

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

**RESERVED ON 05.09.2011
PRONOUNCED ON: 19.09.2011**

+ **CRL.L.P. 331/2010**

STATE

..... Petitioner

Through: Sh. Sanjay Lao, APP.

versus

UPENDER RAM AND ORS.

..... Respondents

Through: Ms. Kamna Vohra, *Amicus Curiae*, for
Respondent Nos. 1 to 3 along with Respondent No. 3 in
person.

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

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Crl. M.A. 15001/2010 (for condonation of delay) in Crl. L.P. 331/2010

For the reasons mentioned in the application, the application is allowed. Crl. M.A.
15001/2010 is accordingly disposed of.

Crl. L.P. 331/2010

1. The State seeks leave to appeal against a judgment and order of the learned Addl.
Sessions Judge dated 16.04.2010 in S.C. No. 506/2006 whereby the respondents were

acquitted for having committed the offences punishable under Sections 302/201/120-B IPC.

2. The prosecution allegations briefly were that an FIR was registered on the basis of a D.D. entry on 22.09.2003 in regard to the murder of a young boy – Rinku, aged 10-12 years at Flat No. 848, Mangol Puri, Delhi. Rinku was the son of PW-3 Shakuntala Devi. The latter stayed with the deceased and her daughters in the ground floor of the premises. The first floor was let-out to Gopal, Pandit and Santosh and the second floor was let-out to Siyaram and Ashok. Shakuntala Devi, PW-3 deposed that as usual, on 22.09.2003, she left for her work at about 09.00 AM and her daughters also left in the morning. Rinku was left behind. He used to attend afternoon school. She was informed, upon her return, that Rinku had been murdered. She expressed suspicion on the respondents' complicity, who she claimed, used to stay with Ashok. She alleged that the accused used to visit Ashok and that one day prior to the incident, there was an altercation between them and her, when they visited Ashok as she had objected to that. Ashok – as stated earlier, was a tenant on the second floor. Shakuntala Devi also deposed that the accused had been residing in Ashok's house about two days prior to the incident which was objected. The altercation and the difference of opinion between the accused/respondents and the Shakuntala Devi was, according to the prosecution, the motive behind the murder.

3. On the basis of the statements recorded by PW-3 and her daughter Pinki, PW-4, and after conducting investigation, during the course of which the respondent accused were arrested, charges were framed against them. The respondent denied guilt and claimed trial. The prosecution relied on the testimonies of 22 witnesses as also several exhibits, including alleged recoveries made during the course of investigation, from the crime scene. After considering them, and the submission of parties, the Trial Court, by the impugned judgment acquitted the accused.

4. Learned APP urged that the Trial Court has, in this case, mis-appreciated the evidence and on flimsy grounds acquitted the respondents. Learned APP argued that the Court completely overlooked the testimony of PW-2, the witness to the last seen evidence and further fell into error in not appreciating the deposition of PW-3 in its proper perspective. Learned counsel urged that besides, the depositions of PWs-9 and 15

established that the button of the shirt worn by one of the accused and his diary was found at the crime scene. The body was in fact discovered on the first floor of the premises, occupied by other tenants. Learned counsel also urged that the accused had access to these premises since the first floor tenants used to keep their key outside in a place accessible to all.

5. We have considered the submissions as well as the original record in this case. At the outset, it would be relevant to notice that the prosecution *inter alia* based its case on circumstantial evidence. It has been repeatedly held (*Padala Veera Reddy v. State of A.P.* 1989 (Supp) 2 SCC 706; *State of U.P. v. Ashok Kumar Srivastava* 1992 (2) SCC 86) that in appreciating circumstantial evidence, the Court should record a conviction only if all links in the chain are complete, pointing to the guilt of the accused and the court is further satisfied that every hypothesis of the accused's innocence is capable of being negated during evidence. Each circumstance should be fully proved and the cumulative of all the facts so established must point unerringly to the guilt of the accused.

6. As far as the motive is concerned, the alleged previous altercation between PW-3 and the respondents, the Trial Court observed that the allegations had not been supported by the deposition of any independent witness. Furthermore, if in fact there was some animosity, the prosecution was not able to explain why the accused took Rinku to the first floor of the premises and why he would have not resisted them. It was further held that the prosecution allegations were that the accused used to visit Ashok, who lived on the second floor; further their relationship with the tenants on the first floor – where the body was found, could not be proved. PW-4 had apparently corroborated PW-3's allegations with regard to an altercation. However, in the cross-examination, she admitted not having any firsthand knowledge but being informed about it by her mother. The Trial Court also noticed that one of the tenants on the first floor – Santosh – had been detained and questioned for 5-6 days before the accused were charged in this case. Having regard to these circumstances, the Court felt that there was no proof of any altercation on 21.09.2003 nor was it of such intensity to create the kind of animus required to result in a murder.

7. The second circumstance put forward by the prosecution was that one Naresh,

PW-2, the brother-in-law of the deceased (elder sister's husband) lived in an adjacent lane and had seen the deceased alive between 10.00 and 11.00 AM on the day of the incident, purchasing *singhadas* and again somewhere between 12 noon and 01.00 PM when he saw the house locked and the accused getting down the stairs. The Court noticed that even though PW-2 claimed that he was not working anywhere and used to stay at home, his mother-in-law, PW-3 admitted that Naresh used to ply a rickshaw. These contradictions were considered sufficiently serious for the Court to doubt the veracity of PW-2; the Court deduced that if in fact he was working as suggested by PW-3, there was no reason for him to be near his house at 12 noon.

8. The prosecution had relied upon the recovery of a button and alleged that it had broken-off from the shirt of one of the accused Ratan Ram. It was also alleged that the pocket diary of Upender Ram, one of the respondents was found at the spot. The Court, after considering the Seizure Memos, Ex. PW-9/B and Ex. PW-9/C, observed that there was no public witness to corroborate the seizure of these. The Court further noticed that the crime team which had visited the spot with IO of the case had photographed the place. These photographs did not show any pocket diary; similarly, the button was also not visible. Commenting on the recovery of various articles at the instance of the accused, the Court disbelieved the depositions of PW-5, 9 and 14 and held them to be untrustworthy in the following terms:

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46. *Whereas all recovery memos exhibited by PW-5 show that the recovery was effected from Ist floor room of H.No.1017, PW-5/Vinod during his cross-examination stated that it was on ground floor. Further, although PW-9/Ct.Rajneesh, PW-15/SI-Raghubir Singh and PW-20/Inspector K G Tyagi have denied any prior acquaintance with PW-5/Vinod but PW-Vinod admitted during his cross-examination that it is correct that he knew all the police officials.*

47. *Thus, PW-5/Vinod was clearly a stock witness planted by IO for the reasons best known to him. Although, there are numerous other contradictions between statements of recovery witnesses-PW-5/Vinod; PW-9/Ct.Rajneesh, PW-15/SI-Raghubir and IO of the case PW-20/Inspector K G Tyagi but discussing the same would be worthless because on the basis findings discussed above, the court has reached to a conclusion that the recoveries allegedly effected by police at the instance*

of accused persons from H.No.1017, Mangol Puri are highly doubtful and do not at all inspire confidence of the court for reasons discussed above. The court is of the view that nothing was recovered by IO from H.No.1017, Mangol Puri at the instance of accused persons which could be admissible in evidence by virtue of provisions of section 27 of Evidence Act.

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9. One of the most important circumstances said to be against the accused was a piece of hair found in the right fist of the deceased Rinku. The hair samples of the accused were sent for comparison. The report of the concerned experts was produced as Ex. PW-16/A. The same reads as follows:

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“on morphological and microscopical examination of the hair in exhibits '5' (hair found in right fist of deceased/Rinku) and exhibits 9-1, 9-2 and 9-3 (hair of accused persons) were of human origin. However, the hair in exhibit 9-1, 9-2 and 9-3 were not found to be similar with the hair in Ex.'5'.”

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10. The Trial Court, besides expressing skepticism about the nature and quality of the evidence led by the prosecution regarding each alleged incriminating circumstance also made certain general observations about the evidence brought on the record. The Court felt that Santosh and Gopal, the first floor tenants, where in fact the murder took place and the body was discovered, were illegally detained along with the father of Gopal and Ashok. Further, the Court noted that the IO made no effort to investigate and place on the record as to who had peeped inside the locked room in the first floor premises where the body was seen. This lapse was considered a significant and serious one, besides the other omissions and lapses which emerged from a reading of the record, on account of the contradictory statements made by the witnesses.

11. It has been often said that the High Court would take a view different from that of the Trial Court - undoubtedly after complete appraisal and independent scrutiny of the evidence, only if the Trial Court’s reasoning betrays gross mis-appreciation of facts or

mis-appreciation of law. It would not be open to the High Court acting as an Appellate Court to substitute its views merely because another possible view can be taken about the prosecution version. In other words, if the approach of the Trial Court and the findings rendered by it are based on reasonable basis and proper appreciation of law, the High Court would not be justified in interfering with those findings. Adopting this approach, we are of the opinion that the impugned judgment calls for no interference and the reasoning of the Trial Court is sound.

12. For the above reasons, we are not convinced that the State has made out any case for grant of leave to appeal. The petition being unmerited is, therefore, dismissed.

S. RAVINDRA BHAT, J

G. P. MITTAL, J

SEPTEMBER 19, 2011
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