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

+ CRL.L.P. 27/2015

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through: Ms. Anita Abraham, APP along with
SI Om Parkash, PS – Badarpur, for
the State.

versus

PAWAN KUMAR

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
12.07.2016

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The State/ petitioner seeks leave to appeal under Section 378 (1)(a) Cr.P.C. to assail the judgment dated 20.10.2014 passed by the learned ACMM/ South-East District, Saket Courts Complex, New Delhi in case No.RBT-200/I dated 05.02.2014 arising out of the FIR No.574/2005 under Sections 279/304-A IPC registered at Police Station Badarpur titled *State Vs. Pawan Kumar*. By the impugned judgment, the accused has been acquitted by the Trial Court.

The case of the prosecution was that on 10.07.2005 at about 10 p.m. at Badarpur Bus Terminal, New Delhi, the accused was driving a bus bearing registration No. DL-1PB-0927 in a rash and negligent manner and

while driving the bus in the said manner, he hit a pedestrian Smt. Urmila Devi and thereby caused her death, not amounting to culpable homicide. The star witness of the prosecution was Sh. Sanjay Kumar (PW-3). Sh. Sanjay Kumar (PW-3) was the driver of DTC bus bearing registration No.DL-0620 of route No.479 when the accident happened. He stated that on the date of the incident he came at Badarpur Bus Terminal from Punjabi Bagh. He stopped his bus near turning of Badarpur More. In the meantime, one blueline bus bearing No.DL-1PB-0927 driven by the accused came on the right side of the DTC bus driven by the witness PW-3, i.e. on the driver side and hit one old lady and after the impact, she got hit by the vehicle of PW-3. He stated that there was jam on the road at the time of accident and his bus could not move until blueline bus move ahead. He stated that just before the accident, the vehicles were at moderate speed as there was jam. He claimed that the driver of the offending vehicle had taken a turn without looking at the left side mirror and without getting any assistance from the conductor. The prosecution did not examine any other independent witness. The police constable Anil Kumar (PW-6) arrived at the site only after the accident had taken place. The site plan so prepared at the site of the accident was produced as Exhibit PW-3/B which shows the location of the two buses, namely the allegedly offending bus driven by the accused and the DTC bus driven by PW-3. It also shows the location of the deceased victim in between the two buses.

The Trial Court has acquitted the accused by observing that PW-3 did not depose that the accused was driving the offending bus rashly and negligently at the time of accident and that due to such rash and negligent driving by the accused, he hit the victim. The Trial Court also found the

statement of PW-3 to be contradictory. In his earlier statement, i.e. Exhibit PW-3/A on the basis of which the case was registered, PW-3 had stated that towards his right side a private bus route No.443 was standing just ahead of his bus and in the meantime one lady who was coming towards right side of his, namely PW-3's bus, was hit by the offending bus driven by the accused at a fast speed and in a rash and negligent manner when he took right turn. This was contradicted by the deposition of PW-3. PW-3 did not depose that the offending bus was standing towards the right side, ahead of his DTC bus. He deposed that before the accident the vehicles were at moderate speed due to a traffic jam whereas he stated in his earlier statement Exhibit PW-3A that the accused came at a high speed. Even though PW-3 had deposed that other persons were present at the time of accident and who had seen the accident, none of them were examined. The Trial Court held that on a perusal of plan Exhibit PW-3/B, the story of the prosecution premised on the testimony of PW-3 appears to be doubtful. The possibility of the victim being hit by the DTC bus driven by PW-3 cannot be ruled out.

In these circumstances, I find no merit in the present leave to appeal as the Trial Court correctly appreciated the evidence brought on record in arriving at its conclusion.

The petition stands disposed of.

VIPIN SANGHI, J

JULY 12, 2016

B.S. Rohella