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

+ **CRL.L.P. 553/2016**

STATE

... Petitioner

Represented by: Mr.Amit Gupta, APP with SI  
Akash, PS Kapashera

versus

DEVENDER SINGH

.... Respondent

Represented by: Mr.Avnish Rana, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

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**23.02.2018**

**Crl.M.A.No.16051/2016 (delay)**

For the reasons stated in the application, delay of 72 days in filing the appeal is condoned.

Application is disposed of.

**CRL.L.P. 553/2016**

State seeks leave to appeal against the impugned judgment dated 25<sup>th</sup> April, 2016 acquitting the respondent of the offence punishable under Section 279/304-A IPC.

Case of the prosecution is based on the testimony of Rakesh Kumar, the complainant PW-5, who in his examination-in-chief deposed that he was going with his aunt to Safdarjung Hospital when an oil tanker hit his motorcycle and his aunt, who was sitting as a pillion rider, fell down, the tanker ran over her leg and she died.

It would be appropriate to note the cross-examination of Rakesh Kumar as under:-

*“It is correct that site plan was not prepared in my presence. Police recorded my statement in the PS only once. It is wrong to suggest that my aunt was not sitting properly on my motorcycle. I stopped at red light when our signal was red and as soon as the signal got green, I started crossing the red light. It is correct that my motorcycle was not damaged from the back side. It is also correct that I had not sustained any injury nor I fell down. I was going towards Safdarjung hospital and I was on the extreme right side of the road as there is no divider on the road. It is wrong to suggest that my aunt fell on the road because of my negligent driving. I know the fact that the heavy vehicle in Delhi always ply on extreme left side of the road. I cannot say as to which vehicle were stopped behind my motorcycle when light was red. It is correct that nobody jumped the red light. It is correct that as it was morning time, there is heavy traffic on the said road. I saw the entire traffic stopped at the time of accident when my aunt fell down on the road. I cannot say confirmly as to which vehicle hit my aunt. Vol. My aunt was under the said truck. It is wrong to suggest that my aunt fell down due to my negligent driving and I implicated the accused falsely in this case in order to claim compensation. It is wrong to suggest that I am deposing falsely.”*

From the cross-examination of this witness it is evident that he admitted that there was no damage to his vehicle on the back side. Thus, if version of this witness has to be believed that the tanker hit on the back side of motorcycle with an impact that his aunt fell down, therefore, the impact would have certainly caused damage to the motorcycle. Moreover, as admitted by Rakesh Kumar, there was no damage to his motorcycle. Further, he also admits that there was lot of traffic and the witness was not

even certain as to which vehicle hit his aunt.

In view of the evidence of Rakesh Kumar, the star witness of the prosecution, this Court finds that there is no illegality in the order dated 25<sup>th</sup> April, 2016 of the learned Trial Court warranting interference.

The petition is dismissed.

**FEBRUARY 23, 2018**  
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**MUKTA GUPTA, J.**