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

+ **Date of Decision: 06.01.2015**

% **CRL.L.P. 278/2014 and CRL.M.A. 6270/2014**

STATE

..... Petitioner

Through: Mr. P.K. Mishra, APP for the State.

versus

MAHENDER PAL SEHGAL

..... Respondent

Through: Mr. Ankur Sood & Mr. Shoumendu Mukherji, Advocates for respondent.
SI Ramesh Chand, PS - Kamla Market.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. This application has been preferred to seek grant of leave to appeal under Section 378(3) Cr.P.C. against the judgment dated 08.10.2013 passed by Sh. Sachin Sangwan, MM-05 (Central), Tis Hazari Courts, Delhi in F.I.R. No. 147/2002, P.S. Kamla Market, District Central, whereby the respondent accused has been acquitted of the offence under Section 279/304A I.P.C.

2. The respondent has accepted the notice and filed a reply.

3. I have heard learned APP as well as learned counsel for the respondent and proceed to dispose of the application.

4. The case of the prosecution is that on 23.04.2002 at about 1.30 p.m., in front of P.S. Kamla Market JLN Marg, the respondent/ accused Mahender Pal Sehgal was found driving scooter No.DL4SM 3047 in rash and negligent manner so as to endanger human life and personal safety of others. While so driving, he struck his scooter against one Smt.Chhoti Devi W/o Sh. Jai Lal and caused her death – not amounting to culpable homicide, and thereby committed an offence punishable under Section 279/304A IPC.

5. Charge was framed against the accused on 23.04.2003 and the accused pleaded “not guilty” and claimed trial. Evidence was led by the parties. One Suresh Kumar was stated to be the eye-witness, who was examined as PW-11. He is the nephew of the deceased.

6. The defence set up by the accused, who examined himself as DW-1, was that on the day of the incident, he was going on his scooter from Hamdard Dawa Khana Chowk towards Paharganj and the deceased along with Suresh Kumar – PW-11 were going from Paharganj side towards his opposite direction. He claimed that all of a sudden a heavy vehicle came on his side. He stated that Suresh Kumar – PW-11 had crossed the road and was near the divider on the road and was shouting to the deceased lady “*Bhag bhua bhag*”. All of a sudden, the lady got confused and got hit by the heavy vehicle from his side. He claimed that he immediately reached there and the lady fell on him and his scooter. He further stated that he was driven along with the said lady; his scooter got imbalanced, and; he fell along with the scooter and the said lady also fell down. He claimed that he lost his senses and regained his senses in the hospital. He also received injuries. He claimed that the accident did not occur due to his fault and it

was an act of misfortune.

7. The Trial Court acquitted the accused upon examination of the question whether the prosecution had proved its case against the accused beyond reasonable doubt. While disbelieving the defence of the accused that there was another heavy vehicle with which the deceased collided before falling on the scooter being driven by the accused, the Trial Court returned the finding that it was not established beyond reasonable doubt that the accused was driving the vehicle in a rash or negligent manner.

8. While PW-11 had claimed that the scooter was being driven in rash and negligent manner, he had not explained as to on what basis he had arrived at such a conclusion. It was not a case where the accused was shown to have disobeyed traffic rules, such as, jumping of red light, driving in a drunken state, driving in zig-zag manner, etc. During his cross-examination PW-11 had claimed that the minimum speed of the scooter was 80 Miles per hour, which translates to around 120 Kilometres per hour. The Trial Court disbelieved this claim, as it is impossible for a scooter to be driven at that speed.

9. More importantly, the I.O. of the case had deposed that on the basis of the skid marks, the speed of the vehicle appears to have been around 30-40 Kilometres per hour. Thus, a clear cut case of over-speeding was not made out. The Trial Court took into account the photographs Exhibit PW-5/A, which showed the skid marks to be almost 2-3 Metres from the *Patri*. The site plan Exhibit PW-15/C was also taken into consideration, which showed the skid marks.

10. The Trial Court took into consideration the fact that the deceased was more than 70 years of age and that there was no intersection, or Zebra-crossing at the place where PW-11 and the deceased were crossing the road.

11. The respondent has supported the judgment and submitted that the evidence on record does not support the conclusion of rash and negligent driving of his vehicle by the respondent. The photographs of the vehicle after the impact have also been relied upon.

12. Learned APP submits that since the defence version of the case has been disbelieved, it stands established that it was on account of the impact of the scooter of the accused that the deceased had lost her life. That, by itself, is not sufficient to establish the offence under Sections 279/304A IPC as it was also essential to establish that the accused was driving his vehicle in a rash and negligent manner. There is no answer to the finding returned by the learned MM that the prosecution had not established any attribute of rash and negligent driving qua the accused at the time of the accident. The accusation of the vehicle being driven at a very high speed of about 120 Km./hr. Has been disbelieved for cogent reasons and is contradicted by the evidence in the form of skid marks and photographs.

13. Accordingly, I find no merit in this petition and dismiss the same.

VIPIN SANGHI, J

JANUARY 06, 2015

B.S. Rohella