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

% **Date of decision: July 28, 2023**

+ **CRL.L.P. 291/2019 & CRL.M.A. 8968/2019**

STATE Petitioner

Through: Ms. Manjeet Arya, APP for
State/R-1 with Insp. Naveen
Kumar, P.S. S.P. Badli.

versus

SATISH KUMAR Respondent

Through:

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The present petition is filed under section 378 (3) Cr.P.C. to impugn the judgment dated 12.12.2018 passed by the Court of Ms. Neha Gupta Singh, MM-02, North District, Rohini Courts, New Delhi in case no. 5288518/2016 arising out of FIR bearing no.0492/2007 dated 22.06.2007 registered for the offences punishable under sections 279/304A IPC at P.S. Samai Pur Badli, whereby the respondent was ordered to be acquitted for the offence punishable under sections 279/304A IPC.

2. As per prosecution, on 22.06.2007 at around 01:00 PM at Lower G.T.K Road in front of Gurdwara, Libas Pur within the



jurisdiction of P.S. Samai Pur Badli, the respondent/accused was found driving bus bearing no. DL 1PA 5771 in a rash and negligent manner and while doing so, he struck against one motorcycle bearing no. DL 8SAG 6571, as a result of which, a pillion rider Ram Avatar (deceased) fell down and crushed under the rear wheel of the bus. After the investigation, the charge-sheet was filed under sections 279/304A IPC.

3. The notice under section 251 Cr.P.C. was given to the respondent for the offence punishable under sections 279/304A IPC to which, the respondent pleaded not guilty and claimed trial. The prosecution during the trial examined 08 witnesses including eye-witness Vinod Kumar as PW-1. PW-1/Vinod Kumar deposed as under:-

“On 22.6.2007, I was going to Panipat alongwith my maternal cousin uncle Ram Avtar Murya @Chintu on my motorcycle no. DL 8S AG 6571 to do some electric work. I and Chintu were electrician. Chintu was student also. At about 1.00 PM when we reached lower GTK road in front of Gurdwara, Libas Pur, Delhi one bus no. DL-IP A5771 came driven in rash and negligent manner and all of a sudden struck my motorcycle from back left side. My cousin brother Ram Avtar fell on the right side of the motorcycle and back left wheel of the bus ran over the head of my cousin brother and he expired at the spot. The bus driver was apprehended



with the help of public persons and produced before the police. His name was found to be Satish Kumar s/o Jagdish Chand and is present in the court today (correctly identified). I had seen the accused at the spot. I gave the complaint to the police which is Ex. PW-1/A and bears my signature at point A. The accident took place because of the rash and negligent manner of the accused present in the court today. I had shown the site to the police officials where the accident took place and they prepared the site plan Ex. PW-1/B. I identified the dead body of my cousin brother Ram Avtar vide identification memo Ex. PW-1/C which bears my signature at point A. The handing over memo of the dead body Ex. PW-1/D also bears my signature at point A. The accused was arrested by the police in my presence. The arrest memo of the accused Ex. PW-1/E also bears my signature at point A. I took my motorcycle on superdari vide my application Ex. PW-1/F from the court vide superdari nama Ex. PW-1/G which bears my signatures at point A.”

4. The statement of respondent/accused was also recorded under section 313 Cr.P.C. wherein, he denied incriminating evidence and pleaded innocence. The respondent/accused preferred not to lead defence evidence. The trial court vide impugned judgment dated 12.12.2018, acquitted the respondent/accused for the offences punishable under sections 279/304A IPC. The relevant portion of the impugned judgment dated 12.12.2018 is reproduced as under:-

“25. In present case prosecution has failed to prove that accused was driving the vehicle in rash and negligent manner. There is no evidence on record to show that accused was driving the vehicle in rash and negligent manner. Eye witness has only deposed to the effect that offending vehicle hit deceased from left side and it was coming at high speed. Moreover, place of incident is a bus



stand and incident happened at 1:00 pm. It is not possible for bus to have a very high speed further it is not disputed that bus was being driven in its own lane. It is already discussed rashness is not about high speed but total disregard of traffic rules and caution. No such fact is brought on record to show that accused was driving in rash and negligent manner. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur".

26. In such circumstances it cannot be said that accused was driving the vehicle in rash and negligent manner and that death was caused due to his rash and negligent act. Accordingly, accused is acquitted for offence under section 279 and 304A IPC."

5. The Additional Public Prosecutor for the petitioner/State argued that the testimony of the PW-1/Vinod Kumar proved that the respondent/accused was rash and negligent while driving the bus bearing no. DL 1PA 5771 and one precious human life was lost due to rash and negligent act of the respondent/accused. She further argued that as per the testimony of PW-1/Vinod Kumar, it proved that the respondent/accused while driving the bus bearing no. DL 1PA 5771, hit the motorcycle from the left side, which clearly proves the rash and negligence on the part of the respondent/accused.

6. The testimony of PW-1/Vinod Kumar only proves that the bus bearing no. DL 1PA 5771 had struck the motorcycle bearing no. DL 8SAG 6571 from the left side, as a result of which, the deceased fell



down on the road and thereafter, rear left wheel of the bus crushed the head of the deceased. PW-1/Vinod Kumar did not depose that the respondent/accused driving the bus at a high speed and was not following the traffic rules. Just a mere hitting of motorcycle on which the deceased was sitting on the pillion seat, does not reflect rashness and negligence on the part of the respondent/accused while driving the bus bearing no. DL 1PA 5771.

7. The testimony of PW-1/Vinod Kumar is not sufficient to prove the rashness and negligence on the part of the respondent/accused. There is no other evidence led by the prosecution to prove the rashness and negligence on the part of the respondent/accused. The impugned judgment is passed after proper appreciation of the evidence led by the prosecution and does not call for any interference.

8. After considering all facts, no ground is made out to grant leave to appeal to the State/petitioner, as a consequence of which, the present petition/appeal along with pending applications, if any, stands dismissed.

(DR. SUDHIR KUMAR JAIN)
JUDGE

JULY 28, 2023
N/SM