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

+ **CRL.L.P. 655/2019**

STATE

..... Petitioner

Through: Mr Tarang Srivastava, APP for State
with SI Sandeep Yadav, PS Mehrauli.

versus

MAHINDER KUMAR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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02.12.2019

CRL.M.A. 41565/2019

1. Allowed, subject to all just exceptions.

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2. The State has filed the present appeal seeking leave to appeal against the order dated 12.07.2019 passed by the Trial Court acquitting the respondent of charges for commission of offences under Section 279/338 of the Indian Penal Code, 1860.

3. The said case was instituted pursuant to the FIR No.236/2018, registered with PS Mehrauli. It was reported that a Trawler, bearing registration no.HR 55J 2466, had come at a high speed and hit a stationary scooty, which was being driven by the victim. Resultantly, the victim had suffered a grievous injury. He was removed to the Trauma Centre, AIIMS. His statement was recorded and the FIR bearing no.236/2018 was registered.

4. Summons were issued to the victim (Shri Ashok Kumar), who was proposed to be examined as one of the witnesses for the prosecution. The said summons were received back un-served. The trial court order dated 12.07.2019 indicates that summons were repeatedly issued to Shri Ashok Kumar but he did not appear. Prosecution, thereafter, dropped him from the list of witnesses. Admittedly, Ashok Kumar was the only public witness. It is not disputed that none of the other official witnesses had witnessed the accident.

5. The Trial Court concluded that no purpose would be served by examining other formal witnesses (who were only police witnesses). The statement of the accused under Section 313 of the CrPC was dispensed with as no incriminating material had come on record.

6. It is the appellant's case that the offence could be established by other witnesses as well. This contention is unmerited. Police officials were the only other formal witnesses and it is difficult to accept that the respondent could be convicted on the testimony of those witnesses. The entire case of the prosecution rested on the statement made by the victim (Sh Ashok Kumar). He was the only material witness. The Trial Court had held that once the said witness was dropped from the list of witnesses, no further purpose would be served to proceed with the trial any further.

7. Mr Srivastava, learned APP submits that an inquiry is required to be held, as it has been subsequently found that the victim could have been reached on phone as his mobile phone was functioning.

8. He submits that additional evidence can also be recorded in this appeal.

9. It is apparent from the present petition that it is not the appellant's

case that efforts ought to be made to re-examine the victim. The present appeal is founded on the appellant's stand that the other witnesses could establish the prosecution's case. This, as observed hereinbefore, is unmerited.

10. It is relevant to note that no application has been filed by the appellant seeking that any additional evidence be recorded.

11. In view of the above, this Court finds no reason to interfere with the impugned order.

12. The present petition seeking leave to appeal against the impugned order is, accordingly, rejected.

VIBHU BAKHRU, J

DECEMBER 02, 2019
MK