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

+ CRL.L.P. 93/2017

STATE (NCT OF DELHI)

..... Petitioner

Represented by: Mr. Hirein Sharma, APP for
the State.

versus

MOHD.SAWAB

..... Respondent

Represented by: Respondent in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **28.02.2018**

Crl. M.A. No. 2687/2017 (Delay)

For the reasons stated in the application delay of 248 days in filing the leave to appeal petition is condoned.

Application is disposed of.

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1. By this petition the petitioner/State seeks leave to appeal against the judgment dated 27th February, 2016 acquitting the respondent for offence punishable under Sections 279/304A IPC.

2. Respondent faced trial in FIR No. 306/2007 under Sections 279/304A IPC registered at PS Keshav Puram, New Delhi on the allegations that he was driving the vehicle (Maruti Van) bearing No. DDA 7787 in rash and negligent manner and while driving the said vehicle he hit against the pedestrian namely Renu, wife of Raghu who received injuries and ultimately succumbed to injuries.

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3. To prove the case of the prosecution it examined Mukesh Kumar, (PW-3) who deposed that on 14th May, 2007 he went to Lawrence Road for his personal work and at about 10.15 AM when he was near Sai Temple, Lawrence Road, he saw a lady walking on the left side of the road, ahead of him, when one Maruti van of white colour came from back side at very high speed and hit the lady. According to Mukesh Kumar the van driver stopped the van and he asked the driver to take the injured lady to the hospital. The injured lady was lying in an unconscious state at the spot after the accident and several public persons gathered there. On the next day he went to make inquiry at Police Station Keshav Puram when he was informed about her death.

4. Learned Trial Court doubting the very presence of Mukesh Kumar, held as under:

“For establishing the remaining elements, the testimony of the eye witness only is relevant as all the other witnesses had not witnessed the accident and had joined the investigation later on.

Perusal of testimony of PW-3 Mukesh Kumar reveals that he deposed that on 14.05.2007 at about 10:15 am, he was present near Sai Temple Lawrence road and one lady was also going on the left side of the road ahead of him. He further deposed that on maruti van came from his back at a very fast speed and hit that lady, who was walking on left side of the road. He further deposed that the accident took place due to rash and negligent driving of the accused who was driving the van at a very high speed and could not control the vehicle and hit that lady. He further deposed that he left the spot at that time and on the next day went to PS Keshav Puram for inquiring about the injured lady where he was informed that the lady had expired. He further deposed that he told the police that he had seen the accident who took him to the place

of accident and prepared the site plan at his instance there. In the cross examination, he deposed that the offending vehicle crossed him at a very high speed and struck from the back on one lady who was walking ahead of him. He admitted that IO had also taken signature on some blank papers and his statement was recorded by the police at the PS. He admitted in the cross examination that he does not know the lady whom accused struck with his vehicle.

According to the aforesaid version, the victim was walking ahead of PW-3 Mukesh Kumar and was on the left side of the road. However, the perusal of duly proved site plan Ex. PW7/D and the explanation given at Sl No. 1, 2 and 3 on the said site plan shows that the location of the eye-witness was on the left side of the road at point B at the time of accident, whereas the victim was hit on the extreme right side of the road as depicted in the site plan at point A. The arrows as shown in the site plan and explained vide explanation at Sl No. 3 depict that the offending vehicle was moving from south to north direction and the victim was also moving in the same direction. The site plan shows that the direction in which the witness PW-4 Mukesh Kumar was moving has not been specifically mentioned but considering the explanation mentioned at Sl No. 3 as discussed above in the light of the testimony of the eye witness that the offending vehicle came from his back at a very high speed and hit the victim from behind, it is clear that the PW-3 Mukesh Kumar was also moving in the same direction in which the victim was moving. It shows that the position of the victim should have been depicted on the extreme left side of the road in the site plan and ahead of the witness and not on the right side of the road just parallel to the witness PW-4 Mukesh Kumar. This contradiction in the version of the eye witness and the site plan is a material contradiction, which makes the version of the PW-4 Mukesh Kumar high doubtful thereby rendering him unreliable witness. Furthermore, the conduct of the PW-4 Mukesh Kumar in not helping the police on the day of the

incident and joining the investigation on the next day after reaching police station to inquire about the condition of the injured, who admittedly was not related to the PW-4 in any manner, creates grave doubt upon the entire version of PW-4 Mukesh Kumar as an ordinary prudent person, who had witnessed such an incident would have either assisted the police on the same day keeping in view of the humanitarian considerations or he would have never turned up again as is done by the materialistic people in the world.

Perusal of testimony of IO PW-7 Retired SI Bal Parkash shows that he deposed that on 15.05.2007, he reached at Peepal Wala Mandir, where he met one person namely Mukesh Kumar who claimed himself as eye witness of the present case and that statement of eye-witness Mukesh was recorded at the spot on 15.05.2007. However, PW-3 Mukesh Kumar stated in his examination in chief that he left the spot at that time when the accident occurred and on the next day he went to PS Keshav Puram for inquiring about the injured lady, where he was informed that the lady had expired and that the police obtained signature on some blank papers. He further deposed that he told the police that he had seen the accident who took him to the place of accident and prepared the site plan at his instance there. He admitted that IO also taken signature on some blank papers and his statement was recorded by the police at the PS.

It is apparent from the aforesaid testimony of PW-3 and IO that they are contradicting each other regarding the place where PW-3 met the IO as well as the place where the statement of PW-3 was recorded by the IO which being a material inconsistency in the prosecution version indicates that no proceedings were conducted on the spot and all the writing work was done at the police station itself without going to the spot.

There contradictions and discrepancies in the version of PW-4 Mukesh Kumar indicate that he is a planted witness and had not seen the accident, which further implies that his testimony regarding the presence of rashness or negligence in the conduct of the accused while driving the offending vehicle and other ingredients of alleged offences, is of no use to the prosecution.

Moreover, PW-3 has not explained the manner in which the accused was rash or negligent while driving as he has merely stated that it was being driven at a very high speed. Merely driving at high speed does not amount to rashness or negligence as the same depends upon certain other parameters like the nature of the place where the vehicle was being driven i.e. crowded place etc. In the present case, even the approximate speed at which the vehicle was being driven has not been specifically mentioned so as to arrive at conclusion as to whether the vehicle was driven at a high speed or not. It is settled law that merely saying that the driver was rash and negligent is not sufficient for fastening criminal liability and the manner in which the accused was rash or negligent is required to be explained for completion of the alleged offences.

Record shows that prosecution has failed to explain the manner in which the accused was rash or negligent while driving the offending vehicle benefit of which must go to the accused.”

5. Indubitably, even after the admission of the owner of the vehicle Arif Ali (PW-5) that the respondent was driving the vehicle, the moot facts which were required to be proved by the prosecution by way of a positive evidence was whether the respondent was driving the vehicle in a rash and negligent manner and hit the deceased?

6. To prove that the respondent was driving the vehicle in a rash and negligent manner the only evidence by the prosecution was the testimony of Mukesh Kumar (PW-3). As noted above, the presence of Mukesh Kumar at the spot is highly doubtful for his conduct after the accident as he left from the spot, did not take the victim to the hospital nor informed anyone nor caught hold of the respondent rather on the next day in a cursory manner goes to Police Station to inquire about the incident is improbable and highly unnatural.

7. Thus finding of the learned Trial Court in view of the various discrepancies in the evidence and the conduct of Mukesh Kumar cannot be said to be a non-plausible view warranting interference.

8. Leave to appeal is dismissed.

MUKTA GUPTA, J.

FEBRUARY 28, 2018
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