

IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 17.10.2011

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CRL.L.P. No. 404/2011

STATE

..... Petitioner

Through : Mr. Pawan Kumar Sharma, Standing Counsel

Versus

Dharmender Singh Mehra & Anr.

..... Respondents

Through : None

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MS. JUSTICE PRATIBHA RANI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The State seeks leave to appeal, against a judgment and order of the learned Additional Sessions Judge, dated 24-11-2011 in SC NO. 172/09 acquitting the respondent/ accused, for committing the offences punishable under Sections 302/34 IPC.

2. The prosecution alleged that on 26.07.04, on receipt of DD No. 19 (Ex. PW 12/A) at 6. 30 PM PW 12, SI Chattar Singh together with PW 19 and two constables reached E – 128/2, SVM Security Office, Main Market Mohammadpur Village, New Delhi. Rameshpal Singh PW-10 (the complainant) met them at the spot and opened the lock of the office of one SVM Security. One male, identified by the complainant, as Om Prakash was found dead in a pool of blood; blood was

also oozing from his mouth and he had injuries on the face. The deceased's shirt of was torn. In the inner room, an individual, identified by the complainant as Subhash Yadav (accused) lay in a drunken condition, besmirched with blood stains on his clothes. There were blood stains on the table; and articles were strewn around. The complainant, an Assistant Sub- inspector in Delhi Police, in his statement Ex. P.W 10/P stated that his wife Sarbati Chaudhary (PW 3) was running SVM Security Agency in Mohammadpur Village, for the previous 4 ½ years. The agency employed a supervisor and 25 Security Guards. Dharmender Singh was working as Supervisor. PW-10 had received a complaint against Subhash Yadav that he had taken liquor while on duty. On 26.07.04 the complainant called up Dharmender on his mobile phone, No. 9868227468 and directed that Subhash Yadav ought to be removed; he also asked Dharmender to meet him. The mobile SIM and the handset had been given by PW-10 to Dharmender for official purposes. Around 8.30 AM Dharmender went to the complainant's house, with the deceased; he was asked to relieve Subhash Yadav from duties immediately and asked to employ someone else. It was stated that PW-10 also directed a cut of 3 day's wages from Subhas Yadav, as penalty. PW-10 further stated that around 6.10 PM when he reached the SVM Security Agency office, the premises were locked and Dharmender was absent. PW-10 had a key to the office, ; the other key used to be with Dharmender. PW-10 opened the premises, and found Om Prakash lying dead. Subhash Yadav was murmuring in the inner room; both rooms contained blood stains and articles were strewn around. The complainant locked the premises, and phoned the police from the shop of PW 4. On receipt of information SI Chattar Singh (PW 19) alongwith police party reached the spot.

3. The prosecution alleged that during investigation HC Lal Chand (PW 8) lifted two chance prints from the office table in the office, one chance print from a

fridge and three chance prints from the glass lying on the table by report Ex. PW 8/A. The crime team photographed the scene, seizures of articles were made, and the body was sent for post-mortem examination. It was alleged that Dharmender was arrested on 28.07.04 at around 5.10 pm upon identification by a secret informer; this was witnessed by complainant (Ex. PW. 12/D) he had possession of a brown colour rexin purse in which he had a "Trump" SIM Card a Harrison key, Rs.250/- cash, identity card issued by SVM and visiting cards of SVM. He was taken to RK Puram where Subhash Yadav was also found. On the pointing out of accused Dharmender Singh Mehra accused Subhash was arrested by arrest memo Ex. P.W 12/C. His personal search was conducted. The blood sample of Subhash was seized by memo Ex. PW 12/H and blood sample of Dharmender was seized by memo Ex. PW. 12/I. It was alleged that pursuant to Dharmender's disclosure, his clothes, mobile battery, bag and cash Ex. P. 16 to Ex. P. 23 were recovered, by seizure memo Ex. PW. 10/P4. During investigation, the prescription slip issued by PW. 1 Dr. Ganpati Bhomik regarding treatment of injury suffered by Dharmender Singh Mehra Ex. P.W. 1/A dated 27.07.04 was seized vide memo Ex. P.1/B. Dr. Ganpati Bhomik duly identified Dharmender as the one who approached him on 27.07.04 at around 9 AM for treatment of his hand injury. Subhash Yadav also made a disclosure. As per postmortem report Ex. PW. 9/A the cause of death was asphyxia due to throttling. The handwriting samples of Dharmender were taken on 28.07.04 by memo Ex. PW 12/K and after examination it with the questioned handwriting, a report Ex. PW. 27/A was obtained; it was produced during the trial. The hand and leg finger prints of accused were taken by memo Ex. PW 12/I. The finger prints and palm impression report is Ex. PW. 25/A &PW. 25/B.

4. The prosecution also claimed that details of call records of mobile phone No. 9868227468 Ex. P.W. 7/A1 – A-3 were placed on record. The allotment of mobile

to the complainant, evidenced by Ex. PW 19/B, was seized on 04.10.04. The rent receipt Ex. P.3 of the premises was seized on 04.10.2004 by Ex. PW. 19/A. The ownership details in respect of Mobile phone No. 9868227468 were collected on 07.04.2004 and seized by memo Ex. P.W. 19/C The telephone No. 26168928 installed at E- 128/2, the SVM office was installed in the name of Sarbati and proof in this regard was seized on 11.10.04 by memo Ex. P.W. 19/D. After investigation, the accused were charged for the offences mentioned above; they claimed to be not guilty and sought trial.

5. The prosecution relied on the testimony of several witnesses, besides material exhibits produced during the trial. After considering these, and the submissions made during the proceedings, the Trial Court, through the impugned judgment acquitted the accused of all charges.

6. The learned APP urged that the impugned judgment discloses substantial and compelling reasons as to why leave ought to be granted. It was urged that the Trial Court's conclusion that the prosecution did not prove motive, and that the facts emerging did not implicate the accused, is contrary to the record. It was emphasized that the combined testimony of PW-5 and the complainant, PW-10 clearly pointed to the role played by both accused; moreover, the other evidence in the form of mobile phone call details, and the circumstances which stood proved, clearly corroborated the disclosure statements made by the accused. Having regard to these, the Trial Court could not reasonably have concluded that the prosecution was unable to establish the respondents' guilt.

7. This court has considered the submissions, as well as the Trial Court records, which were examined carefully. The records were requisitioned for the purpose of this petition. Before proceeding further with the merits, it would be

useful to notice the reasons which impelled the Trial Court to conclude that the accused had not been proved guilty. The relevant extracts of the impugned judgment, are reproduced below:

“In the present case, the prosecution has not proved any motive on part of accused persons to commit the murder. It is pertinent to mention here that IO did not examine the other guards employed in the security agency. The testimony of these witnesses could have thrown light on the relations among the accused persons, deceased and the complainant. This Court is required to critically examine the evidence in the present case, which is based on circumstantial evidence.

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10.6 In the present case it is not disputed that the specimen handwriting and finger prints were taken by IO without permission of the Court. It is quite strange that despite provisions of identification of Prisoners Act, the investigating agency does not care to take specimen finger prints as provided under the Act. Only on account of casual approach of IO, such evidence is going to be excluded. The Senior police officers must give suitable direction to IO's that specimen finger prints should be taken in accordance with the provisions of identification of Prisoners Act. Thus, the entire evidence regarding the finger print and handwriting has to be excluded for consideration.

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12.1 I consider, that testimony of PW 5 Bachan Singh and PW 10 Ramesh Pal Singh, both are not reliable enough to record conviction on this point also. There are umpteen reasons for it. As far as the conduct of the complainant is concerned, it is extremely doubtful since beginning. If we go through his testimony in detail in entirety it does not leave even an iota of doubt that in fact he was running the security agency in the name of his wife. On paper it was a partnership firm. The partners seem to be the wife and daughter of the accused. Earlier there was one Priya Baiju who retired. Admittedly, there were keys of the office more than one. One key is stated to be with accused and wife of the complainant and other key is stated to be with the complainant. However, there is divergent evidence on the point that who used to open the office. PW 5 stated that office was used to be opened sometime by the lady guards also. It also came in the evidence that accused

Dharmender Singh Mehra used to stay in the office only. So where is the question of opening it. IO is so irresponsible that he says that he did not make any enquiry regarding the number of keys of the office. PW 5 Bachan Singh in his statement before the police had stated that he went to the office of SVM when the police had arrived but in his statement before the Court, he took a somersault and stated that when Ramesh Pal Singh initially opened the office and found the dead body, he came to him rushing and informed about the same and then the matter was informed to the police. It also came in his testimony that in the meanwhile he also went along with the witness to the spot. Therefore, it is on record that the venue was accessible to complainant before the police reached there. Even if we believe the testimony of PW 5 for the sake of argument that accused left the office at 3 pm then it cannot be said with certainty that the complainant or any other person did not visit that place in between. It has also come in the testimony that there were to gates. However, one of the gate, the prosecution witnesses say that used to remain closed. But when there is a specific defence that complainant may also be involved in the offence, the possibility of this gate being used cannot be ruled out. I consider, that taking into account the entire law on last seen evidence which has been discussed to detail in the judgment of Arvind @ Chhotu Vs. State A. 362/2001, the circumstances regarding last seen in the present case is not sufficient to convict the accused.

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Recovery of articles.

14.0 The prosecution is heavily relying upon the recovery of SIM card and battery from the possession of accused. They say that the Telephone No. 9868227468 of Motorola Company was given to accused Dharmender Singh by complainant Ramesh Pal Singh for discharge of official duty. If it was so, who stopped the IO to ascertain the location of the accused persons at the relevant time? He did not make any enquiry in this regard. I do not find any evidence on record to conclusively hold that this telephone No. was with accused Dharmender Singh Mehra. Regarding the arrest and recovery from accused Dharmender Singh Mehra on 28.07.04, again there are material contradictions. As per prosecution witnesses, accused Dharmender Singh was arrested from Kailash Colony at around 5 – 5.30 pm and from there he was taken to PS RK Puram, where co-accused Subhash Yadav was arrested and the disclosure statement of both the accused persons were recorded. It is pertinent to mention here that the disclosure of both the accused persons are

almost verbatim, IO states that he had dictated the same. And then these accused persons are taken to Safdarjang Hospital at 6.30 pm and thereafter, they go to PW 1 Ganpati Bhomik and effect recovery from New Friends Colony. However, if we persue the case diary, the recoveries are effected at the instance of accused Dharmender Singh Mehra immediately after arrest and thereafter, he is taken to PS. Therefore, apparently the time at which accused Dharmender Singh has been shown to be arrested is incorrect. The presence of accused Subhash Yadav on the spot could also be conclusively proved by the Crime Team report. The prosecution did not prove it for the reasons best known to them. The case diary states that accused Subhash Yadav had also suffered some injury but he was not medically examined for the reasons best known to the IO.”

8. Several circumstances were sought to alleged against the accused as indicative of their guilt. And yet, the most important of them was the account of how the body was discovered, and the previous, as well as surrounding circumstances. Dharmender was a supervisor, in the security agency. He was allegedly asked to terminate Subhash Yadav’s employment, as the latter was found one day in a drunken condition, when on duty. The evidence of these entirely hinges on the testimony of the complainant. At best, this has some link with a possible motive. The Trial Court, after appreciation of evidence, concluded that motive had not been proved. This court is of opinion that the said conclusion cannot be by any means termed unreasonable, or insubstantial. The court appreciated the entirety of circumstances. As far as the discovery of the body on the day of the incident is concerned, the Trial Court – in its impugned judgment, portions of which have been extracted above, noticed that the two contemporary witnesses, PW-5 and the complainant, PW-10 vastly differed in their testimonies. It was held that Dharmender used to stay in the office premises, which raised some pertinent questions as to why they had to be locked, and keys kept with separate people. Similarly, the court seriously doubted PW-10’s version about discovery of the body. In the deposition, he did not mention having seen it, in the first instance;

however, PW-5 clearly deposed that the complainant had informed him about having seen the deceased's body, and then gone to the police. Similarly, as regards the recoveries, the Trial Court disbelieved the entire prosecution version.

9. This Court has considered the submissions as well as the Trial Court's records. It is now very well established that in all criminal cases, the prosecution has to establish the guilt of the accused beyond reasonable doubt through unimpeachable evidence. Further, the Code of Criminal Procedure permits an appeal against convictions and in others, in a limited category of cases. It does not include an appeal against acquittal. The Courts have uniformly construed this to mean that while considering petitions for grant of leave by the State - against acquittal of accused, there ought to be substantial and compelling reasons, apparent from the record. These compelling reasons may include mis-appreciation of evidence, wrong application of law and glaring omissions on the record.

10. In this case, an overall reading of the evidence leads this court to conclude that the reasoning adopted by the Trial Court while acquitting the accused, is not an implausible or unreasonable one. Having regard to the proper or appropriate test applicable while hearing leave petitions, this court is of the further opinion that there are no substantial or compelling reasons enabling the grant of leave to appeal, to the state. Therefore, the petition has to fail. It is accordingly dismissed.

(S.RAVINDRA BHAT)
JUDGE

October 17, 2011

(PRATIBHA RANI)
JUDGE