence in the cross-examination by the APP, such a testimony cannot be accepted and made the basis of the conviction....”

Now let us see if the prosecution has been able to establish the identity of the accused *Hemant Soni* beyond reasonable doubt.

To prove the identity of the accused as the driver of the offending vehicle, prosecution has examined only one witness, who was none other than the son of deceased.

This witness in his statement recorded by the IO during the course of investigation narrated the manner in which the accident had taken place with the vehicle being driven by the accused, however, before the court, he took a somersault and sated that he did not see the person who was riding the motorcycle. He stated that he reached at the spot when his father was lying on the road.

Since his evidence was not in conformity with his previous statement, he was cross-examined by the learned APP for the State. He during cross-examination by the learned APP for the State denied having accompanied his father at the time of accident. He also denied having told the police that after the accident, rider of the motorcycle disclosed his name as *Hemant Soni*. When it was suggested to him by the learned APP for the State that it was accused *Hemant Soni* who caused the accident, he denied the same and stated that he did not see the rider of the offending vehicle. He also denied the suggestion put forth by the learned APP for the State that accused was arrested in his presence.

Thus, the version given by the sole eye witness to the police is not supported by his own deposition on oath before the court. Before the court he has not spoken anything incriminating against the accused *Hemant Soni*.

Rest witnesses are formal in nature and identify of the accused as the driver of the offending vehicle cannot be proved from their testimonies inasmuch as, the incident was neither caused in their presence nor it is the case of the prosecution

Thus, in my considered view, identity of the accused as the driver of the offending vehicle is not established beyond reasonable doubt.

It was argued on behalf of the State that PW1 had given the registration number of the vehicle during his examination-in-chief which caused the accident. According to learned APP for the State this piece of evidence coupled with *Ex.PW5/A* i.e., the notice served upon the owner of the offending vehicle wherein he admitted that it was him who was driving the offending vehicle at the time of the accident, is sufficient to prove the guilt of the accused beyond reasonable doubt.

Per contra, it was argued on behalf of the accused that he was not a natural witness but was planted later on by the police.

It was the case of the prosecution that PW1 along with his father (deceased) was going on foot to their house when his father met with an accident. However, PW1 when stepped into the witness box stated that on the date of accident, he was going to petrol pump where his father used to work. At about 08:45 p.m., when he reached near petrol pump, he saw his father crossing the road. In the meantime, one motorcycle came from *Nangloi* side and hit his father as a result of which his father fell down on the road. He further testified that he could not see the face of the motorcycle rider. He further testified that his father expired on 4 July 2016 and thereafter, his statement was recorded by the police.

It was contended on behalf of the accused that there was delay of more than 15 days in recording the statement of the alleged eye witness. He also drew the attention of the court towards *Mark X* which was undated.

Regarding delay, it was contended on behalf of the State that the delay has been explained and though the 1st Investigating Officer was examined by the State as PW3, not even a suggestion was put to him as to the reason for such delay and, thus, the accused cannot take any benefit thereof at this stage.

As per prosecution, 1st IO/Head Constable *Manjeet* received a DD Entry No. 29-B dated 4 July 2016 from *Bahadurgarh* hospital regarding admission of injured. Thereafter, he went *Bahadurgarh* hospital, however, no eye witness was found

there. On the same day, the injured succumbed to injuries at PGIMS Rohtak. Thereafter, he recorded the statement of the son of the deceased, who claimed himself to be an eye witness. Though the statement does not found mention the date when it was purportedly recorded by the IO but from its contents, it can be safely presumed that it was recorded on the same day i.e. 4 July 2016. Relevant part of the statement reads as under:-

“...आज दिनांक 4/7/16 को दौरान इलाज मेरे पिता जी की मौत हो गई...”

Thus, I am of the view that there was no delay in recording the statement of the son of the deceased.

Now the question arises as to whether he really witnessed the incident?

Though PW1 has not supported the version of prosecution that he accompanied his father (since deceased) at the time of the accident, he during his examination-in-chief testified that “.....one motorcycle no. HR13-K-3711 came from Nangloi side in rash and negligent manner and hit against my father ...”.

Now, keeping in mind all the contradictions and inconsistencies in the testimony of PW1, let us examine whether the prosecution has been able to prove the ingredients of the offence alleged against the accused *Hemant Soni*.

Section 279 IPC

Section 279 IPC deals with rash and negligent driving. It reads as under:-

279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The Hon'ble Mr. Justice **A. Pasayat** in **Badri Prasad Tiwari vs The State 1994 Cri.L.J. 389** held as under:-

"5. Section 279, IPC, deals with rash and negligent driving of any vehicle or riding on a public way in a rash and negligent manner so as to endanger human life or likely to cause hurt or injury to any person. In order to constitute an offence under Section 279, IPC, it must be established that the accused was driving the vehicle on a public way in a rash and negligent manner to endanger human life or to likely cause hurt or injury to any other person. For the purpose of Section 279 rash and negligence may be described as criminal rashness or criminal negligence. It must be more than mere carelessness or error of judgment. The essential ingredients of Section 279 are:

(i) Rash and negligent driving or riding on a public way.

(ii) The act must be such as to endanger human life or likely to cause hurt or injury to any person.

To constitute an offence under section 279 IPC, it must be shown that the person was driving the vehicle in a rash or negligent manner.

It is the case of prosecution that the accident occurred when the victim (since deceased) was crossing the road.

Now let us see if the prosecution has been able to prove beyond reasonable doubt that the accident was caused due to rash and negligent driving of vehicle bearing registration no. HR-13K-3711.

To prove the rash and negligent driving, prosecution has examined only one witness i.e. PW1/Ashish Kumar, who was the son of deceased. He testified that while his father was crossing the road, one motorcycle came from Nangloi side and hit his father. He further stated that the motorcycle was being driven in a rash and negligent manner. As a result of which, his fell down on the road and sustained bodily injury.

The testimony of PW1 shows that the rider was riding the motorcycle in rash and negligent manner. However, his testimony is silent as to on what basis he had

arrived at such a conclusion. Thus, I am of the view that there is no cogent evidence in respect of the fact that the motorcycle was being driven by the accused either recklessly or negligently except the bald statement of the son of deceased that vehicle was being driven in rash and negligent manner.

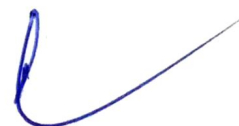
The Hon'ble High Court of Delhi in the case of **Vinod Kumar vs. State** decided on **13th October, 2011** while dealing with the similar type of evidence, has held as under:-

*“7. No evidence or any other material was placed on record by the prosecution to show the manner in which the Petitioner was driving the said vehicle to prove the rashness and negligence of the Petitioner. No photographs of the spot or the bus have been taken. PW10 the alleged eye witness to the incident has also not deposed anything in regard to the accident or manner in which the vehicle was being driven by the Petitioner, **except making a bald statement that the driver of the bus was driving the bus in a rash and negligent manner which does not prove the guilt of the Petitioner.** There is no evidence placed on record to show the speed of the vehicle or the manner in which it was being driven to show rashness and negligence on the part of the Petitioner, especially when the area was a crowded one. ...”*

Result

In view of the above discussion, I have come to the conclusion that there is no evidence on record to identify or link the accused with the commission of the offence, i.e., whether or not he was driving the vehicle involved in the accident. In other words, there is no direct evidence to show that the accused was riding the motorcycle involved in the accident.

Even if it is presumed that the accused was the person riding the offending vehicle at the relevant time, still there is no evidence to prove that he rode the motorcycle rashly and negligently. In absence of any evidence on these two counts, the accused is entitled to acquittal.



state vs. Hemant Soni

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Consequently, accused **HEMANT SONI** is **ACQUITTED** of the crime charged.

File be consigned to record room after due compliance.

Announced in open

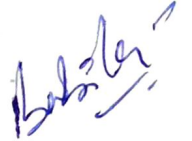
Court on 29th day of August, 2020 (**through V/C**)



(Babita Puniya)

MM-06, West District,
Tis Hazari Courts/ Delhi/29.08.2020

This judgment contains 12 pages and each page bears my signature.



(Babita Puniya)

MM-06, West District,
Tis Hazari Courts/ Delhi/29.08.2020