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

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Judgment delivered on: 26.03.2019

+ CRL.REV.P. 813/2016

STATE

..... Petitioner

versus

RAJ BAHADUR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Meenakshi Dahiya, APP for the State,
ASI Ram Roop, PS Subhash Place.

For the Respondent : Ms. Mallika Parmar, Advocate, (DHCLSC)

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV.P. 813/2016 & CrI.M.A.19624/2016 (for condonation of delay)

1. Petitioner State impugns judgment dated 07.06.2016, whereby, the Appellate Court has reversed the judgment dated 18.09.2014, whereby, the respondent was held guilty of the offence under Sections 279/377/304A IPC and Sections 3/181 Motor Vehicles Act.

2. Respondent was sentenced to undergo rigorous imprisonment for a period of 2 years for the offence under Section 304A and 6 months for the offence under Section 279 IPC and 3 months for the offence under Section 337 IPC and one month simple imprisonment for the offence under Section

3/181 Motor Vehicle Act and to pay compensation of Rs.50,000/- to the legal heirs of the deceased.

3. The Trial Court was of the view that the prosecution had proved the case beyond reasonable doubt and established that the accident between the bus being driven by the respondent and the Maruti car being driven by the brother of the deceased occurred on account of rash and negligent driving by the respondent.

4. The Appellate Court, on perusal *inter alia* of the testimony of PW5, the injured i.e. the brother of the deceased, who was driving the car, found that the testimony did not establish rash and negligent driving on the part of the respondent.

5. On 23.09.2003, the complainant was driving his Maruti car with his brother, the deceased, sitting beside him. The case of the prosecution is that when they reached near Prembadi Pul, a DTC bus being driven by the respondent came from the front side in a rash and negligent manner and with a fast speed hit against the front left side of the car. Both the brothers sustained injuries. The deceased succumbed to his injuries after nearly a month.

6. Since the case was not treated as an MLC case, there was no Post Mortem Report giving an opinion with regard to the cause of death. However subsequent report from AIIMS has been placed on record which states that the death could have been caused by the accident.

7. Learned APP for the State has referred to the statement of PW5 as also the photographs of the Maruti car being driven by the complainant as

also the site plan to contend that the Appellate Court has erred in returning a finding that the prosecution has failed to establish that the respondent was driving the bus in a rash and negligent manner.

8. Per contra, learned counsel for the respondent submits that the material on record clearly establishes that the respondent was not driving the bus in a rash and negligent manner and the collision occurred on account of the negligence of the complainant, who had taken a sudden turn and come in front of the bus.

9. PW5 in his testimony has deposed that he was driving the car with his brother sitting beside him. He has deposed that when he reached near Prembadi Pul, the offending bus came from the front side in a rash and negligent manner and with a fast speed hit against the front left side of the car.

10. Perusal of the photographs of the Maruti car, which form part of the Trial Court record, show that the impact has taken place on the left side of the Maruti car and there is damage on account of the collision to the front side of the car.

11. Perusal of the site plan exhibited as Ex.PW9/A shows that there is a divider with a break in the median where the accident has taken place. The mechanical inspection report of the DTC bus shows that the damage is to the front bumper fender, front grill and front right-side corner of the bus. When the site plan is examined along with the inspection report of the bus and the photographs, it shows that the collision took place not on the front but on the side of the Maruti car, which establishes that the two vehicles

were nearly perpendicular to each other.

12. It is not a case of the prosecution that the bus had taken a turn rather the case of the defence was that the Maruti car, being driven by the brother of the deceased, had taken a sudden right turn in the median and come in front of the bus. This is apparent from the suggestion given to PW-5 at the time of his cross-examination.

13. Perusal from the material on record indicates that the view taken by the Appellate Court that the prosecution has failed to establish that the bus was being driven in a rash and negligent manner by the respondent and the accident occurred on account of his rash and negligent driving, does not seem to be unreasonable.

14. As there was a divider in between the road, the accident could not have been possible unless either the bus had gone on to the wrong side or the Maruti car had come on the wrong side. The site plan indicates that the accident took place on the left side of the road i.e. on the side where the bus was being driven, which further fortifies the theory of the defence that the car being driven by the brother of the deceased had taken a turn and come in front of the bus.

15. On perusal of the record I am satisfied that there is no infirmity in the view taken by the Appellate Court in holding that the prosecution has failed to establish, beyond reasonable doubt, that the accident occurred on account of rash and negligent act on the part of the respondent.

16. Learned counsel appearing for the respondent further contends that the subject revision petition is not maintainable in view of the express bar

laid down in sub Sections (3) and (4) of Sections 401 Cr.P.C..

17. In view of the fact that I have considered the evidence on record and found no merit in the case of the prosecution and also found that the prosecution has failed to prove, beyond reasonable doubt, that the respondent was driving the bus in a rash and negligent manner and the accident occurred on account of his rash and negligent act, this question is left open.

18. In view of the above, I find no merit in the petition. The Petition is, accordingly, dismissed.

19. Order *Dasti* under signatures of the Court Master.

MARCH 26, 2019/st

SANJEEV SACHDEVA, J