

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

DECIDED ON: NOVEMBER 25, 2011

+ CRL.L.P. 411/2011 and Crl. M.A.No.10532/2011

STATE NCT OF DELHI THR DCP Petitioner
Through: Ms. Richa Kapur, APP

versus

DINESH @ DINNI & ORS. Respondents
Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MS. JUSTICE PRATIBHA RANI

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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1. The State seeks leave to appeal against the judgment and order dated 19.08.2010 passed by the learned Addl. Sessions Judge in S.C No.142/10, acquitting the respondents/accused for having committed the offence punishable under Section 302/34 IPC.
2. The brief facts, according to the prosecution, are that the

complainant (PW-2), father of the deceased was employed with the National Textiles Corporation. He lodged a complaint stating that one of his sons i.e. the deceased Sanjeev @ Johny used to study in Class-10 and that sometime back i.e. 25/30 days prior to the reporting of the incident, his neighbor Ms. Murty, w/o Baljit Singh had gone to his house and alleged that the deceased harboured bad intentions towards her daughter Meera and had asked him to counsel the deceased or else he would face dire consequences. It was reported that the same night at 8 PM one Dinesh along with his friends i.e. Hemant, Mitu and Anil had gone to his house and abused Sanjeev and again reiterated that in case he continued to see Meera the deceased would be cut into pieces and thrown. It was alleged that on 03.08.2002 at about 8 PM, one of his sons Yog Pal was sitting on the Gramin Medical Store at the main bus stand of the Village where he saw that the deceased Sanjeev along with several others who were going to take *kawar* from Hardwar. At that time Dinesh, Hemant, Anil and Mitu were also standing in close proximity with the deceased; this was reported to him by Yog Pal. Sanjeev i.e. the deceased did not return home that night. PW-2 claims to have assumed that the deceased had gone to Hardwar with the *kawarias*. He then saw that a crowd of villagers near the school; he, and another son Yog Pal (PW-1) also reached there; where they learnt that a boy had been thrown out after having been killed in the school. He recognized the body to be that of Sanjeev. It had injuries at the neck, left side of the chest, hips and left armpit inflicted with a sharp edged weapon. Blood was lying in the vicinity and had also soaked the slippers. He voiced his suspicion against the respondents/accused. On

the basis of these allegations, an FIR was registered and subsequently after conclusion of investigation, the respondents/accused were charged for committing the crime. In the meantime, they were arrested. They pleaded not guilty and claimed trial.

3. In the course of proceedings, the Trial Court examined several prosecution witnesses including two relatives of the deceased i.e. PW-1 & PW-2 as well as the Doctor, who conducted the postmortem and submitted the report and several other police witnesses. On an overall examination of these materials, the Trial Court concluded that the prosecution had not established the guilt of the accused beyond reasonable doubt and accordingly acquitted them.

4. It is urged by learned Addl. Public Prosecutor for the State that the Trial Court fell into error in disbelieving the last seen testimony having regard to the circumstances. Counsel emphasized that pursuant to the disclosure statement made by the accused incriminating articles including a knife without a handle (used for committing the crime) as well as the wrist watch and purse containing the electricity bill of PW-2's premises were recovered which pointed with almost certainty the role of the accused/respondents. This coupled with the fact that PW-1 had seen the accused along with the deceased on the previous evening just before he went missing and was subsequently found dead, established that they were the perpetrators of the crime.

5. We have carefully examined the record. The prosecution has based its case entirely on circumstantial evidence. It alleged existence of motive against the accused Dinesh and others as supporting him. The evidence relied upon by the prosecution in this regard was of PW-

1 & PW-2. They deposed that the deceased Sanjeev had an eye on Meera; the accused did not like this and held out threats more than once. Even PW-2 had occasion to counsel them. The Trial Court considered the nature of evidence and also the testimony of PW-17, the Investigating Officer of the case, who admitted during his examination that Meera did not support this theory. The Trial Court next considered the last seen circumstance and ruled that having regard to the established facts, the prosecution was unable to prove this incriminating circumstance against the respondents/accused beyond reasonable doubt. The Trial Court's reasoning in this regard is as follows:-

“ First circumstance against the accused alleged by the prosecution is that the deceased was last seen in the company of the accused at the bus stand of Village Kutub Garh on 03.08.2002 at about 7/8 PM. The star witness of the “last seen evidence” is PW1 Yog Pal because it was he who disclosed the same to PW2 Om Parkash, the father of the deceased. PW1 Yog Pal deposed that accused Dinesh, Anil, Hemant along with another Anil were seen by him at the bus stand Kutub Garh and his deceased brother did not reach the house in the night. In his cross-examination, he deposed that about 10/15 persons were present at the bus stand and that he had no suspicion on any person at that time and that he did not lodge any police report in the night when his brother did not reach home and that he used to work as helper at the medical store of his friend at the bus stand. He did not talk to his brother on the bus stand nor the deceased tried to talk to him. He did not ask the deceased as to why he was standing with the accused at the bus stand despite the threat given by the accused to the deceased 20/25 days ago. He admitted that deceased had not left the house in his presence on 03.08.2002. He could not produce any document of his employment at the said Gramin Medical Store at the said bus stand which belonged to his friend. He admitted that the said owner of the said medical store was not interrogated by the police nor he produced the said owner before the police nor he had shown the place to the police where he was standing at that time or where the deceased was seen standing by him. He was confronted

with his previous statement Ex.PW1/DA where it was not found recorded that on 03.08.2002 when he was standing at the said medical store at the said bus stand, he saw all the three accused standing and his brother Sanjeev was also there.

25. The IO of the case PW17 has admitted that he had not recorded the statement of the owner of the said medical store where PW1 Yog Pal was employed or regarding his presence on the said evening when allegedly the accused as well as deceased were seen standing at the said bus stand. Even if I take the deposition of PW1 as it is, it does not establish the factum of "last seen" in the sense in which it is used as a piece of evidence in the chain of circumstances in a murder case. PW2, the father of the deceased, has deposed that Yog Pal told him that the persons standing at the bus stand were going to take Kanwar from Haridwar and the deceased might have also gone there. It is the presence in general and not in specification which has come on the record. Whatever has been established on record is the scene at the bus stand that some persons were standing at the bus stand including the accused and the deceased and some of the said persons were to go to Haridwar for taking Kanwar. Hence, I am of the considered view that the "last seen evidence" as the link in the chain of circumstances has not been established beyond reasonable doubt so as to say that the deceased was exclusively in the company of the accused so as to draw the inference that these were the accused with whom the deceased left the said place i.e. the Bus Stand".

6. The impugned judgment subsequently discussed the nature of evidence presented before it during the course of proceedings and ruled that the recoveries as well as allegations that blood was discovered on the accused's palm as well as on the roof of the premises did not connect them with the crime. The Trial Court went by the FSL report as well as other materials to state that there was no evidence to connect that blood sent for examination with what was actually seized from the premises.

7. It is trite law that while considering petitions for leave to appeal, the High Court does not minutely scrutinize the record or the

impugned judgment of acquittal with a view to form its own opinion. It has to be satisfied that substantial or compelling reasons exist which warrant grant of leave to appeal. The acquittal of an accused is an affirmation of the presumption of innocence which every citizen is entitled to enjoy in our country. Therefore, unless the prosecution discloses that the impugned judgment reveals gross mis-appreciation of law or that it has overlooked some serious facts or has adopted an approach which manifestly leads to injustice, the High Court would be circumspect in granting leave. The approach adopted by the Trial Court in the instant case, in this Court's opinion' both as regards the motive, last seen circumstance as well as recoveries vis-à-vis all the accused in respect of various articles claimed to incriminate them, is sound. It does not merit any interference.

8. Accordingly, we hold that the petition is insubstantial; it is, therefore, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**PRATIBHA RANI
(JUDGE)**

**NOVEMBER 25, 2011
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