

**Mohan Lal Vs. State**

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**Court :** Delhi

**Decided On :** Jan-25-1991

**Reported in :** I(1991)ACC612

**Judge :** S.C. Jain, J.

**Appellant :** Mohan Lal

**Respondent :** State

**Judgement :**

**S.C Jain, J.**

1. Facts giving rise to this revision petition are that on 4-2-1979 at about 6.20 a.m., opposite Khanpur Depot on Mehrauli Road, petitioner Mohan Lai while driving truck No. DHL 22 rashly and negligently on public road, struck against Dalip Singh and caused injuries to him. The petitioner did not stop the truck and succeeded in running away from the spot. The injured was removed to Safdarjung Hospital by Attar Singh (P.W.II), who later on succumbed to his injuries.

2. As the petitioner succeeded in running away from the spot after causing the accident, notice under Section 88 of the Motor Vehicles Act, dated 8.2.1979 it was served upon Shri Pritam Singh owner of the truck, who in his reply (Ex. PW10/A) informed that on 4.2.1979 at 6.20 a.m. (Date & Time of accident) Shri Mohan Lai (Petitioner) was the driver of his truck No. DHL 22 and that he was in his

employment and he would produce him. The petitioner was arrested on 15.2.1979 and challaned for the offences under Sections 279 and 304 A of the Indian Penal Code. '

3. The trial Court by his judgment dated 2nd May 1983 convicted the petitioner for the offences under Sections 279 and 304 A of the Indian Penal Code and sentenced him to undergo R.I. for one year-and to pay a fine of Rs. 10, 000/- and in default to further undergo R.I. for six months. Fine, if realised, was ordered to be paid to the L.R.'s of the deceased.

4. In appeal the Additional Sessions Judge confirmed the order of conviction but on the point of sentence, the order of the trial Court was modified to the extent that the fine amount was reduced to Rs. 2000/- from Rs. 10, 000/- as imposed by the trial Court. Aggrieved by the said judgment of the Additional Sessions Judge dated 12th October, 1983, the petitioner has filed this revision petition.

5. The main thrust of the arguments of the learned Counsel for the petitioner is that there is no evidence on record to establish the identity of the petitioner. He contended that on the said date, time and place, he was not driving the said vehicle. He was not arrested on the spot or immediately thereafter and that the identification parade of the petitioner was also not got done immediately after his arrest. He drew my attention towards the statements of Sh. Het Ram(PW1), Jaswant Singh(PW 11), Attar Singh (PW12), Prem Singh (PW18), who are the alleged eye witnesses. According to him, only Jaswant Singh (PW11) and Attar Singh (PW 12) identified the petitioner in the Court. Identifying the accused person for the first time in the Court at the time of recording evidence is no identification in the eyes of law, submitted the learned Counsel. As per the statements of these witnesses, it was the early hour of the morning and it was dark and the speed of the vehicle was quite high and it did not stop after causing the accident and in such circumstances, the learned Counsel argued, it cannot be believed that any of the witnesses could see the face of the driver of that vehicle. The Courts below convicted the petitioner without conclusive evidence on record to establish the guilt of the petitioner beyond reasonable doubt. He cited a decision of the Supreme Court in the case of Naheshwar Shrikrishna Choube v. State of Maharashtra

reported in 1973 CrL. L.R. 92 in support of his contention that in cases of road accidents by fast moving vehicles it is ordinarily difficult to find witnesses who would be in a position to affirm positively the sequence of vital events during the few moments immediately preceding the actual accident, from which its true cause can be ascertained. Evidence of such persons, therefore, requires close scrutiny for finding out what they actually saw and what may be the result of their imaginative inference. The learned Counsel submitted that the Courts below have not at all applied their judicial mind to appreciate the evidence and grave injustice has resulted there from.

6. The main question which requires determination in this case is about the identity of the accused. The identity of a person as a doer of a particular act comes in question very often in criminal cases. In such cases range of the relevant facts is much wider and is perhaps coextensive with the whole field of relevancy inasmuch as every fact showing that the person in question is the author of a particular act is admissible under one section or another of the Indian Evidence Act, 1872 unless barred by some provisions of Part III. Direct evidence that the accused committed the offence is admissible under Section 5.

7. There is no dispute about the fact that Dalip Singh (deceased) while crossing the road Along with others including Het Ram (PW1), Jaswant Singh (PW 11), Attar Singh (PW 12) and Prem Singh (PW 18), was hit by a speeding truck and received injuries and he succumbed to those injuries later on in the Hospital. The truck did not stop and the driver succeeded in running away after causing the accident. Jaswant Singh (PW 11), Attar Singh (PW 12), Prem Singh (PW 18) have mentioned the registration No. of that truck as DHL-22. This version given by these witnesses remains unchallenged in their cross-examination. Not a single question was put to these witnesses that the truck did not bear registration No. DHL-22 and therefore, it stands proved on record that it was the driver of truck No. DHL-22 who caused the accident resulting in the injuries to Dalip Singh (deceased).

8. It is also not disputed that notice under Section 88 of the Motor Vehicles Act, was served upon its owner Shri Pritam Singh (PW 10) who sent the reply (Ex.

PW10/A) mentioning therein that he is the owner of truck No. DHL-22 and on 4.2.1979 at 6.20 A.M. Mohan Lai (accused) was its driver. Though Pritam Singh, owner of the truck when appeared as a witness (PW 10) tried to wriggle out of this reply by stating that on that day, he had gone to Bhopal and on his return his son Pramjit Singh informed him about it and that he had no personal knowledge but the other evidence on record including the Logbook (PW5/B) clearly establish that it was the petitioner who was driving truck No. DHL-22 on the date, time and place and he caused that accident. Shri Attar Singh (PW 11) and Shri Jaswant Singh (PW 12) who were present with the deceased at the time of accident have correctly identified the petitioner as the person who was driving the truck at the time of accident. They stood the test of touchstone of probabilities in their cross-examination and there is no reason to discard their testimony. It is settled law that where an accused is not previously known to the identifying witnesses, identification parades are generally held. Failure to hold identification parade does not make the identification in Court inadmissible, yet the omission considerably affects the weight to be attached to such identification. In this case, the prosecution did apply before the magistrate for holding the test identification parade of the accused but he refused to participate by saying that since the witnesses were known to him, therefore, he did not want to participate in the identification parade but in his statement under Section 313 Cr. P.C. he explained that he had been shown to the witnesses and therefore, he refused to participate in the identification parade. Interestingly, no such question was put in the cross-examination of the witnesses who were to take part in the test identification parade. This contradictory stand taken by the petitioner leads to the conclusion that he intentionally did not participate in the test identification parade raising a presumption against him. I am in full agreement with the findings of the Courts below that it is the petitioner Mohan Lal who was driving truck No. DLH-22 at the time of accident.

9. The next question which needs determination is whether the death of Dalip Singh (deceased) was as a result of a rash and negligent act of the petitioner. A person who is driving a motor vehicle should always keep it in a state of control sufficient to enable him to avoid dashing against any other vehicle or running over any pedestrian who may be on the road. It is the duty of every one who drives a

vehicle on public highway to drive it with care and caution and to avoid as far as possible any injury to any person. The condition of the road and the nature of the traffic are also circumstances to be considered in order to arrive at a conclusion as to whether the accident was the result of rash or negligent driving of the vehicle by the driver. The Supreme Court in *Shakila Khadar v. Nausher Gama* 1975 Cr. L.J. 1105, has held that the important criteria for deciding whether the driving which led to the accident was rash or negligent would include not only the speed of the vehicle but also the width of the road, the density of the traffic and the attempt, if any, to overtake other vehicles, resulting in coming to the wrong side of the road and being responsible for the accident.

10. In the present case it has come in the statements of PW11, PW12 and PW18 which has not been challenged that at the time of accident some of the employees of DTC working at DTC Khanpur Depot alighted from a DTC bus and they were in the process of crossing the road, truck No. DHL-22 came from Mehrauli side at a very fast speed and without sounding the horn or giving indication and it collided against Dalip Singh. This evidence and other circumstances which have come on record are more than sufficient to establish that the petitioner was guilty of rash and negligent act in driving vehicle No. DHL-22 and causing death of Dalip Singh a pedestrian by his said act. The act of rash or negligent driving so as to endanger human life is itself an offence under Section 279IPC irrespective of such act actually causing the death of any person or hurt or grievous hurt to any person. Where the rash or negligent driving is responsible for the death of any person, the driver would also be guilty of an offence under Section 304 A IPC.

11. Both the Courts below have correctly appreciated the evidence on record and I find no justification in interfering with their judicious findings and I affirm the same.

12. On the point of sentence also, the petitioner deserves no leniency. After the accident, instead of giving a helping hand to the injured in removing him to the hospital, he preferred to run away from the spot. The sentence awarded cannot be said to be severe in the circumstances, as the precious life of a young man has been lost due to rash and negligent act of the petitioner. There is no merit in this revision petition, the same is hereby dismissed.

13. The petitioner is on bail. He shall be taken into custody forthwith to serve out the sentence awarded to him.

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