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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Hearing & Decision: 8th August, 2011

+ CRL. L.P. 92/2007

STATE OF NCT OF DELHI

..... Petitioner

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

versus

ROOP KISHORE & ORS.

..... Respondents

Through: Mr. Amit Baisoya, Proxy for Mr. Kamal
Katyan, Adv. for Respondent Nos.1, 3 & 4.
Mr. Dalip Singh, Adv. for Respondent No.2.

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?

J U D G M E N T

G. P. MITTAL, J (OPEN COURT)

1. The State seeks leave to file an appeal against a judgment dated 30.11.2006 in Sessions Case No.15/2003 whereby the Respondents (the accused) were acquitted of the charge for the offence punishable under sections 365/ 302/ 201/ 120B Indian Penal Code (IPC).
2. According to the prosecution version on 27.08.2002 Ram Singh Sharma (the deceased) left his house on a Hero Honda motorcycle No.DL 6SQ 0198. He used to return home by 10:30/ 11:00 P.M. That day, since he did not return home, his wife, Maya Devi called him up on his mobile phone. The telephone was

disconnected by someone. She, therefore, became suspicious and called her nephew Ramesh Chand Sharma (PW-1). He went in search of Ram Singh Sharma. He went to the house of Sajal Chatterjee since deceased. He met Seema Chatterjee, (wife of Sajal Chatterjee), who informed him that his uncle visited their house but then went away. PW-1, therefore, went to the Police Station (PS) Dabri and lodged DD No.7B Ex.PW-1/B stating that Ram Singh Sharma was missing since 2:25 A.M. on 28.08.2002. On the same day Smt. Maya Devi went to PS Dabri and filed a report Ex. PW-31/A with the police. She informed SI Ravi Pawar that her husband had gone to PS Dabri at 9:40 P.M. regarding missing of a lady Renu. She expressed her suspicion on Sajal Chatterjee and informed that said Sajal Chatterjee had helped Ramesh Chand Sharma (PW-1) in search of her husband till 4:00 A.M. and had left saying that he would return after changing the clothes in half an hour. Maya Devi informed the SI that when Ramesh Chand Sharma (PW-1) went to Chatterjee's house at 5:00 P.M., the latter was not available. She informed the SI that she suspected that Sajal Chatterjee had concealed her husband as he (Sajal Chatterjee) owed huge sum of money to her husband.

3. On 28.08.2002 the dead body of deceased was recovered from a forest in Vasant Kunj. Since the deceased's wife Maya Devi and other family members had expressed their suspicion about Sajal Chatterjee's role, Inspector Lakhinder Singh (the IO) visited house of Sajal Chatterjee (A-74, Mahavir Vihar). The IO was informed by Seema Chatterjee that Sajal Chatterjee (accused) had gone somewhere early morning.
4. According to the prosecution, Inspector Lakhinder Singh noticed blood stains in a room of House No.A-74, Mahavir Vihar belonging to accused Sajal Chatterjee. The said blood stains were lifted with the help of cotton converted into a *pulanda* and sealed with the seal of 'RS'. The IO made enquiries about Sajal Chatterjee

from Sibbu (PW-3) as he was Sajal's friend. Sibbu informed the IO that Sajal had taken his Zen car bearing No. DL 2CJ 5996 and returned it on the same night.

5. The Zen car bearing No. DL 2CJ 5996 was inspected by the Crime Team and one chance print was lifted from the rear view mirror of the vehicle. The IO noticed a blood stain on the rexin of the right side front door. The IO cut that portion from the vehicle converted it into a *pulanda* and sealed the same with seal 'RS'.
6. On 30.08.2002, SI Sanjay Kumar prepared moulds of two tyres of the Zen car and seized them.
7. On 02.09.2002 the IO interrogated accused Seema Chatterjee who confessed her guilt. She made a disclosure statement Ex. PW-31/D and in pursuance to it she got recovered a shirt and one pant, belonging to Sajal Chatterjee, alleged to be stained with blood. She also got recovered one old *Salwaar Kameej* of her maid servant Mamta (PW-5).
8. On 03.09.2002 in the course of further investigation and on the basis of Seema's disclosure statement the accused Ravi was arrested. He also made a disclosure statement Ex. PW-31/F and got recovered one Samsung mobile phone and one burnt chip (SIM card). In pursuance of his disclosure statement Ravi got recovered a blood stained bed sheet from Ram Jodi Mandir, Dabri, which was used for committing the murder of Ram Singh Sharma; he also got recovered some registration papers of the motorcycle belonging to the deceased. Thereafter, accused Pawan Kumar was also arrested on 03.09.2002. He made disclosure statement Ex. PW-31/E and pointed out the place of offence and the place of recovery of the blood stained bed sheet. An application was moved by the IO for holding test identification proceedings (TIP) in respect of the accused Pawan Kumar. Pawan Kumar, however, refused to join TIP. It is alleged that accused Pawan Kumar disclosed about the involvement of accused Roop Kishore in the commission of the offence. The chance prints lifted from the rear view mirror of

Zen car matched with the specimen finger impression of Pawan Kumar. Thereafter, accused Roop Kishore was arrested.

9. In the meanwhile on 24.10.2002 two decomposed dead bodies along with three suicide notes were recovered from Room No.301, Hotel Harsh International, Navi Karim. The bodies were identified as those of Sajal Chatterjee and Vijay Kumar. In one of the suicide notes Sajal Chatterjee mentioned their (his and Vijay's) involvement in Ram Singh Sharma's murder. After completion of the investigation, a report under Section 173 Cr.P.C. was filed against the accused persons. Accused Sajal Chatterjee and Vijay had died before filing of the chargesheet. Whereas, accused Raju was declared a proclaimed offender.
10. In order to bring home the guilt of the accused, the prosecution examined 33 witnesses.
11. In their examination under Section 313 Cr.P.C. the accused persons denied the prosecution allegation and pleaded false implication. During the trial and also at the time of hearing this appeal, the prosecution relied on the following circumstances to bring home the guilt of the accused: -
 - (i) Sajal Chatterjee had to pay huge amount to Ram Singh Sharma.
 - (ii) The deceased being last seen at the house of the accused Sajal Chatterjee (A-74, Mahavir Vihar).
 - (iii) Recovery of blood stain from a room in House No.A-74, Mahavir Vihar belonging to accused Sajal Chatterjee (since deceased) and recovery of blood stained clothes and documents.
 - (iv) Chance prints lifted from Zen car No.DL 2CJ 5996 matching with the specimen finger impression of accused Pawan Kumar and matching of tyre tread marks with the moulds of the tyres prepared by PW-8 (SI Sanjay Kumar).

12. By the impugned judgment the Trial Court found that except the circumstance of Sajal Chatterjee being heavily indebted to the deceased Ram Singh Sharma and recovery of a blood stained bed sheet at accused Ravi's instance, no other circumstance was established against the accused persons. The earlier said two circumstances were too innocuous to bring home the guilt of the accused. On the test of circumstantial evidence as laid down in *Hanumant Govind Nargundkar v. State of Madhya Pradesh*, AIR 1952 SC 343, it was held that the accused persons cannot be convicted on mere suspicion - the accused were accordingly acquitted of the charges framed against them.
13. We do agree with the circumstance that Sajal Chatterjee had to pay huge amount of money to deceased Ram Singh Sharma was not enough to connect the accused persons with the offence with which they have been charged - particularly in view of the fact that accused Sajal Chatterjee (since deceased) had gone missing immediately after the disappearance and recovery of Ram Singh Sharma's dead body also him taking responsibility of deceased's death in suicide note recovered in the room where Sajal Chatterjee's and Vijay's dead body were recovered. Similarly, recovery of the blood stained bed sheet at the accused Ravi's instance cannot lead to an inference that he was either responsible for committing Ram Singh Sharma's murder or that he was a party to destruction of the evidence with the intention of screening the offender from punishment or for entering into a conspiracy to commit these offences. This is true that direct evidence of conspiracy is rarely available as conspiracies are always hatched in secrecy. Thus, the accused being party to conspiracy also has to be proved by circumstantial evidence and the circumstances have to be established fully and firmly on the test as laid down in *Hanumant Nargundkar* (supra), which is completely lacking in this case.

CIRCUMSTANCE OF LAST SEEN

14. On this circumstance, the Trial Court analyzed the testimonies of Ramesh Chand Sharma (PW-1) and Pankaj (PW-11). They were primarily two witnesses produced by the prosecution regarding the deceased being last seen at House No.A-74, Mahavir Vihar. Both, Ramesh Chand Sharma (PW-1) and Pankaj (PW-11), are the deceased's nephews. PW-1 Ramesh Chand Sharma deposed that on 27.08.2002 at about 9:30 P.M. his uncle Ram Singh Sharma went to PS Dabri after which he did not return and, therefore, he made enquiries from the friends of his uncle. He went to the house of accused Sajal Chatterjee and met his wife Seema. On enquiry, she informed him that Ram Singh Sharma did go to their house but went away. He deposed that he went to PS Dabri and made a report (DD No.7B) that his uncle was missing. In his cross-examination PW-11 deposed that he came to know through Kalu Pradhan that Ram Singh Sharma had gone to the Sajal Chatterjee's house.
15. PW-2 Smt. Maya Devi deposed that her husband Ram Singh Sharma used to return home by about 10:30/ 11:00 P.M. On 27.08.2002 when he did not return, she tried to contact him on his mobile phone. The phone was disconnected after one ring, which was unusual. She, therefore, contacted her nephew Ramesh Chand Sharma and he, after enquiry, informed her that Ram Singh Sharma went to Sajal Chatterjee's house. She deposed that a missing report was lodged by PW-1 at about 2:30 A.M.
16. PW-11 Pankaj on this aspect deposed that on 27.08.2002 when he returned home, his aunt informed him that his uncle (Ram Singh Sharma) who had gone to PS Dabri along with Kalu Pradhan, etc. had not returned. He telephoned Kalu Pradhan, who informed him (PW-11) that Ram Singh Sharma was with him at PS Dabri at 9:30 P.M. Kalu Pradhan further informed PW-11 that while in the Police Station Ram Singh Sharma (deceased) had received a telephone and then left the Police Station. PW-1 testified that he contacted his relations to find out whereabouts of the deceased but he could not be traced. At 11:15 P.M. he

proceeded to Sajal Chatterjee's house at A-74, Mahavir Vihar, where he met accused Seema Chatterjee standing at the gate of her house. On enquiry Seema Chatterjee told him that Ram Singh Sharma did not visit her house.

17. The Trial Court analyzed the testimonies of PW-1, PW-2 and PW-11 as also the DD No.7B and opined that the prosecution version given by PW-1, PW-2 and PW-11 *inter se* as mentioned in DD No.7B (Ex. PW-1/B) were contradictory, as the DD report mentioned that accused Sajal Chatterjee (now deceased) had informed PW-1 that Ram Singh Sharma, after visiting their house left from there, whereas PW-1 deposed in the court that when he enquired from Seema Chatterjee (and not from Sajal Chatterjee) about the deceased (Ram Singh Sharma) she said that though the deceased did visit their house, he had gone away. As stated earlier on this very aspect PW-11 Seema Chatterjee had said that Ram Singh Sharma did not visit their house at all. On the basis of these contradictory versions the Trial Court opined that the prosecution version was not credible and, therefore, the same could not be believed. In view of the contradictions pointed out, the Trial Court's conclusion, in our opinion cannot be faulted.
18. Even if it is assumed that deceased visited Sajal Chatterjee's house on the night of 27.08.2002, then too the accused cannot be convicted for commission of the offence as an explanation was given by Seema Chatterjee that though the deceased visited the said house, he left, later.
19. Thus, in the absence of any other circumstance to show that the deceased's murder took place in that house an inference cannot be drawn against accused Seema Chatterjee that she was informed in destruction of the evidence to screen the offender from punishment. It has to be kept in mind that deceased Sajal Chatterjee and Vijay left suicide notes recovered by the police from Hotel Harsh International, Navi Karim along with their dead bodies wherein Sajal Chatterjee had claimed that they had committed the murder (of the deceased). Thus in the

absence of any other evidence to connect the accused with the commission of the offence, deceased's visit to House No.A-74, Mahavir Vihar, could not be said that the accused (Respondents herein) were in any way connected with commission of the offence with which they were charged. We do not find any infirmity in the Trial Court's reasoning on this count.

RECOVERY OF A BLOOD STAIN FROM HOUSE NO.A-74, MAHAVIR VIHAR

20. According to the prosecution, PW-32 (the IO) noticed a blood stain under the bed in the inner room of House No.A-74, Mahavir Vihar belonging to the accused Sajal Chatterjee (the deceased) and accused Seema Chatterjee. PW-5's and PW-31's testimonies were relied upon to prove this stance that the blood stain in the house was lifted by PW-32.
21. The prosecution's case was that the deceased was murdered at the house of accused while the children and PW-5 were present; it is unbelievable that the deceased would have been so murdered. It is the prosecution's case that accused Seema Chatterjee asked Mamta (PW-5) to clean the room and that she noticed blood stains in the inner room of the house. When Mamta (PW-5) was examined during the trial, she did not support the prosecution version. She denied that she was either asked by accused Seema Chatterjee to clean the room at 11:30 P.M. or that she noticed any blood stain in the inner room.
22. Thus, it was the prosecution version that the blood stains were cleaned by maid servant Mamta (PW-5), however, that could not be true as blood stains were allegedly noticed on the next day by SI Ravi Pawar (PW-31) and Inspector Lakhinder Singh (PW-32). Assuming that in spite of room being cleaned, a blood stain was lapsed, the PW-31's and PW-32's testimonies in this regard are neither credible nor consistent. PW-31 deposed that on 28.08.2002 they visited the House No.A-74, Mahavir Vihar and lifted blood stain from the verandah. PW-32 in his examination-in-chief deposed that blood stain was lifted from the room

from under the bed. In his cross-examination PW-32 shifted his stand and deposed that blood was lifted on 02.09.2002 after 6 days of the occurrence. The witness was permitted to be re-examined by the learned APP and he again changed his stand and deposed that the blood stain was lifted only after 6 days was not the correct statement, and he stated so, as he was tensed because of his mother's illness and, therefore, could not depose correct facts.

23. According to both the witnesses, there was just a blood stain. As per prosecution, the Ram Singh Sharma's murder took place on the intervening night of 27.08.2002 and 28.08.2002 and the dead body was recovered from Kusum Pahari, Vasant Kunj at about 7:30 A.M. These witnesses initially went to Vasant Kunj and might have been in a position to reach A-74, Mahavir Vihar only in the afternoon. Firstly, as observed earlier if a blood stain is cleaned some residue of the blood may remain on the floor, but a stain would not be there and secondly a small amount of blood would dry up after many hours. It is not possible to lift a dried blood stain with the help of a cotton as has been deposed by PW-31 and PW-32. In such a circumstance, the blood can be lifted with the help of a knife or a blade. Thus, story of a blood having been lifted from the inner room of House No.A-74, Mahavir Vihar appears to have been concocted while PW-32 in collusion with PW-31.
24. Moreover, as noticed by us earlier in his cross-examination PW-32 introduced the story of blood stain having been lifted only after 6 days of the occurrence i.e. just before accused Seema Chatterjee's arrest, which he cannot change in his re-examination by the APP. After recovery of the blood stain there is no other evidence collected by the police against accused Seema Chatterjee. It seems that PW-32 (the IO) was apprehensive that he might not be in a position to justify Seema's arrest on 02.09.2002 if the blood stain was lifted on 28.08.2002. It appears that the IO has introduced the story of blood stain having been lifted on

02.09.2002. as an improvement. In the circumstances, the story of a blood stain having been lifted on 28.08.2002 is incredible and unbelievable.

THE RECOVERY OF ACCUSED PAWAN'S CHANCE PRINTS OF REAR MIRROR OF ZEN CAR NO.DL 2CJ 5996.

25. According to the prosecution Zen car No.DL 2CJ 5996 owned by PW-3 Sibbu was used by accused Sajal Chatterjee and others including accused Pawan Kumar to dispose of deceased Ram Singh Sharma's dead body. The chance prints 'Q1' lifted by the police tallied with the specimen left thumb impression 'S1' of accused Pawan Kumar. The Trial Court held *inter alia* that the prosecution did not produce any evidence that Pawan's specimen finger print were ever taken and sent to the Finger Print Bureau. Thus, in the absence of any such evidence, the same would not have been compared with the chance prints. It remains only in the realm of doubt as to whose specimen finger prints were compared. In the circumstances, we do not find any good reason to interfere with the Trial Court finding that the chance prints have not been proved to be belonging to accused Pawan Kumar.

TYRE TREAD MARKS OF ZEN CAR NO.DL 2CJ 5996

26. It is submitted by the learned APP that use of Zen car No.DL 2CJ 5996 is proved by comparison of the tyre moulds of the car taken by crime team by memo Ex. PW-8/B. These were sent to FSL for comparison and by report Ex. CW-1/B it was opined that on comparison of different characteristic indentation marks of exhibit mark 1A1 with the exhibited mark as 2B1 as similar characteristics on superimposition. In this regard it is important to note that the evidence of comparison of tyre moulds with the skid marks is not conclusive evidence. This mainly depends on the make of the tyre and the condition of the tyre. This circumstance at the most can be used as an assurance if other circumstances established the guilt beyond reasonable doubt.

27. In this case as stated earlier accused Sajal Chatterjee and Vijay committed the deceased's murder. As per PW-11 the car was taken by accused Sajal Chatterjee. Thus, it does not lead to the conclusion that the accused persons acquitted by the impugned order were in any way connected with the offence in the above circumstance.
28. PW-11, of course, deposed that on the night of 27.08.2002 he went to the house of Sajal Chatterjee to enquire whether the deceased went there. He saw one white Maruti Zen car No.DL 2CJ 5996 being driven by a bespectacled man. Accused Pawan Kumar was identified as the man, who was driving the car then. PW-11 deposed that Seema Chatterjee gave a signal to Pawan Kumar to go back and he therefore drove away. The Trial Court rightly disbelieved this part of PW-11's testimony as it was neither possible to see the number of a car being driven in the dead of night with head lights on nor was possible to identify a person sitting on the driver's seat particularly when the person is a stranger. Thus, the alleged lifting of the tyre tread marks from the spot (place of the recovery of dead body) and PW-11's testimony being incredible, they do not connect the accused persons with the offence with which they were charged.

THE BLOOD STAIN IN THE ZEN CAR

29. According to PW-32 (the IO) a blood stain was noted on the rexin of front right window of Zen car, the said rexin piece was cut and sent to FSL for examination. As per FSL report Ex. PW-32/D, the FSL gave positive test for the blood. We do not know whether this was animal blood or human blood as there is no indication in the report Ex. PW-32/D that the blood on the rexin reacted to the test for human blood. Thus, this piece of evidence does not lead us anywhere. Firstly, because presence of mere blood stain, when neither the origin nor the blood group is proved, does not show that the car was used for the disposal of dead body. Secondly, even if it is believed that the car was used, it does not connect any of the accused against whom the leave petition has been filed, as accused Sajal

Chatterjee (since deceased) in his suicide note admitted having committed the deceased's murder. Thus, even if PW-3's car was used, it does not in any way prove involvement of any of the accused (Respondents herein) in the offence for which they have been charged.

30. As held by the Trial Court the recovery of a bed sheet stained with 'B' group blood at accused Ravi's instance on 03.09.2002 is not such a circumstance by itself to prove any knowledge on his (Ravi's) part about commission of the deceased's murder and disposal of his dead body. The recovery of Samsung mobile and the burnt SIM card is also not in any way connected to the commission of the crime.
31. It is well settled that when the case rests on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, 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. 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 it must be such as to show that within all human probability the act must have been done by the accused. [*Hanumant Govind Nargundkar v. State of Madhya Pradesh*, AIR 1952 SC 343; *Sharad Birdhi Chand Sarda v. State of Maharashtra*, AIR 1984 SC 1622].
32. In *Hanumant Nargundkar* (supra) the Supreme Court reminded the courts dealing with criminal cases not to be swept by the conjectures and suspicion in filling up gaps by straining the circumstances. The Supreme Court relying upon *Reg v. Hodge*, (1838) 2 Lew. 227 observed as under: -

“The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”

33. As regards Respondent Roop Kishore, PW-32 (the IO) frankly admitted in cross-examination that there was no evidence to connect him with the offence. As far as accused Ravi and Pawan Kumar are concerned, there is just a suspicion that they might have been involved in destruction of the evidence to screen the offender. Suspicion, however strong, cannot take place of proof. The Trial Court, therefore, rightly reached the conclusion that the case against the Respondents was not established beyond reasonable doubt. We do not find any good ground to upset the judgment of acquittal passed by the Trial Court.
34. The leave petition is dismissed in above terms.

G. P. MITTAL, J.

S. RAVINDRA BHAT, J.

AUGUST 08, 2011
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