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

+ **CRL.L.P. 97/2018**

STATE OF NCT OF DELHI

..... Petitioner

Represented by: Mr. Amit Gupta, APP for the
State with SI Ranbir, PS
Swaroop Nagar.

versus

RAFIQ MOHAMMAD

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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09.02.2018

Crl.M.A. No. 2499/2018 (Exemption)

Allowed, subject to all just exception.

Crl.M.A. No. 2498/2018

For the reason stated in the application delay of 32 days in filing the leave to appeal petition is condoned.

Application is disposed of.

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1. The State seeks leave to appeal against the judgment dated 21st September, 2017 passed by the learned Metropolitan Magistrate acquitting the respondent of the charge for offence punishable under Sections 279/304A IPC.

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2. The case of the prosecution in nutshell is that on 9th May, 2011 at around 8:30 PM, Rafeeq Mohd., the respondent was allegedly seen driving the truck bearing No. HR 38Q 1520 in a rash and negligent manner. Due to this act of the respondent near Swaroop Nagar bus stand he caused the death of one Rakesh.

3. To prove its case the prosecution examined 13 witnesses however the prosecution case primarily hinges on the testimony of Dharamraj (PW-1), uncle of the deceased who is stated to be the eye witness and was driving the scooter on which Rakesh was allegedly sitting as a pillion rider. Dharamraj in his testimony deposed that on 9th May, 2011 at about 8:30 PM when he reached the spot he saw that the offending vehicle was driven in rash and negligent manner. The vehicle hit the scooter from the right side due to which his nephew fell down and came under the tyre of the truck. It is the case of Dharamraj that the scooter was dragged by the truck upto 15 to 20 feet. When the respondent tried to flee away from there, he was apprehended at the spot with the help of public persons. The case of the prosecution to bring out a case of rash and negligent act by the respondent is that the vehicle was driven at a fast speed and that even after hitting the scooter it dragged for 15 to 20 feet. As per Dharamraj he was driving the scooter which was dragged to 15 to 20 feet.

4. Learned Trial Court observed that despite having been dragged to 15 to 20 feet MLC of Dharamraj was not prepared though Dharamraj stated he received minor injuries. Further it is the case of Dharamraj that his nephew fell down and the rear tyre of the truck crushed the head of his nephew. It is also the case of Dharamraj that his nephew was wearing helmet at the time

of accident however at the spot no helmet was found much less a crushed helmet.

5. Dharamraj was suggested that his scooter had actually hit the barricades and lost control due to which the accident took place. Dharamraj also admitted that there were barricades at the point and due to the repair work going on the highway there was heavy traffic on the service road where alleged accident took place. It is thus evident that at that point the truck could not be driven on a high speed on a service road.

6. Considering the facts noted above the learned Trial Judge held that the testimony of Dharamraj was not reliable and the prosecution has not been able to prove that the respondent was driving the vehicle in rash and negligent manner.

7. From the facts noted above this court is also of the opinion that the view expressed by the learned Metropolitan Magistrate is a plausible view thus warranting no interference of this Court.

8. Leave to appeal is accordingly declined.

9. Petition is dismissed.

MUKTA GUPTA, J.

FEBRUARY 09, 2018

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