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

+ CRL.L.P. 239/2017

STATE

..... Petitioner

Through: Mr. Ashish Dutta, APP for the State

versus

SHYAM BAHADUR TAMANG

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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24.04.2017

CRL. M.A.6644-6645/2017

For the reasons stated in the applications, the delay of 155 days in filing and 24 days in re-filing the leave petition is condoned.

The applications are allowed.

CRL.L.P. 239/2017

The present leave petition has been filed by the State against the judgment dated 09.06.2016 passed by the Court of MM-03, (South District) Saket, New Delhi in FIR No.81/2012 (P.S. Hauz Khas) which was instituted for offences under Sections 279, 304A and 471 of the IPC.

The respondent, Shyam Bahadur Tamang, by the aforesaid judgment has been acquitted for the offences under Sections 279 and 304A of the IPC but has been convicted under Section 471 IPC and has been sentenced for the aforesaid offence for the period which was undergone by him during the course of investigation.

An accident had taken place on 23.03.2012 at about 3:40 p.m. under IIT Flyover, Hauz Khas in which one Smt. Jagwati Devi died. The deceased was the pillion rider of the motorcycle which was being driven by Vinod Kumar, PW1. The motorcycle was hit by a car which was driven by the respondent. The respondent was also found to be in possession of a forged licence which was being used as a genuine document at the time of the accident.

After registration of the case, investigation proceeded, whereupon charge-sheet was submitted and the respondent was saddled with the charges under Sections 279, 304A and 471 IPC.

During the course of trial, Vinod Kumar (PW1) though stated that his motorcycle was hit by a Honda Accord car but since the car came from behind and hit the motorcycle, he was not in a position to state whether the vehicle was being driven in a rash and negligent manner.

In his deposition before the Trial Court, PW1 has also stated that while he was turning his motorcycle at the IIT Flyover, the offending vehicle hit the motorcycle, as a result of which, he and his mother (deceased) fell down. The respondent had not run away or speeded away but came to PW1 and handed over his driving licence. The respondent is also said to have offered treatment to him and his mother.

What is of relevance in the deposition of PW1 is that when he was suggested by the prosecutor that the offending vehicle was being driven in a rash and negligent manner or in high speed, such suggestion was denied by PW-I.

Dr. Mukesh Chandra (PW2) and HC Kamlesh (PW3), though have supported the prosecution case but only with respect to the injuries suffered

by the deceased and the motorcycle and the car having been found at the place of occurrence/accident respectively.

No evidence was led on behalf of the respondent.

The Trial Court, on perusal and analysis of the deposition of PW1 came to the conclusion that there was no evidence with respect to rash or negligent driving and that for prosecution of an accused under Sections 279/304A IPC, the main ingredient is the factum of negligence, which was found to be seriously deficient. Thus the Trial Court, on the aforesaid premise, acquitted the respondent of charges under Sections 279 and 304A IPC.

For the offence under Section 471 IPC, since the driving licence was found to be forged, the respondent was convicted on the plea of guilt but keeping in mind that he was the first offender and remorseful for his conduct and had remained in custody from 08.05.2012 to 04.07.2012, the Trial Court sentenced him to the period which he had already undergone during the course of investigation.

Mr. Ashish Dutta, learned Additional Public Prosecutor argued that the Trial Court seriously erred in not taking into account the fact that the respondent had been using a fake driving licence and the factum of accident coupled with forged driving licence made out a clear case of negligence, punishable under Sections 279 and 304A of the IPC.

The evidence regarding the essential element of negligence is pathetically lacking and therefore no fault could be found with the opinion of the Trial Court and its verdict of no guilt. The Trial Court has rightly convicted and sentenced the respondent for the offence under Section 471 of the IPC on his plea of guilt. The sentence for the offence under Section 471

of the IPC also appears to be reasonable.

Thus, no ground has been made out by the State for interfering with the judgment of the Trial Court.

Leave is denied.

The petition is dismissed for the aforesaid reasons.

ASHUTOSH KUMAR, J

APRIL 24, 2017

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