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

+ CRL.A. 261/2018

STATE (NCT OF DELHI)

.....Appellant

Through: Mr. Satish Kumar, APP, Ms. Sonam Drema, Mr. Kapil Bhakkar, Mr. Mahesh Kumar, Mr. Lalit Kumar, Mr. Karmesh Vikrantt Singh Nagar, Advs. For State and SI Sandeep Singh, PS Kashmere Gate.

versus

SURENDER KUMAR JHA

.....Respondent

Through: Ms. Aishwarya Rao, Ms. Mansi Rao, Ms. Poonam Raswant, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
23.07.2024

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1. The present appeal has been filed under Section 378(3) Cr.P.C for grant of leave to appeal against judgment dated 17.08.2015 passed by Ld. MM-03(Central), Tis Hazari Courts, Delhi in case FIR No. 523/2005, PS Kashmere Gate whereby the accused was acquitted.
2. The state has filed the appeal challenging the order on the ground that the order on acquittal is erroneous.
3. Learned APP for the state has invited the attention of the court to the testimony of PW-1. Learned APP submits that PW-1 is an eye witness and has made a categorical statement before the court that the offending vehicle was driven in a rash and negligent manner. On account of which the vehicle overturned and the deceased was crushed under the bus. Learned APP has also submitted that therefore the



impugned judgment is erroneous.

4. Learned counsel for the respondent submits that it is a well settled preposition of law that the order of acquittal cannot be set aside merely because another view could have been taken. Learned counsel submits that admittedly the respondent was not arrested from the spot. It is also a matter of record that no TIP was conducted.
5. The Apex Court in ***Bhupatbhai Bachubhai Chavda & anr. V. State of Gujarat*** [2024] 4 S.C.R. 322 : 2024 INSC 295 inter-alia held that the jurisdiction of leave to appeal is that the Appellate Court cannot overturn an acquittal just because a different view is possible. For an acquittal to be overturned, the judgment must be shown to be clearly unreasonable. It was inter alia held that it is true that while deciding an appeal against acquittal, the Appellate Court has to re-appreciate the evidence and after re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. It is also a settled preposition that appellate court can interfere with the order of acquittal only if it is satisfied after re-appreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible, and the judgment of acquittal must be found to be perverse to overturn it.
6. I have gone through the impugned judgment. The Ld. Trial Court has given proper reasoning for not relying on the testimony of PW-1 and PW-11. Ld. Trial court has inter-alia held as under:



“20. Prosecution had examined only one eye witness i.e. Ct. Rajesh Kumar who was examined as PW1. Therefore, his statement is liable to be scrutinized thoroughly to test his credibility as well as to clarify that whether he was actually eye witness of the incident or not.

21. PW1 stated that he was present near the spot on his duty when the incident occurred. No any duty roaster/DD entry is placed on record to prove the fact that PW1 was actually on duty at the spot According to PW1, he with the help of public persons shifted the injured to the hospital in a PGR Van which reached there. He nowhere stated the name of any PCR In-charge-Official who reached there. No any PCR official/In-Charge is examined by the prosecution as a witness to prove the fact that PW1 met the PCR officials at the spot. No any PCR call was made by PW1 regarding the incident. As per PW9, who was working as DD writer at PS Kashmere Gate, he received an information from N-55 Operator through wireless at about 10.50 p.m. i.e. Ex.PW9/A whereas the time of incident is at 10.10 p.m, No any document is placed on record by the prosecution that from whom the information was received by PGR Operator. As per Ex.PW1/A, PW1 stated that he was on duty at the spot as per the Chhittha(duty roaster). Therefore, to show that he was actually present there, the prosecution has to place on record the relevant duty roaster. But there is no document in this regard which create doubt regarding the presence of PW1 at the spot at the time of incident.

22. As per PW1, several other public persons were also present there. He stated that the driver/accused fled away from the spot. PW1 stated his position at a distance of about 100 mtr. from the place of accident. Therefore, if a vehicle turned turtle in a running condition, it would be very difficult to ran away by the, driver/accused after rescuing himself from the turtled vehicle and that too in the presence of police official as well as several public persons. It is also not stated by PW1 either he or any public person tried to apprehend the accused which further create doubt



regarding the presence of PW1 at the spot.

23. It is to be seen that whether it was only accused who was driving the offending vehicle at the time of incident. In this respect there are two witnesses i.e. PW1 & PW11. PW1/Eye-witness admitted that accused was not apprehended at the spot and he was ran away from the spot after the accident. The time of incident is of night i.e. 10.10 p.m. It is also admitted by PW1 that on the date of incident drizzling was going on and at that time he was standing at a distance of about 100 mtr. In such circumstances, it is doubtful that PW1 had seen the face of the accused clearly despite the fact that he neither apprehended him nor chased him and especially in view of the fact that presence of PW1 is itself doubtful at the spot. Therefore, there must be some other corroborative evidence to prove this fact.

24. The incident is of 24.09.2005 and accused was arrested on 06.10.2005 i.e. after about 12 days of the incident. If it was only PW1 who had seen the accused while driving the offending vehicle, then either the accused must have been apprehended at the instance of PW1 or accused must have been identified by PW1 through judicial TIP. But in this case, neither accused is arrested at the instance of PW1 nor his judicial TIP was conducted but he was arrested only on the production by the owner of the vehicle at the PS. PW1 admitted in his cross-examination- that accused was identified by him in the police station. No any explanation is given by the prosecution/IO regarding non-conducting of TIP of the accused.

25. Other witness in this regard is PW11 i.e. Pale Ram who is owner of the offending vehicle. According to him at the time of incident accused was driving the offending vehicle. There is no any document produced by him regarding the fact that the accused was his driver. There is no any document showing the employment of the accused as a driver with him or any duty slip etc. Defence raised by the accused is that at the time of incident son of the owner was



driving the vehicle and accused is only implicated thereafter. It is admitted by the owner in his cross-examination that he had not seen the accident and he cannot say that who was sitting on the driver seat at the time of accident. According to the prosecution story PW11 gave his reply Ex.PW11/E to the notice under Section 133 M.V. Act stating that accused Surender Kumar Jha was driving the vehicle on the date of incident. PW11 although stated this fact in his chief examination but in his cross-examination, he stated that PW11/E is not in his handwriting, and he has not written the same. IO stated in his chief examination that owner gave his reply Ex.PW11/E. It is not clarified by the IO that who had written the said reply. PW11 also admitted that police has not recorded his statement. Therefore, in these circumstances, it cannot be ascertained that accused was driving the vehicle at the time of incident in absence of any clear or corroborative evidence in this regard. When this fact is not established by the prosecution that who was driving the vehicle at the time of incident the other evidence regarding the fact that how the incident occurred and how the deceased sustained injuries are not sufficient to establish the ingredients of offence against the accused.”

7. The perusal of impugned order indicates that Ld. Trial Court has appreciated the evidence in detail and has reached on a plausible view. There might be another possible view, but it cannot be said that the view taken by the Ld. Trial Court was not a plausible view or the view was perverse.
8. I do not find any illegality, perversity or infirmity in the impugned judgment. Hence, the present leave to appeal is dismissed.

DINESH KUMAR SHARMA, J

JULY 23, 2024/AR..