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

+ **CRL.L.P. 583/2017 and CRL.M.A. 16561/2017**

STATE (GNCT OF DELHI)

..... Petitioner

Through: Ms Kusum Dhalla, APP for State.
SI Ravinder, PS Bawana.

versus

DEEPAK TYAGI

..... Respondent

Through: Mr A.S. Mann, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **04.02.2020**

1. The State has filed the present petition seeking leave to appeal against a judgment dated 08.02.2017 passed by the learned MM-05, North District, Rohini Courts, whereby the respondent was acquitted of the offences punishable under Sections 279/304A of the Indian Penal Code, 1860 (IPC).
2. The petitioner contends that the judgment dated 08.02.2017 (hereafter the 'impugned judgment') ought to be set aside because the learned Trial Court failed to appreciate various facets of the case. It is contended that as the eye witnesses (PW1 and PW2) had affirmed that they were present at the spot and had seen the accident.
3. Ms Dhalla, learned APP contended that PW1 is an independent witness and had fully supported the case of the prosecution. She also contends that the Trial Court did not consider the testimony of PW5 who is the owner of the offending vehicle and the respondent's brother. He stated that the offending vehicle was being driven by the respondent on the date of

the incident. The inspection report conducted on 01.01.2006 also shows fresh damage to the offending vehicle.

4. The case of the prosecution is that on 31.12.2005 at about 8:25 pm, on Main Road, Harewali Mod and Dariyapur, Delhi the respondent was driving a vehicle (bearing registration no. DL-8CD-9941) in a rash and negligent manner. Consequently, the vehicle being driven by the respondent had collided with a two-wheeler (bearing registration no. DL-8SN-1513) causing the death of its rider, Sh Sehdev Rana (the deceased).

5. FIR no. 549/2005 under Sections 279/304A of the IPC was registered with PS Bawana and thereafter, the chargesheet was filed. The respondent was charged with the commission of offences punishable under Sections 279/304A of the IPC. He pleaded not guilty and the matter was set down for trial. During the trial, the prosecution examined sixteen witnesses to prove its case.

6. By the impugned judgment, the Trial Court acquitted the respondent of all the charges, since it found that the prosecution had failed to prove the guilt of the respondent beyond all reasonable doubt. The Trial Court noted that the case of the prosecution rested on the testimonies of eye-witnesses PW1 and PW2. However, the Trial Court found that their testimonies were not consistent and cogent.

7. Manjeet Singh deposed as PW1. He stated that on 31.12.2005, he and his friend Dinesh Kumar (who deposed as PW2) were going to Bawana on Dinesh Kumar's motorcycle. PW1 stated that he was riding pillion. At about 08:00-08:30 pm, when they reached near Dariya Pur Nahar, a car came from

behind them and over-took them in a rash manner and struck the two-wheeler scooter coming from the front side. As a result of this collision, the scooter was thrown to the side of the road. The car also stopped. PW1 and PW2 stopped their motorcycle and upon inquiry, noted that the rider of the scooter (the deceased) was a person from their village. PW1 stated that the number of the offending vehicle was DL 8CD 9941.

8. In his cross-examination, PW1 stated that the road leading to Bawana is a broken and *kachha* road. There are no streetlights on the road leading to Bawana and there were none at the spot where the accident took place. He affirmed that the offending vehicle over-took their motorcycle from the wrong side. PW1 stated that the scooter, after colliding with the offending vehicle, plunged into the ditch. However, PW1 changed his statement and stated that the car had plunged into the ditch and not the scooter. He stated that at the time of the accident he was at a distance of about 300 yards from the spot. PW1 stated that he tended to the injured while PW2 went to apprehend the driver of the car, which had plunged into the ditch. He denied having seen the accused at the time of the accident at the site.

9. Dinesh Kumar deposed as PW2. He recounted the same facts as to the time and place of the alleged incident. PW2 stated that pursuant to the collision, both the scooter and its rider were thrown into a ditch on the side of the road. He stated that the accused left his car and tried to flee from the spot. PW2 identified the accused in open court and testified that he was driving the offending vehicle at the time of the accident. In his cross-examination, PW2 stated that the road from their village to Bawana is a well-built *pakka* road but there was no street-lighting on the road leading to

the site of the accident. He stated that neither the car nor the scooter were thrown into the ditch and both vehicles remained on the road itself. He stated that at the time of the accident, they were only 20-25 feet away from the spot. They ran about 70-75 paces to reach the spot of the accident. PW2 stated that there were about four persons in the car when the accident took place. PW2 denied having chased the accused and stated that he was tending to the deceased.

10. Arun Tyagi deposed as PW5. He stated that he had purchased the offending vehicle from one Ramsharan Dass and on 31.12.2005, the said vehicle was being driven by the accused.

11. The Trial Court noted various inconsistencies in the testimonies of the prosecution's main witnesses – PW1 and PW2. First, PW1 stated that the road on which the accident took place is a *kachha* road; however, PW2 stated that the same is a *pakka* road. Second, PW1 stated that the offending vehicle came from behind and over-took them while PW2 stated that the car overtook from the wrong side before colliding with the scooter. Third, PW1 stated that after the collision, the scooter plunged into the ditch/trench along the road while PW2 stated that neither vehicle had fallen into the trench and both had remained on the road. However, corroboration with the statement of the IO (PW14) and photographs of the site showed that the car had fallen into the trench. Fourth, PW1 stated that after the collision, PW1 was taking care of the victim while PW2 unsuccessfully chased the accused. This is not corroborated by PW2's testimony as he chasing the accused. Fifth, PW2 deposed that there were about four persons in the car. PW1 did not state anything to this effect and no efforts were made to trace the whereabouts of

these four people allegedly travelling in the said car.

12. The Trial Court referred to the decision of this Court in ***Abdul Subhan v State (NCT of Delhi): (2007) Cri. L.J. 1089***, which contains the procedure to be followed by the investigating agency whilst investigating cases of vehicular collision. Relying on the aforesaid decision, the Trial Court found that the inspection report (Ex. PW14/B) was an unreliable document because it was made without scale and was, merely, a rough sketch. More importantly, it did not contain details about the skid marks, which could indicate as to how the accident had taken place.

13. Undeniably, there are the testimonies of the witnesses on which the prosecution relied to prove its case, are inconsistent in respect of various aspects as noticed by the Trial Court. The prosecution had neither produced photographs nor a site plan drawn in conformity with the decision in ***Abdul Subhan*** (*supra*), which could assist in establishing the manner in which the accident had taken place.

14. Thus, the conclusion that the prosecution had failed to establish its case beyond reasonable doubt does not warrant any interference by this Court.

15. It is also seen that the present petition has been filed after a delay of one hundred and eight-eight days from the prescribed period. The petitioner has also filed an application seeking condonation of delay in filing the present petition. It is stated that *“the appellant could not prefer the present appeal before this Hon'ble Court within the stipulated period as the file pertaining to the present case was sent to the various authorities and after*

passing through various channels the tile of the case along with the opinion regarding the case being fit for challenging before this Hon'ble Court was sent to Department of Law Justice and Legal Affairs". It is stated that the approval was received on 15.09.2017 and thereafter the matter was marked to counsel and steps were taken to file the appeal. The petitioner has sought to explain the inordinate delay by stating that "the delay in filing the accompanying present appeal was not deliberate, but was due to procedural aspects and was thus unavoidable."

16. The above explanation is unpersuasive. The fact that the petitioner has not taken the necessary decision in a timely manner for bureaucratic reasons cannot be a ground for condoning the delay.

17. In view of the above, this Court finds no reason to interfere with the impugned judgment. The petition is dismissed, both on merits as well as on limitation. The pending application is also dismissed.

VIBHU BAKHRU, J

FEBRUARY 04, 2020
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