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

% *Date of Decision : 2nd December, 2013*

+ **CRL.L.P. 700/2013**

STATE Petitioner

Through : Mr.Manoj Ohri, Adv.

versus

LUCKY BEDI Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (Oral)

CRL.M.A.18135/2013

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

CRL.M.A.18133/2013 & CRL.M.A.18134/2013.

3. By CRL.M.A.18133/2013, the petitioner seeks condonation of delay in filing leave to appeal petition and CRL.M.A.18134/2013 in re-filing leave to appeal.
4. Heard and for the reasons stated in the applications, the same are allowed. Delay in filing and re-filing leave to appeal petition is condoned.
5. Application stands disposed of.

CRL.L.P. NO.700/2013.

6. Present leave to appeal petition has been filed by the petitioner under Section 378 Cr.P.C. against the order of acquittal dated

21.1.2013 passed by learned Metropolitan Magistrate.

7. Mr.Ohri, learned counsel for the petitioner, submits that the trial court has failed to appreciate the testimony of eye-witness, PW-1, Anuj Gulati, who has supported the case of the prosecution and specified the rash and negligent act by the respondent (accused before the trial court). Mr.Ohri further submits that although PW-1 did not identify the accused in Court due to lapse of time, however, he testified that the accused was identified by him in the police station before the Investigating Officer. Counsel also contends that while passing the impugned judgment the learned trial court has failed to appreciate that possession of the vehicle bearing no.DL1V 6963 was with the respondent at the time of the accident, which is proved by PW-3, Sh.Vijay, who is the registered owner of the vehicle. Counsel contends that the learned trial court has not considered the entire evidence, which has been placed on record.
8. Since, the testimony of the eye-witness, PW-1, is the most important piece of evidence, the same is reproduced below:

“FIR No.12/07
PS: Kirti Ngr

14.2.2011

PW-1 Anuj Gulati, S/o Sh. Kailash Chand Gulati, R/o 7/150
Second Floor, Ramesh Ngr, Delhi.

ON SA

Before 3 years ago I was returning from my office at C-7
M.S. Garden. When I reached at Paan Wala Shop near Nawab
Showroom Kirti Ngr. at about 8.15 pm. on my two wheeler. In
the meantime one quails came from the site of Rama Road

and going towards Maya Puri Chowk in speed of 40-45 km. One person who was crossing the road hit by Qualis. Due to lapse of time I cannot tell the number of the said vehicle. I made a telephonic call to PCR. PCR van reached at the spot. Thereafter injured removed to hospital. I tried to chase the offending vehicle i.e. Qualis but I could not succeed however, I note down the number of the offending vehicle and same is pass over to PCR officers on the next day, I went to PS and informed to PS regarding number of quails. My statement recorded by the IO and same is Ex.PW1/A which bears my sign at point A. This accident occurred due to the negligence of the driver of the offending vehicle. I cannot identify the accused today due to lapse of time however, the accused was identified by me at PS before IO. The colour of offending vehicle was black colour.

At this stage Id. APP requests to cross examine the witness.

Heard. Allowed.

XXXXXX by Ld. APP.

It is correct that day of incident was 08.01.2007. It is correct that seizure memo of offending vehicle i.e. DL1V6963 Ex.PW1/B bears my sign at point A. It is correct that notice U/S 133 MV Act, disclosure statement of accused, notice U/S 91 Cr.P.C., receipt of dead body and seizure memo, RC and insurance paper respectively Ex.PW1/C and Ex.PW1/D, 1/E, 1/F and 1/G bears my sign at point A. Accused shown to the witness but did not identify the accused due to lapse of time. Personal search memo is Ex.PW1/H which bears my sign at point A and arrest memo is Ex.PW1/I which bears my sign at point A.

XXXXX by Sh. K.K. Sharma counsel for the accused.

Paan Wala shop does not bear any sign board. At the time of accident I was standing in front of the shop of Paan Wala. I saw the accident from a distance of 30-35 steps. I chased the vehicle of the accused till the first red light. It is wrong to suggest that I was not present at the time of accident. It is further wrong to suggest that I never chased the vehicle of the accused. I have signed one document in the police station. I had signed 2-3 other documents. I cannot say whether the other documents were got signed in the PS or not. It is wrong to suggest that I am deposing falsely at the

instance of police. I visited the police station on the next day on receiving the telephone call from the official concerned. I do not remember whether all the documents signed by me in PS. It is further incorrect that I am a planted witness.”

9. Besides PW-1, PW-11, who is the son-in-law of the deceased had also testified that he had seen his father-in-law crossing the road to bring water. Testimony of PW-11 is also useful and the same is also reproduced below:

“14.09.2012

PW11: Ram Vriksh Yadav S/o Sh.Sehadev Yadav R/o Village Jara Dak, District Maharaja Ganj, Tarai, U.P.

ON S.A.

On 08.01.2007, I was working in Man Sarovar Garden, Kirti Nagar. On that day, I was present at C-27, MS Garden at about 8.40 p.m. and my father in law Lallan was also working there and from the said place, my father in law Lallan had gone at the opposite of the road to bring water. In the mean while one car had hit my father in law Lalla and as a result of that he fell down on the road and the car driver fled away from the spot with a car, I had also seen the said car from a distance. I had not seen the person who was driving the said car. I could not see the number of car also. We took my father in law to DDU hospital where he succumbed to the injuries in the night and on the next day morning, I identified the dead body of Sh. Lallan Yadav and IO recorded my statement Ex.PW11/A in this regard and after post-mortem examination we received the dead body and receipt in this regard is Ex.PW1/F was prepared.

XXXXXXX By Sh. S.K. Singh, counsel for the accused.

Number of public persons had gathered at the spot after the incident. I do not know who informed to the police. I do not remember the exact number of police officials who had come to the spot after the accident. My brother in law had reached at the spot after about 10/15 minutes at the spot but I do not know who had called him there. The injured was taken to hospital by the PCR van accompanied by me, by my brother in law and some other persons. My statement was recorded by the IO at PS. It is wrong to suggest that I am deposing falsely.”

10. Heard counsel for the petitioner and also perused the impugned order passed by learned trial court.
11. The law with regard to the grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is mis-application of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more plausible. In **Arulvelu and Anr. vs. State represented by the Public Prosecutor and Anr., 2009 (10) SCC 206**, while referring with approval the earlier judgment in **Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450**, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:-

“1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

6. Careful scrutiny of all these judgments lead to the definite conclusion that the appellant court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law."

12. The first question which comes up for consideration is whether the prosecution has been able to prove that the respondent was driving the vehicle in a rash and negligent manner. Careful reading of the evidence of PW-1 and PW-11 would show that there is not even a whisper with respect to the accused person driving the vehicle in a rash and negligent manner.

13. In my view, the trial court has rightly relied upon the law laid down in the case of ***Rathnashalvan v. State of Karnataka***, reported at (2007) 3 SCC 474. Paras 5 and 6 of the judgment read as under:

"5. Section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304A. Culpable negligence lies in the failure to

exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

6. As noted above, "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted."

14. Similar view has been expressed in the case of ***State of Karnataka v. Satish***, reported at (1998) 8 SCC 493. Relevant portion reads as under:

"5. 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 find any reason to interfere with the order of acquittal. The appeal fails and is dismissed. The respondent is on bail. His bail bonds shall stand discharged."

15. In the present case, the evidence on record i.e. testimonies of PW-1

and PW-11 does not establish any negligence or the fact that the respondent was driving in a rash manner. Hence, in the absence of any evidence, it cannot be said that the view taken by the trial court in acquitting the respondent is perverse and thus there is no reason for this Court to take a different view or disturb the finding of the Court.

16. Accordingly, no grounds are made out to entertain the present leave to appeal petition and the same is dismissed.

DECEMBER 02, 2013
msr

G.S.SISTANI, J