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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.L.P. 174/2018

THE STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP
for the State.

SI Sachin Kumar, PS
Amar Colony.

versus

KHUSHAL SINGH

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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26.03.2025

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 05.12.2017 (hereafter '**impugned judgment**') passed by the learned Metropolitan Magistrate ('MM'), Saket Courts, Delhi in Case No. 92137/2016 whereby the respondent was acquitted of the offences under Sections 279/337/304A of the Indian Penal Code, 1860 ('IPC').

2. The case of the prosecution is that on the intervening night of 19.08.2012 and 20.08.2012, at around 1:30 AM, the complainant/ Rahul Rajput along with his friends Pramod (since deceased) and Kishan Kumar were returning from a birthday party on a motorcycle bearing registration number DL 9S AF 1021. Rahul was driving the motorcycle, with Kishan seated in the middle and Pramod at the rear. It was alleged that when they reached near the U-turn under the Modi Mill flyover, the respondent, who was allegedly driving a truck bearing registration number PB 10 CG 3278 in a rash and negligent manner, hit their motorcycle from behind, as a result of which all

three riders fell to the ground. While the complainant sustained injuries on his leg, Pramod succumbed to his injuries on the spot.

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3. The respondent was charged for the offences under Sections 279/337/304A of the IPC.

4. By the impugned judgment, the learned MM acquitted the respondent of the charged offences on the grounds that the evidence led by the prosecution did not establish the commission of the offences charged beyond reasonable doubt.

5. The learned Additional Public Prosecutor for the State submits that the Trial Court erred in appreciating the evidence of PW-1 (injured complainant) and PW-8 (eyewitness Kishan Kumar), both of whom categorically stated that the respondent was driving the truck rashly and at a high speed. He submits that the testimony of these witnesses, coupled with the medical evidence and post-mortem report, clearly established the respondent's culpability and that the acquittal of the respondent is manifestly erroneous and perverse.

Analysis

6. It is trite law that the Appellate 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 **State 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 clear that an appeal can be registered and

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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.

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

(emphasis supplied)

7. In the present case, in order to establish its case, the prosecution examined 12 witnesses out of which PW-1 was the victim, PW-12 was the parking attendant, and the other witnesses deposed regarding the manner of conduction of the investigation, and the medical report of the victim.

8. PW-1 Rahul Rajput and PW-8 Kishan Kumar were cited as the eyewitnesses. PW-1 deposed that he was driving the

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motorcycle on which three persons were travelling and that the truck driven by the respondent hit them from behind. PW-8 also stated that the truck was being driven in a rash and negligent manner and struck their vehicle with force. However, both witnesses admitted that PW-1 had consumed alcohol at the birthday party and that all three of them were riding in a single motorcycle. Furthermore, PW-1 admitted that the road at the location was wet due to waterlogging and that the motorcycle had skidded and become disbalanced.

9. The Trial Court has rightly observed that no damage was visible on the rear end of the motorcycle in the photographs taken after the incident. The mechanical inspection report also indicated only superficial scratches on the motorcycle, which did not support the claim of a forceful rear-end collision by a truck. The respondent, on the other hand, examined DW-1, an independent witness, who deposed that they had seen the victims lying on the road and stopped their truck only to help, and that the accident had already occurred by then.

10. The Trial Court has further taken note of the inconsistencies in the version of the prosecution witnesses. While the complainant claimed that Pramod came under the rear wheels of the truck, no blood stains were found on the wheels or undercarriage of the vehicle. Moreover, despite the location being a busy road, no independent eyewitnesses were examined by the prosecution.

11. It is pertinent to note that the respondent has been charged for the offence of rash driving on a public way, and causing grievous hurt by such rash or negligent act. In order to bring

home the guilt of the accused under Sections 279/337 of the IPC, the prosecution ought to prove that the accused was driving the

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vehicle in a rash or negligent manner as a consequence of which the victim sustained injuries. The gravamen of the offences under Sections 279/337 of the IPC, thus, is that the act of the respondent is done rashly or negligently.

12. While delineating the meaning of the term ‘rashness’, the Hon’ble Apex Court in the case of **Mohd. Aynuddin v. State of A.P. : (2000) 7 SCC 72** observed as under:

“9. A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.”

13. In the case of **Ravi Kapur v. State of Rajasthan : (2012) 9 SCC 284**, the Hon’ble Apex Court while examining the scope of Section 279 of the IPC, and the meaning of the term ‘negligence’ observed as under:

“12. Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to “rash and negligent driving” within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words “manner so rash or negligent as to endanger human life”. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.”

13. **Negligence** means omission to do something which a

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reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the court. In a given case, even not doing what one was ought to do can constitute negligence.”

14. It is trite that for an offence under Section 279/337/304A IPC, the prosecution must establish that the accused was driving the vehicle in a manner so rash or negligent as to endanger human life or cause death. Mere involvement of the accused's vehicle in the incident, without establishing rashness or negligence beyond reasonable doubt, is insufficient to sustain a conviction.

15. In the present case, the material on record falls short of establishing rashness or negligence on the part of the respondent beyond reasonable doubt.

16. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity in the impugned judgment, and the same cannot be faulted with. This Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no arguable ground has been raised to accede to the State's request to grant leave to appeal in the present case.

17. The leave petition is therefore dismissed in the aforesaid terms.

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AMIT MAHAJAN, J

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