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

+ CRL.L.P. 209/2016 and Crl. M.A. 6305/2016

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Tarang Srivastava, APP

versus

MUN SARIF

..... Respondent

Through: Mr. Aditya Vikram, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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26.04.2017

The respondent was arrested on 17.11.2005 in the course of investigation into first information report (FIR) 302/2005 which had been registered in police station Mayapuri at 6.45 a.m. on the same date for offences punishable under Section 279 and 304A of Indian Penal Code, 1860 (IPC) vide Ex. PW4/A on the basis of rukka (ex. PW3/B) sent in turn on the basis of statement (Ex. PW5/A) of Deepak (PW-1) who is described as the father of Amar, a child aged 4 years, who had statedly died in a motor vehicular accident that had occurred at about 4.30 a.m. early in the morning on the same date on pavement near factory no.E-257, Mayapuri, Phase-2.

The charge-sheet was filed on the basis of report under Section 173 Cr. PC, 1973 (Cr. PC) which was submitted on conclusion of investigation on 03.04.2006. The respondent was put to trial through

notice under Section 251 Cr. PC served on him on 30.10.2006 to which he had pleaded not guilty, the gravamen of the allegations against him being that he was the driver of vehicle described as JCB bearing registration no.HR-38H-7198 at the relevant point of time and he having driven the said vehicle in a rash or negligent manner and caused the accident crushing the child under its wheels.

At the conclusion of the trial, the respondent was acquitted by the court of the Metropolitan Magistrate by judgment dated 05.10.2015. The State has come up seeking leave to appeal against the said judgment of acquittal.

On notice, the respondent has appeared through counsel. The arguments on the petition for leave to appeal have been heard and with the assistance of the learned counsel on both sides, the trial court record has been perused.

It is noted that the police was informed about the accident resulting in the death of the child by telephonic communication which came to be recorded as DD 7A (Ex. PW3/A) at 4.40 a.m. on 17.11.2005 in police station Maya Puri. The person who had given the said telephonic information is not identified in the DD Entry. Noticeably, however, it referred to the vehicle which had caused the accident as a garbage truck ("*kudewala truck*"). PW-1, father of the victim child had made a statement before the investigating officer leading to the *rukka* being sent at 6.10 a.m. thus in less than two hours of the FIR. In the said statement (Ex.PW1/A) he had described the offending vehicle as a bulldozer, bearing registration no.HR-38H-

7198. The witness when he appeared in the court during his examination-in-chief would not mention the registration number of the vehicle but insisted that the vehicle which had caused the accident was a bulldozer. He revealed that the call to the police was made by his maternal uncle.

The identity of the maternal uncle who had made the first communication to the police was not disclosed. A vehicle in the nature of JCB is distinct from a vehicle in the nature of a truck. Going by the deposition of PW-1, the particulars of the offending vehicles were supplied to him by his maternal uncle. This is the reason why the learned Magistrate was not satisfied with the proof as to the involvement of the vehicle on which the respondent is stated to have been deputed as a driver at the relevant point of time.

If the child was actually crushed by the vehicle of the respondent, it would reveal some tell-tale signs in the form of at least blood stains on its wheels. Neither the seizure memo (Ex.PW-3/C) nor mechanical inspection report (ExPW-5/A) have revealed any such evidence.

In these facts and circumstances, the view taken by the learned trial court cannot be said to be perverse or implausible.

The petition and the accompanying application are dismissed.

R.K.GAUBA, J.

APRIL 26, 2017

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