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

+ CRL.L.P. 301/2016

STATE

..... Petitioner

Through: Mr. Arun Kumar Sharma, APP.
SI Shubhangi, PS Preet Vihar.

versus

GOVIND LAL

..... Respondent

Through: Mr.Dinesh Malik, Adv.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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22.05.2017

CrI.M.A. 8721/2016

For the reasons stated in the application, the delay of 172 days in filing the present petition is condoned.

Application is disposed of.

CRL.L.P. 301/2016

The State has called in question the judgment and order dated 04.09.2015 passed by learned Additional Chief Metropolitan Magistrate (East), Karkardooma Courts, Delhi in connection with FIR No.337/2011 (P.S.Preet Vihar) whereby the respondent has been acquitted of all charges under Sections 279/304A of the IPC by giving him benefit of doubt.

On 23.11.2011 at 11.30 PM in Preet Vihar, an accident took place, leading to the death of one Priya Jain. The respondent was driving one DTC bus bearing No.DL-1PB-5436 at a high speed in a rash and negligent manner which led to the accident. Thereafter, the FIR No.337/2011 was

lodged with police station Preet Vihar under Sections 297/304A of the IPC.

The respondent was put on trial and 12 witnesses were brought forth by the State for proving the charges against him.

Head Constable Surender Pal (PW-2) who claims himself to be the eye witness to the accident has deposed that while he was on patrolling duty near P.C.Jewellers, C Block, Preet Vihar, he saw a DTC bus bearing No. DL-1PB-5436 hitting one girl who was crossing the road towards P.C.Jewellers from the side of Defence Enclave. The girl fell down on the road and came in front of the wheels of the offending vehicle. He is said to have removed the deceased from near the wheels of the bus and took her to Metro hospital.

Head Constable Kartar Singh (PW-3) recorded the information of the incident. The offending vehicle was mechanically inspected by the Pradyuman (PW-4). Constable Narender (PW-8) who also claims to be an eye witness to the occurrence spoke about the incident leading to the death of the deceased.

The respondent had examined 3 witnesses on his behalf namely Rajeshwar (DW-1), Anuj (DW-2) and Ajit (DW-3). All the aforesaid defence witnesses have stated that the deceased was actually hit by a motorcycle and the deceased was knocked off and was found lying in front of the offending vehicle.

Before the Trial Court, it was argued on behalf of the respondent that the death was as a result of negligent driving of the motorcycle whereas the offending bus was standing static in front of the bus stop and passengers were either boarding or alighting. In fact, in the complaint book maintained by the conductor (DW-2), it was mentioned by one of the passengers that the

death was not on account of negligent driving of the respondent but the accident was actually caused by a motorcyclist.

The Trial Court has given the following reasonings for acquitting the respondent:-

1. Despite the accident having taken place at 11.30 AM on a busy road near a red light and commercial area, only two police witnesses were examined and no private person was put up to support the prosecution version;
2. Even though the police eye witnesses alleged that the accident took place because of rash and negligent driving of the respondent but those witnesses were not able to even make a guess of the speed with which the offending vehicle was being driven;
3. The statement of Head Constable Surender Pal (PW-2) in Court was different from his statement contained in Exh.PW-2/A in which he has not stated that he saw the respondent driving the offending bus in a negligent and zig-zag manner;
4. Constable Narender (PW-8), though has stated that on the date of the accident, he along with others were on duty at ERV-8 which was parked near red light at Defence Enclave but the parking spot of the vehicle referred to above was not depicted in the site plan (Exh.PW-10/B). In fact, in the site plan, no traffic light has been shown, though, there is a mention of Defence Enclave;
5. There is no zebra crossing at the place where the accident took place and, therefore, the contributory negligence of the deceased cannot be ruled out;
6. The defence of the respondent of the offending bus standing static

finds support from the site plan (Exh.PW-10/B);

7. The testimony of Dr.Manoj Kumar Jha (PW-9) who had examined the victim immediately after the accident took place, reveals that he was not sure whether the body of the victim was crushed. Even the post-mortem report assigns the cause of death as cranio-cerebral damage consequent upon heavy blunt force impact which is sufficient to cause death in the ordinary course of nature;
8. The defence of the respondent that the deceased was using an earphone at the time of accident is supported by the fact that at the Metro hospital, earphone lead was seized (Exh.PW-2/B) and finally;
9. In the complaint book (Exh.DW-1/A) which is maintained by the conductor of the bus in ordinary course of business, there is a mention of the fact that the accident had taken place because the deceased was hit by a motorcycle.

The Trial Court has, therefore, concluded that the testimony of the two police eye witnesses against the testimony of the conductor of the offending bus, cannot be believed and has given the benefit of doubt to the respondent.

This Court does not find any anomaly with the reasoning given by the Trial Court.

The leave petition, therefore, is dismissed.

ASHUTOSH KUMAR, J

MAY 22, 2017

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