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

+ CRL.L.P. 468/2016

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through :Ms. Kusum Dhalla, APP with SI
Vikas Malik, P.S. Pahar Ganj

versus

RAKAM SINGH

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **05.09.2016**

Crl. M.A. No. 13678/2016 (for condonation of delay of 94 days)

For the reasons explained in the application, 94 days delay in filing the petition is condoned. Application is disposed of.

CRL.L.P. 468/2016

1. By this petition under Section 378 of the Code of Criminal Procedure, 1973 (Crl.P.C.), petitioner seeks leave to appeal against the judgment dated 26th February, 2016 passed by the learned trial court, whereby respondent has been acquitted of the charges under Sections 279/304-A of the IPC.
2. As per the prosecution, Prakash (deceased) along with eye-witness/complainant Sukhdev Mandal (PW3) were travelling in a bus

bearing registration No. DL-1PA-7981 plying on route no. 790 on 26th August, 2008. Deceased was standing on the footboard of the rear gate of the bus. Bus was driven by the respondent in a high speed, in rash and negligent manner. When the bus reached in front of the Police Station Pahar Ganj at about 5:30 PM, respondent suddenly applied brakes and as a consequence whereof deceased fell down on the road and sustained multiple injuries to which he succumbed, later on, in RML Hospital. Respondent (driver) and conductor stopped the bus at some distance, came down but soon thereafter they fled away from the spot along with offending bus. Notice under Section 133 of the Motor Vehicle Act, 1988 was served on the owner of the bus, who responded to the notice by stating therein that respondent was driving the offending bus.

3. Eleven witnesses were examined before the trial court. In his statement under Section 313 of the Cr.P.C., respondent did not deny that he was driving the offending vehicle. However, he denied that he caused the accident. He stated that while he was driving the bus, he heard the passengers' shouting that a person fell down from the moving bus and on this, he stopped his bus and got down. He did not notice any signs of apparent injury on the body of the deceased. After satisfying himself that

deceased had not sustained injury, he left the spot. However, respondent did not examine any witness in his defence.

4. PW3 deposed that on 26 August, 2008 he was travelling in the bus along with the deceased. They boarded the bus from Pahar Ganj. They were standing near the back door of the bus. Deceased Prakash was standing behind him and bus was full of passengers and the driver was driving the bus at very high speed in a negligent manner. When the bus reached near Pahar Ganj police station, driver applied brakes suddenly which was at a very high speed as a result whereof deceased fell down on the road and sustained injuries. Bus was stopped at some distance. Conductor and driver came down from the bus. Deceased was in semiconscious state and was unable to speak. Blood was oozing from his head. Driver and conductor of the bus ran away from the spot with the bus. PW3 identified the respondent as the driver of the bus. However, he could not tell number of the bus. Be that as it may, the reason for fall of the deceased from the moving bus as given by the PW3 is sudden application of the brakes. In his deposition, PW3 has stated that they were standing near the back door of the bus and deceased was standing behind him. PW3 has not given speed of the bus. He has simply stated that bus was driven at high

speed. PW3 has not explained as to on what basis he formed an opinion that bus was driven in a rash and negligent manner. Vague statement that bus was driven at a high speed, without disclosing the speed of the bus, ipso facto it cannot be presumed that bus was driven in a rash and negligent manner. This is what has been concluded by the trial court. Trial court has noted that burden of establishing that respondent was driving the offending vehicle in rash and negligent manner was on prosecution. Merely, in view of the statement of PW3 it remained unproved that deceased fell down on account of rash and negligent driving of the respondent. The expression “high speed” is not a synonym to “rash and negligent” driving. The prosecution is duty bound to establish the manner in which the offending vehicle was moving at the time of accident. It must be established by cogent evidence as to how the driving of respondent can be categorized as rash and negligent. It would be grossly incorrect to raise a presumption about rash and negligent driving merely because a passenger fell down from a moving bus. The driver of a vehicle can be made liable only in respect of those consequences of his acts which he can reasonably foresee. It cannot be expected from the driver of a bus that he can foresee that a passenger would fall from a moving bus merely because sudden brakes are applied by him.

Deceased was standing on the foot mat of the rear door of the bus and when the driver suddenly applied brakes, he fell down and sustained fatal injuries. Accident resulted due to the circumstances, which cannot be foreseen even by the most prudent driver. In these circumstances, it would be unfair to record finding of conviction.

5. Learned trial court has placed reliance on Rathnashalvan vs. State of Karnataka, 2007 (3) SCC 474 AIR 2007 SC 1064, wherein it has been held, thus:-

“Rashness” consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.”

6. Reliance was also placed on Kuldeep Singh State of Himachal Pradesh” 2008 Cri.L.J. 3932 (SC), wherein R.V. Caldwell (1981) 1 All ER

961 has been quoted with the following observations:-

“Nevertheless, to decide whether someone has been ‘reckless’, whether harmful consequences of a particular kind will result from his act, as distinguished from his actually intending such harmful consequences to follow, does call for some consideration of how the mind of the ordinary prudent individual would have reacted to a similar situation. If there were nothing in the circumstances that ought to have drawn the attention of an ordinary prudent individual to the possibility of that kind of harmful consequence, the accused would not be described as ‘reckless’ in the natural meaning of that word for failing to address his mind to the possibility; nor, if the risk of the harmful consequences was so slight that the ordinary prudent individual on due consideration of the risk would not be deterred from treating it as negligible, could the accused be described as reckless in its ordinary sense, if, having considered the risk, he decided to ignore it. (In this connection the gravity of the possible harmful consequences would be an important factor. To endanger life must be one of the most grave).....”

7. It is trite law that leave to appeal can be granted only if the findings

returned by the trial court are perverse or there is misapplication of law or any legal principle. If the view taken by the trial court is a possible view, the High Court will not interfere only because another more plausible view is possible. In *State vs. Sunil Kumar and Ors.* MANU/DE/0259/2015, it has been held, thus:-

“17. The law with regard to the grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more plausible. In *Arulvelu and Anr. vs. State* [MANU/SC/1709/2009](#): 2009 (10) SCC 206, while referring with approval the earlier judgment in *Ghurey Lal vs. State of Uttar Pradesh*, [MANU/SC/3223/2008](#): (2008) 10 CRL.L.P.No.764/2013 Page 6 of 7 SCC 450, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:

"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.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

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.

18. It is well settled that leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse. We are of the view that the trial court has given detailed reasons

for disbelieving the prosecution case and we are not inclined to take a different view. We find no infirmity in the judgment of the trial court. The acquittal recorded by the trial court is based on reason and thus, there are no grounds to grant leave to appeal. Consequently the appeal is dismissed.”

8. In this case, I find the view taken by the trial court to be a possible view. The view taken by the trial court does not suffer from any perversity or illegality. PW3 has deposed that he and the deceased were standing near the back door of the bus. Deceased Prakash was standing behind him. PW3 has failed to give speed of the bus. Mere use of word “high speed”, by itself, is not sufficient to determine that bus was driven by the respondent in a rash and negligent manner. It is also surprising that deceased fell down, while nothing happened to PW3, who was also standing with the deceased. Facts, involved in *Niranjan Singh vs. The State (Delhi Administration)*, 1997 Criminal Law Journal 336, are more or less similar to the facts involved in this case. In the said case, prosecution had alleged that driver was driving the bus in a rash and negligent manner and while doing so, he tried to overtake a vehicle from wrong side and since he could not find any space for overtaking, he applied the brakes at full speed and because of the

jerk, the deceased, who was travelling in the bus, fell down as a result whereof he was run over by the rear wheel of the bus. Trial court convicted the driver of the bus under Sections 279/304-A of the IPC. Appellate Court confirmed the conviction. Learned Single Judge held, thus:-

“I am constrained to observe that both the Courts below are blissfully ignorant about the concept of culpable 'rashness' or 'negligence. Rashness consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand is the gross and culpable neglect or failure to exercise that reasonable or proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. Thus, the main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed of the offending vehicle but deliberate disregard to the obligation of its driver

to drive with due care and attention and taking a risk indifference as to the harmful consequences resulting from it.

9. For the foregoing reasons, petition is dismissed.

A.K. PATHAK, J.

SEPTEMBER 05, 2016

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