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

Date of hearing and order: January 04, 2018.

+ CRL.L.P. 425/2017
STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through: Ms. Aashaa Tiwari, Additional Public
Prosecutor for the State

versus

AKASH @ MONU & ANR

..... Respondents

Through: Mr. S.P. Batra, Advocate for
respondent No. 1 and 2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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P.S. TEJI, J. (Oral)

1. The present leave petition has been filed by the State under Section 378(4) of the Cr.P.C. seeking leave to appeal against the judgment dated 10.02.2017 delivered by the learned Additional Sessions Judge -02, in Sessions Case No.47/2015 titled as *State vs. Akash @ Monu & Anr.*, arising out of FIR No.284/2011 registered at Police Station Kotla Mubarakpur, Delhi.

2. The case of the prosecution is that on receiving DD No.70B dated 21.11.2011, SI Sanjeev Kumar reached Safdarjung Hospital where he found one Issac Toppo admitted having sustained fatal injuries on left abdomen with sharp edged weapon and doctor declared him unfit for statement. On the basis of DD entry and nature of injuries present, FIR under Section 307 IPC was registered and investigation was handed over to SI Satish Lohia. During the course of investigation it was revealed that the injured was working with Life Line Path Ltd. and on 21.11.2011, when he was returning from his work place on a cycle at around 10/10.30 PM and reached under AIIMS flyover, he was forcibly stopped by two robbers who attacked him with a knife and caused multiple injuries, then robbed his purse containing cash and election card and some other visiting cards. Furthermore, the robbers also took away his bicycle. Consequently, Section 394/397/34 IPC were also added in the FIR.

3. On secret information, on 24.11.2011, a gang of robbers who committed the instant robbery was arrested alongwith stolen motorcycle. During search one small knife with blood stains which was used in the robbery, one election I-card of the victim and Rs.800/- were recovered from the possession of accused Akash @ Monu. During police custody remand, the blood stained clothes which accused were wearing at the time of robbery, and cycle of the victim were also recovered. Both the accused refused to participate in the TIP. After completion of investigation charge sheet for commission of offences punishable under Section 307/394/397/411/34 IPC was filed.

4. Charges under Section 307/394/397/34 IPC were framed against the accused persons to which they pleaded not guilty and claimed trial.

5. To unearth the crime of the accused persons, the prosecution examined 16 witnesses, namely, HC Hari Om (PW-1), Issac Toppo (PW-2), Prabha Toppo (PW-3), Dr. Helal Ahmed Khan (PW-4), Ct. Sachin (PW-5), Dr. Sandeep Shaina (PW-6), SI Sanjeev Kumar (PW-7), Ct. Munish Kumar (PW-8), Ct. Jagdish Singh (PW-9), Ct. Bal Kishan (PW-10), Ct. Narender Kumar (PW-11), Anil Kumar (PW-12), HC Tejram (PW-13), Sh. Sandeep Garg (PW-14), Naresh Kumar (PW-15), SI Satish Lohia (PW-16). After conclusion of prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded in which they claimed innocence.

6. After going through the evidence and material available on record, the trial court has acquitted both the respondents/ accused persons vide impugned judgment against which the State has preferred the instant leave petition seeking leave to appeal against the impugned judgment.

7. Arguments advanced by the learned APP for the State are that the learned trial court did not consider the deposition of the complainant Issac Toppo (PW-2), who had made very specific and categorical deposition that the accused Sanjay @ Sanju caused injury with knife on his face, throat, neck and thereafter the accused Akash caught hold of him from back and took out the purse from his pocket containing cash, debit card, election card, etc. He had further deposed

that both the accused persons stabbed him on his stomach with the knife. The State has also referred the MLC, which discloses that the injured had sustained 6 injuries with the knife on neck, face, stomach, back, index finger. Recovery of the knife as well as robbed articles, including the bicycle of the complainant, has also been affected from the accused persons. Even the complainant remained consistent with his statements under Section 164 of Cr.P.C., which alone could have been the basis of conviction of the accused persons.

8. We have heard the submissions of Ms.Aashaa Tiwari, learned Additional Public Prosecutor for the State and have gone through the evidence available on record as well as grounds taken in the appeal.

9. So far as the commission of robbery is concerned, the State has failed to establish the same beyond reasonable doubt. It is evident from the record that it was alleged by the injured that his cycle and other articles were robbed by the accused persons on the day of incident. The information of commission of the offence was received by the police vide DD No.70-B Ex.PW7/A on the night of 21.11.2011 from the hospital. As per Ex.PW7/A, injured (PW2) was admitted in hospital by his wife Smt. Prabha (PW3). It was not mentioned in the information given to the police that the injured was looted also. The police officials PW7 SI Sanjeev Kumar along with Ct. Sachin reached the hospital and on the basis of injuries sustained by the injured, rukka Ex.PW7/B was prepared for registration of FIR under Section 307 IPC. Since there was no eye witness to the incident and the injured was unfit for statement, FIR was recorded under Section 307 IPC on

the basis of injuries sustained by the injured. It is worthwhile to mention that Smt. Prabha (PW3), wife of the injured was found present in the hospital, but she did not inform the police about the commission of any robbery with the injured.

10. Injured Issac Toppo (PW2) in his testimony had deposed that on the day of incident, he was assaulted by the accused persons and looted too. He had also stated that his statement was recorded by the police on the night of the incident itself. But this fact has been converted by his wife Smt. Prabha (PW3) who had deposed that statement of her husband was recorded by the police on 29.11.2011 as he remained unconscious till 28.11.2011. The carbon copy of MLC Ex.PW6/A of the injured (PW2) further proved this fact that the injured was unfit for statement till 26.11.2011. It is also apparent from the record that when rukka was prepared by the Investigating Officer, Smt. Prabha (PW3), wife of the injured was present in the hospital, but she did not inform the police with regard to commission of any robbery with the injured. Thus, the incident of commission of robbery is doubtful.

11. Another aspect of the matter is that as per MLC Ex.PW4/A of the injured, he suffered lacerated wounds, total six in number on neck, middle finger, index finger, upper abdomen, left ear and lower abdomen. Injured was medically examined in the hospital by PW4 Dr. Helal Ahmed Khan. Though PW4 proved the MLC of the injured, but he had stated that he had no knowledge of the opinion of facts. PW4 during the course of his cross-examination had stated that

initially the injuries sustained by the injured were opined to be caused by a blunt object, but the same was later on scored out to read sharp. He also stated that no stab or incised wound was recorded in the MLC. The case of the prosecution and the deposition of injured (PW2) is that on the day of incident, he was given knife blows. But this fact has been falsified by the MLC which shows that the injured received only lacerated wounds, but not incised or stab wounds. It is also important to note that after the apprehension of accused persons, one knife was recovered. When it has come in the medical record that the injuries sustained by the injured were lacerated one, the same cannot be connected with the recovered knife. The prosecution had also not sent the recovered knife to the doctor to get his opinion whether the injuries suffered by the injured could be possible with the same knife or not.

12. It is apparent from the record that though the injured received grievous injuries, but the same cannot be said to be fatal which could result into his death and for the said reasons, the accused persons have been acquitted under Section 307 IPC and have been convicted under Section 325 IPC. We find no ground to interfere in the judgment of acquittal of the accused persons under Section 307/394/397/34 IPC.

13. In view of the above discussion, we are of the view that the judgment passed by the trial court is based on correct appreciation of evidence and material available on record and the State has failed to make out any ground in support of the present leave petition.

14. Consequently, the present leave petition is declined and dismissed.

P.S. TEJI, J

VIPIN SANGHI, J

JANUARY 04, 2018

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