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

+ CRL.L.P. 770/2015

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through: Ms. Radhika Kolluru, APP

versus

SHYAM LAL

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

14.09.2016

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Crl.M.A. No.18198/2015

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CRL.L.P. 770/2015 & Crl.M.A. No.18197/2015

The petitioner has preferred the aforesaid petition to assail the judgment dated 25.05.2015 passed by the learned MM-03, South West District, Dwarka Courts, Delhi in case FIR No.54/2007 under Section 279/337/338/394A IPC registered at PS Jafar Pur Kalan. The petitioner has preferred the aforesaid application to seek condonation of 94 days delay in filing the appeal. Since I have heard learned counsel for the petitioner on merits and after perusing the impugned judgment, I am not inclined to issue

notice in the petition, no useful purpose would be served in issuing notice on the delay application and, accordingly, I proceed to dispose of the petition itself.

The case of the prosecution was that on 23.04.2007 at about 7:20 p.m. near Daryapur Malikpur Chowk, Delhi, the accused Shyam Lal was driving tractor bearing no. HR 13C 1240 rashly and negligently in such a manner so as to endanger human life and personal safety of others and while driving so, hit against a Wagon R Car bearing No.HR 26AA 7176, consequent to which the occupants of the car, namely, Himanshu, Pawan, Saroj and Sunita received simple injuries, while Jeewli received grievous injuries and the injured Joginder died in the accident.

The defence of the accused was that the car was coming from opposite side at a very high speed and driven negligently by its driver. The accused tried to avoid the accident and took the tractor to the edge of the road, however, the driver could not save the car and hit against the trolley attached to the tractor. PW-10 Smt. Jeewli was sitting in the trolley and on account of the impact, she fell off the trolley and suffered grievous injury and became unconscious at the site. The accused claimed that this trolley was loaded with paddy and was running at normal speed of 25 kmph.

The learned MM while acquitting the accused has analysed the evidence brought on record and returned his finding in the following manner:

“7. The fact that the accused was driving the tractor at the time of accident is not in dispute. The defence has contended that the accused was not at fault for the accident. Prosecution witnesses of the incident i.e. PW1 Smt Saroj, PW3 Sh Pawan Kumar and PW4 Smt. Sunita were in the car which met with

accident. PW8 Jeewali Devi had taken lift in the offending tractor and she was on the tractor trolley at the time of accident. In cross examination PW1 has stated that she was not aware about the road condition neither she knew if tractor was having any trolley as she was taking care of her child. She also stated that she saw the tractor from one feet before accident. PW3 Pawan Kumar was the driver of the Wagon R. This witness reveals in his cross examination that despite he had received minor injuries he did not contact police from the date of incident till next three days. Although witness Pawan has stated in his examination in chief that he had went to check the progress of case it has been revealed in the cross examination that since his documents were in the car he was called by the I.O. for verification of those documents. The conduct of PW3 Pawan Kumar being a driver of Wagon R which met with accident, in which one person died, is very suspicious. Was he trying to keep himself away from the police? He is the most interested witness against accused, for he is safe only if the accused is guilty?

8. PW4 Sunita had turned hostile to prosecution case in cross examination and at request of Id. APP she was recalled and she admitted in re-examination that someone had told her to become hostile however considering her old age she was left with warning. Her testimony was similar to the testimony of PW3 Pawan. All these witnesses who were in the Wagon R car have stated that the accused was driving his tractor at very fast speed and in zigzag manner but it is very surprising that the prosecution witness Jeewali Devi i.e. PW 10, who had taken lift in that tractor has deposed no such fact. It is her who had suffered grievous injuries despite that she did not depose that accused was driving tractor in very fast speed or in zigzag manner. Her only testimony is that "the tractor hit with the vehicle coming from the front side and the trolley of the tractor in which I was sitting got bumped due to which I fell". After falling from tractor she became unconscious and it is obvious that she could not depose anything happened after accident. However, PW10 would be the best person to ask whether the

tractor was in a fast speed and going in zigzag manner or not. So far as the site plan is concerned the witnesses have stated that after accident they never visited the spot so it is not clear as to how the details mentioned in site plan were obtained. Clearly the collusion was at the trolley of tractor as mechanical inspection report shows that there was no damage to the tractor. The accused has explained that he took his tractor to side of the road in order to avoid the collision still the car hit the trolley. There are no photographs of the spot taken by I.O. and on the top of that PW10 have not deposed about the rash or negligent manner of driving by the accused who was the best witness to depose that. The prosecution is banking on the testimony of PW2, PW3 Pawan and PW4. But PW3 himself is in doc and testimony of PW2 and PW4 cannot prevail over what PW10 had deposed. PW2 and PW4 were sitting in back seat of Wagon R and given the time of accident and the season i.e. month of April, there is no possibility of them being as accurate as they have deposed”.

The submission of learned counsel for the petitioner is that the Trial Court had disbelieved the testimonies of PW-1 Smt. Saroj, PW-3 Pawan Kumar and PW-4 Sunita merely on account of PW-10 Jeewli not supporting the case of the prosecution.

From the aforesaid extract, it would be seen that the Trial Court has analysed and marshalled the evidence and good reasons have been recorded for preferring the testimony of PW-10 over those of PW-1, PW-3 and PW-4. PW-3 was the driver of Wagon R car, PW-1 and PW-4 were sitting on the rear seat of the car. The accident took place at about 7:20 p.m. on 23.04.2007. PW-1 in her cross examination stated that she saw the tractor only when the same was about a foot away from the car. Before that, she was looking after her child. She was not in a position to depose with regard to the road condition. Consequently, the testimony of PW-1 against the

accused was rejected by the Trial Court. PW-4 had turned hostile, and she was recalled at the request of the APP, when she admitted that she had been told to turn hostile. Her testimony was similar to that of PW-3. So far as PW-3 driver of the car is concerned, the court has raised a doubt with regard to his conduct. He had suffered minor injuries and he did not bother to report the accident to police for three days. The court, therefore, raised a doubt if he was trying to avoid the police on account of his own rash and negligent driving. PW-10, who was an independent witness – since she had taken lift in the tractor trolley from the accused and was sitting in the trolley, was grievously hurt. The court has observed that she had no reason to defend the accused as she was equally aggrieved by the accident, and she did not depose that the tractor was being driven in a rash and negligent manner.

In the aforesaid circumstances, I am of the view that the approach of the Trial Court in appreciating and evaluating the evidence is reasonable and premised on the evidence led before it. I find no reason to interfere with the impugned judgment. Dismissed.

VIPIN SANGHI, J

SEPTEMBER 14, 2016

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