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

+ **CRL.L.P. 173/2018**

STATE

..... Petitioner

Represented by: Mr. Amit Gupta, APP for State.
versus

VIMAL SINGH

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **16.03.2018**

Crl. M.A. No. 4898/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 173/2018 and Crl. M.A. No. 4897/2018 (Delay)

1. By this petition the State seeks leave to appeal against the judgment dated 28th August, 2017 acquitting the respondent for offence punishable under Section 308 IPC.

2. The prosecution case hinges on the testimony of Nitin Nirwal (PW-2) the injured witness/complainant. Nitin Nirwal before Court deposed that on 21st December, 2010 at about 6.30/7.00 PM he was going towards Naraina side from Shadipur red light and was standing at the corner of the bus stand. While he was waiting for the bus, the respondent came out from Car DL 3CA AH 0036 with a baseball bat in his hand and inquired from the complainant as to why he pelted stone on his car. Nitin Nirwal replied that he had done nothing however the respondent did not hear him and hit him with the said bat on his legs. When Nitin Nirwal tried to save him,

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respondent also hit him on his left hand and head from where blood started oozing out.

3. Dr. Shailesh Gupta (PW-6) proved the MLC vide Ex. PW-6/A prepared by Dr. Mayank Nautiyal who was no more working with the hospital. The injuries on Nitin Nirwal were opined to be simple in nature.

4. Case of respondent in his statement under Section 313 Cr.P.C. was that he had never visited the spot as mentioned in the FIR and has been falsely implicated. He stated that in fact on the date and time of alleged incident his car was with the mechanic under repair from around 11.00 AM on the date of incident.

5. The learned Trial Court by the impugned judgment noted that the complainant and respondent were not known to each other and admittedly even as per the prosecution case, respondent was identified by the complainant in Police Station and no test identification parade was got conducted. Even as per the prosecution case the offence was committed at 6.30 PM on 21st December, 2010 whereafter the injured was taken to hospital. On 23rd December, 2010 the owner of vehicle DL 3C AH 0036 was called at the Police Station to disclose as to who was driving the vehicle at the time of alleged incident and the complainant was also present at that time. As per HC Anil Kumar (PW-7), who had initially investigated the case, the owner of vehicle Sanjay had come along with the vehicle and driver Vimal Singh at Police Station on 23rd December, 2010 and the witness could not identify Vimal Singh as the person who had injured him. Further the Investigating Officer during the course of investigation had also collected the call details of mobile number of respondent on the basis of

which it was revealed that he was not in the area of Patel Nagar at the time of alleged incident, thus creating doubt on the presence of respondent at the relevant time at the place of incident.

6. Considering the nature of evidence and that except the vehicle number there was no connecting link with the respondent, further the injured witness failed to identify the respondent immediately after the incident and even during the course of investigation the presence of respondent at the place of incident was doubtful, thereby probablising the defence of respondent that he was not driving the vehicle on the date of incident and had sent the same to mechanic, this Court finds that the view expressed by the learned Trial Court granting benefit of doubt to respondent cannot be said to be a perverse view warranting interference.

7. Since this Court finds no ground to grant leave to appeal, petition and application are dismissed.

MUKTA GUPTA, J.

MARCH 16, 2018

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