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

+ **CRL.L.P. 671/2017 & CRL.M.A. 19310/2017**

THE STATE GOVT OF NCT OF DELHI Petitioner

Through: Mr Amit Gupta, APP for State.
SI Matwar Singh, P.S. Kapasehara,
N.D.

versus

RAJBIR SINGH Respondent

Through: Mr Anuj Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.09.2019

1. The present petition has been filed by the State, seeking leave to appeal against the judgment and order dated 14.07.2017, passed by the learned Metropolitan Magistrate-04 (South-West), Dwarka Courts, Delhi. The Trial Court held that there were contradictions in the facts stated by the eye witness (PW1), the circumstances of the case, as well as the statement of DW1. The Trial Court noted that all the other witnesses were formal witnesses and therefore, the evidence to link the happening of the incident with the rashness and negligence of the accused, was insufficient. In light of the same, the accused (respondent herein) was acquitted of the offences punishable under Sections 279/304A of the Indian Penal Code, 1860 (IPC).

2. It is the prosecution's case that the Trial Court had failed to appreciate that PW1 (Mohd Sakeel) – the principal witness – had categorically mentioned the circumstances which caused the accident and also identified the bus which the accused was driving. He had proved the identity of the

accused (bus driver) which was sufficient to convict the accused. It is further contended on behalf of the prosecution that all the statements of the other prosecution witnesses support the case of the prosecution and the testimony of PW-1.

3. On 11.11.2012 at about 09:35 pm, the respondent was driving a Delhi Transport Corporation (DTC) bus bearing registration no. DL-1-PB-1199. It is the prosecution's case that respondent was driving the bus in a rash and a negligent manner, which led to the incident resulting in a boy losing his life. It is alleged that one boy, who was trying to board the aforesaid bus, came under the rear wheel of the DTC bus as a result of the respondent suddenly accelerating the bus while exiting a bus stop.

4. The FIR in question was registered at the instance of the complainant, Mohd. Sakeel (PW-1). After completion of the investigation, a charge-sheet was filed against the accused for the offences punishable under Sections 279/304A of the IPC.

5. PW1 (eye witness and the complainant), in his examination in chief deposed that on 11.11.2012, at about 9:30pm, PW-1 along with one Kanchan were coming from Kapashera by DTC bus no. DL 1PB1199, route no. 729 (i.e. on the offending bus) to bus stand 'Malik Farm House'. They de-boarded the bus and walked about four steps, when they saw one boy (the victim) boarding the bus. Suddenly, the bus driver (accused) accelerated due to which the boy fell down. The conductor of the said bus also shouted to stop the bus, but the driver of the bus was in hurry and accelerated the bus. As a result of which, the boy came under the rear wheel of the said bus.

6. The Trial Court noted that even though a person named Kanchan was travelling with PW1 and was also an eye witness to the accident, Kanchan was neither included in the investigation by the Investigating Officer (IO) nor called as a witness. Further, as per the testimony of PW-1, the conductor of the bus was a witness to the accident, but his testimony did not support this assertion.

7. In his cross examination, PW-1 stated that he had taken the ticket of the bus he had boarded, but he does not remember if he handed over the same to the police or not. He stated that he cannot remember if the police had obtained his signatures on a blank piece of paper. He stated that the victim was trying to board the bus from the rear gate and when he put his foot on the *payedaan* (footstep), the bus accelerated and he fell down. PW1 states that he saw the victim as he came under the tyre of the bus.

8. The Trial Court held that the presence of PW-1 at the spot of the accident was not corroborated by any other evidence. PW-1 had not produced the ticket nor any ticket was collected by the IO during the investigation. No other witness had been examined who could testify that PW-1 was present at the site at the time of the incident. This was not done despite the fact that PW-1 had stated that he had taken a ticket when he had boarded the bus. PW1 did not remember whether he handed over the ticket to the IO or not. However, in his deposition, the IO (PW-13) stated that he asked for the tickets from the eye witnesses (PW-1 and Kanchan) and they could not produce the tickets, as they had torn the same. The Trial Court noted that the fact of the torn ticket had not been mentioned by PW-1.

9. PW-1 stated in his cross examination that the victim had fallen down while boarding the bus and had come under the rear tyre of the bus. Even in the complaint, Ex. PW1/A, PW-1 had stated that the deceased had come under the rear tyre of the bus. In light of the same, the Trial Court analysed the statement of PW2 (Traffic inspector- DTC Depot) with reference to the structure of the bus.

10. PW-2 stated that, there is a front gate, then a front tyre, then a rear tyre and then the rear gate. As per the rules, the passenger should board the bus from the rear gate and deboard the bus from the front gate. PW2 stated that it is correct that if someone boards the bus from the rear gate, he can never come under the rear tyre (unless the bus is reversing) because the rear gate is situated behind the rear tyre.

11. The Trial Court, taking into account the statement of PW-2 and the photograph of the offending bus (Ex. A1), observed that if a person falls down from the rear gate and the bus is moving in a forward direction, then there is no chance of the person coming under the rear tyre of the offending bus. Thus, the testimony of PW-1 was not accepted.

12. The Trial Court noted that according to the IO (PW-13) he had called the crime team at the spot. PW-9 (SI Rakesh Kumar) also stated that he was posted at the Mobile Crime Team at the time of the incident and in the present case, he prepared a crime team report and the same was handed over to the IO. However, during cross examination, the witness was shown the judicial file and there was no record to support the said assertion.

13. In the statement of the accused under Section 313 of the CrPC, the accused stated that he was driving the alleged offending vehicle on the date of the incident. At the time of the incident, after stopping the bus at the bus stop and on receiving the whistle from the conductor, he had started to move the bus. At that time, he heard a noise that someone had jumped under the rear wheel of the bus to commit suicide. He suddenly stopped the bus and found out that the boy had sustained injuries. The injured boy succumbed to the injuries. The respondent maintained that there was no negligence on his part.

14. Thereafter, the defence examined the witness DW-1 (the conductor). DW1 stated that at the time of the incident, the driver (the accused) started the bus after he gave a whistle. He had done so after ensuring that everyone had boarded the bus. The bus had moved only 5-7 feet when he heard a noise "*roko roko koi gadi main ghus gaya hai*", meaning that "the said person jumped himself under the tyre of the bus". DW1 stated that he had only heard a cry from a public person and had not witnessed the incident.

15. The Trial Court noted that according to PW-1, he and the conductor both had witnessed the incident and they had both shouted to stop the bus. However, the testimony of DW-1 (the conductor) was at variance with the testimony of PW-1. DW-1 clarified during his cross-examination that the accused (driver) started the bus only after he gave the whistle and he had heard a noise from a public person that someone had jumped under the bus and had come under the tyre. The Trial Court held that the presence of DW-1 as a conductor in the offending bus is not disputed by the prosecution and

therefore, the version of DW-1 corroborates the defence raised by the accused.

16. After evaluating the evidence, the Trial Court held that the prosecution had failed to establish the charge beyond reasonable doubt.

17. This court finds no infirmity with the impugned decision.

18. The petition is, accordingly, dismissed. The pending application is disposed of.

VIBHU BAKHRU, J

SEPTEMBER 16, 2019
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