

CNR No. HRGRB1-000207-2017

CIS No. CHI-97-2017

State Vs. Manoj Kumar

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**IN THE COURT OF MOHOMMAD SAGEER, JUDICIAL MAGISTRATE
IST CLASS, PATAUDI, GURUGRAM**

CIS No. CHI-97-2017

Date of Institution: 27.02.2017

Date of Decision : **07.03.2024**

State Versus

Manoj Kumar S/o Sh. Naresh Chand, age 42
years, R/o Village Jaganathpura, Ajitmal,
Orraia, UP.

...Accused

F.I.R No. 44, dated 02.02.2017

U/Ss 279, 337, 338, 427 of IPC

Police Station. Bilaspur, Gurugram

Present : Ms. Monika, Ld. APP for State.

Accused on bail with Sh. Pawan Thakran, Advocate.

JUDGMENT:

The above named accused has been sent up to face trial for commission of offence punishable under Sections 279, 337, 338, 427 of IPC by the police of police station, Bilaspur, Gurugram.

2. The brief facts of the prosecution case are that present case was registered on the complaint of Ganesh Dutt S/o Sh. Tilakraj dated 02.02.2017 wherein he stated that he use to work in Amazon Company. On 31.01.2017, he and his colleagues namely Sourav S/o Rambilas, Jitender S/o Gangaram and Rajiv S/o Leela Ram were going to their company on Tauru Road from Bilaspur Chowk in the vehicle of the company No. HR55V-2808 and it was being driven by Rajiv and others were sitting in it. At around 07:56 AM when they reached just ahead of Village Pathreri then one truck coming from Tauru side in rash, negligent and speedy manner while trying to overtake hit their vehicle directly due to which the front portion of their vehicle got struck in the front of truck and all of them got

injured. Several persons gathered on the spot who took them out of the car. The unknown driver of the truck fled away from the spot taking benefit of the mob after leaving his truck on the spot. Meanwhile, one private ambulance came and took them to Rockland Hospital for treatment. Their vehicle also got damaged in this accident. Action be taken against the unknown driver of the truck who caused the accident.

3. On the basis of this, present case was got registered u/s 279, 337, 338, 427 of IPC Investigation was started. During the course of investigation, the accused was arrested. On completion of investigation, challan against the accused was produced before this court.

4. Copy of challan was supplied to the accused free of cost as per Section 207 Cr.P.C and on finding a prima facie case punishable under Sections 279, 337, 338, 427 of IPC, accused was charge sheeted accordingly by this Court vide order dated 07.03.2024 to which accused pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined following witnesses:-

PW-1	Dr. Kartik
PW-2	Ganesh Dutt, Complainant
PW-3	Sourav, injured

6. Besides this following documents are as under:-

Ex. PW1/A-D	Police Rukkas dated 31.01.2017
Ex. PW1/E-H	MLRs Dated 31.01.2017
Ex. PW2/A	Complaint

7. PWs were closed by the Court order dated 27.02.2024 as prosecution failed to complete PWs despite almost seven years of the trial.

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8. Statement of accused Under Section 313 Cr.P.C was recorded in which he denied that all the allegations leveled against him and stated that the case has been falsely planted against him. He opted not to lead evidence in defence.

9. Arguments have been advanced by Ld. APP for the state and Ld. defence counsel and the case file has been carefully perused. After hearing the arguments, the court has come to the conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt for the following reasons –

10. Firstly, although the prosecution has examined seven witnesses, yet the prosecution has not been able to bring home the guilt of the accused, because for offence punishable under Sections 279, 337, 338 & 427 of IPC following ingredients must be proved viz .

1. that accused was driving or riding vehicle,
2. that such driving is or riding must be on public way,
3. that driving or riding is rash or negligent,
4. that driving endangered the human life or likely to cause hurt or injury to any person as well as damage to the property of the complainant and in fact caused simple as well as grievous hurt and damages.

11. However, the prosecution failed to prove identification of the accused as the driver of the offending truck who committed the alleged accident of the complainant and also that he was driving the vehicle in rash, negligent or speedy

manner and also that any injury was suffered by the complainant or any other person or that there vehicle got damaged in this accident.

12. Only three witnesses have been examined by the prosecution in order to prove the case against the accused. However, this Court is not satisfied with the prosecution evidences to prove the guilt of the accused beyond reasonable doubt for the following reasons:-

13. The complainant Ganesh Dutt, PW2 in his cross examination stated that he has not seen the accused driver at the time of accident and it had been the claim of the complainant in his complaint Ex. PW2/A that the accused driver fled away from the spot after leaving the offending truck. Therefore, he failed to identify the accused as the driver.

14. Similarly another injured witness Sourav was got examined as PW3 who also could not identify the accused driver and stated in his chief-examination that the driver of the offending truck fled away from the spot and in his cross examination, he stated that he did not know who was driving the offending truck.

15. Further, the prosecution also failed to submit any photograph of the accident and of the vehicles of the complainant as well as of the accused despite the claim that accused left the vehicle at the spot. There is no mechanical inspection report of the vehicle of the complainant no. HR55V-2808 and truck No. HR47B-5388 nor the same has been proved. Therefore, even the prosecution failed to prove any damage from the vehicle of the accused.

16. The prosecution also could not examined the owner of the offending truck to prove that it was the accused who was driving the offending truck on the date of accident to establish his identity. Prosecution also failed to examined other injured eye witnesses, IO of the case and other prosecution witnesses despite the trial took place for seven years and this goes against the case of the prosecution.

17. Prosecution also failed to prove the alleged rash, negligent and speedy driving of the accused as only PW2 and PW3 stated that vehicle was being driven in rash, negligent and speedy manner but they failed to explain the manner of the driving or the speed of the truck to come under defination of rashness/negligence etc. Only on the oral testimonies of these two persons and in the absence of any independent witness, the allegation of prosecution cannot be accepted and moreso when the injured eye witness Sourav manipulated the driving style in the chief examination while appearing as PW3 when he stated the truck was coming from wrong side in speedy manner and hit their vehicle whereas in the complaint Ex. PW2/A as well as in the chief examination of complainant, it was claimed that the driver of the truck caused the accident while overtaking. This creates doubts in the mind of the Courts.

18. No independent witness has been examined by the prosecution to depose and support the prosecution version despite the availability as has been disclosed in the cross-examination of the complainant. Rest of the witnesses are formal in nature and have not seen the accident.

19. Keeping in view the above discussion, the prosecution to failed to prove the guilt of the accused beyond reasonable doubt and the accused is

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acquitted of the charges leveled against him in this case. His bail bonds stand discharged. File be consigned to record room after due compliance.

Pronounced: 07.03.2024

(Mohammad Sageer),
Judicial Magistrate Ist Class,
Pataudi, Gurugram
UID No. HR-0381

Note: This Judgment & Order contains six pages and all pages have been checked and signed by me.

(Mohammad Sageer),
Judicial Magistrate Ist Class,
Pataudi, Gurugram
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Present : Ms. Monika, Ld. APP for State.
Accused on bail with Sh. Pawan Thakran, Advocate.

Fresh power of attorney on behalf of accused filed by Sh. Pawan Thakran, Advocate. Today the case was fixed for recording the statement of accused under Section 313 Cr.P.C. However, it has been brought into the notice of the Court that after accused was declared PO, when he appeared the case continued to be fixed for PWs under Section 299 Cr.P.C and no charge framed inadvertently as the accused never appeared in the Court before 18.08.2023 after granting the bail. This seems to be inadvertent mistake which needs to be corrected. Ld. Counsel for the accused submitted that they have no objection for framing of charge today. Arguments heard on point of charge. From the perusal of challan and other documents, a prima facie case under Section 279, 337, 338, 427 IPC is made out against the accused.

Statement of accused under Section 313 Cr.P.C recorded wherein the accused opted not to lead any defence evidence. Argument heard. Vide my even date of separate Judgment, accused is acquitted of the charges leveled against him. Bail bond and surety bond stands discharged. Case property, if any, be disposed of accordingly as per rules after expiry of appeal/revision, as the case may be. Personal bonds has been taken. Original RC and DL, if any be released in favour of the accused upon submitting the self attested photocopy of the same. File be consigned to record room, after due compliance.

Pronounced: 07.03.2024

Mohammad Sageer
Judicial Magistrate Ist Class
Pataudi, Gurugram
UID No. HR-0381

Sahil Singh-III