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

+ **CRL.L.P. 388/2017**

STATE NCT OF DELHI

..... Petitioner

Through: Mr Amit Gupta, APP for State.
SI Rambharan Singh, P.S. J.P. Kalan.

versus

RAMBIR SINGH

..... Respondent

Through: Ms Supriya Juneja, Advocate
(DHCLSC) with Mr Harsh Yadav,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.10.2019

Crl. M.A. 11037/2017

1. For the reasons stated in the application, the delay in filing the present petition is condoned.
2. The application stands disposed of.

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3. The State has filed the present petition seeking leave to appeal against a judgment dated 29.11.2016 (hereafter referred to as the 'impugned judgment') passed by the learned MM-06 (West), Dwarka Courts, Delhi stemming from FIR No. 11/2013 registered under Sections 279/337/304A of the Indian Penal Code, 1860 (IPC) registered with P.S. JP Kalan. By the impugned judgment, the Trial Court acquitted the accused (respondent herein) of the offences under Sections 279/304A of the IPC.
4. The State submits that the impugned judgment is based on conjectures and surmises. The Trial Court rejected the testimony of PW – 1(Sh Vijay

Kumar), who is stated to be an eye-witness to the incident in question and thus, acquitted the respondent since the prosecution could not cross the threshold of establishing its case beyond reasonable doubt in order to drive home the conviction of the respondent. Further, the Trial Court also doubted whether PW-1 was present at the spot of the incident in order to testify to how the incident had taken place. The State contends that the testimony of PW-1 is cogent and sufficient to convict the respondent and that he is not a planted witness.

5. It is the prosecution's case that on 01.02.2013 at about 09:45 a.m., the respondent was driving one Maruti Van (bearing registration no. DL 4C AA 8259) on a service road near village Issapur, near village Qazipur between pole nos. 791 and 792 in a rash and negligent manner. It is submitted that the said vehicle collided with a motorcycle (bearing registration no. DL 4S BN 1014) and two persons riding the said motorcycle suffered injuries (Sh. Sumit and Sh. Praveen) leading to their death. Both Sumit and Parveen were taken to RTRM hospital by the police. Sumit was declared dead and Parveen was referred to another hospital. He succumbed to his injuries subsequently. Upon a complaint by the ASI, FIR No. 11/2013 under Sections 279/337/304A of the IPC was registered with P.S. JP Kalan.

6. Subsequently, the respondent was arrested and a chargesheet was filed on 18.02.2014 under Sections 279/304A of the IPC. The accused pleaded not guilty and claimed trial. In the course of the trial, the prosecution examined eight witnesses to prove its case. The defence did not lead any evidence.

7. Sh. Vijay Kumar (uncle of Sumit and Praveen) was examined as PW1. He deposed that he had witnessed the accident. He stated that he was

irrigating the crops at about 09:45 a.m. on 01.02.2013 and he had seen the collision between the Maruti Van driven by the accused and the motorcycle driven by his nephews (Sumit and Praveen). He further deposed that Maruti Van was being driven in a zig-zag manner and had hit the motorcycle from the wrong side of the road. He testified that he reached the spot and had helped the injured persons and in the meantime a police vehicle (Gypsy) arrived at the spot and had taken Sumit and Praveen as well as the driver of the Maruti van to RTRM Hospital, Jaffarpur. He stated that he did not go to the hospital but returned to his house to arrange for money. He deposed that he had met the police officials subsequently, who had recorded his statement.

8. The Trial Court found the testimony of PW1 to be unreliable and had concluded that it was doubtful whether PW1 was present at the spot. Since PW1 is the only material witness examined by the prosecution, the prosecution had failed to establish that the accused had committed the offence beyond reasonable doubt. The Trial Court had, accordingly, acquitted the accused (respondent herein).

9. Mr Amit Gupta, learned APP appearing for the State, fairly stated that the prosecution's case that the accused was driving the Maruti van in a rash and negligent manner rested on the testimony of PW1. He, however, contended that the Trial Court had erred in disbelieving the testimony of PW1.

10. In view of the above, the principal question to be considered is whether the view of the Trial Court that PW1's testimony is doubtful is a plausible view.

11. Before the Trial Court, it was argued on behalf of the defence that

PW1 was planted and had not witnessed the accident. The Trial Court noted that PW1 claimed that he was near the spot but had not called the PCR. PW1 had also not accompanied the injured persons to the hospital, although they were his nephews. He claimed that he had returned to his house to arrange for money for treatment of his nephews.

12. The Trial Court had noted that although PW1 also deposed that he had assisted the injured, there was no evidence of his clothes being soiled by the blood of the injured. The Trial Court also noted that although PW1 had a mobile phone, he had not made any call the PCR.

13. Ct. Kishan Kumar (PW3) had deposed that he along with ASI Kishan (PW7) had reached the spot of the accident and had found the vehicles (Maruti van and the motorcycle). He deposed that there was no public witness at the site. While they were at the spot, information was received by the IO (PW7) from RTRM Hospital and PW7 left the spot and had proceeded to RTRM Hospital. In his cross-examination, he stated that he remained at the spot from 10:00 a.m. to 06:00 p.m. and he did not meet any eye witness at any point of time.

14. PW3's testimony is inconsistent with the testimony of PW7. PW7 had deposed that he had met PW1 at the site and he had recorded his written statement (PW7/E). It is also relevant to note that PW1 had deposed that the IO in the present case (PW7) had met him for the first time on 01.02.2013 at the police station.

15. The Trial Court states that the *rukka* was dispatched at 12:15 p.m. and even at this time, no eye-witness had met the concerned investigating officer (IO). Even though PW-1 claims to have gone to the hospital where the injured/deceased were being treated, he did not meet the IO. Further, there is

yet another material inconsistency in the statement of PW-1 and PW-7 (the IO). PW-7 states that he became aware that the incident in question had taken place in the middle of the road from the statement of PW-1. However, this was not disclosed by PW-1 either in his examination in chief or his cross-examination.

16. The inconsistencies in the testimony of PW1, PW3 and PW7, undeniably, raise a doubt whether PW1 had witnessed the accident.

17. It is clear that the standard of proof has not been met. The prosecution has not established, beyond reasonable doubt, that the accused had committed the offence.

18. In view of the above, this Court does not find any compelling reason to interfere with the impugned judgment.

19. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

OCTOBER 15, 2019
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