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

+ CRL.L.P. 336/2016 and Crl. M.A. Nos. 10131-32/2016

Decided on 11th July, 2016

THE STATE (GNCT OF DELHI)

..... Petitioner

Through : Ms. Meenakshi Chauhan, APP

Versus

UMESH RAI

..... Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Arguments heard and material, placed on record, perused.
2. By this petition under Section 378(1) of the Code of Criminal Procedure, 1973 ('the Code', for short), petitioner seeks leave to appeal against the judgment dated 10th February, 2016 passed by the trial court, whereby respondent has been acquitted of the charges under Sections 279/304-A IPC.
3. As per the prosecution, respondent, while driving the truck bearing no. DL-1GB 2289, in a rash and negligent manner, on 2nd August, 2011 at about 4:50 PM, knocked down the victim, namely, Anwar Ansari (deceased), who was crossing the road, near DTC bus stand at Shaheen

Bagh, New Delhi, resulting fatal injuries to him to which he succumbed before he could reach at All India Institute of Medical Sciences, New Delhi (AIIMS). The incident was witnessed by PW1 H.C. Vinod Kumar, who was on picket duty at Shaheen Bagh. PW1 HC Vinod Kumar informed the Police station as also at no. 100 from his phone and pursuant thereof DD No. 33-A (Ex.PW4/A) was recorded and was handed over to PW4 SI Ramesh Chand, who along with PW5 Constable Manveer Singh reached the spot and shifted the victim to AIIMS Trauma Centre, where he was declared brought dead. PW4 SI Ramesh Chand returned at the spot and recorded statement of PW1 Constable Vinod Kumar pursuant whereof FIR was registered. After the accident, respondent ran away from the spot leaving the truck at the spot. Truck was taken in possession. On 3rd August, 2011 PW3 Shri Kamla Prasad produced the respondent in the police station, accordingly, respondent was arrested.

4. Trial court has meticulously scrutinized the statements of the witnesses produced by the prosecution as also other relevant material and has come to the conclusion that prosecution had failed to prove its case beyond shadow of reasonable doubt. Accordingly, respondent has been acquitted by the trial court.

5. It is trite law that leave to appeal is to be granted in exceptional cases and for substantial and compelling reasons, where the judgment under appeal is found to be perverse. It has to be shown that the conclusions arrived at by the trial court are perverse or there is misapplication of law or any legal principles have been violated. High Court cannot entertain a petition merely because another view is possible or that another view is more plausible. Reliance is placed on Arulvelu and Anr. Vs. State, MANU/SC/1709/2009 in which Ghurey Lal vs. State of Uttar Pradesh, MANU/SC/3223/2008 has been considered. The principles which have to be kept in mind by the High Court while entertaining the appeal against the acquittal have been enunciated in the following manner:-

“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.

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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. In the backdrop of the above settled legal position, I have considered and perused the statements of the witnesses, reliance whereupon has been placed by the learned APP and am of the view that view taken by the learned trial court is not perverse, inasmuch is a possible view. Learned trial court has found the testimony of PW1 to be untrustworthy and unreliable. To my mind view taken by the trial court is neither perverse nor suffers from any manifest error. On scrutiny of evidence I also find the PW1 to be not a trustworthy witness, inasmuch, the presence of PW1 at the spot at the time of accident itself is shrouded with mystery and is doubtful.

7. As per the prosecution, PW1 had witnessed the accident and immediately thereafter made a call to police station as well as at number 100. DD No. 33-A (Ex. PW4/A) was recorded in the Police Station Jamia Nagar. Pursuant to this DD entry, Investigating Officer along with Constable Manveer Singh reached the spot. The telephone number as mentioned in the DD entry, is not that of PW1 HC Vinod Kumar but is of some other person.

PW1 HC Vinod Kumar has given his mobile number as 9868341784; whereas, the mobile number recorded in Ex. PW4/A is 9911332886. PW1 HC Vinod Kumar, in his cross-examination, has admitted that mobile number 9911332886 was not his. Meaning thereby, the information regarding the accident was not given by PW1 HC Vinod Kumar but by some other person. Had PW1 HC Vinod Kumar been present at the spot and had given information through his mobile number, in Ex. PW4/A his mobile number would have found mentioned and not of some other unknown person. Learned APP has vehemently contended that identity of the respondent stands proved since he was produced in the Police Station by the Caretaker, who stated that respondent was driving the truck bearing no. DL-1GB 2289 which was seized from the spot. As per PW4 and PW5, PW3 Shri Kamal Prasad had produced the respondent in the Police Station on 3rd August, 2011. However, PW3 Shri Kamal Prasad has not whispered a single word in this regard in his statement. He has simply deposed about the release of the vehicle, i.e., truck bearing no. DL-1GB 2289 to him on superdari. Even otherwise, in absence of any eyewitness this circumstance would not have been of much help to the prosecution to prove that vehicle was driven in a rash and negligent manner, resulting in alleged accident.

There are other discrepancies as well. As per PW4 SI Ramesh Chand, he along with Constable Manveer Singh had reached the spot on receipt of Ex. PW4/A. However, PW5 Constable Manveer Singh has deposed that Duty Officer handed over DD No. 33-A (Ex. PW4/A) to him to hand over the same to PW4 SI Ramesh Chand. Thereafter, he reached the spot and handed over the DD entry to the Investigating Officer (PW5). On this point also, PW4 and PW5 have given different versions.

8. For the foregoing reasons, I am of the view that petitioner has failed to make out a case for grant of leave to appeal. Petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

JULY 11, 2016

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