

FIR No. 74/17
PS Mayapuri
State Vs. Raj Das

(At 12 PM)

29.07.2020 (**PROCEEDINGS CONDUCTED THROUGH CISCO WEBEX MEETING ID 919211305**).

ORDER ON SENTENCE

Present: Ld. APP for the State.
Ld. LAC Sh. K. K. Singh for the accused Raj Das.
Accused Dashrath & Ramu (On Bail)
Accused Raj Das (in Jail No.4, Tihar Jail) produced through VC.
Sh. DD Sharma, Ld counsel for the accused Dashrath and Ramu.
Complainant Sanjay is also present through VC.

Heard on the point of sentence. It is stated on behalf of the convict Dashrath that he has already suffered incarceration in JC for about 2 years. He is sole bread earner in his family. He has appeared on each and every date fixed by this Court. It is further submitted that the convict is labour by profession and earning only Rs. 6000/- per month.

It is submitted on behalf of the convict Ramu that he has suffered incarceration in JC for about 13-14 days. It is further submitted that he is a sole bread earner in his family . He has appeared on each and every date fixed by this Court. It is further submitted that the convict is labour by profession and earning only Rs.6,000/- per-month.

It is stated on behalf of the convict Raj Das that he is in custody since the date of his arrest and has already suffered incarceration in jail for about 3 years and 3 month. It is submitted that the convict has no family to look after. His parents are also no more. He doesn't even has fixed place of abode.

Ld. APP for the State prays for maximum punishment.

Heard on the aspect of the compensation to be granted to the complainant



Sanjay. The complainant submits that he does not require any compensation and he wants to close this case.

Keeping in view the aforesaid facts & circumstances of the case, the convict namely Dashrath is hereby sentenced to imprisonment already gone by him and to deposit fine of Rs. 3000/- for the offence punishable u/s 394 IPC. Convict Ramu is hereby sentenced to imprisonment already gone by him and to deposit fine of Rs. 1000/- for the offence punishable u/s 411 IPC. Convict Rajdas is hereby sentenced to imprisonment already gone by him and to deposit fine of Rs. 200/- for the offence punishable u/s 394 IPC. In default of payment of fine, the convicts shall undergo further simple imprisonment of one month.

Fine deposited on behalf of accused Raj Das. Convict Raj Das be released from custody if not required in any other case. Soft Copy of this order and Judgment dated 23.07.2020 be supplied to all the convicts through whatsapp/email. Digitally signed copy of this order be also sent to the official email ID of Jail Suptd. concerned. This order be also uploaded on the court's website.

At request, put up for deposit of fine by the accused Dashrath and Ramu on 06.08.2020.

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(PANKAJ ARORA)

M.M-03 (West), THC, Delhi

29.07.2020

IN THE COURT OF SH. PANKAJ ARORA, MM-03, West, THC, Delhi

STATE VS. RAJEEV
FIR NO. 174/12
PS: MAYA PURI
U/S: 279/338 OF IPC.

ID No.	:	65515/16
Date of commission of offence	:	18.11.2012
Date of institution of the case	:	18.01.2013
Name of the complainant	:	Sh. Puran
Name of accused and address	:	Rajeev, S/o Sh. Jitender Singh, R/o H. No. Villa Ghaziabad, UP
Offence complained of or proved	:	U/s 279/337 of IPC.
Plea of the accused	:	Pleaded not guilty
Final order	:	Convicted
Date of judgment	:	29.07.2020

J U D G M E N T

1. The case of the prosecution in brief is that on 18.11.2012 at about 12.05 a.m. , at Lajwanti Chowk Red Light, Maya Puri, Delhi within the jurisdiction of PS Maya Puri, the accused namely Suresh Chander was found driving a Truck bearing registration no. HR-63B-4019 in a manner so rash and negligent so as to endanger human life and personal safety of others. While driving in the said manner, the accused had struck against one motorcycle bearing registration no. DL-3SW-8561 from behind and caused grievous injury to one Moses. On the basis of the statement of Sh. Puran, the present FIR came to be registered. After completion of necessary formalities, charge sheet was filed in this Court. Cognizance was taken. The accused was summoned. Charge was framed against the accused, to which he pleaded not guilty and claimed trial.



2. The prosecution examined 9 witnesses in support of its case, which are as follows:

1) Sh. Moses Dass is the victim, who was examined as PW-1. He deposed that in the month of November, 2012, he was working at V. CARE Call Centre at Noida. On the intervening night of 17/18.11.2012, he after dropping his sister namely Ms. Shefali at her house at Hari Nagar, was going towards Palam on Motorcycle bearing registration no. 8561, which was owned by his brother-in-law namely Sh. Ajit. At around 11.45 to 12.00 a.m. (of night) when he reached at Lajwanti Chowk, he saw that a Truck coming from Maya Puri Side. The said Truck was being driven by its driver in a rash & negligent manner at fast speed. The said truck hit his motorcycle from the back and due to the said collision, he along with his motorcycle fell down. The driver of the said Truck did not stop his Truck and his left leg came under tyre of the offending Truck. The said Truck dragged him along with my motorcycle to a little distance. After some time, the offending Truck stopped.

He further deposed that the registration number of the said offending Truck is 4019.

He further deposed that people gathered at the spot and they apprehended the driver of the said offending Truck at the spot itself. He came to know that the name of the driver of the said offending Truck is Rajiv. One *Chhole-Bhathure Wala* who was present at the spot and had seen the accident, made call to the police on 100. Police PCR Van came at the spot and took him to DDU Hospital.

He further deposed that at the said hospital, his brother-in-law namely Sh. Ajit Singh met him. After seeing his serious condition, his said brother-in-law took him to AIIMS Trauma Centre for further treatment. As his condition was serious and he was under treatment so, in the month of December, 2012, police recorded his statement regarding the said accident. The witness has correctly identified the accused and the photographs of the offending vehicle. During his cross-examination, he admitted the suggestion that many public persons gathered at the spot at the time of accident. He denied the

suggestion that the police has not recorded his statement in his presence. He further denied the suggestion that the police obtained his signatures on his statement which was recorded prior to recording of his statement. His signatures on his statement were obtained at the hospital. He further denied the suggestion that he has not seen the offending truck at the spot. He further denied the suggestion that he has seen the photographs of the offending truck for the first time in the court. He further denied the suggestion that he has seen the accused only in the court. He stated that he was driving his motorcycle prior to the accident in the speed of about 20-25 km/ph. The offending truck might had been driven in the speed of about 70 km/ph. He further stated that he was wearing helmet at the time of accident. He further stated that he fell down at the distance of about 10-15 feet from the offending truck at the time of accident. He further stated that the offending truck stopped at the distance of about 10-15 feet from the place of impact. He denied the suggestion that he had not met any accident with the offending truck.

2) HC Sanjeev Kumar is the duty officer, who was examined as PW-2 and he registered an FIR No. 174/12/10 which is Ex. PW-2/A and made the endorsement on the rukka which Ex. PW-2/B. The witness was not cross-examined despite having given the opportunity.

3) Ct. Bhimesh is the investigating police official, who accompanied with IO/ASI Sitar Singh at the spot and he was examined as PW-3. He was cross-examined but nothing material came out in his cross-examination.

4) Sh. Narender was examined as PW-4, who got released the offending vehicle i.e. Truck on superdari vide superdaginama which is Ex. PW-4/A and he received notice U/s 133 of M.V. Act which is Ex. PW-4/B and gave its reply which is Ex. PW-4/C. The witness was cross-examined but nothing material came out in his cross-examination.

5) Retd. ASI/Tech. Sh. Devender Kumar was examined as PW-5, who conducted mechanical inspection of offending Truck & victim's motorcycle and identified his reports which are Ex. PW-5/A & Ex. PW-5/B. The witness was not cross-examined despite having given the opportunity.



6) Retd. SI Ram Niwas was examined as PW-6. He deposed that he has brought the copy of order pertaining to destruction of old PCR records for the period from 01.07.2012 to 31.12.2012 after obtaining NOCs from all the concerned district unit, Delhi. The same is Mark A.

He further deposed that therefore, the record of present PCR record dated 17.11.2012 and 18.11.2012, PS Maya Puri was no more available. In his cross-examination, the witness denied the suggestion that he had brought false orders.

7) Ct. Matadin was examined as PW-7, who recorded DD No. 6B regarding admission of one patient namely Moses Dass at AIIMS Hospital, Delhi which is Ex. PW-7/A. The witness was not cross-examined despite having given the opportunity

8) Dr. Bhawana Saxena was examined as PW-13 who prepared the MLC No. 24371 of the injured namely Sh. Moses Dass. She deposed that she opined the injury was under observation and blunt in nature. The witness was not cross-examined despite having given the opportunity.

9) SI Sitar Singh is the IO in the present case, who was examined as PW-9. He deposed that in the intervening night of 17/18.13.2012, he was posted at PS Maya Puri as ASI. On that day, he received DD No. 2A regarding accident at Lajwanti Chowk near under flyover. Thereafter, he along with Ct. Bhimesh reached at the spot and found that one motorcycle & one truck in accidental condition. He came to know from the public persons that injured was taken to hospital through PCR Van. In the meantime, he received DD No. 4A regarding MLC of the injured. Thereafter, he left for hospital and Ct. Bhimesh remained at the spot. He moved an application to concerned hospital for recording the statement of the injured, however concerned doctor declared victim as unfit for statement. Thereafter, he again came to the spot and searched eye-witness of the present case and during the said search, he met one person namely Puran, who told all about the accident and he recorded his statement. On the basis of the said statement, he prepared the rukka which is Ex. PW-9/A and the same was handed over to Ct. Bhimesh for

getting the FIR registered. After registration of FIR at PS, Ct. Bhimesh came back at the spot along with copy of FIR and original rukka and same was handed over to him at the spot. The witness, thereafter, deposed about preparation of site plan, seizure memos, arrest memo and personal search memo and notice under section 133 of M.V. Act and reply of notice U/s 133 of M.V. Act. He further deposed that he had clicked 11 photographs showing the offending vehicle and vehicle of the injured. He further deposed that during investigation, the offending vehicle was mechanically inspected by mechanical inspector and he recorded the statement of witnesses. The witness was not cross-examined despite having given the opportunity.

3. Thereafter, statement of accused U/s 313 of Cr.P.C. was recorded, wherein all the incriminating facts were put to the accused. Accused stated that he has not committed any offence. He has been falsely implicated in the present case and he was innocent. Accused opted not to lead any evidence in defence.

4. This Court has heard the Ld APP for the state through VC (Cisco webex meeting ID No. 919 211 305) and perused the record. However, Ld counsel for the accused chooses not to address any arguments and submitted that the court may pass appropriate order on the basis of material placed on record during VC hearing dated 28.07.2020..

5. It is observed that only one eye witness got examined by the prosecution is PW-1 Sh. Moses Dass, who is the victim as well. He has correctly identified the numeric digits of registration number of the offending vehicle as well as the accused. He also correctly identified the photographs of the spot of incident as well as photographs of the offending vehicle. PW-1 has categorically deposed that on the intervening night of 17/18.11.2012, he after dropping his sister namely Ms. Shefali at her house at Hari Nagar, was going towards Palam on Motorcycle bearing registration no. 8561 , which was owned by his brother-in-law namely Sh. Ajit. At around 11.45 to 12.00 a.m. (of night) when he reached at Lajwanti Chowk, he saw that a Truck coming from

Maya Puri Side. The said Truck was being driven by its driver in a rash & negligent manner at fast speed. The said truck hit his motorcycle from the back and due to the said collusion, he along with his motorcycle fell down. The driver of the said Truck did not stop his Truck and his left leg came under tyre of the offending Truck. The said Truck dragged him along with his motorcycle to a little distance. His testimony is in consonance with his statement u/s 161 Cr.p.c. Ex. PW-1/A recorded by the IO, and also in consonance with Rukka Ex PW-9/A prepared by the IO on the spot on the basis of statement of eye-witness namely Puran (who could not be examined by the prosecution as summons to him through DCP concerned received back with the report that he had left the given tenanted premises and his present whereabouts could not be ascertained)

MLC No. 24371 (Ex. PW-8/A) and Mechanical Inspection Reports Ex. PW-5/A & Ex. PW-5/B corroborates the version of the aforesaid witness. As per the mechanical inspection reports, there are fresh damages on the front as well as rear part of the victim's motorcycle , and also on the front portion of the offending vehicle. As per the MLC Report, the injured has received multiple injures on his body. There is lacerated wound on his left leg and nose, abrasions on his temporal regions, right leg, nose etc. swellings on left thigh, left knee and left leg. However, the nature of the injury received by the victim is not specified in the MLC. As per the said MLC, the victim has left the DDU Hospital against the medical advice. As per the version of PW-1, he was admitted in AIIMS Trauma Centre for further treatment. No record pertaining to treatment received by the victim in Trauma Centre was got exhibited by the prosecution. There is no material to indicate that the injury received by the victim falls in the category of "**grievous injury**" as defined in Section 320 of IPC. Under these circumstances, the prosecution has failed to prove the fact that the victim has received grievous injury due to the accident in question.



It is proved that the motorcycle of the victim was hit from behind and the accused was driving a commercial vehicle i.e. Truck, therefore, the accused is supposed to be extra cautious and should have applied breaks at appropriate time in order to ensure that his commercial vehicle doesn't touches any other vehicle. It is pertinent to mention at this stage that it has been held by the Hon'ble High Court of Delhi in case titled as **Jeet Lal Vs. The State in Cri. Revision No. 382 of 2010** that *'the very fact that the truck driver did not care for the persons walking ahead on the road and did not apply brakes to save the pedestrian walking on the road itself shows that the truck driver was negligent. Every motor vehicle driver is supposed to drive the vehicle in accordance with road conditions, traffic density and presence of pedestrians on the road. Where the traffic density is more and pedestrians are also waling on the road, the motor vehicle driver is supposed to drive in such a manner that he does not hit the pedestrian and the motor vehicle would stop immediately on application of brakes. If this caution of driving a vehicle in a proper manner is not taken, this would amount to negligence and if the motor vehicle hits somebody from behind, due to such driving or non-application of brake, this is criminal negligence'*.

The identity of the accused is also established from the testimony of PW-4 Narender kumar, the registered owner as well as Superdar of the offending truck, who has identified his reply Ex.PW-4/C to the notice u/s 133 M.V. Act Ex PW-4B issued by the IO, wherein he stated that accident was caused by his driver Rajeev s/o Sh. Jitender(the accused herein). The identity of the offending vehicle is not disputed by the accused as reflected from the deposition dated 24.05.2016 of PW-4 Narender Kumar. No defence evidence was led on behalf of the accused despite having given the opportunity.

6. In the opinion of this court, all the prosecution witnesses have deposed about the incident fully in consonance with the facts mentioned in the charge sheet. There is no reason to disbelieve the testimony of the prosecution witnesses. The prosecution has proved the fact that the accused namely

Rajeev was driving Truck bearing registration no. HR-63B-4019 on a public way in a manner so negligent as to endanger human life and also the fact that the accused namely Rajeev had struck against one motorcycle bearing registration no. DL-3SW-8561 from behind and thereby caused simple injury to the motorcyclist namely Sh. Moses Dass. All the requirements of section 279/337 of IPC are satisfied. The testimony of prosecution witnesses comes out to be clear, convincing, trust-worthy & inspires confidence of this Court. Accordingly, accused namely Rajeev is hereby convicted for the commission of offence under Section 279/337 of IPC. The convict be heard on the point of sentence on

Announced in the virtual court vide Cisco Webex Meeting ID No. 919211305.
On 29, July, 2020.

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(Pankaj Arora)
MM-03 (West), THC Delhi
29.07.2020

FIR No.174/12
State Vs. Rajeev
U/s 279/338 of iPC
PS: Maya Puri
29.07.2020

**(PROCEEDINGS CONDUCTED THROUGH CISCO WEBEX
MEETING NO. 919211305)**

Present: Ld. APP for the State.

Accused Rajeev as well as his Counsel is not present today despite having been intimated in yesterday's VC hearing. Today, the matter is fixed for final arguments from the side of State.

Final arguments heard from the side of State

Put up for order at 2.00 p.m. today itself.

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(Pankaj Arora)
MM-03 (West),THC Delhi
29.07.2020

At 2.00 p.m.

Present: As above.

Vide separate judgment announced in the virtual court vide Cisco Webex Meeting ID No. 919211305, the accused namely Rajeev is hereby convicted for the commission of offence punishable under Section 279/337 of IPC.

Issue court notice to the complainant Sh. Moses Dass for NDOH.

Court notice also be issued to the accused as well as to his counsel and surety for NDOH.

The matter be put up for hearing on the point of sentence on 13.08.2020. Copy of the judgment be supplied to all concerned, and be uploaded on the court's website.

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MM-03 (West),THC Delhi
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