

\$~44

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

+ CRL.L.P. 446/2016

STATE

..... Petitioner

Through :Mr. Sudershan Joon, Adv. with SI
Uday Singh, P.S. Bawana

versus

PAPPU KUMAR

..... Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

%

26.08.2016

Crl. M.A. No. 13182/2016 (for condonation of delay of 89 days)

1. For the reasons explained in the application, delay in filing the petition is condoned. Application is disposed of.

Crl. M.A. No. 13183/2016

2. Allowed, subject to all just exceptions. Application is disposed of.

CRL.L.P. No. 446/2016

3. Respondent was convicted under Sections 279/304-A of the IPC by the trial court and sentenced to undergo rigorous imprisonment for one year with fine of ₹5,000/- for the offence under Section 304-A of the IPC. Respondent preferred an appeal before the Sessions Court, which has been allowed by the learned Additional Sessions Judge (North) Delhi.

4. That is how petitioner is before this Court by way of present petition seeking leave to appeal against the acquittal of respondent.

5. Appellate Court has meticulously scrutinized the testimonies of the witnesses, more particularly that of eye-witnesses PW1 Basant Kumar and PW3 Ashok Kumar. Appellate Court has also taken into consideration the testimonies of PW7 Constable Satish Kumar, PW8 ASI Anandi Prasad Singh and PW9 ASI Vindheshwar Prasad. PW8 is the Investigating Officer. PW7 had accompanied the Investigating Officer to the spot and remained with him during the investigation. PW9 was in the PCR vehicle which was on patrolling duty in the area. Appellate Court has returned a finding that their statements suffer from material contradictions and the same are discrepant and unreliable. Learned Appellate Court has enumerated in details such inconsistencies and contradictions in the impugned judgment. I have also perused the testimonies of the above referred witnesses, who are material witnesses, and I am of the view that their testimonies suffer from material inconsistencies and are discrepant, inasmuch as have been rightly doubted by the Appellate Court.

6. From the testimonies of above witnesses, it cannot be concluded that respondent, while driving the truck bearing no. DNG 0709 in a rash and negligent manner on 24th July, 2002 at about 7.50 AM, had hit the rickshaw pulled by deceased Cheddi Lal and on which PW1 and PW3 were sitting,

resulting in fatal injuries to the deceased, to which he succumbed at the spot. PW1 and PW3 have claimed that they were sitting on the rickshaw, pulled by the deceased and after the truck hit the rickshaw, they were thrown away on the left side of the road, while deceased was thrown away on the right side and was run over by the truck. In their statements, PW1 and PW3 have deposed that after hitting the rickshaw, truck was not stopped and rather, truck driver fled away along with the truck. Both of them have admitted that they did not sustain any injury. It is difficult to believe that a person sitting on the rickshaw, thrown away on the road after being hit by a truck, would not sustain even bruises. Had they been sitting on the rickshaw, they would have sustained spine injuries. PW1 and PW3 have admitted that they could neither read the registration number of the truck nor could see the driver. They have also admitted that the PCR came at the spot after 10 minutes of the accident and on being told that the truck had hit the rickshaw, they chased the truck and apprehended the same and brought it back to spot with the respondent. It is not understood as to how the PCR, which had arrived at the spot after 10 minutes of accident, could have chased the truck of the respondent without being told of its registration number by the eye witnesses. As per the prosecution, the front tyre of the rickshaw was damaged. However, Appellate Court has noted from the photographs that no damage to the front tyre of the

rickshaw was noticed.

7. There is yet another material discrepancy, which has been noted by the Appellate Court, with regard to arrest of the respondent. As per PW1, PW3 and PW9, the respondent was arrested at the spot. However, as per the Investigating Officer(PW8), respondent was arrested in the Police Station after he was produced by the owner. PW8 has deposed that after returning from the spot, he made inquiries about the owner of the offending vehicle and thereafter, went to the owner of the vehicle at his house at Bawana and asked him to produce the driver of the vehicle, who was driving the same at the time of accident. In the evening, the owner of truck came to Police Station along with his son, namely, Pappu Kumar (respondent), who was driving the vehicle on the date of incident. Thereafter, he arrested the respondent vide Arrest Memo Ex. PW8/E. PW7 Constable Satish Kumar was also with the Investigating Officer during the investigation. He has also deposed in his examination-in-chief that they returned to the Police Station and accused was arrested at the Police Station. He was cross-examined by the learned APP, wherein he took a different stand and stated that respondent was arrested at the spot. Be that as it may arrest of the respondent from the spot becomes doubtful.

8. In view of the above discussions, I am of the view that the view taken by the Appellate Court is a plausible possible view, inasmuch as, does not suffer

from any perversity. Petitioner has failed to make out a case for grant of leave to appeal. Petition is dismissed.

A.K. PATHAK, J.

AUGUST 26, 2016

rb