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

+ **CRL.L.P. 389/2017 & CRL.M.A. 11046/2017 (delay)**

STATE NCT OF DELHI

..... Petitioner

Through Mr Amit Gupta, APP for state.
SI Sanjeev Choudhary, P.s. Delhi Cantt present.

versus

KULDEEP

..... Respondent

Through Mr Harsh Prabhakar, Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.02.2020

1. The State has filed the present petition seeking leave to appeal against the judgment dated 19.11.2016, whereby the respondent was acquitted of the offences under Sections 279/338/304-A of the IPC.
2. The respondent was prosecuted pursuant to FIR bearing No. 292/2007, under Sections 279/338/304-A of the IPC, registered with Police Station Delhi Cantt. It was reported that on 01.09.2007, at about 9.55 a.m., on the road towards Dwarka-Palam, Delhi Cantt, an accident had occurred. It was alleged that an Innova Car bearing No. HR-55-DT 960, which was being driven by the respondent in a rash and negligent manner had collided with one motorcycle, bearing No. DL-4S-AR-7571 and, thereafter, had collided with a pedestrian (Jagbir Singh) who succumbed to his injuries.
3. The impugned judgment indicates that the prosecution examined five witnesses. The case of the prosecution rested, essentially, on the evidence of

Ranjeet Roy (PW4), an eye witness, and ASI Purshottam Singh, the Investigating Officer in the case, who deposed as PW5. PW 4 is the motorcyclist, who had also suffered injuries in the accident. He testified that the respondent was driving the vehicle in a rash and negligent manner and had collided with his motorcycle from the rear side and thereafter, struck the pedestrian who was crossing the road. Due to the impact, both of them suffered injuries. The pedestrian (Jagbir Singh) had subsequently succumbed to his injuries.

4. The Trial Court evaluated the evidence and noted that the necessary evidence incriminating the respondent was lacking. The Trial Court noted that the testimony of PW 4 could not be relied upon as he could not depose whether the vehicle was being driven at a high speed. This was because the vehicle being driven by the respondent had approached PW 4's vehicle from the rear side. Thus, his testimony that the offending vehicle was being driven in a rash and negligent manner was also found to be not sufficient to establish the case of the prosecution. Further, the Trial Court also noted that merely stating that a vehicle was being driven in a rash and negligent manner would not be sufficient to establish any offence. It would be necessary to describe the precise manner in which the vehicle was being driven so as to establish that the same was being driven in a rash and negligent manner.

5. Mr Amit Gupta, learned APP for State referred to the site plan (Ex. PW 5/B) and has drawn the attention of this Court to the spot marking the accident. He submitted that the said spot was close to the side of the road and not in the middle of the road. He stated that this indicated that the

respondent was driving the said vehicle in a rash and negligent manner. He stated that there were no eyewitnesses that were present at the spot and in such a situation, the best evidence that was available had been produced. He contended that the Trial Court had erred in not relying on the testimony of PW 4.

6. Mr Harsh Prabhakar, learned Amicus Curiae, appearing for respondent countered the aforesaid submissions. He submitted that the site plan could not be considered as the same was produced by PW 5 – the IO of the case. However, his testimony remained inconclusive as the two vehicles – Innova and the motorcycle – had not been produced. He stated that subsequently, the evidence of the prosecution was closed without PW5 completing his examination in chief and consequently, the respondent had no opportunity to cross examine him.

7. He also drew the attention of this court to the testimony of PW 4 and submitted that he had admitted that Jagbir Singh, the deceased, was hit when he was in the middle of the road. He also referred to the decision of a Coordinate Bench of this Court in **Bal Kishan v. State: 2008 (105) DRJ 379** and **Abdul Subhan v. State (NCT of Delhi) 133 (2006) DLT 562**. On the strength of the said decisions, he submitted that the fact that an accident had occurred, did not mean that the vehicle was being driven at a high speed. Further, the speed of the vehicle could not be determinative of whether the same was being driven in a negligent manner. This is because if it is established that a person was walking in the middle of the road, then even the vehicle that was being driven at a normal speed could be involved in an accident.

8. He further submitted that this Court has laid down the guidelines that were required to be followed for preparing the site plan which would include making a scaled site map, providing photographs of the site of collision, including the tyres skid marks. The photographs of the surroundings were also required to be taken in addition, to the mechanical inspection report of the vehicles involved.

9. This Court concurs with the view of the Trial Court that the evidence obtaining in this case is insufficient to establish beyond reasonable doubt that the respondent is guilty of commission of the offence for which he was charged. Although, PW 4 had stated that the respondent was driving the vehicle in a rash and negligent manner, his sole testimony is, clearly, insufficient to establish the prosecution's case beyond reasonable doubt. It is also PW 4's testimony that the deceased was in the middle of 30 to 40 feet of the road when the accident had occurred. Concededly, the deceased was not crossing the road at a zebra crossing and there was no red light in the immediate vicinity.

10. PW 4 had testified that the vehicle driven by the respondent had hit him from behind. It is difficult to understand how PW 4 can testify to the manner in which the vehicle behind him was being driven. The site plan prepared by PW 5 shows that the vehicle was being driven in a zig zag manner. This was admittedly drawn by the IO on the sole statement of PW 4. Thus, the site plan is also of little assistance in this case.

11. Apart from the above, there is merit in the contention that the evidence of PW 5 has remained inconclusive and, therefore, the documents exhibited by him have little evidentiary value.

12. In view of the above, this Court finds no reason to interfere with the impugned judgment.

13. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

FEBRUARY 10, 2020

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