

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

Date of decision: 05.08.2011

+ **CRL.L.P. 235/2011**

STATE Petitioner
Through : Sh. M.N. Dudeja, APP.
versus

RAFAT AHMED @ SAHIL @ CHAND Respondent
Through : Nemo.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE G.P. MITTAL

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| 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 |

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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Crl. M.A. 5655/2011 (Under Section 5 of the Limitation Act) in Crl. L.P. 235/2011

For the reasons mentioned in the application, CrI. M.A. 5655/2011 is allowed.

Crl. L.P. 235/2011

1. The State seeks leave to appeal against a judgment and order of the learned Addl.

Sessions Judge dated 30.09.2010, acquitting the respondent of the charge of having committed offence punishable under Section 302 IPC.

2. The prosecution's allegations were that the respondent had inflicted knife injuries upon one Jang Bahadur Yadav and fled from the spot. The latter was found in a critically injured condition at Loha Mandi, opposite Bentex. Information about the incident was recorded through a D.D. entry 32A (Ex.PW-7/A) at 10.30 PM. The injured Jang Bahadur Yadav, (whose identity was ascertained after his Identity Card was recovered from his personal effects by the police), was taken to the DDU Hospital, where he breathed his last. The doctor, who examined the deceased, did not record any statement. The injured - Jang Bahadur Yadav apparently stated that he was attacked by some unknown assailants. A First Information Report (FIR), namely 133/2009 (Ex. PW-8/A) was initially registered at Police Station Naraina in respect of offence punishable under Section 324 IPC. After Jang Bahadur Yadav died, the allegation was modified to the offence under Section 302 IPC. The police conducted investigation and after recording statements of several witnesses, including Ravis Rana, PW-1, the Team Leader of the concern (Intouch Solution Private Limited, where Jang Bahadur Yadav used to work), arrested the respondent/accused on 26.09.2009. The prosecution's allegations were that on account of a love interest with Sonia, the deceased nursed a grudge against the accused. Sonia apparently had committed suicide and the deceased felt that the accused was responsible for that event. The prosecution, therefore, alleged that the accused respondent was responsible for the murderous attack on the accused, with whom he had an altercation and heated exchange of words. Placing reliance on the theory of "last seen" and circumstantial evidence, the prosecution filed its report, accusing the respondent of committing Jang Bahadur Yadav's murder. The Trial Court framed charges. The respondent entered the plea of *not guilty* and claimed trial. The prosecution relied upon the testimonies of more than 22 witnesses and material exhibits. After duly considering them, the Trial Court held that the prosecution was unable to establish the respondent's guilt beyond reasonable doubt and acquitted him.

3. It is submitted by learned APP that the Trial Court fell into error in not properly

appreciating the material evidence which connected the respondent with the crime. Learned counsel pointed-out that the call details, which were produced by PW-21 and 22 established that the accused respondent was in the vicinity at the relevant time. Learned counsel also urged that even though the testimony of PW-1 was disbelieved because he did not support the prosecution version, there was sufficient material on the record by way of deposition of PW-3, the deceased's brother, who testified about a threat held-out by the accused to the deceased on account of the common love interest that both of them had with Sonia.

4. We have carefully considered the submissions. We have also gone through the Trial Court records which were requisitioned for the purpose of these proceedings. The prosecution mainly premised its allegations on circumstantial evidence. The principal circumstance by which the prosecution sought to implicate the respondent was his alleged common love interest (along with the deceased) in Sonia that led to her suicide. For this purpose, the prosecution relied heavily on the testimony of PW-1. Though this witness had supported the prosecution and recorded a statement during investigation (he was the deceased's Team Leader in the concern where he worked), he did not depose in that regard and was declared hostile. As a consequence, the prosecution was unable to establish a very vital circumstance, i.e. motive.

5. So far as the testimony of the last seen was concerned, we notice that even though the prosecution argued that PW-3 was a material evidence in that regard, the facts alleged nowhere made-out such a case. PW-3 was the deceased's brother; he lived in a separate premises. The Trial Court noticed in this regard that the witness, PW-3:

(a) did not depose about the threat which he had stated in the previous police statement during the investigation – in the examination-in-chief, before the Court. He was made to state this in the leading questions put to him by the learned Public Prosecutor after permission was sought in this regard;

(b) made discrepant statements about the alleged visit of the accused respondent to his house when he held-out threats against the deceased. The Trial Court noticed in this regard that in the previous police statement, the witness had stated that the accused had

visited his house about two months prior to the incident; however, in the deposition, he stated that the time gap to be about 1 ½ months;

(c) the circumstance that the witness resided separately. The Trial Court reasoned that there was no cause for the accused to, therefore, visit this witness and hold-out a threat to the deceased. In this context, the Trial Court pertinently observed that the prosecution had alleged separately that the deceased, accused and Sonia used to be in touch over the cell phone, and sought to place reliance on mobile call details. This improbabilized the story of the alleged threat.

6. The prosecution's reliance on the call details – the records of which were sought to be proved by PW-20 and 21 were rejected by the Trial Court by the application of Section 65B of the Evidence Act. The Court held that in the absence of certification mandated by the provision as to the integrity of the electronic record, the documents were inadmissible in evidence. Independently, the Court also reasoned that at best the call records disclosed that the accused was present within a radius of 4-5 kms. of the place where the incident occurred. That, however, could not implicate or connect him to the place of last seen. We also notice that the Trial Court disbelieved the manner of arrest of the accused. Most importantly, it completely threw-out the prosecution version about the recovery of the weapon of offence, i.e. the knife. In this regard, the Trial Court noticed that even though the respondent accused was arrested on 26.09.2009 – a fact testified by all the police witnesses, and he allegedly made a disclosure statement even pointing-out the place where the weapon was hidden, i.e. in the Pusa Agricultural Institute (again testified by PW-15 and 18), no attempt was made to recover or secure the weapon till 30.09.2009.

7. It has been held and reiterated time and again over the last five decades that in order for a State to successfully secure permission to prefer an appeal against an acquittal, there ought to be substantial and compelling reasons for the High Court to grant it. These substantial and compelling reasons do not cover minor errors in appreciation of evidence or law. There has to be something more than that. The Trial Court's reasoning in support of acquittal has to reflect serious misapplication of law or overlook essential

facts or material evidence. There could also be cases where the Trial Court's decision discloses completely erroneous approach which leads to miscarriage of justice.

8. On an overall conspectus of circumstances, we find none of these elements in the present case, warranting grant of leave. The Criminal Leave Petition, being unmerited is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

G.P. MITTAL
(JUDGE)

AUGUST 05, 2011
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