

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

Date of decision: 2nd September, 2011

+ CRL.L.P. 123/2002

STATE

..... Petitioner

Through: Ms. Richa Kapoor, APP for the State.

versus

VINAY SINGHAL & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G. P. MITTAL

1. Whether reporters of local papers may be allowed to see the Order? No.
2. To be referred to the Reporter or not? No.
3. Whether the Order should be reported in the Digest? No.

J U D G M E N T

G.P. MITTAL, J. (ORAL)

1. The State seeks leave to appeal against the judgment dated 18.07.2000 in Sessions Case No.191/96 whereby the Respondents (the accused) were acquitted of the offence punishable under Section 302/34 of the Indian Penal Code (IPC).
2. On 17.09.1991 at about 6:45 AM on receipt of information from Lady Constable Manju, 2676 PCR, DD No.97-B was recorded in Police Station Shahdara that a dead body was lying near a *nala* in Balbir Nagar Extension. SI Pratap Singh reached the spot and found that the dead body of a male, aged 40 years was lying in an Army (*Khakhi Green*) colour bedding. The dead body had several stab injuries. The identity of the dead body could not be established. The *rukka* Ex.PW-2/A was sent to the Police Station by the SI for registration of a case under Section 302/201 IPC.

3. During the investigation, the IO met PW-4 Anil Prabhakar and PW-7 Bharat Bhushan, who identified the dead body as that of Vipin Singhal. They also disclosed to the IO that they saw Vipin Singhal being taken in a TSR by accused Vinay Singhal and Usha (the deceased's wife) on 17.09.1991 at 4:00 AM. The investigation of the case was taken over by PW-20 ACP S.L.Dua (then Inspector, SHO Police Station Shahdara). After conducting the inquest proceedings, the dead body was sent for postmortem examination.
4. PW-20 ACP S.L. Dua (IO) reached house No.1/5774, Gali No.14, Balbir Nagar since one pillow and one stripped bed sheet with some blood stains were found and seized by the IO. In the course of investigation, it was revealed that the deceased's wife Usha had illicit relations with the co-accused Vinay Singhal, and this used to be a constant source of quarrel between the deceased and Usha. PW-8 Arun Gupta informed the IO that on 16.09.1991 at about 11:30 PM when he returned to his house in Balbir Nagar in his TSR No.DL-1R-6352, he noticed the light in the deceased's room was still on. He went upstairs to find out from Vipin why the light was on at that odd hour. The door of the deceased's room was ajar and he noticed the deceased being held by accused Usha while Vinay Singhal was inflicting injuries on him.
5. Autopsy on the dead body was conducted by PW-21 Dr. L.K. Barua, who found 15 stab injuries which were ante-mortem in nature. He opined that injury Nos. 2,3,4,5,6,7,8,9, 10, 13 and 14 individually and with other injuries collectively sufficient to cause death in the ordinary course of nature.
6. On completion of the investigation, a report under Section 173 Cr.P.C. was presented to the Court.
7. The accused pleaded not guilty to the charge. The prosecution examined 21 witnesses to bring home the guilt of the accused. The accused examined DW-1 Jagdish and DW-2 Hardesh Kumar in order to prove that the deceased and Usha were having

cordial relations. The relations between the deceased and the landlady were inimical as the landlady wanted the house to be vacated.

8. When examined under Section 313 Cr.P.C., the accused denied the prosecution allegation and pleaded false implication at the behest of the landlady.
9. In this case, the prosecution relied on direct evidence in the shape of PW-8 Arun Kumar Gupta's testimony, who saw the accused committing the deceased's murder. The prosecution further relied on circumstantial evidence as there was a motive to commit the crime i.e. the illicit relationship between Usha, the deceased's wife and the accused. Both accused were also noticed taking the deceased in a TSR in the wee hours of 17.09.1991 by PW-4 Anil Prabhakar and PW-7 Bharat Bhushan.
10. First of all, we shall deal with direct evidence. PW-8 Arun Kumar Gupta's testimony exhibits a strange behaviour contrary to natural human conduct. He deposed that the deceased Vipin Singhal was a tenant under his *Tai ji* (aunt) Smt. Shanti Devi. After 3-4 months of inception of the tenancy, Vinay Singhal started residing with him. He deposed that there used to be a quarrel between the accused and the deceased over Usha. He testified that Usha also used to quarrel with her husband (the deceased). He testified that on 16.09.1991 at about 11:30 PM he reached his house in Balbir Nagar in his TSR No.DL-1R-6352. He went upstairs to the deceased's room as the room light was still on at an odd hour. When he went there, he saw the door of the rented room open. He found accused Usha holding both legs of the deceased firmly while co-accused Vinay Singhal was stabbing him with a knife. He deposed that Vipin Singhal was trying to avoid the attack. There was blood all around. He was terrified by the scene and ran away. He reached his in-laws house in Najafgarh leaving behind his TSR at the spot.
11. Incidentally, this TSR is claimed to have been used in transporting the dead body. According to the prosecution, some blood was also noticed in the TSR. We do not know if this was the reason impelling PW-8 to implicate the accused persons in this

case and to save his own skin, but to say the least, the conduct of this witness is unnatural and the version given by him is highly improbable. It is not believable that when two persons (alleged to be having illicit affairs) are committing murder of one of their spouse, they would keep the door of the room open where the gruesome act is committed. PW-8 also deposed that while the accused Vinay Singhal was attacking, the deceased was trying to ward off the attack. It cannot be believed that the deceased would simply try to save himself and would not raise alarm to attract his neighbours. The matter does not end there. PW-8 claimed to be frightened on seeing the incident and left for Najafgarh to his in-laws house while leaving the TSR at the spot. Again it is highly improbable that a person would not like to escape in his own TSR and would wait for some public transport in the dead of night. Moreover, PW-8 claimed himself to be the deceased's friend. Therefore, even if, he was frightened on seeing this ghastly act and did not have enough courage to intervene and save the deceased, yet his natural reaction would be to immediately go to the police and report the incident. PW-8 also presented an affidavit in the Trial Court that he knew nothing about the case. After giving the affidavit, he stuck to the original version in his chief examination. In cross-examination he tried to explain that the affidavit was obtained by Vinay's relative under threat. It is important to note that the affidavit was duly attested by the Oath Commissioner. It is highly improbable that the witness would be threatened even while the affidavit was typed by an advocate and attested by the Oath Commissioner. If PW-8 was really under threat what defies reason is how the threat was dispelled when he deposed against the accused in Court. All this makes the prosecution version, put forth by this witness, to be unbelievable and the witness unworthy of reliance. Thus, the ocular evidence regarding the commission of the murder by the accused persons is completely knocked out.

12. Now, we turn to the circumstantial evidence. The prosecution relied upon the following circumstances to connect the accused persons with the offence with which they have been charged:-

- (A) Motive – i.e. the illicit relations between the two accused.
 - (B) Evidence of last seen.
 - (C) Recovery of some blood stains from the rented room occupied by the deceased and accused Usha.
13. We would deal with the circumstances one by one.

(A) **MOTIVE**

14. PW-8 Arun Kumar Gupta, who according to the prosecution, was an eye witness of the occurrence and has been disbelieved by us earlier, also testified on the motive for commission of the offence. He deposed that after Vinay Singhal (the accused) shifted to the rented premises of the deceased, there used to be a quarrel between Vinay and the deceased over Usha. Usha also used to quarrel with her husband (the deceased). Witness has made vague statement about the cause of quarrel and is not believable for the reasons stated by us earlier. The Trial Court, in the impugned judgment, held that PW-1 was a witness on the motive as he was a witness to prove the illicit relationship between the two accused. There is nothing in PW-1's testimony to indicate that he was a witness to prove the motive. In any case, apart from a vague statement made by PW-8 Arun Gupta, nothing was produced by the prosecution to prove the alleged motive. Thus, we are of the view that the prosecution failed to establish any motive for the accused to commit the gruesome act.

(B) **EVIDENCE OF LAST SEEN**

15. The prosecution examined PW-4 Anil Prabhakar, PW-7 Bharat Bhushan and PW-9 Kapil to prove this circumstance. PWs 4 and 7 claimed themselves to be friends who used to go for the morning walk together early morning. PW-4 deposed that 5/7 days prior to 23.09.1991 at about 4:00 AM, he was proceeding for morning walk to Shivaji Park via Balbir Nagar; his friend Bharat Bhushan (PW-7) was with him. When they reached Balbir Nagar, Gali No.14, they noticed a TSR parked there. Accused Vinay Singhal was sitting on the driver's seat of the TSR whereas accused Usha was sitting

on the rear seat. She had covered the face of her husband Vipin Singhal with her *Pallu*. He asked them what was the matter and where they were going, to which they told him that they were taking Vipin to the hospital as he was ill.

16. PW-7 Bharat Bhushan by and large corroborated PW-4's testimony. He deposed that half of the *Pallu* of Usha's *sari* was lying on the body of the person lying on the rear seat.
17. These two witnesses were disbelieved by the Trial Court as they had claimed that while on their way back from the morning walk at about 6:00 – 7:00 AM they found the police present near the Balbir Nagar *Nala*, Vipin's dead body was also recovered from the *Nala*. According to the prosecution version, SI Pratap Singh reached the spot i.e. the *Nala* (from where the dead body was recovered). Immediately after receipt of DD No.20 at 6:45 AM, he sent the *rukka* Ex.PW-2/A to the Police Station for registration of a case at 08:05 AM. By that time SI Pratap Singh was not aware of the identity of the dead body. The Trial Court thus held that PWs 4 and 7 were telling a lie that they saw the dead body at 6:00/7:00 AM. PW-4 made improvements in his statement in the Court when he deposed that he saw Vipin Singhal's wife covering his face with the *Pallu* and was confronted with the statement under Section 161 Cr.P.C. Ex.PW-4/DA. The witness was also confronted with his statement on the aspect of noticing Vipin Singhal's dead body on way back from the morning walk and was also confronted with his statement.
18. Though, PWs 4 and 7 claimed themselves to be friends who used go out on morning walks, however, in his cross-examination PW-7 gave the details of Anil Prabhakar which did not match with the one who was examined in the Court. The Trial Court thus, opined that PWs 4 and 7 could not have been friends. In view of the improvements made by PW-4, particularly, about identification of the dead body and a statement by PW-7 that his friend Anil Prabhakar was a resident of Balbir Nagar as against Babarpur and was aged 20-22 years as against the age of PW-4 (who gave his

age as 35 years), no fault could be found with the Trial Court's reasoning that these two witnesses are not credible and reliable.

19. PW-9 Kapil testified that on 16.09.1991 at about 9:30 PM he saw the accused Vinay Singhal and the deceased Vipin exchanging the hot words while going to their rooms. He deposed that the hot words were also exchanged by them in the morning. The Trial Court disbelieved this witness on the ground that he was PW-8's brother and nephew of the landlady. It was held that PW-9's testimony was unnatural and there was every reason to believe that he supported his brother (PW-8), who went to the extent of claiming that he saw the incident and merrily went to his in-laws house leaving his TSR in the gali.
20. Even otherwise, since the other circumstances have not been proved and the prosecution has not explained where were the couple's (Vipin and Usha) children when the deceased was allegedly murdered and there was a time gap between the claim of last seen by PW-9 and the murder and having disbelieved the ocular evidence of PW-8, we are not inclined to place reliance on this weak piece of evidence to hold the accused guilty of murder.

(C) **RECOVERY OF SOME BLOOD STAINS FROM THE RENTED ROOM OCCUPIED BY THE DECEASED AND ACCUSED USHA.**

21. PW-20 ACP S.L.Dua (the then Inspector and SHO) deposed to reaching the spot and the seizure of a pillow, a bed sheet stained with blood and some blood stains from the spot. We have earlier disbelieved PW-8's testimony that accused Usha firmly held the deceased's leg while the deceased was standing and co-accused Vinay Singhal was inflicting injuries. It has emerged from evidence that the deceased and accused Usha had two children who were staying with the couple in the rented room. The prosecution has not led any evidence where the children were at the time of commission of the offence. Obviously, this crime possibly could not have been committed in presence of the children and even if, they were present, the accused

Usha could not have escaped without them. Therefore, the recovery of some blood stains or a blood stained pillow and a bed sheet cannot fasten liability of commission of the murder on the two accused. The evidence adduced can raise only a suspicion that either of the accused may have committed the offence. It can well be the handy work of a third person. It is well settled that suspicion, howsoever strong, cannot take the place of proof. The Trial Court rightly held that the case against the accused persons had not been established beyond all reasonable doubt.

22. It is well settled that the High Court interferes in an order of acquittal when there are substantial and compelling reasons or there is grave miscarriage of justice. What are substantial and compelling reasons were enumerated by the Supreme Court in *Chandrappa & Others v. State of Karnataka*, (2007) 4 SCC 415 as follows: -

“In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution.”

23. It cannot be said that the view taken by the Trial Court was not plausible and reasonable on the basis of evidence adduced. We do not find any substantial and compelling reasons to interfere in the order of acquittal. The leave petition, therefore, has to fail. The same is accordingly dismissed.
24. The leave petition is dismissed in the above terms.

G. P. MITTAL, J.

S. RAVINDRA BHAT, J.

AUGUST 26, 2011

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