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

+ **CRL.L.P. 359/2016 and CRL.M.A. 10907/2016**

STATE OF GNCT OF DELHI

..... Petitioner

Through: Ms Meenakshi Chauhan, APP for
State.

SI Suraj Bala, P.S. Amar Colony.

versus

GAUTAM RAI

..... Respondent

Through: Mr Preet Singh Oberoi, Amicus
Curaie.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **24.10.2019**

1. The State has filed the present leave to appeal, seeking leave to appeal against the judgment dated 17.12.2015 passed by the Learned Metropolitan Magistrate (MM), South-East, Saket Court, whereby the respondent was acquitted for the offences under Sections 279 and 304A of the Indian Penal Code, 1860 (IPC).
2. The State contends that the Learned Trial Court had erred in disbelieving the testimony of the eye witness (PW3). He had clearly deposed that he had seen the respondent driving the offending bus in a rash and negligent manner and had witnessed the respondent colliding with the motor cycle ridden by the deceased victim, from the rear. The State contends that the Learned Trial Court erred in failing to appreciate that the testimony of PW3 established the case of the prosecution and had erred in relying on the testimony of the sole defense witness (DW1).
3. It is the case of the prosecution that information was received

regarding the road accident on 18-19.10.2006 and the Investigating Officer (IO) found the bus bearing No. DL-1PB-5025 (hereinafter referred to as the 'offending bus') and motorcycle bearing No. DL-6SQ-1466 (hereinafter referred to as 'the motorcycle') in an accidental condition. The driver of the motorcycle was taken to the hospital and was declared 'brought dead'. It is alleged that the accused was driving the offending bus in a rash and negligent manner and had hit the motorcycle from the rear, which had resulted in the death of the driver of the motor cycle.

4. On the basis of the aforesaid, the FIR in question was registered; investigation was conducted; and a chargesheet was filed. In order to prove its case, the prosecution had examined seven witnesses. Out of the seven witnesses, PW3 (Kanchan Kumar) was the only eye witness.

5. Concededly, the prosecution's case rested on the testimony of PWC and he was the star prosecution witness.

6. PW3 deposed that on 18-19.10.2006, at about 9:30 pm, he was going to Vasant Kunj to Jamrudpur Village by a bus. When he reached the LSR (Lady Shriram college) Bus Stop, he got down from the bus and was standing on the centre verge (midway) of the road in the process of crossing it, when the accident happened. He stated that he saw one person riding on a motorcycle from the side of Nehru Place and one blue line bus coming from the back road of Nehru Place. He saw the bus coming at a fast speed and it hit the rear of the motorcycle, after which, the motorcyclist fell down and became unconscious. PW 3 stated that, thereafter, he went to his friend's house. After some time, when he was returning to his house, he saw police officials present at the spot. He asked about the injured person and

thereafter, the police recorded his statement.

7. In his cross examination, PW3 deposed that he did not remember the exact address of the friend who he had gone to visit and deposed that he had not taken the accused to the hospital nor had informed the police about the alleged incident. He stated that he had visited the Police Station after he was called by one police officer, named Mr. Praveen and he had given his statement after eight to ten days.

8. The Trial Court noted that in order to rely upon the testimony of any eye witness, his presence on the spot must be specifically established. As per the case of the prosecution, PW3 was going to meet his friend at Jamrudpur Village and while crossing the road, he saw the incident. The witness admitted in his cross examination that he did not inform the police after the incident and did not accompany the injured to the hospital. PW3 also could not tell the address of the friend, whom he had gone to meet on the date of the alleged incident.

9. The Trial Court also held that there were inconsistencies in the deposition of the witnesses with reference to the time of the arrival of the eye-witness (PW3) at the spot of incident. PW6, who had accompanied the IO, deposed that the IO had prepared the *rukka* after the arrival of the eye-witness on the spot. In contradiction to the same, IO deposed that the eye witness came to the spot after the investigation. PW6 further deposed that the investigation proceedings continued till 01:15 am and the eye witness had come to the spot after some time of arrival of the owner of the offending vehicle, who had come to the spot at about 12:00 midnight. IO (PW7) stated that the eye witness met them at the spot at about 2-2:15 am. Whereas, PW3

stated that he had left the house of his friend at about 11:30 p.m. and thereafter reached the spot. The Trial Court held that the abovementioned inconsistencies cast a shadow of doubt on the presence of the eye witness.

10. The Trial Court further took into account various inconsistencies with reference to when the statement of the eye witness (PW3) was recorded. PW3 deposed that he had given his statement after eight to ten days of the incident, when one police official Mr. Praveen had called him. The Court further noted that PW3 was unable to state his position at the time of the incident and the same was also not reflected in the site plan. Further, the statement of PW3 under Section 161 of the Code of Criminal Procedure, 1973 was not found in the judicial file. The witness had failed to tell the place of incident from the traffic light of the Blue Bell College and LSR College. On the basis of the abovementioned inconsistencies, the Trial Court held that the eye witness (PW3) was not consistent and wholly reliable.

11. The Trial Court noted that, as per the judicial pronouncements made by the Apex Court, it is imperative for the IO to prepare an accurate site plan so that the evidence can be properly appreciated in Court. The Trial Court observed that though the site plan was prepared by the IO, at the instance of PW3, the alleged eye witness (PW3) was silent in his evidence on the said aspect and did not mention making of the same. Further, the position of the eye witness was not shown on the site plan and the prosecution witness did not support the facts of the site plan. The Court noted that the offending bus and the motorcycle were shown to be at some distance which was inconsistent with the deposition of PW6, wherein PW6 had deposed that the motorcycle was found lying adjacent to the front right tyre of the bus.

Further, the fact that there were traffic signals before and ahead of the place of the incident was also not reflected in the site plan. Inasmuch, the Trial Court concluded that the site plan had been prepared casually and mechanically and its authenticity was under the shadow of doubt.

12. The Trial Court took into account the defence of the accused, wherein he stated that the motorcycle was not hit by the offending bus but had rather collided with some unknown TSR. DW1 deposed that he had stopped the offending bus at the LSR red light and all of a sudden, he had heard a noise from the back side. The Trial Court held that the position of the vehicles in the site plan supported the defence of the accused.

13. The Trial Court held that the prosecution had failed to establish its case, as it found that investigation conducted by the IO was shoddy; the version of the alleged eye witness (PW3) was unreliable; and there was doubt whether the eye witness (PW3) was present on the spot

14. Undeniably, the testimony of PW3 is inconsistent with the testimony of the PW7 as to the time when he arrived at the spot after visiting his friend. According to PW 3, he left his friend's house at 11.30 PM and thus would have arrived shortly thereafter. However, PW-7 had deposed that he was at the spot and had met PW3 at about 2.00-2.15 AM. It is also relevant to note that PW3 had deposed that he had recorded his statement at the PS eight to ten days later.

15. The learned counsel for the respondent also pointed out that in his cross examination, PW3 had deposed that at the time of the incidence, he was waiting for the traffic to clear and had seen the accident after hearing the noise of the impact. He contended that in view of this testimony, it is

apparent that even according to PW-3, he had not witnessed the accident.

16. The Trial Court has evaluated the evidence obtaining in this case. The inconsistencies in the testimonies, as noted by the Trial Court, are material and there is no infirmity with the inference that the prosecution has failed to establish its case beyond reasonable doubt.

17. For the reasons stated above, this Court finds no compelling reason to interfere with the decision of the learned Metropolitan Magistrate.

18. In view of the above, the petition seeking leave to appeal is dismissed. The pending application is also disposed of.

OCTOBER 24, 2019

VIBHU BAKHRU, J