

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

+ **Crl. M.A. No. 15144/2010 & Crl. LP No. 338/2010**

% **Date of Decision: 10.11.2010**

State of NCT, Delhi Petitioners

Through Mr.Jaideep Malik, APP

Versus

Rajender @ Jinder @ Dancer & Anr. Respondents

Through Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR.JUSTICE MOOL CHAND GARG

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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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Crl. M.A. No. 15144/2010

This is an application by the appellant seeking condonation of delay of 65 days in filing the petition seeking leave to appeal.

The applicant has contended that the applicant had applied for the certified copy of the judgment dated 8th April, 2010, which was provided on 21st July, 2010. The applicant has also disclosed the details of the persons who had dealt with the file before it was finally decided to file the petition for leave to appeal. Reliance has also been placed on

Collector Land Acquisition Vs. Katiji 1987 (2) SCC 107 and State of Nagaland Vs. Lipok Ao 2005(3) SCC 752.

Considering the averments made by the applicant, it is apparent that sufficient cause has been made out for condoning the delay of 65 days in filing the petition for leave to appeal.

In the circumstances, delay of 65 days in filing the petition for leave to appeal is condoned and the application is allowed.

Application stands disposed of.

Crl. L.P. No. 338/2010

The petitioner had sought leave to appeal against the order dated 8th April, 2010 passed by the Sessions Court in Sessions Case No. 13/2008 arising out of FIR No.02/2008 under Sections-302/201/394/397/392/328/411/34 of IPC, PS Kanjhawala acquitting Deepak and Rajender of the charges made against them.

The case of the prosecution before the Trial Court was that a dead body was found floating in the pond of Karala Village, Kanjhawala on 6th January, 2008 which was identified by Tarun Jain (brother of the victim) as that of his brother Naresh Jain. The petitioner/prosecution on the basis of their investigation concluded that it was the respondents who were responsible for the murder of Naresh Jain. According to prosecution, accused Rajender @ dancer knew the deceased.

According to the prosecution both the accused Rajender and Deepak were in need of money, so they had planned to rob him and they purchased some sleeping pills, Lorazepam tablets, namkeen, cold drinks and strings and also arranged a Maruti Car bearing No. DL-5C-7241. A call was made to Naresh Jain from one STD booth at 9:30 pm on 5th January, 2008 and he was asked to meet them. On that date Ashok Kumar Sharma, friend of Naresh Jain had seen him going with the accused persons. Later on a Maruti car was recovered at the instance of the accused persons and a strip of sleeping pills Lorazepam was also recovered at the instance of the accused persons in the same Maruti Car. Recoveries were also made at the instance of the accused of the personal belongings of deceased Naresh Jain which articles were duly identified. The forensic report of the viscera of the deceased also indicated presence of Lorazepam.

The prosecution thus contended that on 5th January, 2008 both the accused with an intention to rob the deceased, arranged a Maruti Car and called him on phone and asked him to come at main Rohtak Road. The accused administered Naresh Jain, deceased a drink laced with sleeping pills and thereafter robbed him and murdered him and threw his body in the pond. Both the accused persons were charged for commission of offence under Sections- 302/201/394/397/392/328/411/34 of IPC and the charge sheet was filed on 13th April, 2008. Accused pleaded not guilty and claimed trial and during the trial the

prosecution examined 35 witnesses. Accused were examined under Sections 313 of the Crl. Procedure Code and one accused Deepak examined two witnesses, DW-1 father of accused Deepak, Sh. Bane Singh and DW-2 Baldev Kumar, a Gold Smith and the accused Rajender examined Sandeep Sharma in support of his defence. The Trial Court, after hearing the arguments in extenso and considering the pleas and contentions of the parties acquitted the accused of the charges against them by order dated 8th April, 2010 against which the present petition for leave to appeal has been filed.

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 favor of the accused which is rather fortified and strengthened by the order of acquittal passed in his favor. 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 favors 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 favorable 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 Additional Public Prosecutor in detail and has also gone through the evidence and relevant documents from the trial Court's record. The learned counsel for the petitioner mainly contended that the testimony of Ashok Kumar Sharma PW-2 who had last seen the deceased with the accused is reliable and should have been taken into consideration for upholding the conviction of the accused. The learned counsel also contended that the recoveries have been established and there is sufficient material on record to inculcate the accused/respondents.

The Trial Court, while acquitting the accused, took into consideration various facts including the one about procurement of car by the accused. The Trial Court noted that PW-21 Pramod Verma was a very important witness in this regard, however, he has not supported the case of prosecution. He had stated in his statement that he had purchased the car from Mukesh Verma PW-12 and the accused persons had demanded the car which was given on rent of Rs. 700/-, which was agreed by Mukesh Verma. The car was allegedly taken on 5th January, 2008 at 9:00 PM and it was returned and parked in front of his house on 6th January, 2008 at 7:00 AM and keys and the amount was handed over to Mukesh Verma. Mr. Pramod Verma was declared hostile and he was cross-examined by the prosecution. In his cross-examination, he denied that the accused person had come to him and had returned the vehicle. The Trial Court also took into consideration, the testimony of

Mukesh Verma, who appeared as PW-12 and noted vast improvements made by him. Considering the testimonies of Mukesh Verma and Pramod Verma, it has been held that both the versions cannot be reconciled. Mukesh rather stated that the vehicle was not with him since 27th December, 2007 as he had sold it to Pramod Verma. The Trial Court has also relied on the fact that if the accused were not known to Mukesh, it is unbelievable that he would hand over the car to the accused persons without any security and without even getting the amount of rent which was allegedly paid later on. It was also disbelieved that the car which was allegedly given to the accused had registration no. DL-5C 7241. The Trial Court had also referred to the testimonies of PW-7 Pappu and PW-27 Hardev Singh who also had turned hostile and had not supported the case of prosecution. Considering the testimony of PW-8 Raj Kumar and other factors, the Trial Court has rather held that there was complete chaos in the testimonies of various witnesses and their testimonies are irreconcilable and it has not been established as to who was the registered owner of that car. So much so, that nobody came forward to take the car on superdari. Though, the registration certificate on record was in the name of PW-7 Pappu, however, the Investigating Agency did not contact the Transport Authority to ascertain as to whom the car belonged to so as to establish whether the accused had hired the car and if the car was hired then from whom. The Trial Court has also noticed that the prosecution has failed to establish that it was Pramod Gupta who had handed over the

Maruti Car to the accused persons. The learned additional public prosecutor has not been able to propound any proposition or reveal any such facts from the evidence on the basis of which it could be shown that the reasoning and inferences by the Trial Court regarding disbelieving the hiring of car by the accused is unsustainable or perverse or suffering from any illegality. No evidence of documents have been pointed out which have not been considered or ignored by the Trial Court. In the circumstances there are no grounds to grant leave to appeal to the petitioner on this aspect.

The learned counsel for the petitioner has contended that evidence of last seen is sufficient and should not have been disbelieved by the Trial Court and has referred to the statement of Ashok Kumar Sharma, PW-2. It is contended that it can be inferred that the accused were last seen with the deceased. PW-2, Ashok Kumar Sharma is a property dealer and he had deposed that the deceased had come to his house as he wanted some jewellery and the deceased had told the said witness that he is going to a party on 4th January, 2008 with his acquaintance, namely, Dancer. Witness Ashok Kumar Sharma PW-2 deposed that at 10:30 PM he had met Naresh Jain as the deceased Naresh Jain was residing near his house. He further deposed that when he met the deceased he told him about the party which was initially slated for 4th June, 2008 but was postponed to 5th January, 2008 and he was going to the party with Dancer. According to the said witness,

the deceased accompanied him till main Rohtak Road, where a silver coloured Maruti 800 car was already parked and he was told that his friends have already come to pick him. According to PW-2, Ashok Kumar, when he and Naresh Jain, deceased, reached the car, the accused, namely, dancer was on the driving seat. While disbelieving the evidence of last seen given by Ashok Kumar, the Trial Court has noticed that the said witness did not depose in his examination-in-chief about other accused namely, Deepak @ Deepu. He answered the Court's questions deposing that he had seen one more person, but he could not identify him as he did not know him from before. He rather stated that both the persons were standing outside the car. To the Court's question whether he could identify both of them, the witness Ashok Sharma had deposed that the other person, whom he did not know, was shown at the police station and the witness had indicated towards accused Deepak. The Trial court has reasoned that since Dancer was known to the witness so Test Identification Parade was not required. But since he did not know the other accused, Deepak, test identification parade was required. The Trial Court has also noted that the accused Deepak was arrested on 14th January, 2008 and in patently illegal manner, he was shown to the witness on 16th January, 2008 and thereafter supplementary statement of the witness Ashok Sharma was recorded where he had identified both the accused. Such a statement has not been relied on. If the accused Deepak was not known to the witness Ashok Sharma then how could he be shown in the police

station on 16th January, 2008 after the arrest of the said accused on 14th January, 2008 and how this identification can be relied on? The learned counsel had not shown any provision of any precedent laying down that the premise that such identification can be relied on by the Court. Reasoning of the trial Court in the facts and circumstances cannot be construed to be unsustainable or illegal or suffering from any perversity requiring any interference by this Court.

The contradictions noted by the Trial Court in the statement of Sh. Ashok Sharma also could not be refuted successfully by learned Additional public prosecutor. The Trial Court observed that during winter season at about 10:30 PM, it was not possible for the said witness to identify the accused from a distance of 20-25 paces. This cannot be termed to be unsustainable or perverse. The other contradiction noted by the Trial Court is that the said witness has given different versions. In one version he had stated that he had walked with the deceased Naresh from near his house to main Rohtak Road where a silver colour car was parked and the accused Dancer was sitting on the driving seat whereas in another version he has stated that when he walked with deceased up till Rohtak Road, the silver Maruti Car came and thereafter both the accused were standing outside. The Trial Court has also noted that if Naresh Jain had accompanied the witness on his motorcycle as the version of Ashok Sharma is that he had met deceased Naresh Jain while coming back from his office on the

motorcycle and if the deceased Naresh had accompanied witness Ashok on his motorcycle, he would not have dropped him at a distance of 20-25 paces from the car, rather he would have dropped him right at the spot where the car was parked. The discrepancies in the deposition of the said witness go to the root of the matter and shake the very basis of the version of the prosecution. While appreciating the evidence of said witness it is evident considering the entire evidence it does not appear to have a ring of truth. Discrepancies in the evidence of the said witness cannot be construed to be minor in the facts and circumstances. Identification of the accused specially accused Deepak was not relied on in the absence of a proper test identification parade and taking cumulative effect of all these facts, the testimony of Ashok Kumar Sharma, PW-2, was held to be unreliable. The learned counsel for the State, Mr. Malik is not able to raise any such grounds or pleas, which would show that any of the observations of the Trial Court is unsustainable or perverse or suffers from any illegality. If that be so, the prosecution has utterly failed to establish that the deceased was last seen with the accused on 5th January, 2008 at about 10.30 pm. In this regard and for these reasons the order of the Trial Court cannot be faulted. If the testimony of last seen evidence is to be disbelieved, the accused cannot be convicted solely on the basis of circumstantial evidence. In disapproving the testimony of PW-2 Ashok Kumar, reliance has also been placed by the Trial Court on State (Delhi Admn.) Vs. V.C. Shukla 1980(2) SCC 665; George Vs. State of Kerala 1998 Cr.

LJ 2034 SC and State of Maharashtra Vs. Sukhdeo Singh, (SC) 1992 CrL. LJ 3454, holding that the evidence of the witness in Court, identifying the accused only in the Court without previous identification parade is valueless. The learned counsel for the petitioner has not cited any other precedent where the test identification parade done before the police authorities without muffling the accused, as has been done by the prosecution, can be relied on. In the circumstances, the petitioner is not entitled for any leave to appeal against the said findings and inferences of the Trial Court.

The Trial Court has also disbelieved about the accused procuring sleeping pills and cold drinks, namkeen, liquor and strings. The chemist PW-6 Vikas Jain admitted that about 50-100 customers used to visit his shop and he did not know the accused persons beforehand. In the circumstances, there is no cogent evidence as to how Vikas Jain could identify the accused as the persons who had purchased the sleeping pills Lorazepam from his medical store under the name and style of Vikas Medical Store. Learned counsel for the State is also unable to give any rational explanation as to how such a testimony can be relied on. The bill book which was proved as Ex. PW-6/A also appears to be tampered as it is for the period from 20th December, 2007 to 15th January, 2008 but it has two bills only of each day. According to said witness about 50 to 100 customers used to visit the shop daily as has been admitted by the said witnesses in his examination-in-chief,

then how only two bills on each day were issued has not been explained. The learned additional public prosecutor is also unable to give any rational explanation that if 50 to 100 customers were visiting the shop everyday then how only two bills were issued every day. In the circumstances, the observation of the Trial Court that the bill book Ex. PW-6/A is tampered cannot be faulted and the findings of the Trial Court cannot be held to be unsustainable or perverse. The other clear factor is that the bill no. 1413, which has been proved as Ex. P-7, by which the accused had allegedly purchased the sleeping pills was in the name of Amit Sehgal. Who is Amit Sehgal, is not established. The name on the bill cannot be linked to the accused. It is also not the case of the prosecution that though the bill was issued to the accused, however, a wrong name was given by them. The purchase of this medicine from the Chemist Vikas Medical Store also cannot be accepted as the alleged tablets which were allegedly recovered from the Maruti Car had a different batch no. than batch, i.e., 02064 which was sold by bill No. 1413. In the circumstances and on perusal of the evidence the findings of the Trial Court that the accused had not purchased Lorazepam tablets from Vikas Medical Store cannot be faulted nor has the additional public prosecutor been able to show any cogent ground on the basis of which it can be held that the findings of the Trial Court are unsustainable or illegal or suffer from any such perversity which is liable to be correct and would entitle leave to appeal to the petitioner.

Purchase of cold drinks, namkeen, liquor and strings from the Kirana shop at H-3/6, Sultan Puri, Delhi has also not been accepted by the Trial Court on the basis of the testimony of PW-4 Sh. Sanjay. The said witness could not identify the accused rather he could not say that the accused were brought to his shop on 16th January, 2008 for identification by the Police. He had also deposed that no nara (string) was shown to him nor any persons were shown to him when the queries were made by the police. Regarding the purchase of liquor no evidence has been produced by the prosecution except relying on the disclosure statement and on the basis of said evidence it has been held that the prosecution has failed to establish that the accused has purchased certain articles from Kirana shop at H-3/6, Sultan Puri, Delhi. The learned additional public prosecutor is unable to show any perversity in the reasoning and inferences of the Trial Court in the facts and circumstances. The learned additional public prosecutor has not raised any such pleas which would require consideration and which would entail granting leave to appeal to the petitioner in the facts and circumstances.

The next circumstance considered by the Trial Court is about making of STD call by the accused to the deceased Naresh Jain at about 9:30 pm on 5th January, 2008 to invite him to a party. The Trial Court referred to the testimony of PW-5 Om Prakash who was allegedly the STD Booth owner. The said witness did not identify the accused

and was declared hostile however, from his cross-examination also, nothing can be inferred in favor of the prosecution. The said witness rather went on denying that the accused was brought to his shop and he had identified them. The Trial Court had also noticed that a call was made from the STD booth on the mobile of the deceased at 10:29 pm, however there is no evidence that the said call was made by the accused and in the circumstances, the accused persons cannot be inculpated for the charge made against them. The learned additional public prosecutor has not raised any plea or contentions which would entitle the petitioner for leave to appeal in the present facts and circumstances. The observation of the Trial Court that the statement of PW-5 cannot be disbelieved does not suffer from any illegality or unsustainability.

In the circumstances, the prosecution has utterly failed to prove any such circumstance which will inculpate the accused as has been rightly held by the Trial Court that even if the last seen evidence is believed, unless it is corroborated by other evidence, it is hardly sufficient to form foundation for conviction of the accused. The learned counsel for the State was also not in a position to refute the same and in any case, even the testimony of the last seen of witness Ashok Sharma has not been believed.

The learned counsel for the petitioner has lastly argued regarding the recoveries of car, sleeping pills from the car, recovery of bracelet and purse of the deceased at the instance of the accused persons and presence of Lorazepam in the viscera of the deceased.

The case of the prosecution was that car bearing No. DL-5C-7241 was used by the accused persons, however, Ashok Sharma, PW-2 did not give the car number. From the mobile the number of the deceased, as given by his brother, as 9899124707 for which the call details were collected by the Nodal Officer. A print out of call details has been proved as Ex. PW 35/H. The Trial Court, however, has not relied on the documents regarding the mobile phone as they were produced during the deposition without proper permission of the Court and not within the legal parameters. The Trial Court also relied on non compliance of Section-65B of Indian Evidence Act regarding the electronic record produced by Jyotish Mohrana, PW-16, Nodal Officer of Vodafone Essar Mobile Services Limited. The Trial Court has rather commented adversely upon the act of the Nodal Officer of signing the documents at the time of recording of his deposition. . There were also more calls on the mobile of the deceased after the alleged call was made from the STD Booth of Om Prakash. Though the other calls were the diverted calls, however, the prosecution has not got it clarified. From the record, it appears that there was another call from Mobile No. 9871194318 at 22:

29:22 on the alleged mobile of the deceased which was found to be in the name of Om Prakash Verma who had the STD booth. The said witness Om Prakash has also not supported the prosecution version of the accused coming to his booth and making a call to the deceased. If that be so, the reasoning and inferences of the Trial Court cannot be held to be suffering from any illegality or un-sustainability in the facts and circumstances.

Recovery of car has also been disbelieved on the ground that it was found from an open place, as the Maruti Car was allegedly found in an open street and as it has already been held that the prosecution has failed to establish the ownership of the car and also as to who had given the car to the accused and the fact that no one came forward to claim the car on Superdari after the incident. In the circumstances, it has been held that the recovery cannot be held to be at the instance of the accused. The seizure memo of the car PW-19/E is allegedly witnessed by an independent witness Sh. Pramod Verma. However PW-21 Pramod Verma has not supported the case of the prosecution and had turned hostile. PW-21 rather deposed that the car was seized on 13th January, 2008 and not on 14th January, 2008 contrary to the version of the prosecution, and thus, the material witness regarding the recovery has deposed against the prosecution. In the circumstances, if it has been held by the Trial Court that recovery of car at the instance of the

accused person has not been established, the same cannot be faulted nor has the petitioner been able to show any illegality or perversity in the said finding so as to entail granting of leave to appeal to the petitioner.

Regarding recovery of Lorazepam tablets from the Maruti Car, the Trial Court has emphasized that the car was lying in an open street from 5th January, 2008 to 14th January, 2008 and it is unbelievable that for a period of eight days, no one would check the vehicle and it would remain in the same condition as it was allegedly left on 6th January, 2008. The Trial Court has also noticed the variation in the seizure memo and the deposition of PW-19 ASI Shiv Narain as to the place of the car from where the strip of Lorazepam tablets was recovered. The witness stated that strip of four tablets was recovered from beneath the front driving seat. The witness was declared hostile and was cross-examined and in the cross-examination, he showed his inability to recollect as to from where the strip of tablets was recovered, though, he had recovered the strip of tablets and had also signed the seizure memo.

In view of the conflicting testimony of PW-19 and PW-35, Insp. Suman Pushkarna, the Trial Court has held that recovery is doubtful. The learned Additional Public Prosecutor has not been able to show any

ground on the basis of which it can be held that the reasoning and findings of the Trial Court are unsustainable or perverse in any manner or suffer from any illegality.

Similarly, in respect of recovery of bracelet and purse, the Trial Court has disbelieved the same. Regarding the bracelet, the witness PW-22 HC Anil Kumar did not remember whether the bracelet had any mark or not. It has also been observed that such bracelets and chain are easily available in the market. The Trial Court has considered other facts and circumstances, which has not been refuted by learned additional public prosecutor. In any case, taking the testimony of PW-19 & PW-22 into consideration, the reasoning and the inferences taken by the Trial Court cannot be construed to be unsustainable or perverse so as to grant leave for reconsideration of the findings.

Similarly, this Court does not find any reasoning regarding not relying on the recovery of purse at the instance of the accused to be illegal or unsustainable. Regarding presence of Lorazepam in the viscera of the deceased, the Trial Court has noticed that such tablets are taken by any person suffering from depression or anxiety and in order to prove that the accused had given the tablets to the deceased, it was incumbent upon the prosecution to establish that the deceased was not suffering from any sort of anxiety or depression and the tablets were

never consumed by the accused. The prosecution has failed to establish that the accused had purchased the said Lorazepam tablets from the chemist shop Vikas Medical Store as neither the bill was in the name of the father of one of the accused nor the chemist could identify them as he was not knowing them earlier and the bill book of the chemist has also been held to be doubtful and batch number of the alleged tablets recovered from the car and the tablets which were allegedly sold did not match. In the circumstances, if the Trial Court has held that presence of Lorazepam in the viscera of the deceased will not inculcate the accused in any manner, cannot be held to be illegal.

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 Trial Court has also held that the prosecution has failed to prove the motive behind the murder. It has been noticed that motive in case of murder based on direct evidence is of little importance but it assumes greater magnitude in the case of circumstantial evidence and has relied on *Tarseen Kumar v. Delhi Administration*, 1995 CrL. Law Journal 470 SC; *Ramesh Govind Thakur v. State of Maharashtra*, 2008 CrL.LJ 2169 Bombay.

The proposition considered by the Trial Court cannot be doubted in the facts and circumstances and has not been refuted by the petitioner. Though, in order to substantiate the motive it was alleged that the accused Rajender had an account with the jewellery shop of the victim and he did not want to clear his outstanding, however, this fact has not been established. It has been observed that the account books have not been proved and cannot be relied on as it does not bear a date nor does it have the page number. The account is alleged to be in the hand writing of the deceased, however, this fact has not been established as the alleged account in the handwriting of the deceased has not been compared with the admitted hand writing of the deceased. Even the brother of the deceased Tarun Jain, who could have been the best witness with regard to this matter, has not stated that the accused Rajender owed money to the deceased. The Trial Court has also ruled out robbery as the motive for killing the deceased as to when his body was recovered it still had four rings on the fingers of the victim. It was reasoned that if robbery was the motive, the accused would have removed the rings of gold from the body of the deceased. The learned counsel for the petitioner is unable to give any rational and cogent explanation as to why the accused will leave the gold rings on the body of the deceased, if the motive was to rob the deceased.

The Trial Court also considered the alleged disclosure statement as according to PW-22, disclosure statement of Deepak was recorded at his house, however, the concerned investigating officer in his deposition, could not depose as to where the disclosure statement was recorded. No independent witness was joined nor has any cogent reason been given for not joining any independent witness if the disclosure statement was recorded at the dance centre of the accused Rajender.

In the totality of the facts and circumstances, no other view is possible than the view taken by the Trial court that the evidence produced by the petitioner is insufficient to implicate the accused. This is also true that even if some other view is possible so long as the view taken by the Trial Court is possible, the Appellate Court will substitute its view with a reasonable view of acquittal taken by the Trial Court.

In the circumstances, the learned additional public prosecutor has not been able to make out a case for grant of leave to appeal to the petitioner. This Court does not find any such illegality, unsustainability or perversity in the reasoning and the inferences drawn by the Trial Court acquitting the respondents which would require interference by this Court.. Therefore, there are no grounds to grant leave to the petitioner and the petition to grant to leave to appeal

against the impugned order dated 8th April, 2010 is declined and the petition is dismissed.

ANIL KUMAR, J.

MOOL CHAND GARG, J.

NOVEMBER 10, 2010

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