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

+ **CRL.L.P. 347/2016**

THE STATE GOVT OF NCT OF DELHI Petitioner

Through: Mr Amit Gupta, APP for State.

versus

MOHD. KALIM

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.02.2020

CRL.M.A. 10443/2016

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

CRL.L.P. 347/2016

3. The State has filed the present petition seeking leave to appeal against a judgment dated 18.11.2015 passed by the learned ASJ, Karkardooma Courts (hereafter the 'Appellate Court') whereby the respondent was acquitted of the offences under Sections 279/304A of the IPC and had set aside the judgment dated 28.06.2014 and the order on sentence dated 30.06.2014 passed by the CMM, North East, Karkardooma Courts.
4. The case of the prosecution is that on 07.09.1999 at 06:45 pm, near Chandu Nagar Bus Stand, Main Karawal Nagar, the respondent was driving his vehicle in a rash and negligent manner and had hit a pedestrian, which had resulted in the pedestrian's death. Charges under Sections 279/304A of

the IPC were framed against the respondent. In order to prove its case, the prosecution had examined seven witnesses.

5. The learned CMM, on perusing the evidence obtaining in this case, convicted the respondent for the offences under Section 279/304A of the IPC by a judgment dated 28.06.2010. The learned CMM, by an order dated 30.06.2014, sentenced the respondent to rigorous imprisonment for a period of one year, along with a fine of ₹1 lakh as compensation to the legal representatives of the deceased. In default of payment of the aforesaid fine, the respondent was sentenced to undergo simple imprisonment for a period of six months.

6. Thereafter, the respondent filed an appeal before the Appellate Court against the judgment dated 28.06.2010 and the order on sentence dated 30.06.2014, passed by the learned CMM. The Appellate Court allowed the said appeal by setting aside the said judgment and order on sentence passed by the Learned CMM, as the Appellate Court found that there were inconsistencies in the testimonies of the witnesses.

7. The Appellate Court noted that PW4 (Ratan Singh) was an eye witness and on the basis of his statement, the FIR in the present case had been registered. The Appellate Court noted that the testimony of PW4 was, initially, recorded on 12.02.2004, wherein he refused to identify the driver of the offending vehicle. Thereafter, the learned APP had deferred the examination in chief of PW4 for want of police files. However, the Appellate Court noted that the testimony of another witness, PW5, had been recorded by the learned APP without a police file. PW4 was, subsequently, examined on 28.11.2007. And, on the said date, PW4 identified the respondent by name and also disclosed the registration number of the

offending vehicle. The only explanation that was tendered by PW4 for not identifying the respondent earlier was that he was not feeling well on 12.02.2004 (the date on which his deposition had been initially recorded). The Appellate Court did not accept the aforesaid explanation – in view of this Court, rightly so – and observed that PW4 had deliberately changed his testimony or had been tutored earlier. PW4 had stated that he was sitting at his shop when had witnessed the said accident take place. However, the Appellate Court noted that the said shop was also not reflected in the site plan.

8. PW4 had made a PCR call on the basis of which DD no. 19A was recorded. The Appellate Court noted that the said DD disclosed an entirely different narration of the incident than that stated by PW4 in his statement before the Trial Court. Even if it was to be assumed that an error had taken place, it was the IO's responsibility to disclose and explain the said error in the chargesheet but no such explanation had been provided. The Appellate Court held that it appeared that the IO had conducted the investigation without going through the contents of the DD entry.

9. To ascertain the fact of rash and negligent driving, the Appellate Court also perused the mechanical inspection report (Ex. PW 6/J) and found that Mechanical Inspector, after inspecting the vehicle, had made the noting "*fresh damage nil*". The said report did not support the allegation of the offending vehicle hitting the deceased. The Appellate Court noted that had the deceased been hit by a vehicle and he had died on spot, then fresh damage would have been caused to the front of the vehicle, but that was not the case. The post mortem report (Ex. P1) had indicated that there was a fracture on the middle and left temporal of the deceased and such fractures

would not be possible without the forceful use of a blunt object. The photographs (Ex PW 6/O) also reflect a large quantity of blood at the spot and suggested that damage must have been caused to the vehicle involved. However, the mechanical report did not support the same. The prosecution had not brought on record any evidence to disprove the mechanical inspection report. In view of the evidence and the inconsistencies in the oral testimony, the Appellate Court noted that there was doubt as to the respondent's involvement in the incident.

10. The Appellate Court noted that other than the testimony of PW4, there was no other evidence to prove that the respondent was driving the vehicle in a rash and negligent manner. However, the fact that PW4 could not indicate where he was present with reference to the site plan (Ex. PW 6/B), the testimony of PW4 could not establish, beyond reasonable doubt, that the respondent was driving the vehicle in a rash and negligent manner and thereby caused the death of the deceased.

11. This Court finds no infirmity with the impugned judgment dated 18.11.2015. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

FEBRUARY 19, 2020
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