



(VIA VIDEO CONFERENCE)



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

+ **CRL.L.P. 150/2021**

STATE

..... Petitioner

Through: Mr. Amit Ahlawat, APP for the State
with SI Ashok Kumar, PS Timarpur.

versus

RAM SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

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11.01.2022

CRL.M.A. 17839/2021(for exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

CRL.L.P. 150/2021

1. Petitioner/State is aggrieved by order dated 14.11.2019 by virtue of which the respondent has been acquitted of the charges under Sections 279/304A IPC.
2. It is submitted by learned APP for the State that vide impugned judgement on acquittal dated 14.11.2019, learned Trial Court has wrongly disbelieved the testimonies of PW-6 and PW-7 and has rather placed the entire blame on the deceased, school going boy, for the accident. It is further submitted by learned APP for the State that the blue line bus was ceased from the spot and the driver of the offending vehicle was also arrested from



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the spot. It is further submitted by him that PW-7 was a constable in PCR which was stationed nearby and he has also deposed with regard to the manner in which the accident had taken place and PW-6 and PW-7 were corroborated with each other to the extent that the respondent was driving the offending vehicle in a rash and negligent manner. It is further submitted by learned APP for the State that learned Trial Judge has discarded the testimonies of these witnesses by observing that simply the bus driven at a high speed it does not mean that the vehicle was driven in a rash and negligent manner.

3. Some part of the testimonies PW-6 and PW-7 is noteworthy which reads as follow:-

“18. Coming now to the testimony of PW7 Retired SI Pratap Singh the testimony of the witness shows that he has given an account of the occurrence. The extract of his deposition which is vital for the case is being reproduced as under:

"On 22.11.2007 at about 8:00 am, when I was present in PCR Van at Nehru Vihar Mode. In the meantime, we saw that one blue line bus bearing registration No. DL 1PB 4647 of route no. 108 which was coming from Timar Pur from Wazirabad fly over and driver was driving the vehicle rash and negligent manner. He suddenly took left turn and when he took left turn one boy who was crossing the said road came under the driver side front tyre. Thereafter, public persons started making shouting & with the help of public persons, the said bus was stopped."

19. The testimony of PW7 too is crucial for prosecution's case, but relying on the decision of Hon'ble Delhi High Court in Kishore Chand Joshi v. State, (Decided on 12/11/2018), court is of the opinion that even this witness has failed to prove beyond all reasonable doubt rash or negligent driving by accused. Moreover, presence of PW7 at the spot too seems dubious because, site plan fails to depict his position anywhere



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near the spot of accident. The investigating officer was duty bound to exhibit the correct position of witness in the site plan. He has also refrained from producing the log books or any DD entry showing his duty near the spot. Therefore, from even from the testimony of PW7, rash or negligent driving by accused is not proved.

*20. Further, in the present case what is worthy to note is that, the accident occurred when the accused took a turn and as per PW7 the boy was crossing the road. In the testimonies of the witnesses it has clearly surfaced that there was no bus stop or zebra crossing at the place from where the boy was attempting to cross the road. With regard to these facts, the decision of the Hon'ble High Court of Gauhati titled **Ranjit Nath v. State of Assam 1997(3) GLT 126**, is an essential read. The observations made in the decision are important and are as under:*

"In order to sustain conviction u/s 304 A IPC and to impose criminal liability under section 304A IPC, it is necessary that the death should have been the direct result of a rash or negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa causans it is not enough that it may have been the cause sine qua non. The main criterion for deciding, whether the driving which led to the accident was rash and negligent is not only the speed, but the width of the road, the density of the traffic and the attempt to overtake the other vehicles resulting in going to the wrong side of the road and being responsible for the accident. Even if the accident took place in the twinkling of an eye, it is not difficult for eye-witness to notice a car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution. must be culpable or gross and not the negligence merely based upon an error of judgment where a pedestrian suddenly crossed the road from west to east without taking note of the approaching bus, there



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is every possibility of his dashing against the bus without the driver becoming aware of his crossing, till it is too late. The bus driver may not be in a position to save the accident however slowly he may be driving. "

21. In the instant case too, prosecution's standpoint is that accident had occurred while accused took a left turn and he ran over a child crossing the road. There being no zebra crossing at the place, it can be presumed that, that place was not a designated place for crossing the road. It is pertinent to note that zebra crossings near the traffic signals or otherwise and pavements are made by government to enable the pedestrians to walk smoothly and unobstructed on the road. But when pedestrians try to cross the road from the place which is not designated for their movement, they not only jeopardize their life but also cause obstructions in the smooth flow of traffic. Further, with regard to the right of way of the pedestrians, Rule 11 of the Rules of the Road Regulations, 1989, provides that the pedestrians have the right of way at uncontrolled pedestrian crossings. The rule further provides that when any road is provided with a footpath or cycle track especially for other traffic, then except with permission of a police officer in uniform, a driver of a motor vehicle shall not drive on such footpath or track. It is thus implicit in this rule that it is only at the uncontrolled pedestrian crossings that the pedestrians have their right of way, but this right cannot be said to be existing on the portions of the road designated for the movement of traffic. So if a person tries to cross the road from such area or portion of road which is specially designated for the movement of traffic and an untoward incident occurs, in my opinion the driver of the motor vehicle cannot be held liable for the simple reason that the negligence was actually on the part of the pedestrian. Likewise in the present case, even though the accident was the causa causans of death of deceased boy, yet in the circumstances discussed in the foregoing paragraphs, the accused cannot be held to be rash or negligent in driving the bus."



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4. Issue notice to respondent on steps being taken by the petitioner/State by all possible modes, returnable on 18th May 2022.

JANUARY 11, 2022

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RAJNISH BHATNAGAR, J