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

+ **CRL.L.P. 62/2017 & CRL.M.A. 1833/2017**

STATE (NCT OF DELHI)

.....Petitioner

Through: Ms Kusum Dhalla, APP for State with
SI Balwan Singh, PS Mangol Puri.

versus

PRAVEEN KUMAR

.....Respondent

Through: Mr Gurmeet Singh, Advocate (*amicus curiae*) along with the respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **30.01.2020**

1. The State has filed the present petition, *inter alia*, seeking leave to appeal against the judgment dated 25.06.2016 passed by the MM (North-West), Rohini Court whereby the respondent was acquitted of the offences punishable under Sections 279/304A of the Indian Penal Code, 1860 (IPC).

2. It is contended on behalf of the petitioner that the judgment dated 25.06.2016 (hereafter the 'impugned judgment') ought to be set aside, because the Trial Court did not appreciate the evidence, as obtaining in this case properly and this led to the acquittal of the respondent. Further, it is contended that a bare perusal of the evidence would show that the identity of the accused and of the offending vehicle are evident. The petitioner also contends that the Trial Court erred by ignoring the testimony of the eye-

witness (PW3), which is corroborated by the mechanical inspection report of the offending vehicle.

3. Briefly stated, the case of the prosecution is that on 02.07.20017 at about 04:45 pm, the deceased (Ekta) was crossing a road holding the hand of her uncle (Deepak – the complainant in this case) when a Toyota Qualis vehicle (bearing registration no. DL8CF9501) came at a very high speed and hit Ekta. This accident took place near Main Chowk, S-Block, Mangolpuri on Main Street Road. It is stated that the eye-witness in this case – the uncle of the deceased – was taking the deceased to his shop and the car which hit the deceased was being driven by the respondent at a speed of about 80-85 kmph.

4. Thereafter, FIR bearing no. 477/2007, under Sections 279/338/304A of the IPC was registered with PS Mangol Puri. The accused was arrested on 04.07.2007 and after completion of investigation, a chargesheet was filed against the accused. Subsequently, on 29.08.2012, he was charged with commission of offences punishable under Sections 279/304A of the IPC on 29.08.2012. The accused pleaded not guilty and the case was set down for trial.

5. The prosecution examined six witnesses to establish its case. The defence did not lead any evidence.

6. The Trial Court, by the impugned judgment, acquitted the respondent (accused) of all the charges. The Trial Court concluded that there were lacunae in the investigation and evidence, which created a cloud of doubt over the case of the prosecution and therefore, the prosecution had failed to

prove, beyond reasonable doubt, that the accused was driving the offending vehicle in a rash and negligent manner and thereby, struck against Ekta thus causing her death.

7. The Trial Court held that the prosecution had examined only one eye-witness who was the uncle of the deceased (PW3). In his testimony, PW3 stated that on 02.07.2007 at about 04:45 pm, he was taking his niece to his shop. When they reached the chowk of S Block and had crossed half the road, a Qualis car bearing no. 9501 came from the side of Ring Road at a speed of about 80-85 kmph and hit his niece. Thereafter, he took her to the SGM Hospital where she succumbed to her injuries. He stated that the accused was driving the said vehicle and even though he tried to run away, he was apprehended at the spot. He further stated that at the time of the accident, his niece was walking one or two steps ahead of him while holding the finger of his left hand.

8. The Trial Court found that except PW3, no other witnesses were examined to testify to the speed of the vehicle and the manner in which it was being driven. It relied upon the decision of this Court in ***Abdul Subhan v State: (2007) Crl. LJ 1089***, wherein it is stated that a mere averment of a witness that a vehicle was being driven at a high speed cannot be the sole ground that the said vehicle was being driven in a rash and negligent manner. It ought to be explained as to how the vehicle was being driven rashly and negligently.

9. The Trial Court also examined the site plan prepared during investigation (Ex. PW-5/B) prepared by HC Chand Singh, who deposed as

PW-5. The Trial Court found that the said site plan was not prepared in accordance with the directions given by this Court in ***Adbul Subhan*** (*supra*) inasmuch as, the said plan was unclear as to the exact manner in which the accident took place and as to who was at fault. The Trial Court noted that the said site plan did not show the point of impact, tyre skid marks and the point at which the vehicle came to rest. And, the site plan has also not been drawn to scale. In terms of the decision of this Court in ***Adbul Subhan*** (*supra*) it necessary that, in cases of vehicular collision, photographs of the vehicles involved in the collision; of the site; and of the surrounding area be taken for the court to be able to discern the exact topography of the site. In this case, no photographs were taken and proved, in accordance with law.

10. The mechanical inspection report was also considered. The Trial Court held that the said report has not been proved in accordance with law inasmuch as, the person who prepared the said report was not examined during trial. Further, the report is also not in consonance with the decision of ***Adbul Subhan*** (*supra*) inasmuch as, it does not disclose the exact physical condition of the vehicle at the time of the incident. The Trial Court held that this would assist in ascertaining whether the collision took place due to human negligence or due to mechanical failure beyond human control. Further, the aforesaid decision of this Court makes it mandatory for the investigating officer to note the prevailing weather conditions, at the time of an incident. In this case, the investigating officer has not brought on record any such information.

11. It is important to note that the complainant and the deceased were admittedly not crossing the road at a zebra crossing at the time of the

incident. In such a situation, unless the prosecution is able to establish on the basis of material evidence that the accident was caused due to negligence on the part of the person driving the vehicle, it cannot be readily inferred that the person driving the vehicle was driving in a rash and negligent manner. In the present case, there is no material apart from the sole testimony of the complainant that the accused was driving the vehicle at a high speed. It would be unsafe to accept the same. The question whether the vehicle was being driven in a high speed is a matter of perception and it would be very unsafe to rely on the uncorroborated perception of a single witness who was closely involved in the accident. In cases where pedestrians are struck while crossing the road on a zebra crossing, an inference of rash and negligent driving may be drawn. However, it is unsafe to do so in cases where persons are involved in an accident while crossing a road at a place other than those designated for this purpose.

12. Considering the evidence in the present case, this Court is unable to accept that the impugned judgment is manifestly erroneous. Thus, this Court finds no reason to interfere with the said judgment.

13. The petition seeking leave to appeal is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 30, 2020

MK/pkv