

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

DECIDED ON: NOVEMBER 04, 2011

+ CRL. L.P. No. 53/2002

STATE Appellant
Through: Mr. M.N. Dudeja, APP for the State

Versus

RAM JIWAN @ PAPPY Respondent
Through: Mr. V.K. Malik, Adv.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MS. JUSTICE PRATIBHA RANI

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MS. JUSTICE PRATIBHA RANI (OPEN COURT)

%

1. The State seeks leave to file an appeal challenging the judgment dated 24th January, 2001, passed by the learned Additional Sessions Judge, Karkardooma Courts, whereby the respondent was acquitted of the charges under Section 363/364/364A/302 and 201 read with Section 120B IPC.

2. In brief, the case of the prosecution is that on 19th May, 1999, Sumit (the deceased) S/o Sh. Ram Bhajan, aged about four years was found to be missing. Shri Ram

Bhajan got DD No.20A dated 20.05.1999 recorded in P.S. Khajuri Khas. The police and complainant made efforts to search for the child but could not succeed. On 23rd May, 1999, the complainant Ram Bhajan was handed over a copy of ransom note by the respondent which he handed over to the IO. On the basis of this ransom note, FIR No. 199/99, under Sections 363/364-A/302/201 r/w Section 120-B IPC was registered.

3. During investigation, the respondent was arrested on 24th May, 1999 and interrogated. On the basis of the disclosure statement made by him, the dead body of the deceased Sumit was recovered from Yamuna Pushta. It was identified by the complainant to be the body of his son. The dead body was sent for post-mortem. Upon completion of investigation, the charge sheet was filed.

4. After the case was committed to the Court of Sessions, the respondent was charged with offences punishable under Sections 363, 364-A and 302 IPC. As he entered the plea of not guilty, the prosecution examined 16 witnesses to prove its case. The statement of the respondent was recorded under Section 313 Cr. P.C. where he denied the prosecution case and claimed that he was innocent and claiming that the complainant had falsely implicated him to get him to vacate the tenanted premises.

5. Since it was a case based on circumstantial evidence as well the recovery of dead body at the instance of respondent, who allegedly handed over the photocopy of the ransom note to the complainant, the court considered the entire circumstances and arrived at the conclusion that the evidence adduced by the prosecution was insufficient to nail the respondent for the offences he was charged with.

6. The Trial court considered the circumstance No. 1 i.e. handing over of the photocopy of the ransom note to the complainant demanding ₹ 60,000/-. The Trial court was of opinion that neither the specimen handwriting of the respondent was taken for comparison nor was the original of the ransom note ever recovered. It was also considered highly improbable that the Respondent himself would hand over the ransom note to the father of the deceased after committing the crime.

7. The second circumstance proved by the prosecution was recovery of dead body at the behest of the respondent. In that regard also, the testimony of the prosecution witnesses were disbelieved by learned trial court for the reason that the proceedings

regarding recovery of dead body were photographed but the photographer himself demolished the entire case of the prosecution. The testimony of PW-4 Ravi Kumar, the photographer was to the effect that he was called to the police station where respondent was also present and they accompanied the police party, headed by the SHO, to the place from where the dead body was recovered.

8. This statement was contrary to the case of the prosecution whereby the dead body was recovered at the disclosure of the respondent by accompanying the team headed by SI Ajay Kumar from the place where he was arrested. As if these two circumstances were not enough to demolish the case of the prosecution, even the prosecution's witness Constable Om Prakash, a witness to the recovery of dead body failed to support the case of the prosecution version. He went to the extent of denying that accused was arrested in his presence on 24th May, 1999 or that dead body of the child deceased Sumit was recovered at the instance of the respondent, in his presence on that day.

9. When the prosecution case rests upon circumstantial evidence, the circumstances should be conclusively proved and point to the guilt of the accused. The circumstances so proved should not be compatible with any hypothesis except the guilt of the accused. Hon'ble Supreme Court in ***Hanumant Govind Nargundkar & Anr. Vs. State of M.P.***, ***AIR 1952 SC 343***, laid down five principles, extracted as under:-

- “1. The circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established;*
- 2. All the facts so established should be consistent only with the hypothesis of the guilt of the accused;*
- 3. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved;*
- 4. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused; and*
- 5. It must be such as to show that within all human probability the act must have been done by the accused.”*

10. The learned ASJ has considered the circumstance that the place where the dead body was found was an open space which could not be said to be in the exclusive

knowledge or possession of the respondent. Since there was no other material adduced by the prosecution to strengthen its case, taking into consideration the weak circumstantial evidence and that the chain of circumstances sought to be proved by the prosecution did not lead to the hypothesis that it was only the respondent who could have committed the crime, Id. Addl. Sessions Judge acquitted the respondent.

11. The legal position is very clear that High Court possesses wide powers and can re-appreciate the evidence while hearing an appeal against an order of acquittal. In the present case, we are of the opinion that the finding and conclusion of the Trial Court are based on correct and proper appreciation of evidence. As there are no substantial or compelling reasons to interfere with the order of acquittal, the Leave Petition is meritless and is, therefore, dismissed.

**PRATIBHA RANI
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

**NOVEMBER 04, 2011
sd**