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

+ CRL. L.P.322/2013

Date of decision: 24.08.2015

STATE

..... Petitioner

Through: Mr.M.P.Singh, APP.
SI Ajay, P.S.Samai Pur Badli.
versus

HARI NANDAN

..... Respondent

Through: Ms.Neelam Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

Crl.M.A No.9754/2013

On grounds shown in the petition, the delay of 124 days is condoned.

Application is disposed of.

CRL. L.P.322/2013

1. The respondent was convicted and sentenced by judgment and order dated 23.5.2012/6.6.2012 passed by the Trial Court for offences under Section 279/337/304A of the IPC. For the offence under Section 279 and 337 of the IPC, the respondent was sentenced to undergo SI for 15 days respectively and for the offence under Section 304A of the IPC, SI for one year. The petitioner was also directed to pay a fine of Rs.200/-, 300/- and Rs.4500/- respectively for the offences referred to above. In case of default of payment of fine, the petitioner was directed to suffer SI for 3 days respectively for the offences under

Section 279 and 337 of IPC and SI for 15 days for the offence under Section 304A of the IPC.

2. The respondent preferred an appeal before the Court of Additional Sessions Judge-VI (Outer), Rohini Courts, Delhi vide criminal appeal No.8/12. The Appellate Court vide its judgment dated 27.11.2012 set aside the judgment and order of the Trial Court and acquitted the respondent of the offences.

3. Hence this petition for leave to appeal.

4. An information vide DD No.16 dated 6.5.1997 was received by Head Constable Vijender Singh that an accident has taken place at Village Shahbad Daulatpur near an Engineering College. On reaching the spot pursuant to such information, the aforesaid Head Constable and one Constable Awadh Bihari (PW-9) found a scooter bearing registration No.DL 8SG 5277 lying on the road. It was learnt that the injured persons have been taken to Hindu Rao Hospital by a PCR van. Constable Awadh Bihari (PW-9) was left at the spot whereas Head Constable Vijender Singh went to the hospital and obtained the MLC of Rambir and Ram Karan. Rambir was certified by the doctor to be in a fit condition to give a statement and accordingly his statement was recorded.

5. Rambir gave his statement that while he and Ram Karan were coming on a scooter which was being driven by him, they were hit by a tempo bearing registration No.DL 1LA 2550 which was being driven at a fast speed. It was further stated by Rambir that he and Ram Karan fell down from the scooter and received injuries whereas the tempo driver escaped from the place of occurrence.

6. Ram Karan succumbed to the injuries on the following morning in the hospital.
7. On the statement of Rambir, first information report was drawn up. After investigation chargesheet was submitted.
8. The informant Rambir (PW-1) deposed before the Court that the respondent had ran away from the spot, leaving the tempo at the place of occurrence. He has stated that he and the deceased had become unconscious and were taken to hospital where his statement was recorded (Exh.PW.1/A). On the point of identification of the respondent, he (PW-1) has stated that he saw him driving the tempo and also saw him running away from the spot leaving the tempo at the accident site.
9. Sukhbir Singh (PW-8) claims to have seen the occurrence and has testified to the fact that the tempo was being driven at a very high speed and in a rash and negligent manner. As a result of such faulty driving, the informant was injured and the pillion rider of the scooter (Ram Karan) died. He went to the hospital along with the police and thereafter returned to the spot. He is a witness to the seizure of the scooter and the tempo (Ex.PW.8/B and 8/A respectively). He has also testified to the fact that after the accident, the respondent ran away from the place of occurrence.
10. In his statement before the police, PW-8 had stated that the respondent was arrested in his presence. However, during the trial he resiled from such statement and therefore, was cross examined by the prosecution.

11. During the cross examination, PW-8 could not state about the basic details namely the registration number of the scooter or whether the informant and the deceased were under the influence of liquor or not.

12. The IO of this case namely Head Constable Bijender Singh has not been examined and no explanation has been offered for his non examination.

13. Constable Awadh Bihari (PW-9), who had accompanied Head Constable Bijender Singh to the place of occurrence has, though, supported the prosecution version.

14. The Appellate Court took note of the fact that PW-1 in his statement (Ex.PW.1/A) categorically stated that after the accident the tempo driver sped away but he could identify the driver if he were brought before him. Juxtaposed to this, PW-1, deposed before the Court that the respondent ran away from the spot leaving behind the offending vehicle. No categorical statement was made by PW.8 with respect to the offending vehicle being found at the place of accident.

15. The Appellate Court found the statements of PW-1 and 8 in sharp contradiction to the deposition of Constable Awadh Bihari (PW-9) that there was no tempo at the spot. He has categorically stated that only the scooter was found at the place of occurrence when he first visited the site along with the IO.

16. The Appellate Court also doubted the genuineness of the statement (Ex.PW.1/A) as the statement was found to be thumb marked with red colour. PW.1 incidentally in his deposition has

claimed himself to be a literate person and has also signed in English on the deposition which was recorded by the Trial Court.

17. The MLC of PW-1 (Ex.PW.7/B) also appear to be doubtful as it was found to be in different handwritings. The MLC does not even record the time as to when PW-1 was declared fit immediately for giving his statement. According to PW-1 he and the deceased both had become unconscious after the accident.

18. The Appellate Court therefore, differing from the Trial Court doubted PW-8 being an eye witness and PW-1 being in fit mental condition to get his statement recorded. Such an opinion of the appellate Court was further buttressed by the fact that there were no photographs of the spot on record nor any direction of the offending vehicle was shown in the site plan. The site plan was not even exhibited even though it was claimed by PW-8 that it was at his instance that the same was prepared.

19. The judgment of the Trial Court convicting the respondent is much too presumptuous and is not based on sound logic.

20. This Court finds no fault with the reasoning given by the Appellate Court for acquitting the respondent of the charges after setting aside the judgment and order of conviction passed by the Trial Court.

21. In such circumstances, the leave to appeal is declined.

22. The petition is dismissed.

AUGUST 24, 2015
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ASHUTOSH KUMAR, J