

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

+ **Crl. L.P. No. 289/2010**

% **Date of Decision: 15.11.2010**

State Petitioner
Through Mr. Ranjit Kapoor, Additional Standing
Counsel (Crl.) and Mr. Asim and Mohd.
Sharif, Advocates

Versus

Anil Kumar @ Vicky Respondent
Through Nemo

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE S.L. BHAYANA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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CM No.13472/2010

Allowed subject to just exceptions.

Crl. M.A. No. 13473/2010

This is an application by the petitioner seeking condonation of delay in filing the petition for leave to appeal.

The applicant has contended that the certified copy of the judgment was applied on 9th March, 2010 and comments were given about the merits of the case by letter dated 1st December, 2009

pursuant to the information of additional public prosecutor on 25th November, 2009. The applicant has given the details of other officers, who had dealt with the matter and finally decided that the petition seeking leave to appeal should be filed and in the process resulting in a delay of 251 days.

The applicant has relied on Collector of Land Acquisition Vs. Katiji, (1987) 2 SCC 107 and State of Nagaland Vs. Lipok Ao, 2005 (3) SCC 752 holding that sufficient cause should be considered with pragmatism in justice oriented approach rather than a technical defection of sufficient causes for explaining every days delay having regard to considerable delay of procedural red tape in the decision making process of the government, certain amount of latitude is permissible and should be given. The applicant has contended that the State Government is the impersonal machinery working through its officers or servants- hence it cannot be put on the same footing as an individual.

Considering the facts and circumstances and the law cited by the applicant, the applicant has been able to make out sufficient cause for condonation of delay of 251 days in filing the petition seeking leave to appeal.

The application is therefore, allowed and the delay in filing the petition seeking leave to appeal is condoned.

Crl. LP No. 289/2010

The petitioner has sought leave to appeal against the order dated 30th October, 2009 passed by the Additional Sessions Judge in Sessions Case No. 28/2005 titled as State Vs. Anil Kumar @ Vicky arising out of FIR 923/2004 under Section 302 of IPC, PS Lajpat Nagar acquitting the respondent of the charge of committing murder of his wife Rajni.

The case of the prosecution was that on 21st November, 2004, respondent killed his wife at his residence bearing house No. 127, 2nd Floor, Lajpat Nagar, New Delhi by causing fatal injuries with a scissor and a wooden log.

The case of the prosecution was that the respondent picked up his three minor children on 21st November, 2004 from his house and dropped the daughter, namely, Pringle at her school, aged 10 years and both the sons aged 8 and 7 years respectively at the house of their maternal grandmother (nani), which was at a distance of about 15 minutes walk from the house of the accused. It was alleged that the respondent told the children that they would be picked up from the house of their maternal grandmother after the deceased, mother of the children will go to the paternal grandparents of the children.

According to the prosecution, after dropping the children, the accused came back to his house committed the murder of his wife and

disappeared till he was arrested on 27th November, 2004 from New Delhi Railway Station.

The respondent had opposed his prosecution contending, *inter alia*, that after dropping the children, he had left for Udaipur, Rajasthan for his business activities and on 23rd November, 2004, he came back and came to know about the murder of his wife. He went to the police station where he was detained and was falsely implicated on the charge of murder of his wife.

The prosecution also alleged that the respondent used to beat the deceased after taking liquor and a few days before the incident he had caused a bleeding injury to her. Conciliation was done with the help of family members and the disputes were resolved. Under the resolution of the dispute, the sister of the deceased had entered into a deal with the brother of the respondent namely Jolly in respect of his share in the house and even some amount was paid to Jolly. Complete possession of the said house was to be taken on payment of balance amount in the near future. However, there had been a dispute again between the accused/respondent and the sister of the deceased. It was alleged that the respondent and his brother were pressurizing the deceased and her sister not to take the possession of the entire house.

According to the prosecution, Kamal Kumar, brother of the deceased, had repeatedly called on the mobile phone of the deceased and the respondent but there was no response and on 23rd November, 2004, he went to Jitar Nagar to know their whereabouts. When he came to know that neither his sister nor the accused had reached the place, Kamal Kumar went back to his house and at around 12:30 PM the daughter of the deceased had intimated him that her mother was lying dead in the house in a pool of blood. Kamal Kumar, therefore, along with the daughter of the deceased and the respondent went to the house, which was lying locked but the door of the Balcony was open. On raising hue and cry, the people of the locality assembled and collected at main entry door. Lock was broken and the deceased was found lying on the floor near the bed room in a pool of blood. A baniyan and an underwear stained with blood belonging to the respondent was also found lying in the bathroom. The shirt belonging to the accused with blood stains was also found on the bed and in the circumstances, it was suspected that the murder was committed by the respondent as allegedly he used to quarrel with the deceased. The respondent had dropped the children at the house of Kamal Kumar on the pretext that he and his wife Rajni had to go to Jitar Nagar which was also construed against him, as in fact he did not go to Jitar Nagar but allegedly went to Udaipur, Rajasthan.

Before the Trial Court, the respondent denied the charges against him and claimed that 18 witnesses were examined by the prosecution including the daughter of the accused aged 13 years besides mother of the deceased and the brother of the deceased. Two public witnesses, Pankaj Gupta, PW-15 and Pravin Kumar, PW-12 were also examined but both of them turned hostile.

The Trial Court, while acquitting the respondent, took into consideration the fact that PW-15 Pankaj Gupta and Pravin Kumar, PW-12 had turned hostile and even in the cross-examination, it could not be established that the accused/respondent had gone back to his house after dropping his children at their nani's house.

The Trial Court disbelieved that the respondent was arrested on 27th November, 2004 pursuant to secret information regarding presence of the accused at New Delhi Railway Station. The plea that even on 27th November, 2004, accused was wearing blood stained pant and shoes since the time of commission of offence on 21st November, 2004, was found to be improbable and was not believed. Another aspect which was noticed by the Trial Court was that the accused, though, was alleged to be standing in a queue for purchasing a ticket, however, no amount was recovered from him.

The Trial Court also relied on the statement of PW-15, who had stated that the accused had gone to the police station on 23rd November, 2004, however, his statement was not recorded. It was also noticed that even the additional public prosecutor had suggested that the accused with PW-15 had come to Lajpat Nagar Police Station on 23rd November, 2004 and inquiries were made by them but their statement was not recorded. PW-15 also deposed that the accused had reached Udaipur, Rajasthan on 21st November, 2004. Since, the respondent/accused had the mobile phone, the prosecution ought to have collected the record of his mobile phone so as to establish whether he remained in Delhi or in fact had gone to Udaipur Rajasthan. From the evidence of the witnesses, the Trial Court inferred that there was no sufficient evidence that the accused came back to his house and murdered his wife and then absconded. The Trial Court observed that the suspicion cannot take place of proof and there was no evidence that the accused/respondent instead of going to Udaipur, as was contended by him, had come back to his house.

The Trial Court also inferred on the basis of the evidence that no act of cruelty could be made out from the deposition of the brother and mother of the deceased as the allegations were omnibus and generic in nature and there was no sufficient motive for accused to commit murder of his wife.

This is settled law that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused which is rather fortified and strengthened by the order of acquittal passed in his favour. Even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favours the accused should be adopted and the view taken by the trial Court which had an advantage of looking at the demeanour of witnesses and observing their conduct in the Court is not to be substituted by another view which may be reasonably possible in the opinion of the High Court. Reliance for this can be placed on 2009(1) JCC 482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of

justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of acquittal is based and should record its own reasons for not accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal.

This Court has heard the learned counsel for the petitioner, additional public prosecutor in detail and has also perused the Trial Court record. This is not disputed by the learned additional public prosecutor that there is no evidence that the accused had come back to his house after dropping the children. Perusal of PW-12, Pravin Kumar reveals that he had denied the prosecution version in total and had even denied that he had given his name as Vijay Sharma. He rather deposed that he did not meet the respondent on that day and he does not know anything about the case. He denied that on 23rd November, 2004, he had gone to the police station and had told the police that on 21st November, 2004, respondent along with his children was going to his in-laws' house to drop his children and he had told them that he

would be coming back within ten minutes. He denied that the respondent had asked him to arrange for liquor and onions and also denied that the respondent uses to quarrel with his wife. He denied that he heard any cry from the house of the respondent and the respondent had come back and had told him that “Jo hota hai achche ke liye hota hai”. Consequently, there is no evidence to show that the respondent had come back on 21st November, 2004 back to his house. If he had not come back on the said date to his house merely on the suspicion, it cannot be held that he had come back and had murdered his wife.

This inference is further augmented by the fact that another witness PW-15 depose that the accused/respondent had reached at Udaipur, Rajasthan on 21st November, 2004. Prosecution did not collect the details of the mobile record of the accused/respondent to negate his statement that he was not in Delhi after dropping his children and had gone to Udaipur, Rajasthan. Even the allegations of arrest of the respondent from Railway Station on 27th November, 2004 cannot be believed as even according to the additional public prosecutor in the cross-examination, it was suggested to PW-15 that the respondent had gone to Lajpat Nagar Police Station and inquiries were made from him but his statement was not recorded. If the respondent had gone to Lajpat Nagar Police Station on 23rd November, 2004, his alleged arrest on 27th November, 2004 from the Railway Station while standing in the

queue for purchasing the ticket though no money was recovered from him, belies the allegation that he was arrested on 27th November, 2004.

The learned counsel for the petitioner is also unable to give any cogent reason as to why the accused will keep wearing the same trouser and cloths with blood stains which were allegedly worn by him on 21st November, 2004, when he allegedly murdered his wife. The plea by the prosecution is improbable and in the facts and circumstances, inferences and reasoning of the Trial Court cannot be termed to be unsustainable or perverse or contrary to the evidence on record.

The learned counsel for the respondent is also unable to show any cogent evidence on the basis of which it can be inferred that the light brown shirt recovered from the house of the respondent was worn by him on the day of incident. Merely because blood stained underwear and baniyan was recovered from the house of the deceased cannot inculcate the respondent. The learned additional public prosecutor is also unable to show any other incriminating material which will inculcate the respondent with the alleged crime.

In the totality of the facts and circumstances, the learned additional public prosecutor has failed to show any of the inferences of the Trial Court to be unsustainable or perverse. This is no more *res integra* that even if another view is possible on the facts and

circumstances of the case, the High Court shall not substitute its view with the view of the Trial Court based on observing the demeanour of the witnesses. Consequently, no grounds have been made out by the petitioner for granting leave to appeal against the judgment dated 30th October, 2009, acquitting the respondent of the charge of murdering his wife. The learned additional public prosecutor has also not raised any such pleas on the basis of which it can be held that the findings of the Trial Court are ex-facie perverse or unsustainable.

The petition, in the facts and circumstances, is without any merit and no ground has been made out for granting leave to appeal to the petitioner. The petition is, therefore, dismissed.

ANIL KUMAR, J.

NOVEMBER 15,2010

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S.L. BHAYANA, J.