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

+ **CRL.L.P. 102/2019**

STATE

.....Petitioner

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Mr. Hunny Yadav,
Ms. Akchita Singh, Mr.
Jaideep & Mr. Mahesh,
Advs.
Inspector Naveen Kumar,
PS- Samaypur Badli

versus

AJAY AGGARWAL

.....Respondent

Through: Mr. Vipin, Adv. with
respondent in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

21.08.2024

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1. The present petition is filed under Section 378(3) of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to appeal against the judgment dated 08.10.2018, passed by the learned Metropolitan Magistrate ('MM') in FIR No. 44/2012, registered at Police Station Samaypur Badli (hereafter '**the impugned judgment**').

2. By impugned judgment, the learned MM acquitted the respondent of the offences under Sections 287/338 of the Indian Penal Code, 1860 (IPC).

3. The FIR was registered pursuant to receipt of DD entry on 04.02.2012. It was found that the victim namely Aamin got injured while working in the factory of the respondent. It was alleged that the victim used to transport the goods for packing in

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the respondent's factory and on 04.02.2012, the victim was forced by the respondent to work on the press machine. It was alleged that the respondent knowingly and negligently omitted to take care as was sufficient to guard against any probable danger to human life from such machinery. The victim was forced to work on the machine despite his request that he did not know how to operate the machine. The statement of the victim was recorded, who stated that while he was working on the machine, one clip piece trapped in the machine and while he was trying to take the clip piece from the machine, the handle of the machine got pressed by his right hand due to which three fingers of his left hand got cut. The victim was taken to the hospital by the respondent in his vehicle.

4. During the course of the trial, six witnesses were examined, including the victim and the eye witness one Brij Kishore, who was working as supervisor in the factory premises of the respondent at the relevant time. The remaining witnesses were formal witnesses being police officials and the Medical Superintendent.

5. The learned Trial Court noted that the victim is still working in the same factory. It was also noted that the victim had himself deposed that he was trying to pull out a piece stuck in the machine and the same was being pulled out in the natural course of the operation of the machine. The victim also stated that he used to handle the machine in the same manner and on the date of the accident, he was similarly trying to pull out the piece stuck in the machine when he accidentally pulled the lever due to which the fingers of his left hand were crushed.

6. The learned Trial Court held that the accident occurred due to the victim's own negligence and the injury cannot be said to



have been caused owing to any negligent act of the respondent. The respondent was thus acquitted.

7. The learned Additional Public Prosecutor ('APP') for the State submits that the learned Trial Court failed to appreciate that the victim had deposed that the respondent had asked him to run the said machine and the victim had refused as he had never worked on the said machine.

8. He submits that the victim had deposed that he was working under pressure when forced by the respondent. It is further contended that the respondent did not give proper equipment or proper safeguards which points towards the negligence of the respondent. It is contended that the victim was not skilled to operate the machine yet he was pressurised by the respondent to operate the same which led to grievous injuries.

9. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***Maharashtra v. Sujay Mangesh Poyarekar*** : (2008) 9 SCC 475 held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the



High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

10. The prosecution is seeking conviction of the respondent for offences under Section 287 read with Section 338 of the IPC. The same read as under:

“Section 287. Negligent conduct with respect to machinery Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

“Section 338 Causing grievous hurt by act endangering life or personal safety of others

“Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.”

11. A person is held liable under Section 287 of the IPC if he does with any machinery, any act so rash or negligent as to endanger human life or be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take precaution with any machinery in his possession as is sufficient

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to guard against any probable danger.

12. Similarly, in terms of Section 338 of the IPC, a person is held liable if the grievous hurt is caused by any rash or negligent act done by any person.

13. Thus, the first and foremost parameter for convicting a person would be that the act committed is rash or negligent.

14. Every accident, though, involves some degree of negligence, however, the same cannot be called to have happened because of any culpable conduct by any person so as to make the act rash or negligent thereby attracting criminal liability. Negligence is a breach of duty or an omission to do something which a reasonable man would ordinarily be required to do or doing something which a prudent and reasonable man would not do.

15. The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For a negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher, that is, of a gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis of prosecution. [Ref: ***Jacob Mathew v. State of Punjab and Another* : (2005) 6 SCC 1**]

16. The learned Trial Court after considering the deposition of the victim rightly observed that the victim adopted the usual procedure as always which showed that he had worked in the machine earlier also. The victim also deposed that the accident apparently occurred due to negligence when he was trying to pull out a piece stuck in the machine and accidentally pulled the lever

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due to which the fingers of his left hand got crushed.

17. The learned APP for the State submitted that the victim was not skilled to operate the machine and pressuring him to work on the same amounted to gross negligence.

18. When the victim had himself deposed that he had worked on the machine earlier also, it cannot be said that he was not skilled to operate the machine. It is not the case of the prosecution that the accident had occurred on an earlier occasion as well when the victim worked on the said machine.

19. It is further contended that the machine was not equipped with proper safeguards and, thus allowing the victim to work on the same amounted to gross negligence. This argument is based on presumption.

20. As noted above, it is not the case of the prosecution that because of certain alleged safeguards not being installed, the accident used to occur regularly or that if the safeguards as alleged were provided, the victim would not have been injured.

21. In view of the above, in the opinion of this Court, the State has not been able to establish a *prima facie* case in its favour to justify that the order of acquittal should be set aside.

22. The leave petition is dismissed with the aforesaid observations.

AMIT MAHAJAN, J

AUGUST 21, 2024

"SS"/"SK"