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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CRL. A. No. 461 of 2017**

Between:-

STATE OF NCT OF DELHI,APPELLANT
(Through Mr. Utkarsh, APP for State)

AND

**SHIV NARAIN CHAUDHARY
S/O SARYUG CHAUDHARY,
R/O H. NO. 12, YOGMAYA MANDIR,
MEHRAULI, NEW DELHIRESPONDENT**
(Through Mr. Chandan Malik, Advocates)

% Pronounced on : 18.01.2023

J U D G M E N T

1. This appeal under Section 378 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") is directed against the judgment of acquittal dated 08.09.2015 passed by the Metropolitan Magistrate, South District, Saket Courts, New Delhi in connection with FIR No. 245/10 registered at Police Station Ambedkar Nagar, Delhi for the offence punishable under Sections 279/304A of the Indian Penal Code, 1860 (In short "IPC").
2. The prosecution case in brief in that on 20.08.2010, Head

Constable Rameshwar, received DD No. 28A and he accordingly proceeded with Constable Mahavir Prasad (PW-1) to the place of the accident *i.e.*, M.B. Road in front of old petrol pump, where, motor cycle bearing no. DL-3SBJ-8795 (in short ‘accidental motorcycle’) and bus bearing no. DL-1PB-9178 (in short ‘offending bus’) were found present. The injured was also found lying near the motor cycle, who was then moved to AIIMS hospital in government vehicle bearing no. DL-1CM-1624 by PW-1. Constable Balram (‘Complainant’) was found present at the spot whose statement was recorded with regard to the accident and his statement formed the substratum for registration of the present FIR. In the hospital, MLC No. 223591/10 of injured Raj Kumar Rawat (‘deceased’) was collected. However, he was declared brought dead. During the course of investigation, a non-scaled site plan was prepared. Notice under Section 133 of the Motor Vehicle Act, 1988 (‘MV Act’) was given to the owner of the offending bus Rajat Maurya (PW-4) who produced the driver Shiv Narain Chaudhary (‘accused’) who was then arrested. It is alleged that since the respondent/accused was driving the vehicle rashly and negligently so as to endanger the human life or to be likely to cause injury to other persons, FIR for offences punishable under Sections 279/304A of the IPC was registered against him. After investigation, the police filed the chargesheet.

3. Accused was charged for offence under Sections 279/304A of the IPC to which he pleaded not guilty. Accordingly, trial was conducted. The learned trial court after appreciating the entire evidence and material available on record acquitted the respondent/accused. Hence, the state is in appeal.

4. Learned counsel appearing on behalf of the State submits that the impugned judgement is illegal and improper. According to him, the Learned trial court erred in not relying upon the testimony of the eye-

witness *i.e.*, the complainant (PW-2) as the case of prosecution was essentially proved by his testimony. The learned trial court has given undue importance to lack of proof of arrival and departure of the complainant in DD entries from police station, who was on patrol duty at the relevant time even though the defense did not question the witness in the cross-examination with regard to the DD entries. The learned trial court has further erred in failing to appreciate that the accused was apprehended by the eye-witness at the spot and was handed over to the Investigating officer. This aspect was corroborated by the presence of eye-witness and the accused at the spot. According to him, it is proved through the testimony of the complainant that the accused was driving the offending bus. The medical evidence shows that the deceased died due to injuries sustained in the said accident. Thus, the ingredients of the offences alleged were duly proved in the facts of the present case. Additionally, undue importance to a delay of seven hours in sending the *rukka*, more so when the defence failed to ask any question on the aspect of reasons for delay, ought not to have been given.

5. On the other hand, learned counsel for the respondent/accused vehemently opposes the submissions and submits that the offences have not been committed by the respondent/accused and therefore, the learned trial court has rightly acquitted him. He submits that the learned Metropolitan Magistrate has considered all the submission made by the respondent/accused, and the testimony of the sole eye-witness *i.e.*, the complainant suffers from equivocation and prevarication, thus not worthy of according any credence. Learned trial court held that the prosecution has not been able to make out a case of rash or negligence driving against the accused.

6. I have heard learned counsel for the parties and perused the record.

7. The prosecution has examined following eight witnesses :-

PW	NAME	ROLE
PW-1	CT. MAHAVIR	POLICE
PW-2	CT. BALRAM	COMPLAINANT
PW-3	SHADI LAL	MECHANICAL INSPECTOR
PW-4	RAJAT MAURYA	TRANSFERRED OFFENDING BUS
PW-5	ADARSH KUMAR	FSL DOCTOR
PW-6	ASI PARVEEN	DUTY OFFICER
PW-7	HC DHARAM SINGH	DUTY OFFICER
PW-8	SI JITENDER SINGH	SUB-INSPECTOR

8. In order to prove the case of prosecution, the essential ingredients of Sections 279 and 304A of the IPC had to be proved. Section 279 of the IPC requires only two essentials viz. (a) driving of vehicle and; (b) such driving must be so rash or negligent so as to endanger the human life or to be likely to cause hurt or injury to any other person. For Section 279 to apply, the rashness or negligence must be criminal rashness or negligence. Both ingredients must be satisfied. Certain aggravated degree of rash and negligence is contemplated here. For Section 304A of the IPC, a direct nexus between the death of the person and the rash or negligent act has to be established. Presence of either rash actions or negligent actions are sufficient to attract the Section and its punishment. Burden lies on the prosecution to prove on the basis of the material available on the record and to establish the negligence or rash driving.

9. In the present case, the prosecution had to prove three aspects—*firstly*, that the accused was driving the offending bus on the date of incident; *secondly*, that the offending bus was being driven by the accused in a rash and negligent manner causing the accident in question and; *thirdly*, the victim succumbed to the injuries in the said road

accident. The third aspect is not in question as the accidental death of the deceased is proved by the testimony of Dr. Adarsh Kumar (PW-5) who has proved the postmortem report as Ex.PW5/A by opining the cause of death as hemorrhage shock.

10. With regard to the first and second aspect, learned trial court considered that it was accepted by the learned counsel that accused was present at the spot but the accident had not occurred with his bus. Prosecution has mainly rested its testimony on the case of the complainant who was stated to be on patrolling duty on the date and time of the incident. There is a strong cavil that this witness has been foisted by the prosecution to establish the case against the accused. This observation of the learned trial court was based on the following evidence. *Firstly*, if the complainant was on patrolling duty, he should have bought the relevant records showing his arrival and departure and should have proved the same by documentary evidence such as by producing DD entry. This was based on Chapter 22 Rule 49 of the Punjab Police Rules. The concerned rule has not been complied with by the complainant. This has also been held by this Court in the case of ***Rattan Lal v. State***¹. *Secondly*, there is vast difference between the deposition of the complainant with regard to the accident and his initial statement given to the police upon which the FIR was registered. He deposed that the offending bus and the accidental motorcycle were running parallelly and the accident occurred in an attempt to overtake the motorcycle. Subsequently, the rider fell down on the right side. However, in his initial statement, he claimed that the offending bus came in a rash or negligent manner and overtook the accidental motorcycle from the right side as a result of which, the offending bus was hit on the front side. Furthermore, from the deposition before the court, it is culled out that the accidental motorcycle was being driven in

violation of the traffic rules *i.e.*, on the right side of the road, which is meant for heavy vehicle.

11. The complainant has not deposed that the site plan was prepared by the Investigating Officer at his instance. The site plan does not bear his endorsement even though Investigating Officer, SI Jitender Singh (PW-8), has deposed that he prepared the site plan at the complainant's instance. These circumstances have failed to substantiate the story of the prosecution that the offending bus had endeavoured to overtake the accidental motorcycle. Furthermore, the mechanical inspection report of the offending bus (Ex.PW3/B) demonstrates the damages on the bus as front left bumper scratch. This finding is at variance with the deposition of the complainant who has deposed that the offending bus overtook the motorcycle and in that process the motor cyclist was hit and fell down. There is also an unexplained delay in sending the *rukka* (Ex.PW3/B) of seven hours.

12. The order dated 08.09.2015 of the learned Metropolitan Magistrate indicates that he has considered the case on merits and found that the rest of the testimonies other than that of the complainant's are formal in nature having no bearing to the conviction of the accused and the testimony of the complainant suffers from equivocation and prevarication, thus not trustworthy. The essential elements for fastening criminal liability for the offences punishable under section 279/304A of the IPC have not been proved beyond reasonable doubt. Therefore, the matter was decided and respondent/accused was acquitted.

13. The Hon'ble Supreme Court in the matter of *State of Maharashtra v. Sujay Mangesh Poyarelar*² while considering its earlier pronouncements including the decision in the case of *Chandrappa &*

*Ors. v. State of Karnataka*³ has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is relied and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate court. It has also been held that nonetheless it is not correct to say that unless the appellate court in an appeal against acquittal under challenge is convinced, that the finding of acquittal recorded by the trial court is ‘perverse’, it cannot interfere. If the appellate court on re-appreciation of evidence and keeping in view the well established principles, comes to a contrary conclusion and records a conviction, such conviction cannot be said to be contrary to law.

14. The Supreme Court in the matter of *Hakeem Khan & Ors v. State of M.P.*⁴ has again considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the said decision it has been held that if the ‘possible view’ of the trial court is not agreeable for the High Court, even then such ‘possible view’ recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot be supplanted over the view of the trial court.

15. Having considered the aforesaid facts and circumstances, this court finds that the prosecution has not been able to make a water-tight case. On examination of the material available on record, this court is not inclined to take a different view other than the view which has already

³ (2007)4 SCC415

⁴ (2017) 5 SCC 715

been taken by the learned trial court. Accordingly, the appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 18, 2023/C'sha

