

***In the court of Ms. Joshica Sood, PCS,
Judicial Magistrate Ist Class,
SAS Nagar (Mohali)***

Case No.: RBT-45/17.4.2017/19.1.2016

CIS No. CHI -16/2016

CNR No.:PBSA03-000100-2016

Date of Decision: 21.04.2018

S T A T E

Versus

Kashmiri Lal son of Jandu Ram, resident of # 1666/1, Sector 29-A,
Chandigarh.

.....accused

FIR No.222 Dated 16.12.2015,

Under Sections: 279/337/338/427 of I.P.C.

Police Station: Mataur, District Mohali

Present: Sh.Ravinder Singh APP for the State.

Accused on bail with counsel Sh.H.S.Dhanoa, Advocate.

J U D G M E N T

1. The above named accused has been sent up by SHO of Police Station Mataur, District Mohali to face trial for the offence punishable under sections 279/337/338/427 of the Indian Penal Code.

2. Facts of the instant case are that on 14.12.2015, a telephonic call was received at Police Post from General Hospital, Sector 32, Chandigarh to the effect that one Kirpal Singh son of Inder Singh has been admitted in the hospital due to accident. Upon this, ASI Jagir Singh went to General Hospital, Sector 32, Chandigarh obtained opinion of the concerned doctor regarding fitness of injured Kirpal Singh who declared him unfit to make any statement.

Thereafter, on 15.12.2015, ASI Jagir Singh went to the hospital inquired about injured Kirpal Singh where it was informed that Kirpal Singh has gone from the hospital. It has been further mentioned in the FIR that thereafter, Investigating Officer came to know from the house of injured that injured Kirpal Singh has been admitted in Chawla Hospital, Phase-7, Mohali. On 16.12.2015, Investigating Officer along with other police officials went to Chawla Hospital. After obtaining opinion of the concerned doctor regarding fitness of injured, statement of injured Kirpal Singh was recorded to the effect that on 14.12.2015, he was going from his house towards his shop on TVS Scooty having registration number PB65-T-3625. When he reached YPS Chowk, Mohali at about 9.30 AM, one scooter came in rash and negligent manner from Phase-7, 3B1 and hit into his scooty due to which he fell on the road alongwith his scooter. The complainant has further stated that he received injuries on his waist, arms and right ankle. His TVS scooter was also damaged. Thereafter, the rider of the scooter came to him but did not disclose his name. The complainant has further mentioned that he read registration number of offending vehicle as CH03-8679 and the accused fled away from the spot whom he could identify. The complainant further got recorded that thereafter, his son Gurinder Singh got admitted him in Government Hospital, Sector 32, Chandigarh where he was operated for nose bone fracture. His right ankle was also fractured. On 15.12.2015, he was got discharged from GMCH, Sector 32, Chandigarh and was admitted to Chawla Hospital, Phase-7, Mohali. As per the complainant, the accident took place due to the rash and negligent driving of accused Kashmiri Lal. The complainant prayed for taking action against the accused.

3. On the basis of said statement, present FIR was registered. Place of occurrence was inspected. Rough site plan was prepared. TVS scooty bearing registration number PB65-T-3625 alongwith photo copy of RC and DL of complainant/injured Kirpal Singh were taken into possession. On 22.12.2015, complainant got recorded his supplementary statement and Kashmiri Lal son of Jandu Ram, resident of # 1666/1, Sector 29 A, Chandigarh was nominated as accused in the instant case. On 30.12.2015, accused was arrested. Offending vehicle scooter CH03-8679 alongwith RC, DL of accused and insurance were taken into possession. Ownership of the vehicles involved in the accident was verified from the concerned authorities. Mechanical reports of both the vehicles were also obtained. Statements of witnesses were recorded. On completion of investigation, police report under Section 173, Cr.P.C was presented in the court recommending trial of the accused under sections 239/337/338/427 of Indian Penal Code.

4. On appearance in the court, copies of challan/documents were supplied to the accused free of cost as envisaged under section 207 Cr.P.C.

5. Thereafter, matter was examined for the purpose of framing the charge. Finding a prima facie case under sections 279/337/338/427 IPC, accused was charge-sheeted vide order dated 1.2.2016 to which he pleaded not guilty and claimed trial. Accordingly, case was fixed for evidence of prosecution.

6. In order to prove its case, prosecution has examined the following witnesses:-

7. PW1 Gurinder Singh furnished the evidence that he is a shopkeeper. On 14.12.2015, he got the information about the accident of his father at YPS Chowk and he immediately reached at the spot. He further stated that he saw the accused seated on the side near his vehicle. He also stated that due to serious condition, he took his father to GMCH, Sector 32, Chandigarh. On the next day, they got discharged his father from GMCH, Sector 32, Chandigarh and admitted him to Chawla Hospital, Phase-7, Mohali. He also stated that on 16.12.2015 he alongwith Paramjit Singh and police party wen to the spot where IO prepared rough site plan in his presence. TVS Scootery PB65-T-3625 alongwith copy of RC and DL of his father Kirpal Singh were produced before the police which were taken into possession by IO.

8. PW2 Kirpal Singh, injured/complainant of this case when stepped into the witness box stated on the lines of prosecution. He stated that on 14.12.2015, he was going towards his shop at Sector 20-D, Chandigarh from his house on scooter TVS bearing No.PB65-T-3625. When he reached at YPS Chowk, Mohali at about 9.30 AM, one scooter came at very high speed, in rash and negligent manner and hit his scooter due to which he fell on the ground facing towards ground and received several injuries on his both arms, ankle and nose. His teeth were also broken. He further stated that somebody called his son Gurinder Singh from his mobile phone who got hit admitted in GMCH, Sector 32, Chandigarh. He also stated that as hospital staff did not care properly, his children got him discharged on 15.12.2015 in the evening and got admitted in Chawla Hospital, Phase-7, Mohali. He further stated that he also noted down the number of offending vehicle CH-03E-8679 at the spot and also seen the accused Kashmiri Lal there. He further stated that the accident took

place due to the rash and negligent driving of Kashmiri Lal. He also stated that Kashmiri Lal also visited his house for compromise and he told him that his children will talk on this matter. Thereafter, Kashmiri Lal did not visit to meet him. He also proved his statement got recorded to the police as Ex.P2/A. He also identified accused in the court.

9. PW3 ASI Jagir Singh, Investigating Officer of this case when stepped into the witness box furnished each and every detail of investigation and proved on record the following documents:

Application moved to the concerned doctor to know the fitness of injured Kirpal Singh Ex.PW3/A, application dated 16.12.2015 moved at Chawla Nursing Home regarding fitness of injured Ex.PW3/B, statement of complainant Kirpal Singh Ex.P2/A, police proceedings Ex.PW3/C, FIR Ex.PW3/D, rough site plan of the place of occurrence Ex.PW3/E, recovery memo of TVS Scootry bearing No.PB65-T-3625 alongwith document Ex.PW3/F, arrest memo of accused Ex.PW3/G, his personal search memo Ex.PW3/H, memo Ex.PW3/J vide which offending scooter bearing No.CH03-E-8679 alongwith RC, insurance and DL of accused were taken into possession, offending vehicle scooter bearing No.CH03-E-8679 as MO1.

10. PW4 Dr.Parminster Singh, Orthopedic Surgen from Chawla Nursing Home & Hospital stated that on 15.12.2015, Kirpal Singh was admitted in their hospital with alleged history of roadside accident. He further stated that on 16.12.2015, vide endorsement Ex.PW4/A he declared the said patient fit to make statement. He medically examined Kirpal Singh and found the following injuries:-

1. Right ankle swelling tenderness deformity. Advised X-ray right ankle aplateral. X-ray shows fracture right ankle
2. Right elbow swelling deformity tenderness. Advised X-ray right elbow. X-ray shows fracture right elbow.
3. Left wrist swelling deformity tenderness. Advised X-ray left wrist. X-ray shows fracture left wrist.

He further stated that patient was operated and fractures were fixed and was discharged on 1.1.2016 in satisfactory condition. He proved his report as Ex.PW4/B.

11. PW5 Gurbir Singh Cheema, Junior Assistant proved the driving license of complainant Kirpal Singh Ex.PW5/A and verification report in this regard Ex.PW5/B.

12. PW6, Ajit Singh Mechanic, who mechanically inspected the vehicles involved in the accident during investigation, proved mechanical report of TVS scooter No.PB65-T-3625 Ex.PW6/A and that of offending vehicle i.e. scooter CH03-E-8679 Ex.PW6/B.

13. PW7, Dr.Pawan Kumar, Senior Resident, Orthopedic Department, GMCH, Sector 32, Chandigarh was examined through Video Conference who stated that patient Kirpal Singh 80 years male son of Inder Singh, resident of 1823, Phase-7, Mohali, Punjab was admitted in their hospital on 14.12.2015 and date of discharge (LAMA) is 15.12.2015. Following injures were noticed with history of roadside accident:-

Fracture both bone forearm (right)

Fracture bi-malleolar (right)

Fracture distal radius (left) after alleged history of Road side accident.

Patient left against medical advice.

He further stated that nature of injuries were grievous. Radiologist, surgery and ENT opinion was advised. He proved medico legal case summary as Ex.PW7/A.

14. PW8, Satvir Singh, Junior Assistant, Office of SDM, Samana produced record pertaining to Driving License of accused Kashmiri Lal. He proved verification report of Licensing Authority, Samana Ex.PW8/A, attested copy of the original record Ex.PW8/B and original DL of accused Ex.PW8/C and also identified signature of Amreshwar Singh PCS, SDM-cum-Licensing Authority thereon.

15. PW9, Gurmail Singh, Clerk, Office of RTA, Mohali has been examined to prove the verification report regarding vehicle PB65-T-3625. This witness stated that as per record, the above said vehicle is in the name of Kirpal Singh son of Inder Singh. He proved verification report as Ex.PW9/A and attested screen report of the vehicle as Ex.PW9/B.

16. PW10, Manjeet Singh, Date Entry Operator, RLA, Sector 17, Chandigarh produced the record of Chetak Scooter bearing No.CH03-E-8679 and stated that as per record, this scooter is in the name of Kashmiri Lal son of Jhandu Ram. He proved attested screen report of vehicle Ex.PW10/A, another screen report on the judicial file as Ex.PW10/B and original RC of the vehicle as Ex.PW10/C.

17. PW11, Dr.Tarun Kumar, Department of Surgery, GMCH, Sector 32, Chandigarh stated that on 14.12.2015, patient Kirpal Singh was treated in GMCH, Sector 32, Chandigarh and on that day, on application of police official, he declared the patient Kirpal Singh unfit to give statement. He proved his opinion in this regard as Ex.PW11/A.

18. PW12, Dr.Vishal Verma, Medical Officer, GMCH, Sector 32, Chandigarh who was examined through Video Conference stated that patient Kirpal Singh 80 years male son of Inder Singh, resident of 1823, Phase-7, Mohali, Punjab. Patient was admitted in their hospital on 14.12.2015 and date of discharge (LAMA) is 15.12.2015. On examination, following injuries were noticed with history of roadside accident:-

Fracture both bone forearm (right)

Fracture bi-malleolar (right)

Fracture distal radius (left) after alleged history of Road side accident.

Patient left against medical advice.

He further stated that nature of injuries was grievous. Radiologist, surgery and ENT opinion was advised. He also proved medico legal case summary as Ex.PW12/A and also identified signature of Dr.Pawan Kumar at point A.

19. On conclusion of the prosecution evidence, the statement of the accused was recorded under section 313 Cr.P.C. in which all the incriminating evidence appearing against the accused in the statements of witnesses was put to him in question answer form to which he denied and raised the plea that he is innocent and has been falsely implicated in the present case. No occurrence as alleged by the prosecution ever took place. Though the accused opted to lead evidence in defence but closed the same without examining even a single witness.

20. I have heard the learned APP for the State and the counsel for the accused and perused the file carefully with their able assistance.

21. It is the cardinal principle of criminal jurisprudence that in order to convict the accused, the prosecution has to establish its case beyond all

reasonable doubt. It is a settled legal principle that for the purpose of proving a case under sections 279/337/338 IPC, the prosecution has to establish the following ingredients:-

- (i) Identify of the accused and the fact that the offending vehicle was being driven by the accused.
- (ii) The occurrence took place due to the rash and negligent driving of the accused.
- (iii) As a consequence of the accident, injuries were suffered by the injured.

22. For proving its case, the prosecution in the instant case got examined PW2 Kirpal Singh who is the complainant. It is pertinent to mention that during his examination-in-chief, the complainant identified the accused Kashmiri Lal in the court. He further stated during his examination-in-chief that after the occurrence, the accused Kashmiri Lal was sitting on the side. The number of the offending vehicle was also noted by Kirpal Singh. It is further pertinent to mention that during his cross-examination, nothing favourable could be culled out by the defence counsel that can raise a doubt on the identification of the accused. Moreover, PW3 the Investigating Officer of the present case during his examination-in-chief stated that on 22.12.2015 the complainant Kirpal Singh suffered a statement in which he disclosed the name of the accused as Kashmiri Lal who was the person who had approached the complainant for effecting a compromise. As such, the prosecution has established the identity of the accused Kashmiri Lal who was driving the offending vehicle.

23. Learned defence counsel has vehemently argued that prosecution in the instant case has failed to establish that the offending vehicle was being driven in a rash and negligent manner by the accused Kashmiri Lal. It has been further argued that there is no evidence on record that can corroborate the mere statement of the complainant that the offending vehicle was being driven in a rash and negligent manner. Learned defence counsel has further argued that there is nothing on record that can even establish the point or the exact place as to where the accident took place. PW2 during his examination-in-chief has stated that on the day of occurrence i.e. on 14.12.2015 he was going towards Chandigarh on his TVS scooter bearing No.PB65-T-3625. When he reached YPS Chowk, Mohali at around 9.30 AM, then the offending vehicle came at a very high speed and was being driven rashly and negligently and hit into his scooter as a result of which he fell on the ground and received several injuries. It is pertinent to mention that during his examination-in-chief the complainant failed to mention the exact location or even the direction of both the vehicles when the occurrence took place. Further it has not been mentioned that from which side did the offending vehicle hit the scooter of the complainant as alleged. The prosecution has also got examined PW1 Gurinder Singh son of the complainant. As per his statement in court, he reached the spot after the occurrence. As such, his testimony does not substantiate the case of the prosecution with respect to the fact of rashness and negligence of the offending vehicle. It is further pertinent to mention that site plan Ex.PW3/E mentions the spot 'A' as the place where the occurrence took place. However, neither the direction of any of the vehicles involved in the incident, nor the place as to where the offending vehicle had hit the scooter of the complainant has been

mentioned in the site plan Ex.PW3/E. As per the statement of the complainant, he was going from Mohali towards Sector 20, Chandigarh and the occurrence took place at YPS Chowk, Mohali. Point 'A' on the site plan Ex.PW3/E shows the location where the accident took place as per the prosecution. However, there is nothing on record to establish the fact as to from where the offending vehicle was coming or the fact as to where exactly the collision between the two vehicles took place. There is no evidence on record that even mentions the fact as to the direction in which the offending vehicle was being driven by the accused. Apart from the statement of PW1 who reached the spot after the occurrence and PW3, there is no eyewitness which has been examined by the prosecution. PW Parampreet Singh one of the eyewitnesses in the instant case was not got examined inspite of several opportunities given to the prosecution as the witness had left the country according the statement suffered by his father in the court. Further, during his cross-examination, PW2 Gurpal Singh admitted that he was not aware as to from which side accused Kashmiri Lal was coming and towards which side he was going when he hit into his scooter. He further admitted that he could not even saw as to whether the accused was coming from right side or from the left side. Moreover, there is nothing on record that can establish the speed of the offending vehicle and the fact as to whether it was high. It is a settled legal principle that merely the statement of the complainant that the offending vehicle was being driven rashly and negligently is not sufficient to convict the accused under section 279/337/338 IPC. It has been further held by the Hon'ble Apex Court in a plethora of judgments that the fact of rashness and negligence or the fact that the offending vehicle was being driven at a unreasonable high speed has to be established by

the prosecution by leading cogent evidence. In the instant case, it is not even clear from the statement of the complainant and the site plan on record as to from which direction was the offending vehicle being driven and the location where the accident took place. There is nothing on record that can substantiate the allegations of the prosecution that the offending vehicle was being driven in a rash and negligent manner. As such, in view of the reasons mentioned above, this court finds that the prosecution has failed to establish the fact that the offending vehicle was being driven in a rash and negligent manner.

24. Accordingly, in view of the fact that the essential ingredients for conviction of the accused under sections 279/337/338 IPC have not been established by the prosecution, a doubt is raised which has to go to the accused. Accordingly, accused Kashmiri Lal is acquitted of the charge framed against him. Previous surety stands of accused stands discharged. File be consigned to record room.

Pronounced in open court on:
21.04.2018

(Pawan Kumar)

(Joshica Sood)
Judicial Magistrate Ist.Class
Mohali/UID No. PB0530