

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

DECIDED ON: 14.10.2011

+ **CRL.L.P. 369/2011**

STATE

..... Petitioner

Through : Sh. Sanjay Lao, APP.

versus

DHARAM PAL

..... 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. 9063/2011 (for condonation of delay) in Crl. L.P. 369/2011

The delay is condoned for the reasons mentioned in the application. The application stands disposed of accordingly.

Crl. L.P. 369/2011

1. The State seeks leave to appeal by the present petition against a judgment and order of the learned ASJ dated 23.07.2010 by which he acquitted the respondent of the charge of having committed offence punishable under Section 302 IPC.
2. The prosecution had alleged that on 17.10.2004, Police Station Narela received information from one Mahender Singh of Village Bawana about the recovery of the dead body of

Ram Nath, at 08.35 AM. Ram Nath, a native of U.P., was working at his tubewell in the fields, was found dead on his cot. The information was duly recorded by a diary entry and the matter was handed-over to SI Manwar Patwal, who with other police staff and Mahender Singh went to the spot. The body was identified by Kali Charan, the complainant and the brother of the deceased, who deposed as PW-6. It was apparent from a look at the body that the deceased had been inflicted with injuries on the face, left cheek and neck, and several other wounds were also found; all of them were caused by some sharp-edged weapon. The police recorded the statement of Kali Charan, who indicated that for about 2 ½ years, the deceased used to live near the tubewell of one Chaudhary Ishwar Singh, working as agricultural laborer in the fields and was also working for Chaudhary Mahender Singh. The distance between these two places was around half-a- kilometer. The prosecution alleged that on 17.10.2004, when PW-6 was passing through the tubewell, where the deceased was working, the latter was sleeping, covered with a bed sheet and when he went near, he discovered that Ram Nath had injuries and had already died. PW-6 informed that his younger brother, Het Ram and another person named Jagdish had reached the spot and informed him that the previous night, at 12.00 AM, when he (Het Ram) was returning after watching a movie, he saw the respondent going towards the field via a canal passage armed with an axe. He also stated that the deceased had complained about harassment by the accused. After conclusion of the postmortem examination and consideration of materials, the respondent, who had been arrested in the meanwhile, was charged with having committed the murder. He denied any involvement and claimed trial. The prosecution basically relied upon the testimony of several witnesses and also other materials, including the Postmortem Report and the recovery of an axe, said to be the murder weapon as well as the blood-stained clothes from the premises of the respondent/accused. After consideration of these and the submissions of the parties, the Trial Court, by the impugned judgment, acquitted the accused.

3. Sh. Sanjay Lao, learned APP urges that the State ought to be granted leave to appeal in the present case since the Trial Court fell into error in not appreciating the full impact and appropriateness of the last seen evidence which had to be seen in the backdrop of the recoveries made from the respondent/accused's premises. It is submitted that the Doctor, who had examined the body and furnished the Postmortem Report deposed in Court that the axe in question produced during the trial could have been the murder weapon and the cause for the injuries of the deceased.

4. The Trial Court disbelieved the version and doubted the testimonies of PWs-6 & 8. The relevant discussion about the evidence of last seen may be seen by the following extracts of the impugned judgment:

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27. *The first circumstance that the deceased had gone along with the accused to the Mela (of Ram Leela) on the night in question along with other persons has been deposed by PW8 that they had gone to Ram Leela ground at about 7 p.m one day before the murder of his brother Ram Nath and that he along with one Hetu returned back as they did not enjoy the Ram Leela. In his cross examination, PW8 has replied that when he and Hetu returned from Ram Leela ground, there were other five persons including the deceased and the accused remaining there.*

28. *From the said evidence, the factum of the accused and the deceased last seen together cannot be said to have been established and even if it is taken as true that both the deceased as well as the accused along with other persons were there at the Ram Leela ground, it was an innocent act and it is not the case of the prosecution that accused accompanied the deceased to the Ram Leela ground with some ulterior motive or under suspicious circumstances. It is not at all established on the record, either by way of any document or from the mouth of any of the witness, as to when the accused or the deceased had returned to their respective places. Hence, there is no “last seen evidence” as such established on the record.*

29. *Second is the circumstance that the accused was seen with an axe on his right shoulder at 12.30 a.m coming from Bawana side and going towards the fields where Ram Nath was working as Guard, as deposed by PW8.*

30. *Taking the said deposition of PW8 as true for the sake of arguments, I have no piece of evidence before me to know as to what was the distance between the place where the accused was seen with an axe by PW8 Het Ram and the place where the dead body of the deceased was recovered. Moreover, it is the claim of PW8 that his fellow Hetu also saw the accused with an axe at the said time and place but the said Hetu has not been produced in the witness box by the prosecution for the reasons best known to the IO. If it was so and in the morning when PW8 came to know regarding the death of the deceased and when he started shouting that the accused had killed the deceased, I failed to understand as to why PW8 was not made the complainant of the case. PW8 further failed to depose as to how he and Hetu saw the accused with an axe or as to whether there was light so as to see the accused in the said circumstances. I can safely infer that there was no light so as to identify a person definitely and it was because of this reason that the complainant PW6 Kali Charan deposed that PW8, his brother, saw the accused with an axe in the light of a truck going on the road. The explanation of the source of light has been tendered by PW6, who was otherwise deposing the*

said fact with regard to the accused having been seen with an axe, on the knowledge derived from PW8.

31. There is a sharp and material contradiction between the deposition of PW8 and whatever allegedly told by PW8 to PW6, as per deposition of PW6, with regard to the position of PW8 when he saw the accused with an axe. PW8 has categorically deposed that when he was returning after watching the film on VCR and reached at Bawana Canal Bridge, he saw the accused with an axe whereas for PW Kali Charan, when PW8 Het Ram was enjoying Jhula (ride), he saw the accused Dharampal carrying an axe on his shoulder towards Hanuman Mandir Canal Road in the light of a truck going on the road.

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5. This Court has the benefit of the considering the Trial Court records which were requisitioned for the purpose of present proceeding. PWs-6 & 8, in the opinion of this Court cannot be considered to be material witnesses as far as the last seen circumstance is concerned. Both contradicted each other as well as the previous statement recorded by the police during investigation, under Section 161 Cr.PC. The circumstances in which PW-6 is alleged to have returned home after seeing the mela and proceeding to watch a movie is not very clear. Furthermore, the Postmortem Report fixes the time of death to be about 36 hours from the time of its commencement, i.e. 01.00 PM, on 18.10.2004. If that were the position, the time of death was approximately 01.00 AM of the morning intervening 16.10.2004/17.10.2004. If these were correct, the version of PW-6 as well as PW-8 about their having seen the accused around 12-12.30 in the midnight intervening 16.10.2004/17.10.2004 assumes great significance. That apart, this Court is also alive to the circumstance that last seen by itself cannot implicate the accused unless other corroborative materials and circumstances strongly and irrevocably point to his complicity in the crime. (Refer to *Hanumant v. State of M.P.* AIR 1952 SC 343, *Sharad Birdichand Sarda v. State* 1984 (4) SCC 116 & *State of Goa v. Sanjay Thakran* 2007 (3) SCC 755).

6. It has been often stated and reiterated that the Supreme Court and various High Courts' task while evaluating a petition for leave to appeal is not to delve deep into the merits but to see that the judgment of the Trial Court impugned before it discloses substantial or compelling circumstances, warranting grant of such relief. This would extend to significant misappreciation of evidence, wrong appreciation of law or the unreasonableness or perversity in the general approach of the Trial Court leading to miscarriage of justice. On an overall consideration of the

circumstances, of this case, we are of the opinion that none of these elements exist to persuade us to take a view contrary to that of the Trial Court. Consequently, the petition has to fail. It is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

G.P.MITTAL
(JUDGE)

OCTOBER 14, 2011
‘ajk’