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

+ **CRL.L.P. 302/2018**

STATE GOVT OF NCT OF DELHI

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for the State.
SI Devi Lal, PS Maurya Enclave
along with SI Pradeep Kumar, PS
Model Town

versus

KUNAL KHANNA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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21.05.2018

The State has preferred the present leave petition to seek leave to appeal against the judgment dated 13.12.2017 passed by the Additional Sessions Judge, North District, Rohini Courts, New Delhi in Sessions case No. 57467/2016 arising out of FIR No. 116/2013 registered at PS Model Town under Sections 307/353/186 IPC.

By the impugned judgment the Trial Court has acquitted the respondent accused of the charge framed against him under the said provision.

The background facts taken note of by the Trial Court in paragraph 1 of the impugned judgment read as follows:

“1. Formal indictment against accused, namely, Kunal Khanna, is that, on 10.05.2013, at about 1.45 am, at Red Light Model Town-III near Ring Road, Delhi, within the jurisdiction of PS Kingsway camp/Model Town, accused caused injuries on the person of complainant Constable Subhash and Constable Yogesh being public servants by hitting them with Honda City vehicle bearing registration no. DL-3CBE-5181, when they were discharging their public duties and thereby committed an offence punishable U/s 186 IPC and secondly, on the abovesaid, date, time and place accused assaulted and used criminal force to abovesaid police officials, public servants while discharging of their duty as public servant and as such committed an offence punishable U/s 353 IPC. Further, on the abovesaid date, time and place, accused Kunal Khanna hit the above said public servants with Honda City Vehicle bearing registration No. DL-3CBE-5181 with such intention or knowledge and under such circumstances that if by that act, he would have caused the death of Constable Subhash and Constable Yogesh, he would have been guilty of murder.”

The Trial Court has acquitted the respondent accused by taking into consideration the fact that there was no independent witness joined on behalf of the prosecution. The TSR driver who took the injured to the hospital was also not examined. The clothes of the injured were also not seized or sent for examination. There is also no evidence of any bleeding of the injured.

The invocation of Section 307IPC in the present case, clearly, was an endeavour to enable the police to arrest the accused at the stage of investigation. Apart from making a bald statement that the accused had hit the injured with his vehicle with the intention to kill him, there is absolutely no evidence brought on record to show as to why the accused would harbour such an intention and how it manifested.

The Trial Court has given its reasoning in paragraph 25 of the judgment which reads as follows:

“25. In the present matter, it may be pointed out that no independent witness has been joined or cited on behalf of the prosecution to prove the allegations against the accused to the effect that he had caused the injuries to the complainant. The prosecution witnesses have deposed to the effect that the injured persons were taken in the TSR by public persons, however, none of the public persons have been joined to prove this fact. Further, there is no evidence to the effect that injuries, on the person of the complainant, were caused by the Honda City Car. There is lack of independent witness to strengthen or to corroborate the prosecution witnesses. All the witnesses cited on behalf of the prosecution are police witnesses and are interested witnesses and cannot be given much reliance in the absence of corroboration from any independent source. Further, when the case of the prosecution is to the effect that the injured were taken in the TSR by public persons, it is the bounden duty of the prosecution to prove its case, through the evidence of the independent witness. Thus, there is no sufficient, clinching, incriminating evidence against the accused, to connect him with the alleged offence. In order to attract section 307 of IPC, it is necessary that there must be requisite intention or knowledge. It has been made clear, through catena of Judicial pronouncements that in order to determine the question as to whether offence under Section 307 of IPC is made out or not, the requisite mens-rea should be there, which is an important part of section 307 IPC. Further, there are material contradictions between the evidence of prosecution witnesses in the present matter, as PW4 had deposed, in his cross-examination, that he and Ct Subhash were in conscious condition, on the other hand, PW2 had deposed that he became unconscious. Further, as per PW11, SI Devi Lal, who is IO of the case, there is deposition to the effect that he did not find any blood on the spot. He further deposed, in his cross-examination, that uniforms were not sent to FSL for examination. This fact, coupled with the contradictions in the

deposition of police witnesses, creates doubt regarding the manner, in which the injuries were inflicted upon the complainant. The prosecution has not been able to prove its case, against the accused beyond reasonable doubt. There is nothing on the record file to show that accused, at any point of time, had voluntarily obstructed any of the police witnesses in discharge of their public functions or committed the offence punishable U/s 307/353/186 of IPC.”

We have also perused the MLC of the injured persons and the injured did not suffer any grievous or serious injury. In these circumstances, we are of the view that the impugned judgment does not call for interference.

Dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 21, 2018

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