

IN THE COURT OF SH. KAPIL KUMAR
METROPOLITAN MAGISTRATE-05, CENTRAL,
TIS HAZARI COURTS, DELHI

CNR no. DL CT02-001400-2013
CIS No. 291712/16
State Vs. Sandesh Nagpal
FIR No. 120/13
PS, Daryaganj
U/s. 288/304-A IPC

JUDGMENT

- 1) The date of commission of offence : 08.05.2013
- 2) The name of the complainant : Shiv Parshad
S/o Sh Ram Raj
- 3) The name & parentage of accused : Sandesh Nagpal
S/o. Late Banwari Lal Nagpal
- 4) Offence complained of : 288/304-A IPC
- 5) The plea of accused : Pleaded not guilty
- 6) Final order : Acquitted
- 7) The date of such order : 11.06.2020

Judgment announced on : 11.06.2020

BRIEF REASONS FOR THE JUDGMENT:

- 1) The case of prosecution against the accused is that on 08.05.2013 at about 8:45 PM at property no. 107, Daryaganj, Delhi within the jurisdiction of PS Daryaganj he being the contractor knowingly or negligently omitted to take such order with the above-mentioned building under construction as was



ment to guard against any probable danger to human life by providing adequate safety measures specifically as to the vacant area for the installation of the lift. Due to the said act of the accused one person namely Chotte Lal fell down from the vacant lift area and got expired.

- 2) After completion of investigation, charge sheet was filed against the accused. In compliance of Sec.207 Cr.PC, documents supplied to the accused. Arguments on point of notice were heard. Vide order dated 18.11.2013 a notice for the offence u/s. 288/304-A IPC was served upon the accused, to which he pleaded not guilty and claimed trial.
- 3) In support of its case, prosecution has examined six witnesses. Statement of accused was recorded under section 313 Cr.P.C, (as per section 281 Cr.PC) in which he denied all the allegations and opted not to lead DE.
- 4) I have heard the arguments of Ld. APP for State and Ld Counsel for accused. I have also perused the record carefully.
- 5) It is the cardinal principle of criminal justice delivery system that the prosecution has to prove the guilt of the accused beyond reasonable doubts. No matter how weak the defence of accused is but the golden rule of the criminal jurisprudence is that the case of prosecution has to stand on its own legs.
- 6) Prosecution examined three eye witnesses in the present case who were with the deceased at the time of the incident. Their testimony is required to be appreciated carefully to see as to whether the case of the prosecution proved beyond reasonable doubts specifically on the aspect of rashness or negligence on the part of the accused. It is to be kept in mind that the case of the prosecution is that the victim Chotte Lal fallen down from the empty uncovered space meant for installation of lift in the building and thus got expired.
- 7) PW1 Shiv Parshad, PW2 Akhilesh and PW3 Arvind deposed almost on the same lines that on the day of the incident they had dinner at the first floor of



Building under construction and after having dinner victim Chotte Lal went to the upper floor for sleeping. They deposed that the victim was under the influence of liquor at that time. All of them deposed that the victim fallen from the open space of stairs and not from the space meant for the lift. All three witnesses did not support the case of the prosecution as far as the alleged factum of falling of victim for the space meant for the installation of lift is concerned. Witnesses were cross-examined by Ld APP for the State but all of them maintained their stand that the victim did not fall from the space meant for installation of lift. The fact which came in the testimony of all the eye witnesses that victim did not fall from the space meant for the lift turns out to be fatal for the case of the prosecution as in the cases of rashness or negligence it is to be proved specifically as to in what manner and at what place the accused committed a over-hasty act or breached his duty to take care. Falling of a person from a stair case is completely different from the fact that a person fallen down from the uncovered open space meant for installation of lift. In the first case the rashness or negligence is not appearing on the face of act while it is so appearing in the second case as it is in itself negligent that the open space meant for installation of lift was kept uncovered or unguarded in the building under construction. The prosecution fail to prove that the victim fallen from the space meant for the installation of lift.

8) It is also denied by the witnesses that they asked the accused to cover or guard the open space meant for installation of lift. This fact is also important in the facts of the present case as it is not proved that the accused was made aware of his duty to cover the open space by the labours working there or accused breach his duty intentionally. On the other hand PW1 deposed that sheets were already put at the space meant for installation of lift. This was deposed by PW1 voluntarily in the cross-examination by the Ld APP for the State and there was



Further cross-examination of the witness on this aspect.

Another fact deposed by all the three eye witness and admitted by PW6 SI Munish Kumar, who was the investigating officer of the present case, that the victim was under the influence of liquor at the time of the incident. If a person is going inside a building under construction and that too under the influence of liquor than that person is also negligent.

10) By virtue of testimony of public witnesses and investigating officer coupled with documents proved on record it is came on record that the victim was under the influence of liquor at the time of the incident. It is not proved that the victim fallen from the space meant for the installation of the lift which was allegedly kept uncovered and this fact destroys the case of the prosecution. If the victim fallen from the open space of stairs which he was using under the influence of liquor than the accused who was the contractor cannot be held responsible for the same. Though it could be said that there must have been further sufficient guard for disallowing entry of any person in the building under construction in the night time and that was the responsibility of the accused but this fact in itself is not sufficient for the conviction of the accused when the case of the prosecution is completely different that a person fallen from a open space of lift. This court cannot bring the additional fact in the case of the prosecution at this stage to impute any kind of liability upon the accused.

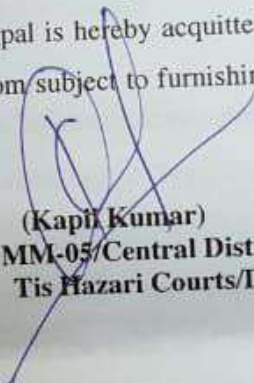
11) To sum-up all the three eye witnesses turned hostile to the case of the prosecution. The alleged fact as to the falling of victim from the open space meant for installation of lift stands not proved. It is well settled law that suspicion, however grave it may be, cannot take the place of proof and there is huge difference between something that 'may be proved' and 'will be proved'. In criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. The large gap between ' may be true' and 'must



ue', must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution before the accused could be condemned as convict. Reliance could be place upon Judgments titled as *Hanumant Govind Nargundkar & anr. Vs State of M.P., AIR 1952 SC 343*; *Shivaji Sahabrao Bobade & Anr. Vs. State of Maharashtra, AIR 1973 SC 2622*; *Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622*; *Subhash Chand Vs State of Rajasthan, (2002) 1 SCC 702*; *Ashish Batham vs State of MP AIR 2002 SC 3206*; *Narendra Singh & Anr Vs State of MP., AIR 2004 SC3249*; *State through CBI Vs Mahender Singh Dahiya, AIR 2011 SC 1017*; and *Ramesh Harijan Vs State of U.P AIR 2012 SC 1979*.

12) The prosecution is not able to discharge its burden of proof and accordingly, the accused Sandesh Nagpal is hereby acquitted from the present case. File be consigned to Record Room subject to furnishing of bail bonds as per section 437 A Cr.PC.

Announced in open court
on 11.06.2020


(Kapi Kumar)
MM-05/Central District
Tis Hazari Courts/Delhi,

No. DL CT02-001400-2013
No. 291712/16
Late Vs. Sandesh Nagpal
CIR No. 120/13
PS. Daryaganj

11.06.2020
(Through VC)

File has been pre-ponned in view of circular of the Ld District & Sessions Judge (HQ), reference no. 8188-8348/DJ/Covid 19, Lockdown pronouncements/2020, dated 03.05.2020.

Present: Ld APP for the State.

Accused is present with counsel.

Matter was fixed for judgment earlier.

Records perused.


Vide separate judgment of even date, announced, accused Sandesh Nagpal S/o Late Banwari Lal Nagpal is hereby acquitted from the present case.

The soft copy of the judgment has been provided to the computer branch for necessary uploading the same on CIS.

It is to be noted that digital signature of undersigned has been expired for which the necessary intimation has been sent to the computer office.

Section 437A Cr.PC complied with.

File be consigned to Record Room after due compliance.


(KAPIL KUMAR)
MM-65/Central:
Delhi/11.06.2020