



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 22nd April, 2025
Pronounced on: 28th June, 2025*

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CRL.A. 534/2025

THE STATE OF DELHI

Govt. of NCT of Delhi

I.P. Estate,

Delhi Secretariat

New Delhi.

.....Appellant

Through: Mr. Utkarsh, APP for State with I.O
SI chetan, P.s. Paschim Vihar West.

Versus

1. **MAMTA SEHGAL**
W/o Sh. Sameer Mehta
R/o H.No.154, Janta flats,
Rohini, Sec-2, Pocket-3, Delhi.

2. **MUKESH PAL**
S/o Sh. Mohan Lal
R/o H.No.77, Bhera Enclave,
Paschim Nagar,
Delhi.

.....Respondents

Through: Mr. Pradeep Kumar Mishra,
Advocate with Mr. Ashish Upadhyay,
Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. Appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed by the State to challenge the Judgment dated 21.11.2019 whereby the learned M.M. has acquitted the **Respondent No.1/Mamta Sehgal** under Section 279/338 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) in case FIR No.203/2016 under Section 279/338 IPC & Section 146/196 Motor Vehicle Act, 1988 (*hereinafter referred to as "M.V. Act"*) Police Station Mianwali Nagar, New Delhi but convicted the Respondent No.1/Mamta Sehgal under Section 146/196 M.V. Act. Learned M.M. also convicted the **Respondent No.2/Mukesh Pal** under Section 146/196 M.V. Act, on his admission of guilt.
2. ***Briefly stated***, the case of the Prosecution is that on 21.04.2016 at about 12:00 noon while the Complainant, Surender Bahadur Tiwari was coming back on his Cycle from Keshopur Mandi and was going towards Rohini, on the Peeragarhi Flyover, he was hit by the Car driven by Respondent No.1/Accused, Mamta Sehgal in a rash and negligent manner, because of which he fell and suffered grievous injuries. The Respondent No. 1 subsequently fled from the spot.
3. Public collected and gave the registration number of the Offending Vehicle on a Visiting Card to the Complainant. The PCR arrived and took the injured to the hospital, where his MLC was prepared. He gave his written Complaint after two days of incident, on 23.04.2016 on which impugned FIR No.203/2016 under Section 279/338 IPC & Section 146/196 M.V. Act was registered.



4. To prove its case, the Respondent No.1/accused, Mamta Sehgal, the Prosecution examined three witnesses in all. The material witnesses were *PW1, Surender Bahadur Tiwari*, the Complainant who proved his Complaint dated 23.04.2016 as Ex.PW1/A and the Visiting Card containing the number of the Offending Vehicle as Ex.P1. *PW2, Dr. Abhishek Gupta* proved the MLC of the Complainant as Ex.PW2/A. *PW3, Dr. Charan Singh*, CMO, Bhagwan Mahavir Hospital had examined the Complainant *vide* the MLC Ex.PW2/A. The other Prosecution documents were admitted by the Complainant.

5. The Statement under **Section 313 Cr.P.C.** was recorded of Respondent No. 1 who asserted that she was not rash or negligent in driving the Car. She was going on the flyover, while the Complainant hit her car from behind. She stopped the Car and intended to take the injured to the Hospital provided there was some lady to accompany her. She further stated that the cyclist/injured sat in front of her Car and started demanding money. She on the insistence of the people who had gathered, gave Rs.3,500/- to the injured and left the spot. She denied that she was rash or negligent or driving the vehicle at the high speed.

6. The learned M.M. *vide* the impugned Judgment dated 21.11.2019 observed that the Prosecution had not been able to prove rashness and negligent on behalf of the Respondent No.1 and thereby acquitted her under Section 279/338 IPC, but on the admission that there was no Insurance Policy of the vehicle, convicted and sentenced **Respondent No.2/Mukesh Pal** under Section 146/196 of the M.V. Act.



7. *Aggrieved by the acquittal of the Respondent No.1 under Section 279/338 IPC, the State has preferred the present Appeal.*

8. The **grounds of challenge** are that the Complainant/PW1 had supported the Prosecution story in all material aspects. He had correctly identified the vehicle and the Respondent as its driver. The testimony of PW1 has not been appreciated in the correct perspective by relying on the Site Plan. The specific role had been ascribed to the Respondent/Accused by the Complainant in his testimony which has been overlooked. It is, therefore submitted that the impugned Judgment be set aside and the Respondent be convicted.

9. ***Learned counsel for the Respondent**, however, has contended that the testimony of the Complainant was vague and in no manner proved the negligence of the Respondent. Rather from her defence, it is evident that it was the cyclist/injured who had hit the Car from behind.*

10. It is submitted that the learned M.M. has rightly acquitted the Respondent under Section 279/338 IPC.

11. **Submissions heard and record perused.**

12. The *case of the Prosecution* is that on 21.04.2016, while the Complainant, Surender Bahadur was going on his Cycle, he was hit from behind by the Respondent No.1, who was driving the Car in a rash and negligent manner, whereby the Complainant fell and suffered injuries. It is the defence of the Respondent that in fact it is the Cycle which had hit her Car from behind.

13. Before appreciating the testimony of the Complainant/PW1, *the **first pertinent aspect*** to note is that though accident had occurred admittedly on



21.04.2016, but according to the Complainant, since no action was taken by the Police, he himself went to the Police Station on 23.04.2016 and got his Complaint, Ex.PW1/A registered. The delay of two days in registration of FIR is thus, explained by the Complainant, on which there is no material cross-examination.

14. The *second aspect of significance* is to ascertain the manner of accident.

15. The suggestions given on behalf of the Respondent to the Complainant was that he had hit her Car from the left side from behind and that she was not rash or negligent in driving the vehicle.

16. Her defence gets corroborated from the **Seizure Memo of the Cycle** dated 28.04.2016. It is mentioned in the Seizure Memo of the Cycle that because of the accident, rear tyre, handle and paddle has been damaged, while the front wheel has got twisted, because of which the Cycle is no longer road worthy. Pertinently, no Mechanical Inspection was done of the Cycle.

17. The Seizure Memo which shows that it is the front vehicle which had got twisted, was not possible if the Cycle was hit from behind. Such damage is inconsistent with a rear-end collision, where one would expect greater damage to the rear wheel. The nature of damage to the Cycle therefore, creates a doubt about the manner in which the accident has occurred and lends some credence to the defence taken by the Respondent.

18. The **Site Plan** could have been a significant document in understanding the manner in which the accident occurred. However, the Complainant has admitted in his cross-examination that the Site Plan was



not prepared at his instance. It has been prepared subsequently by the I.O. on 23.04.2016. Evidently, the depiction of the accident in the Site Plan is based solely on the I.O.'s assessment of events and not on any input from the Complainant, to which no significance or importance can be attached.

19. In so far as the Car being driven by the Respondent is not disputed, but the testimony of the Complainant has not been able to establish that the accident occurred due to the rash and negligent driving of the Car by the Respondent. It has been rightly observed by the learned M.M. that merely because an accident took place, is not *ipso facto* a ground to attribute negligence to the Respondent in the absence of any such evidence.

20. Therefore, it is concluded that the Respondent has been rightly acquitted under Section 279/338 IPC. There is no merit in the present Appeal, which is hereby dismissed.

21. The Appeal is accordingly disposed of along with pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 28, 2025

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