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

% Order Reserved on: September 30, 2011
Order Pronounced on: October 24, 2011

+ **Crl. Rev.(P) No.275/2008**

SANJEEV KUMAR Petitioner
Through: Mr.Yash Tondon, *Amicus Curiae*
versus

THE STATE Respondent
Through: Mr.Rajesh Mahajan, Additional
Standing Counsel (Crl.) for State
with Ms.Urvi Kathulia, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | } | No. |
| 2. | To be referred to Reporter or not? | | |
| 3. | Whether the judgment should be reported in the Digest? | | |

SUNIL GAUR, J.

1. The challenge herein is to the conviction of the petitioner for rashly and negligently driving his maruti van No. DNH -0105 on 19.10.1990 at about 6:00 p.m. on ring road from Punjabi Bagh side towards Dhaulan Kuan and near Rajdhani College Bus Stop, petitioner had purportedly hit his van against the cycle being driven by Dharampal in the same direction and as a consequence of this vehicular accident, the pillion rider on the cycle, who happened to be Shakuntla Devi, wife of the cycle driver- Dharampal, had sustained grievous injuries, which ultimately proved fatal.

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2. In relation to the aforesaid incident, petitioner had faced trial in FIR No. 831/90, under Sections 279/338/304-A of the IPC, registered at Police Station Rajouri Garden, Delhi, which ultimately culminated in the conviction of the petitioner and substantive sentence of 8 months with fine was imposed upon him for the main offence under Section 304-A of the IPC, which was challenged by way of appeal.

3. Vide impugned order of 12.5.2008, petitioner's appeal was dismissed and in this revision petition, conviction of the petitioner of the assailed on merits as well as on the question of sentence. However, at the hearing it was urged by learned *Amicus Curiae* counsel for the petitioner that the manner of taking place of this incident had not been disclosed by the alleged eye witness- Kamal (PW-3), who happens to be related to the deceased and even the site plan of the spot, which has not been duly proved is of no assistance to establish the negligence of the petitioner in any manner whatsoever.

4. It was next contended that the solitary evidence of Kamal (PW-3) is insufficient to establish the charge of rash and negligent driving against the petitioner and in the absence of the evidence of the Investigating Officer and the cycle driver, the conviction of the petitioner cannot stand and thus, deserves to be set aside.

5. Mr. Rajesh Mahajan, learned Additional Standing Counsel (Crl.) for Respondent – State supports the impugned Judgment and submits that prosecution case stands established from the unrebutted testimony of the eye witness Kamal (PW-3) and so, this petition deserves dismissal.

6. It is true that the evidence of Kamal (PW-3) remained unchallenged as the petitioner was unrepresented before the Trial Court, but without going into this aspect any further, when the crux of the deposition of Kamal (PW-3) is analysed, it becomes apparent that the emphasis of this witness has been on the fact that petitioner was driving his vehicle at a very fast speed but pertinently this witness attributes no negligence to the petitioner and does not state in his evidence as to how this accident took place. When petitioner/accused was questioned at trial, he had simply stated that he had not been rash and negligent in causing this accident and in fact this accident took place due to fault of the cycle driver – Dharam Pal. Infact, the prosecution is handicapped for want of evidence of Dharam Pal who was the best witness who could have shed light as to how this accident took place.

7. Since the solitary deposition of Kamal (PW-3) is lacking in its material particulars about the manner of taking place of this accident, therefore one has to fall back upon the site plan of the spot which though remains unproved in evidence as the Investigating Officer of this case has not been examined, but one thing strikes at a glance, that is, the site plan of the spot does not disclose as to at whose instance, it has been prepared.

8. Even if the site plan of the spot is taken into consideration, still it leads nowhere as it is not indicated therein as to how this accident took place. By means of arrows, it has been simply shown in this site plan that the vehicle of the petitioner as well as the cycle on which the deceased was the pillion rider, were going in the same

direction. It does not indicate as to how and where petitioner's vehicle had struck against the cycle on which the deceased was riding. This lacuna in the prosecution case introduces an element of reasonable doubt regarding the veracity of the entire prosecution case.

9. Upon objectively considering the prosecution case in its entirety, it transpires that though alleged eye witness Kamal (PW-3) who is related to the deceased claims to have taken the deceased and injured to the hospital but in the MLC of the deceased and the injured, the name of the relative or friend who had brought them to hospital is of Rakesh Kumar son of Om Prakash and not of this witness. Apart from this, none of the documents prepared at the spot, bear the signatures of the purported eye witness Kamal (PW-3). Thus, the prosecution case gets clouded by a grave doubt about its veracity.

10. In Abdul Subhan vs. State (NCT of Delhi), 2006 (3) JCC 1797, the decision of the Apex Court in State of Karnataka vs. Satish (1998) SCC (Cri.) 1508 was quoted with approval while extracting its operative part, which deserves notice and reads as under:-

"There being no evidence on the record to establish 'negligence' or 'rashness' in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the Respondent is a perverse view. To us it appears that the view of the High Court, in the facts and circumstances of this case, is a reasonably possible view. We, therefore, do not

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find any reason to interfere with the Order of acquittal. The appeal fails and is dismissed."

11. Somehow, the Trial Court as well as the Appellate Court have conveniently relied upon the unchallenged testimony of the solitary eye witness Kamal (PW-3) without considering as to whether the essential ingredients of the offence with which the petitioner has been charged, stand established from his deposition. Therefore, the impugned Judgment cannot be sustained and is accordingly set aside. Consequently, while extending benefit of doubt to the petitioner, the conviction of the petitioner recorded by the Trial Court is set aside and petitioner's bail bonds are discharged.

12. This petition is accordingly allowed.


(SUNIL GAUR)
JUDGE

October 24, 2011
rs/pkb