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

+ CRL.L.P. 547/2017 and CRL.M.A. 15532/2017

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms Kusum Dhalla, APP for State.
SI Bijendra Singh, MACT/Cell.

versus

VINET KUMAR @ SETU

..... Respondent

Through: Mr A.K. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **04.02.2020**

1. The State has filed the present petition seeking leave to appeal against the judgment dated 27.02.2017 passed by the MM-04, South West, Dwarka Courts, New Delhi, whereby the Trial Court had acquitted the respondent of the offences under Sections 279/304-A of the Indian Penal Code, 1860 (IPC).
2. Ms Dhalla, learned APP, contends that the Trial Court had erred in not appreciating the testimony of PW3, who was an eye witness, and had clearly deposed that the injuries sustained by the deceased had occurred due to rash and negligent driving on part of the respondent.
3. The present case was registered against the respondent on the allegations that on 12.07.2011, at about 1:20 pm, at Sector-2 Bus Stand, near Old Age Home, Dwarka, New Delhi, the respondent was driving a motorcycle bearing no. DL-85-AA-6040 in a rash and negligent manner. While driving the motorcycle, he hit against one pedestrian namely, Sh. Dinesh (hereafter 'the deceased') which led to his death. At the instance of

the complainant, Sh. Rahul Kumar, FIR No. 196/2011 was registered under Sections 279/304-A of the IPC with PS Dwarka South.

4. Thereafter, investigation was completed and a charge sheet was filed before the Trial Court. Charges were framed against the respondent under Sections 279/304-A of the IPC to which the respondent pleaded not guilty. Accordingly, the case was set down for trial. To prove its claim, the prosecution examined eleven witnesses.

5. The Trial Court noted that the main question in dispute was whether the respondent was driving the offending vehicle in a rash and negligent manner at the time of the incident and whether the accident occurred because of his driving. In this regard, the Court perused the testimony of the only eye witness – PW3, Rahul Kumar, who had stated in his examination-in-chief that the respondent came from Sector 1- Red Light at a very fast and speed and in a negligent manner and hit against his uncle (the deceased), who was crossing the road.

6. The Trial Court perused the site plan (Ex. PW 3/B) and noted that the place of occurrence was near Sector 1-2, Red Light, Dwarka, towards Sector-2 Bus Stand. During cross examination, PW3 admitted that the distance between the red light and his shop was about half a kilometre. It was also stated by PW3 in his complaint (Ex. PW 3/A), as well in his cross-examination, that his cycle repairing shop was situated near the power house. The Trial Court noted that in the site plan, the power house was shown after the crossing of the Sector-2 bus; however, the shop of the complainant was not reflected in the site plan. On the basis of the same, the

Trial Court held that it was not established beyond reasonable doubt that PW3 had seen the happening of the incident directly.

7. The Trial Court perused the complaint (Ex. PW3/A) made at the instance of PW3, and noted that the tea shop from where the deceased had taken tea was situated at some distance from the shop of the complainant (PW3) and it reflected that the said tea shop and the complainant's shop were on the same side of the road. On the other hand, during examination-in-chief, PW3 stated that the accident occurred when his uncle was returning from the tea shop, which was situated on the opposite side of his road. The Trial Court noted that PW-3's testimony was contradictory with regard to the positions of the tea shop and his shop. Further, neither the shop of the eye witness (PW3) nor the tea shop from where the deceased was allegedly returning from, were reflected in the site plan. Further, the position of the eye witness was not demarcated in the site plan.

8. The Trial Court further noted that there was a contradiction in the testimony of the eye witness with reference to his position at the time of the alleged incident. In his examination, PW3 stated that he was present in his shop, whereas, in another place, he stated that he was present at the spot of the alleged incident. While stating that he was present at the spot, he did not give any explanation as to why he had gone to the said spot from his shop. The Trial Court also noted that during cross examination, PW3 was unable to tell whether the traffic signal at that time was red or green. Further, the Court noted that there was no mention of PW3 in the MLC of the deceased (Ex. PW 7/A). The MLC noted that the deceased was brought by ASI Azad Singh i.e. PCR official, however there was not mention of the name of PW3.

The said PCR official was also not examined by the prosecution to corroborate the presence of PW3, when they arrived at the spot. The Trial Court held that these contradictions were material in nature and created doubts regarding the status of PW3 as a material eye witness.

9. The Trial Court noted that all other examined witnesses were formal procedural witnesses and those witnesses were neither eye witnesses and nor was their evidence brought on record sufficient to link the accident in question with the rash and negligent driving of the respondent. Further, the medical evidence was not sufficient to link the injuries suffered by the deceased to the rashness or negligence of the injured persons.

10. In view of the aforementioned inconsistencies, the Trial Court held that the prosecution had failed to prove its case against the respondent and had acquitted the respondent for the offences committed under Sections 279/304-A of the IPC.

11. Although the site plan was produced (Ex.PW3/B), the same is of little assistance. Inasmuch as it neither reflects the shop of PW3 nor clearly indicates the tea shop from where the deceased was allegedly returning. The red light is also not reflected clearly. Although the prosecution was required to produce the site plan as per scale clearly reflecting the spot of the incident, the site plan which has been produced is not only not in accordance with scale but also does not reflect all the relevant reference points.

12. In ***Abdul Subhan v. State (NCT of Delhi): 2007 CriLJ 1089***, this Court had issued guidelines with regard to preparation of a site plan and had underscored the importance of a site plan in cases involving motor

accidents. The site plan prepared in this case clearly raises more doubts than it seeks to address.

13. PW 3 had testified that at the material time, he was working as a cycle mechanic at Sector 2, near Power House. He also stated that the distance between the red light and his shop was about half a kilometre. The accident is stated to have occurred near a red light. The site plan also indicates a crossing near the spot of the incident. Although, it does not reflect a red light at the said crossing.

14. In view of the above, it would be very difficult for PW3 to have witnessed the said accident from the shop where he was working. In his cross-examination, PW3 had stated that he was present at the spot of the accident. This is inconsistent with his testimony that he was present at the shop at that date.

15. In view of the above, this Court finds no infirmity with the decision of the Trial Court that the respondent was not guilty of committing the offences under Sections 279/304-A of the IPC.

16. In view of the above, this Court finds no reason to allow the present petition.

17. The same is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

FEBRUARY 04, 2020
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