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

Date of hearing and Pronouncement: 25th July, 2011

+ CRL.L.P. 83/2004

STATE Petitioner

Through : Mr. Jaideep Malik, APP for the State.
ASI Ram Gopal, PS Mukherjee Nagar.

versus

JAI KUMAR DAS Respondent

Through: Mr. Ajay Verma, Amicus Curiae with
Mr. Gaurav Bhattacharya, Advocate.

AND

+ CRL.L.P. 54/2005

STATE Petitioner

Through : Mr. Jaideep Malik, APP for the State.
ASI Ram Gopal, PS Mukherjee Nagar.

versus

JAI KUMAR DAS Respondent

Through: Mr. Ajay Verma, Amicus Curiae with
Mr. Gaurav Bhattacharya, Advocate.

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?
2. To be referred to the Reporter or not?
3. Whether the Order should be reported in the Digest?

JUDGMENT

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The State seeks leave to appeal, by these two petitions, against the common judgment and order of the learned Sessions Judge dated 11.05.2004 in Sessions Case No.71/2000 and Sessions Case No.72/2000.

By the said judgment, the Respondent Jai Kumar Das was acquitted of the charges of committing offences punishable under Section 224 and 302 of the Indian Penal Code (IPC).

2. The prosecution allegation was that the Respondent had been interned in the beggars' home at Kingsway Camp (premises being known as 'Sewa Kutir') for one year. One Manoj Kumar (hereinafter referred to as "the deceased") was also serving an identical sentence at that time. The deceased was allegedly stabbed by the Respondent with a piece of glass in his abdomen; the injury resulted in the death of Manoj Kumar. The prosecution further alleged that the Respondent allegedly escaped from Sewa Kutir and was apprehended by the PCR van in the vicinity of Police Station Civil Lines, near the Exchange Store at around 3:27 A.M. on 19th August, 1998. The prosecution claims that the Respondent admitted to his guilt and complicity in the death of Manoj Kumar. After completion of the investigation, the Respondent was charged with committing offences mentioned previously in the judgment. He entered the plea of not guilty. The prosecution led its evidence in the form of about 23 witnesses – so far as the charge pertains to the offence of murder; and 6 witnesses as for as the charge pertained to the offence punishable under Section 224 IPC. After considering these depositions and the material on record, the Trial Court concluded that the accused/Respondent was not guilty and acquitted him of all the charges.
3. It is argued that the accused/Respondent's arrest, almost contemporaneously with the incident and his unexplained presence at PS Civil Lines, at 3:27 A.M. was an extremely strong circumstance that ought to have been taken into consideration by the Trial Court. The Learned APP argues that after the homicidal attack upon the deceased Manoj, the Respondent fled from Sewa Kutir. These facts were deposed by PW-6 SI Om Parkash Singh and PW-16 Bairagi Lal. Learned APP for the State

submitted that in disbelieving their evidence and ignoring the circumstances which weighed heavily against the Respondent, the Trial Court committed an error. It is also argued, in addition, that once the prosecution established that the Respondent was present at 3:27 A.M. and had been arrested with a piece of glass, an iron rod and was also found wearing blood stained clothes, the onus shifted on him by virtue of Section 106 of the Evidence Act to explain the incriminating circumstances. Since he did not account for them, the finding of acquittal was not justified.

4. We have considered the record in both the cases which were summoned for the purpose of these proceedings. The Trial Court while concluding that the Respondent was not guilty (and since the case is entirely based on circumstantial evidence) – noticed the following discrepancies and omissions in the prosecution evidence, which according to it were sufficient to justify acquittal:-

- (1) That PW 6 and PW-16 on the one hand stated that when the deceased was seen at around 11:30 P.M. and even subsequently, the wound, in his abdomen was visible. However, during the proceedings it transpired that the *Kurta* recovered in that regard did not bear any cut mark.

- (2) The prosecution had alleged that the deceased Manoj was taken for treatment at around 11:30 P.M. – the time by which the attack had taken place. However, PW-23 Smt. Bhajan Kaur, who treated and dispensed medicine to the deceased, in her deposition clearly stated that he was given medication for loose motion. She did not mention having noticed any cut mark or bleeding on the deceased's body. She also produced Ex.PW-23/A, the relevant register for this purpose which was marked during the trial.

- (3) PW-17, the one prosecution witness who claimed to have seen the cut marks in the abdomen was himself uncertain in this regard. At one place he stated that he noticed bleeding at 11:00 P.M. but subsequently upon cross-examination by the prosecution, by leave of the Court, he fixed the time at 1:00 A.M. on 19.08.1998.
- (4) All witnesses stated that Manoj was in his undergarments (therefore, if there was any cut or injury on his abdomen that was noticeable). However, PW-16 stated that he was fully dressed in *Kurta Payjama*.
- (5) All prosecution witnesses clearly deposed that the deceased was conscious between 1:00 and 1:30 A.M.
- (6) The prosecution's inability to prove any enmity or motive, on part of the Respondent.
5. One of the circumstances which led the trial Court to hold the Respondent not guilty to the charges was inordinate and unexplained delay in lodging of the FIR. The Trial Court recorded, materially, in this regard that :-

“39. *There is yet another fact that throws immense doubt on the prosecution's case. Despite the alleged apprehension of the accused Jai Kumar with the alleged weapon of offence at 3.27 am, the investigating officers PW25 and PW27 have claimed that no case of murder as the specific cause of death of Manoj was not known. Therefore they were awaiting the instructions of the SDM, more so since the death was a custodial death. In other words, even so soon after the death and alleged apprehension of the accused Jai Kumar, SDM was not able to give directions for registration of the case under Section 302 IPC against the accused and needed time till 31st to issue such directions. The only conclusion that can be drawn is that there was no case made out against the accused and subsequently, in order to hide the true facts, a belated FIR was registered against the accused and a case made out against him.*”

6. So far as the charge pertaining to the offence punishable under Section 224 IPC is concerned, the trial Court noticed that the prosecution was unable to substantiate it and on the other hand, the evidence suggested that no window pane had been broken; no witness mentioned hearing about the shattering of any glass. The prosecution did not even produce any site map to prove that the Respondent had escaped from Sewa Kutir.
7. The prosecution did not make any blood comparison or analysis of the sample allegedly found on the Respondent hand when he was arrested at 3:27 A.M. by PW-24.
8. It has been held that the standard to be applied by the High Court while considering whether or not to grant leave to Appeal against the order of an acquittal is to see if there are substantial or compelling reasons to do so in the Trial Courts, such as glaring errors in appreciation of law; overlooking material evidence; and generally adopting any approach resulting in grave miscarriage of justice etc.
9. Having considered the records in both the cases, we find that no such reasons are forthcoming which warrant the grant of leave in either of them. The Trial Court's findings are well reasoned and do not call for any interference. The leave petitions are therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

G. P. MITTAL
(JUDGE)

JULY 25, 2011

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