

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

+ **CRL.LP No.248/2010**

% **Date of Decision: 25.08.2010**

State (GNCT) of Delhi Appellant
Through Mr. Sanjeev Bhandari, Addl. Standing
Counsel (Crl.)
SI Giriraj Singh, PS Badarpur

Versus

Jaspreet Singh Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SURESH KAIT

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

ANIL KUMAR, J.

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Crl.M.A No.12718/2010

This is an application seeking condonation of delay in filing the leave petition.

For the reasons stated in the application delay is condoned.

CRL.LP No.248/2010

This is a petition under Section 378 of Code of Criminal Procedure by the State against the judgment dated 25th August, 2009 passed by Additional Sessions Judge acquitting the respondent of the

charges under Section 302 of Indian Penal code in FIR No. 381/2003, PS Hari Nagar acquitting him of the charge of killing his father Sh.Joginder Singh.

The case of the petitioner is that on 26th August, 2003, in House No. K-44A, First Floor, Fateh Nagar, the dead body of Sh. Joginder Singh, Son of late Sh. Mangal Singh was found on a double bed with injuries on the right side of the head. The walls and the almirah in the room had blood stains.

No chance prints were found, blood earth and earth control were lifted from the spot. Blood stained double bed sheet and the pillow cover were also seized along with a note book Ex. PX1 bearing the name of Jaspreet Singh/respondent containing exercise notes related to political theory of political science (Hons) B.A. 1st Year and some events in the hand writing of the respondent.

The case of the petitioner was that from the note book it transpired that the accused was having love affair with a girl, named Simmi PW 6, his classmate. The accused allegedly on sustained interrogation had revealed that he wanted to marry Shamshad @ Simmi PW 6. However, the deceased father of the accused was a hurdle in their marriage, which could not be tolerated by him, therefore, he gave his father, coffee laced with sleeping pills and when his father was sleeping,

blows with hammer were given on his head which resulted into the death of late Sh. Joginder Singh, father of the respondent.

The accused allegedly confessed his guilt and made disclosure statement which is Ex. PW 10/E. Pursuant to alleged disclosure by the respondent, a hammer having blood mark on the handle was recovered which hammer was round in shape from one side and the other side of the hammer was sharp edged. An empty strip of 10 tablets and another empty strip of six tablets of Diazepam Ranbaxy and Diazepam Cipla were also recovered. The viscera of the deceased was also preserved and the bills of purchase of medicine in the name of the mother of the respondent were also collected.

Before the Sessions Court, the charge under Section 302 of IPC was framed against the respondent as he pleaded not guilty. During the trial, the petitioner examined 22 witnesses. The respondent also examined Smt. Manjeet Kaur, his mother. After hearing the parties, the Sessions Court has held that the petitioner/state has failed to prove the all the links in the chain of circumstances leading to hypothesis of the guilt of the respondent and therefore, acquitted him.

This Court has heard the learned counsel for the petitioner in detail and has also perused the record of the Trial Court. This is not disputed that there is no direct evidence in this case and it is a case of

circumstantial evidence. To prove the guilt of the respondent, all circumstances should be established completely and there should not be any missing link pointing or leading to conclusion of guilt of the respondent. In *Pandala Veera Reddy Vs. State of Andhra Pradesh*, AIR 1990 SC 79, it was held by the Apex Court that the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; circumstances should be of definite tendency unerringly pointing towards guilt of the accused; circumstances, taken cumulatively, should form a chain so complete that there should not be any escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused

According to the petitioner, the motive for the murder by the accused/respondent of his father was the hurdle created by him in the proposed marriage between the respondent and Ms. Simmi PW 6. For this, the State has relied on the diary Ex. PW 10/D of the accused containing day to day feelings of the respondent towards the girl, namely, Simmi @ Shamshad Bano.

Shamshad Bano was examined as PW 6, however, she only admitted her friendship with the respondent as her class mate. She also

admitted talking to the accused on telephone. She has deposed that the respondent never proposed to her and she was only a friend of the accused. She rather further elaborated that since the respondent was a brilliant student, not only she but all the students in the class used to contact him and so she also used to contact him and she was only a good friend of the respondent and had no other relationship nor the respondent expressed any other feelings to her.

Merely on the basis of the feelings of the respondent towards Simi @ Shamshad Bano, it could not be inferred that there was a mutual love affair between Ms. Simmi and the accused which could fructify into a marriage. If there is no evidence that the respondent and his classmate Simmi wanted to marry each other, a fortiori, it cannot be held or inferred that the father of the respondent was a hurdle in the marriage between the two. Such a proposition is only an assumption by the petitioner for which there is no evidence on record. The plea of the petitioner that the deceased was a hurdle to the love of the respondent for Simmi is more of an assumption than based on any cogent evidence on the record.

If that be so, then, the petitioner has not been able to establish the motive of murder by the respondent of his father. The Sessions Court has also held so and this finding of the Sessions Court cannot be faulted in the facts and circumstances nor the petitioner has been able

to show any other facts and circumstances on the basis of which it can be inferred that the deceased Sh. Joginder Singh was a hurdle or had been opposed to the love of his son towards his class mate, namely, Simmi or created such circumstances, which would have triggered or initiated such hatred or intense adverse feelings in the respondent so as to murder his own father.

According to the petitioner, the weapon used in offence was a hammer (Ex. PX-6) which was recovered pursuant to the disclosure statement Ex. PW 10/E of the respondent. But there is no independent witness to the recovery. The learned counsel for the petitioner is unable to give any cogent or reliable reason as to why the recovery was not done pursuant to the disclosure statement in the presence of the independent witnesses though the independent witnesses were present. The Trial Court has placed reliance on Chander Pal and Ors. Vs. State, 1998 (3) CC Cases HC 215 and State of Haryana Vs. Ram Singh, 2002 SCC (Crl.) 351 holding that when the disclosures and arrests are made in the absence of independent witnesses, a doubt or suspicion is created and benefit of such a doubt is to be given to the accused.

There is another clear discrepancy about the time of arrest and the disclosure statement and recovery made pursuant thereto for which no satisfactory or reliable explanation has been given by the learned counsel for the petitioner. Perusal of the record reveals that Sh. Desh

Raj, SI, PW10, had stated in his cross-examination that the respondent was arrested at 2:30 AM and his disclosure statement was recorded between 2:30 AM and 3:00 AM and thereafter the recovery of hammer was made at about 4:00 AM. Whereas according to the investigation officer Sh. A.S. Bazwa (PW-21) though the time of arrest is shown in Ex. PW 10/J as 2:30 AM but it is on account of over writing whereby the time of arrest shown in the arrest memo as 4:30 AM has been changed to 2:30 AM. The Sessions Court also noticed that though the IO identified his signatures on the arrest memo Ex. DA, however, he could not offer any explanation as to how and under what circumstances, Ex. DA, arrest memo was prepared. If the arrest of the respondent was at 4:30 AM then how his disclosure statement could be recorded between 2:30 AM to 3:00 AM and how the recovery could be made even before the arrest. There is no reliable and acceptable explanation by the petitioner. If that be so, the recovery of the hammer made by the petitioner cannot be relied on.

The alleged weapon of offence, the hammer is round in shape on one side and sharp edged on the other side. However it has not been established to be a weapon of offence as the said hammer was not shown to the doctor nor the opinion of the doctor has been taken that the injuries to the deceased were caused or could be caused by the said hammer. Reliance can be placed on Manpreet Singh and Ors. Vs. State 2004 (1) CC Cases (HC) 74 holding that if the weapon of offence is not

produced before the doctor for his opinion, then this snaps the chain of events leading to the guilt of the accused. It cannot be doubted that it is important to connect the alleged weapon with the offence in order to bring home the guilt of the accused. Mere recovery of weapon does not mean that it is the weapon of offence. If the injuries to the deceased are not connected to alleged weapon of offence, the lacuna is fatal to the case of the prosecution. The prosecution has failed to establish that the hammer alleged to be recovered was the weapon for the offense which was also recovered even before the arrest of the respondent. This is a major flaw in the hypothesis of guilt of the accused propounded by the petitioner. The hammer recovered is the weapon of offense is further dented by the fact that in the evidence it has been established that the police had lifted the blood stained earth with the help of the hammer which was given to Police by Sahib Singh, PW5 uncle of the respondent. Even DW1 mother of the respondent as defense witness has categorically deposed that the alleged hammer which was recovered by the police as the weapon of offence was rather used for lifting the blood stained earth from the spot. In view of the deposition of PW 5 Sahib Singh and DW 1 mother of the respondent unequivocally deposing that hammer was used for lifting the blood stained earth, it was for the petitioner to establish how the earth soaked with blood was lifted from the spot, if not with the same hammer. However, no such evidence has been led and the prosecution is completely silent in this regard. In the circumstances, the inevitable inference is that the prosecution has

failed to establish that the weapon of offence is the hammer allegedly recovered pursuant to the disclosure statement made by the respondent.

The Trial Court while acquitting the respondent had also noticed that the petitioner has failed to produce any evidence that at the time of offence the deceased and the respondent were alone. Another factor which has weighed with the Trial Court is the alleged recovery has not been shown in the site plan Ex. PW 21/B or even in the scaled site plan Ex. PW 9/A which was prepared much later.

The petitioner though, allegedly recovered the blood stained cloths from the almirah in the room, however it has not been established whether the blood on the blood stained cloth was of the deceased or the accused. In the circumstances, mere recovery of the blood stained cloths do not point towards the guilt of the respondent and the reasoning of the Trial Court in this regard cannot be faulted on the alleged grounds raised by the petitioner.

The prosecution story that the respondent had laced the coffee with the sleeping pills is also not substantiated on the basis of the evidence on record. The remnants of the coffee which allegedly killed the deceased or made him unconscious were not collected. Even the viscera report was not got analyzed to show the presence of Diazepam

Cipla tablets or any other such substance. Interestingly, the bills on the basis of which it was tried to be established that the respondent had purchased the Diazepam Cipla tablet, do not show that on the said bills Diazepam Cipla tablets were sold to the respondent. Even the chemist PW 15 has denied having sold the said tablets or Calmpose tablets to the respondent. From all the bills produced by the prosecution, it cannot be inferred that Diazepam Cipla or Calmpose tablets were purchased by the respondent. If that be so, a very important link in the alleged circumstances for alleged guilt of the respondent is snapped. The inevitable inference in the circumstances, is that the circumstances to infer guilt of the respondent cogently and firmly has not been established by the petitioner and the alleged chain of events and the circumstances propounded by the prosecution has many vital and important links missing, which will conclusively points to the probability of accused/respondent not having committed the offence of murder of his father by a hammer.

Appreciation of testimonies of the witnesses of the prosecution by the Trial Judge do not suffer from any grave infirmity or such error which would require any interference by this Court in the facts and circumstances of this case. This cannot be disputed that unless the conclusions of the Trial Court drawn on the evidence on record are unreasonable, perverse or unsustainable, the High Court should not interfere with the order of the acquittal. Though the High Court has the

power to rather assess the evidence and reach its own conclusion, which power is as extensive as in an appeal against the order of conviction, yet as a rule of Prudence, the High Court should always give proper consideration to matters such as (i) the views of the Trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favor of the accused; a presumption which certainly is not weakened by the fact that the accused has been acquitted at his trial; (iii) the right of the accused to the benefit of any doubt, and (iv) the slowness of an Appellate Court in disturbing a finding of the fact arrived at by a Judge who had the advantage of seeing the witnesses and noticing their demeanor .

On the analysis of facts and circumstances and the evidence of the prosecution, this Court does not differ with the conclusions of the Trial Court acquitting the respondent nor finds the inference as unreasonable, perverse or unsustainable.

No other grounds have been raised by the petitioner seeking leave against the judgment of the Trial Court dated 25th August, 2009 in Sessions Case No. 74/2008 titled as State Vs. Jaspreet Singh. Since the view taken by the Trial Court does not suffer from any unreasonableness, perversity or unsustainable on any ground, any other view even if possible by this Court is not to be substituted with the view of the Trial Court in the facts and circumstances.

For the foregoing reasons, we do not find any ground to interfere with the decision of the Trial Court acquitting the respondent from the charge of murder of his father and committing an offence under Section 302 of IPC. Therefore, the leave to appeal is declined and the petition is dismissed.

ANIL KUMAR, J.

SURESH KAIT, J.

AUGUST 25th , 2010

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