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

+ **CRL.L.P. 203/2017**

STATE

..... Petitioner

Represented by: Mr. Hirein Sharma, APP for
the State with SI Rajender
Singh, PS Malviya Nagar.

versus

LALIT KUMAR

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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20.02.2018

Crl. M.A. Nos. 5782/2017 (Delay) and 5783/2017 (delay in refilling)

For the reasons stated in the applications delay in re-filing and filing the leave to appeal petition is condoned.

Applications are disposed of.

CRL.L.P. 203/2017

1. By this petition, State seeks leave against the impugned judgment dated 11th July, 2016 acquitting the respondent for offence punishable under Sections 279/304A IPC in case FIR No. 694/2008 registered at PS Malviya Nagar, New Delhi.
2. The case of the prosecution hinges entirely on the testimony of an alleged eye witness Rajan Tiwari (PW-1) and it would be relevant to note the observations of the learned Trial Court in respect of the said witness:

“19. In cross examination PW1 Sh. Rajan Tiwari was questioned on the aspect of his identity, he deposed that he had an identity card in the name of Rajan Tiwari but he did not

have the same as the same pertained to Bihar. PW1 denied the suggestion that he was not Rajan Tiwari as he was called by that name at his residence however all his identity proofs were in the name of Ramesh Kumar Tiwari. Further, PW1 deposed that he used to work as a security man and courier in part time and he further denied the suggestion that he was unemployed at that time. He was then confronted with his cross examination dated 04.01.2010 i.e. Ex. PW1/D2 recorded before Ld. MACT, New Delhi in the matter of Kiran Kumari Vs. Lalit Kumar where he had deposed as PW3 and he admitted his signatures thereon. Perusal of Ex. PW1/D2 reveals that this very witness had deposed in the MACT case that he was unemployed at the time the accident occurred. Though this witness denied the suggestion that he was a planted witness at the behest of the family of the deceased for taking benefit of motor accidents claim however in view of the above discussed self-contradictory testimony of this witness, his very identity comes under a cloud of grave suspicion.”

3. Thus the identity of this witness who purportedly claims himself to be an eye witness was doubtful, he was a stock witness and besides there were other lacunas in the investigation as the site plan was also purportedly prepared by the Investigating Officer at the instance of this witness however, this witness stated that the site plan was prepared at the police station and not at the site, further no photographs of the spot were taken nor evidence of skid marks etc. was collected.

4. The learned Trial Court also noted that no doubt that the respondent refused to undergo the test identification parade however, no adverse inference can be drawn thereon for the reason the prosecution's own witness, that is, PW-1 deposed that on 23rd September, 2008 at 12.30 AM in the midnight when he reached Police Station he saw the respondent present in Police Station and he thus identified him. Learned Trial Court thus held

that if TIP was got conducted it was tainted.

5. For the reasons learned Trial Court acquitted the respondent, this Court finds no ground to interfere in the same.

6. Leave to appeal is declined. Petition is dismissed.

MUKTA GUPTA, J.

FEBRUARY 20, 2018

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