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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 12/2016
ANIL KUMAR SINGH Petitioner
Through: Mr. Tarun Khanna, Adv.
versus

STATE (GNCT OF DELHI) Respondent
Through: Ms. Kusum Dhalla, APP for State
with SI Amar Singh, P.S. Saket.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **01.09.2016**

1. Petitioner was convicted under Sections 279/338/304-A IPC by the trial court and sentenced to undergo simple imprisonment for three months with fine of ₹500/- for the offence under Section 279 IPC; sentenced to undergo simple imprisonment for six months with fine of ₹1000/- for the offence under Section 338 IPC and sentenced to undergo simple imprisonment for two years with fine of ₹5,000/- for the offence under Section 304-A IPC. All the sentences were directed to run concurrently.
2. Petitioner preferred appeal before the District & Sessions Judge (South), Saket Courts, New Delhi which has been dismissed by the judgment dated 22nd August, 2015.
3. That is how petitioner is before this Court by way of present petition under Section 397 of the Code of Criminal Procedure, 1973.

4. Arguments heard and trial court record perused.

5. As per the prosecution, petitioner while driving Tata Safari car bearing registration no. DL-3C-AX-3304 in a rash and negligent manner at M.B. Road, Saket on 25th March, 2012 at about 10:50 pm hit some labourers resulting in grievous injuries on the person of Rohit Kumar and Gholat Sada and fatal injuries to Umesh Yadav and Domi Sada. It is further the case of prosecution that petitioner did not stop his vehicle and fled away from the spot. The vehicle was traced out by the Investigating Officer from the number plate which had fallen at the spot. Owner of the vehicle, namely, Balbir Singh was given notice under Section 133 of the Motor Vehicle Act, 1988, who gave a written reply stating therein that petitioner was driving the Tata Safari car bearing no. DL-3C-AX-3304 at the time of accident. Accordingly, petitioner was arrested. As per the prosecution, petitioner had taken the vehicle to one mechanic, namely, Bijender Singh after the accident to get the number plate affixed on the vehicle. PW5 Bijender Singh stated that he had fixed the number plate on the Tata Safari vehicle brought by the petitioner. It is also the case of prosecution that PW 1 Subodh Kumar, PW2 Gholat Sada and PW4 Rohit Kumar had witnessed the incident and had identified the petitioner as the driver of the offending vehicle.

6. A perusal of record shows that PW 1 Subodh Kumar, PW2 Gholat Sada and PW4 Rohit Kumar have not identified the petitioner in Court as the same person who was driving the offending vehicle. This fact has been noted in the judgment of the courts below. Trial court as well as appellate court have convicted the petitioner in view of the reply of PW6 Balbir Singh that petitioner was driving the offending vehicle on the date of incident. Statement of PW5 Bijender Singh was also considered to the effect that petitioner had gone to him for affixing the number plate on the Tata Safari car.

7. Learned counsel for the petitioner submits that merely because owner of the offending vehicle has stated that petitioner was driving the vehicle is not sufficient to conclude that petitioner, while driving the Tata Safari car, had caused the accident more so, when eye witnesses and injured have not identified the petitioner in court, inasmuch as, petitioner was not apprehended at the spot nor was the vehicle recovered from the spot. Reliance has been placed on Jagdish Prasad vs. State (Govt. of NCT of Delhi) MANU/DE/3486/2011 and Shahid Khan vs. State MANU/DE/5192/2012. In both these cases similar facts are involved. In Shahid Khan (Supra) also, eye witness had not identified the driver of the

offending vehicle and only on the basis of statement of the owner that vehicle was in possession of the driver, conviction was made. The learned Single Judge of this Court held thus:-

“7. In the judgment cited by the counsel for the petitioner almost under similar circumstances this Court had acquitted the accused who had been convicted under Sections [279/304-A](#) IPC only on the basis of a similar statement made by the owner of the offending vehicle to the effect that at the time of accident the offending vehicle was being driven by the accused. this Court had held that only on the basis of the said claim of the owner of the offending vehicle the accused could not have been convicted and further that the possibility of the vehicle owner himself being involved in the accident and to avoid his own prosecution his naming the accused as the driver could not be ruled out.

8. In my view, the said decision of this Court applies squarely to the facts of the present case. Merely on the basis of the statement of the owner of the offending car that on the date of the accident his car was with the petitioner he could not be held guilty. As far as the sole eye witness of the accident is concerned he clearly had claimed that he could not see the driver of the car as he had fled away with the car.”

8. In Jagdish Prasad (Supra), learned Single Judge has held as under :-

“9. In the instant case, the revisionist was charged for the offence punishable under Section [279/304A](#) IPC in an accident case involving a truck and a three-wheeler scooter. Thus, in order to bring home the guilt of the Petitioner, the prosecution was required to establish beyond doubt that the Petitioner was the driver of the truck at the relevant time. PW7 Bhagwat Prasad, the sole eye witness examined by the prosecution has not identified the Petitioner as the driver of the truck. He has stated that he saw two persons in the truck and that the driver fled away. Only other evidence worth name

against the Petitioner is the statement of PW5 Harvinder Singh, owner of truck No. DNG-1636. PW5 in his testimony has stated that the Petitioner Jagdish Prasad was the driver of truck No. DNG-1636 on 24.12.1993 i.e. the date of accident. Question arises whether this statement of owner of the truck is sufficient to prove that the Petitioner was driving the truck at the time of accident. In order to find an answer to this question, it is necessary to have a look on the notice under Section [133](#) Motor Vehicles Act served on the owner of the truck by the IO. On perusal of the notice under Section [133](#) Motor Vehicles Act Ex.PW12/F, it transpires that at the bottom of this notice, PW5 Harvinder Singh has recorded in his own handwriting on 26.12.1993 that "we will produce the driver before you who was driving the truck No. DNG-1636 on 24.12.1993 by tomorrow". On perusal of above endorsement, one gets an impression that while appending the endorsement on 26.12.1993, PW5 Harvinder Singh was not aware about the identity of the driver of the truck on the relevant day. Subsequently, he might have found out from the record as to who was the driver on the truck. However, no such record has been produced to corroborate the version of PW5 Harvinder Singh. Otherwise also, PW5 Harvinder Singh is admittedly the owner of the truck. A possibility cannot be ruled out he himself was driving the truck at the time of accident and in order to save himself as the actual truck driver, he has falsely named the Petitioner as the driver of the truck. Thus, in my view, the testimony of PW5 Harvinder Singh is not sufficient to conclude beyond doubt that the revisionist Jagdish Prasad was driving the truck in question. Both learned M.M. and learned Additional Sessions Judge have ignored this fact. Therefore, in exercise of revisional jurisdiction under Section [401](#) Code of Criminal Procedure, I hereby set aside the impugned judgment of learned Additional Sessions Judge dated 24.01.2005 as also the judgment of conviction passed by learned M.M. and acquit the revisionist/Petitioner of charges under Section [279/304A](#) IPC giving him benefit of doubt."

9. Since the three eye witnesses have not identified the petitioner in the

witness box as the driver of the offending vehicle, in my view, petitioner cannot be convicted only on the statement of owner of the vehicle. The courts below were not having benefit of the judgments (Supra) and the findings returned by them is contrary to the judgments rendered by this Court. Accordingly, petitioner is entitled to the benefit of doubt.

10. For the foregoing reasons the impugned judgment is set aside and petitioner is acquitted. Fine deposited by the petitioner be refunded to him. Petitioner is in jail. He be released forthwith if not required in any other case.

11. Revision petition is disposed of in the above terms.

12. Copy of the order be sent to the Superintendent Jail for serving it on the petitioner and for compliance.

A.K. PATHAK, J.

SEPTEMBER 01, 2016

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