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

+ CRL.L.P. 391/2016

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through :Ms. Kusum Dhalla, APP with SI
Sanjeev, P.S. Lajpat Nagar

versus

SHAMBHU PANDIT

..... Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **01.08.2016**

Crl. M.A. No. 11558/2016 (exemption)

Allowed, subject to all just exceptions. Application is disposed of.

Crl. M.A. No. 11559/2016 (For condonation of delay of 144 days in filing)

For the reasons explained in the application, delay of 144 days in filing the petition is condoned. Application is disposed of.

CRL.L.P. 391/2016

1. Petitioner seeks leave to appeal against the judgment dated 1st December, 2015 passed by the learned trial court, whereby respondent has been acquitted of the charges under Sections 279/304-A IPC.

2. As per the prosecution, respondent is an auto rickshaw driver. It is alleged that in the night intervening 3rd/4th February, 2007 deceased travelled in an auto rickshaw driven by the respondent. He de-boarded at Lala Lajpat Rai Marg from the TSR. He made payment to respondent, however, respondent did not return the balance and tried to run away with his auto rickshaw. Deceased chased the auto rickshaw and caught hold the same but fell down on the road as auto rickshaw did not stop. Deceased sustained injuries and was removed to Moolchand hospital, from there he was shifted to AIIMS, where he succumbed to his injuries. It was alleged that deceased died on account of rash and negligent act of the respondent.

3. As per the prosecution, PW1 Jagdish and PW2 Tarun Goswami had witnessed the incident. PW1 is father of deceased. Trial court has meticulously examined the statements of PW1 and PW2 and has concluded that their statements were not in line with each other and statement of IO, inasmuch as their presence at the spot was suspicious. FIR was registered on the DD entry wherein name of PW1 was not mentioned as informant. As per the Investigating Officer, no eye-witness was present at the spot or at the hospital. As per the Investigating Officer PW1 came at the spot after registration of FIR. He did not find any of the relatives of the deceased

either at Moolchand Hospital or at All India Institute of Medical Sciences. PW1 has deposed that deceased was working as a Photographer. He used to come at the spot at about 9 PM and used to meet him there. On the day of incidence, PW1 had left his house at about 10/11 PM. Time of return of the deceased was not fixed. The incident happened at mid-night, therefore, presence of PW1 at the spot was doubtful since usual time of return of his son used to be earlier than midnight. Though PW1 has claimed that he was present at the spot but deceased was removed to Moolchand Hospital by some passerby. As per PW1 Jagdish, deceased was removed to Moolchand Hospital by PW2 Shri Tarun Goswami. Had PW1 been present at the spot, deceased would have been removed to hospital by him and not by PW2. PW2 Shri Tarun Goswami, in his cross-examination, has deposed that he could not see the happening of the incident but he saw the injured lying on the road. I have also gone through the statements of PW1 and PW2 and upon careful scrutiny thereof, I am of the view that presence of alleged eyewitnesses at the spot is doubtful and view taken by the Trial Court is plausible and a possible view.

4. I do not find any perversity or manifest error of law in the view taken by the trial court.

5. For the foregoing reasons, petition is dismissed.

A.K. PATHAK, J.

AUGUST 01, 2016

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