

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

**RESERVED ON: 10.03.2011
PRONOUNCED ON: 29.03.2011**

+ CRL. L.P. 420/2010

STATE (NCT OF DELHI) Petitioner
Through: Sh. Jaideep Malik, APP.

versus

VISHNU SHARMA & ORS. Respondents
Through: Sh. K.K. Manan, Advocate.

**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

Crl. M.A. 17387/2010 (Under Section 5 of the Limitation Act)

% 1. Delay of 97 days in filing Leave Petition condoned for the reasons stated in the application.

Crl. L.P. 420/2010

2. The state seeks leave against the judgment and order of the learned Additional Sessions Judge, dated 23.04.2010, in SC No. 99/2008, whereby the respondent (hereafter

“the accused”) was acquitted of the charges under Sections 302 and 120, IPC. He was however, convicted of the charge under Section 201, IPC

3. The prosecution case in brief was that, on 01.05.2007, accused Bhagwat Sharma and Raj Singh were intercepted at police post – Tapovan, while travelling in Santro car No. DL-4CAB-0185, driven by the accused. They were intercepted by officials of police station Muni Ki Reti at police post – Tapovan during a routine checking of vehicles. The accused were asked to open the boot of the car; Raj Singh said he could not do that as they did not have the key. When the boot was opened by accused Raj Singh, a dead body wrapped in a bed sheet with the outer cover of a sack, middle cover of a gadda and inner cover of a bed sheet, were recovered. Thereupon, accused Bhagwat Sharma disclosed that the dead body was of one Dhananjay (hereafter, “the deceased”), who had committed suicide and said that he (Bhagwat Sharma) and Raj Singh were taking the body for its disposal in Rishikesh. The Panchnama was prepared and the dead body was sent for post mortem. In the meanwhile, both the accused were asked not to leave the jurisdiction of P.S. Muni Ki Reti. The Delhi Police were informed about the recovery of dead body, who in turn informed the family members of the deceased.

4. On 02.05.2007, the family members of the deceased reached P.S. Muni Ki Reti and Sanjay (PW-4), the deceased’s younger brother made a statement that deceased was residing in the accused Bhagwat Sharma’s house, and that he had illicit relations with his wife and also had property transactions with the same accused. He further stated that Bhagwat Sharma, had killed his brother (the deceased). On recording the statement, dated 02.05.2007, an un-numbered FIR was recorded. On 11.05.07 a regular FIR was registered at P.S. Dabri, New Delhi bearing No. 396/2007, under Section 302/201/120B.

5. On the basis of the above allegations, and investigations, the accused were charged with various offences; they pleaded not guilty, and claimed trial. After considering the evidence and the materials placed on record, the Trial Court acquitted the accused of the charge of having committed the offences punishable under Sections 302 and 120B IPC, and convicted Bhagwant Sharma and Raj Singh of the offence punishable under Section 201 IPC. Noticing that the prosecution based its case on circumstantial

evidence, the court, on an evaluation of the materials, found that no motive for the murder of the deceased, by the accused was proved, though the recovery and identification of the deceased were proved. Feeling aggrieved, the state seeks leave to appeal through its petition.

6. It is argued that the Trial Court committed an error in not seeing that the accused were involved in the murder of the deceased; concededly they did not have any explanation how the deceased had died. Their explanation about his having committed suicide, or even the reason for the suicide, could not be believed. If indeed the deceased had committed suicide, there was no reason for the accused to not report the matter to the police. Instead, they took the body for disposal, which could not have fit with any hypothesis except his guilt. Coupled with the fact that he had financial transactions with the accused, there was sufficient motive for them to have committed the crime of murder.

7. The Trial Court noticed that on the basis of the un-numbered FIR, on 02.05.2007, both the accused were arrested and the Santro car in which they were travelling was taken into possession by the police and deposited in P.S. Muni Ki Reti. On 26.05.2007, both the accused were brought to Delhi; both of them pointed out the place of incident, i.e. the second floor of C1/214, Madhu Vihar (Ex. PW-15/C & Ex. PW-15/D) and made disclosure statements (Ex. PW-15/E & Ex. PW-15/F). After the disclosure statement of Bhagwat Sharma a pillow was recovered from a room on the second floor of his house. On 06.06.2007, accused Jamuna Devi was arrested, she allegedly pointed out the place of incident (Ex. PW-16/A). On 21.06.2007, accused Vishnu Sharma was arrested and he pointed out the place of incident and made a disclosure statement (Ex. PW-21/D & Ex. PW-21/C).

8. The case of prosecution was that the deceased was residing in the house of the accused (i.e. all other than accused Raj Singh) and was dealing in property with accused Jamuna Devi with whom he had an illicit relationship. The main witness, i.e. the complainant Sanjay (PW-4, the deceased's brother) did not support the prosecution case. In his testimony, Sanjay deposed that the deceased was staying with them (Sanjay and his family) at D-90, Madhu Vihar, Uttam Nagar, New Delhi; he continued to reside with

them till the date of his death. He was declared as a hostile witness by the prosecution. PW-4 denied that his statement was recorded on 02.05.2007 at P.S. Muni Ki Reti. He denied that the deceased was residing with accused Bhagwat Sharma at Dabri for the last 3 or 4 years or that the deceased had any illicit relationship with the accused Jamuna Devi, Bhagwant Sharma's wife. He also denied that his father (Ram Naresh) had loaned the deceased ₹ 1.5 lakhs to purchase land and that because of a money dispute between the deceased and Jamuna Devi, the latter and her family murdered the deceased in Delhi and tried to dispose of the body in the Ganges. He also denied having made a statement to the officials of P.S. Dabri on 12.05.2007.

9. PW-5 Maya Devi, the deceased's mother deposed on the same lines as PW-4. In the chief examination she stated that the deceased was residing with them but later in her cross examination she deposed that the deceased was not staying with them. She said that the deceased was involved in the business of property dealing at Madhu Vihar and she does not know where the deceased used to reside. She further denied that the deceased had ever told her about any illicit relationship he had with the accused Jamuna Devi. She deposed that no statement (by her) was recorded either in P.S. Muni Ki Reti or P.S. Dabri. PW-1, Ram Charit Sinha (father in law of Sanjay, PW-4) also denied of any illicit relationship between the accused Jamuna Devi and the deceased. He however, stated that there was some money transaction pertaining to land between the two, which was told to him by the deceased himself before his death. However, PW-1 was unable to give any particulars regarding the date and time when it was so told to him, or the date on which the deceased took the alleged ₹ 1.5 lakhs from his father. PW-1 supported PW-4 on the point of deceased residing with his family at D-90, Madhu Vihar.

10. From the statements of above witnesses, so far as the motive aspect is concerned, all of them have denied that the deceased had illicit relations with accused Jamuna Devi or that there was some property transaction between the deceased and the accused (except PW-1 who talks about there being a property transaction, but is not able to give any particulars regarding the date, mode of payment or regarding the particulars of the land so

purchased). Therefore, as such the motive aspect was not proved, in the opinion of the Trial Court.

11. On the question of identification of the body, PW-4, Sanjay states that the body was not identifiable, but since the police said the body is of deceased, they (PW-4, PW-5 and sister Kanchan Kumari) cremated the body. However, PW-5, the mother, stated that the body was identifiable and she identified the body from the injury on the deceased's foot. PW-1 deposed that the dead body was identified as that of the deceased by PW-4, PW-5 and sister Kanchan Kumari. PW-2 Ganesh Singh Yadav, (resident of the deceased's neighbourhood) states that he identified the dead body as that of the deceased. It was argued on behalf of the accused that PW-4 and PW-5 ruled out the presence of PW-1 and PW-2 in the police station as well the cremation ground and they specifically deposed that they were not accompanied by anyone except Kanchan Kumari. However, the Trial Court held that the statement of PW-4 and PW-5 could not be considered or taken into account for discrediting the versions of PW-1 and PW-2, because they (PW-4 and PW-5) were declared hostile. Therefore, the dead body of the deceased stood identified.

12. On the question of recovery of the dead body, PW-12 Constable Ashok Kumar Tiwari deposed that on 01.05.2007, he, along with PW-9 SI S.S. Bhandari and Constable Ravinder Yadav were checking the vehicles at Tapovan Check Post from 4:30 AM onwards and at about 5:30 AM, a black Santro car bearing No. DL-4CAB-0185 was seen coming from Rishikesh. The car was stopped and the driver was asked about the luggage in the vehicle. Initially he refused to say anything and stated that there was nothing in the car. The driver was asked to open the car boot (dikki) upon which he tried to evade, saying that he did not have the keys but finally when the dikki was opened, a dead body wrapped in a double bed sheet, with a "gadda" cover, which was covered with a sack was found. PW-12 specifically stated that accused Raj Singh was driving the car and accused Bhagwat Sharma was sitting by the driver, Raj Singh's side. He further stated that inquiries were made from Raj Singh as well as Bhagwat Sharma and SI S.S. Bhandari prepared the Panchnama. He also deposed that accused Bhagwat Sharma said that the

dead body was of one Dhananjay; the dead body was sent for post mortem. The accused Bhagwat Sharma and Raj Singh were told that till the investigation was completed, they had to stay in a hotel. The hotel that the accused were staying in was very close to the police post. PW-9, SI S.S. Bhandari fully supported the case of PW-12 on each and every aspect.

13. It was held that no suggestion was given to PW-12, that the accused were not found in the car, or that the car was not checked on 01.05.2007. The only suggestion given was on behalf of Raj Singh and that to only to the effect that inquiries were made from Bhagwat Sharma and not from him and that he (Raj Singh) had told PW-9 that he had come to Delhi on 30.04.2007 itself. Hence, the accused were held to have admitted their presence and interception of the car by police officials on 01.05.2007. The conduct of accused Raj Singh and accused Bhagwat Sharma in hesitating to disclose the contents of dikki and the fact that they were found in the early morning hours, having left Delhi late in the night, proves the conscious possession of the dead body of Dhananjay, deceased.

14. PW-10 SI Marut Shah stated that on 02.05.2007, he was posted at police post Dhalwala, P.S. Muni Ki Reti and he alongwith PW-9, S.S. Bhandari reached Tapovan, near Gangadham and arrested accused Bhagwat Sharma and Raj Singh. The black Santro was also taken into possession by them and was deposited at P.S. Muni Ki Reti. In his cross examination he has stated that both accused were arrested after registration of F.I.R. no. Nil at 1:45 PM. PW-9, S.S. Bhandari stated that he informed the SHO at P.S. Dabri, Delhi that accused Bhagwat Sharma disclosed that the dead body was of one Dhananjay resident of Madhu Vihar, New Delhi. Therefore the fact that that the dead body was recovered and was sent for post mortem on the same day and an intimation was sent to P.S. Dabri, Delhi resulting into reaching of family members at P.S. Muni Ki Reti, stood proved.

15. It is a case where there is no eye witness and prosecution has relied solely upon circumstantial evidence. It is a settled position that a criminal court can record a conviction in a case based on circumstantial evidence only when all hypothesis

inconsistent with the innocence of the accused is ruled out. This was explained in *Sharad Birdhichand Sarda v. State of Maharashtra*, (AIR 1984 SC 1622). The court, while dealing with circumstantial evidence held that onus was upon the prosecution to prove that the chain is complete. The conditions precedent, in the words of the Supreme Court, before conviction is based on circumstantial evidence, must be fully established. The conditions precedent, are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis except the one to be proved; and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In the case of *Kishori Chand v. State*, 1990 CRI LJ 2289, it was held that, if any circumstance in the chain is consistent with the innocence of the accused, he is entitled to benefit of doubt.

16. The case of the prosecution is that Bhagwat Sharma, Jamuna Devi and Vishnu Sharma entered into a criminal conspiracy to murder Dhananjay as Dhananjay was having illicit relations with Jamuna Devi (wife of Bhagwat Sharma) and at the same time was also trying to have relations with the wife of Vishnu Sharma (son of Bhagwat Sharma). The wife of Vishnu Sharma complained of the same to Jamuna Devi and it was then decided that Dhananjay had to be done away with. The prosecution has on the basis

of the disclosure statements of accused Bhagwat Sharma and others, relied on the theory of criminal conspiracy. It has already been discussed in a previous part of this judgment, that the prosecution was unable to prove motive, as alleged, about relationship between deceased and Jamuna Devi.

17. In each case, of conspiracy, some evidence regarding meeting of minds must be established. However, in the present case, no evidence regarding the three accused, entering into conspiracy has been led. The wife of Vishnu Sharma has not been examined in this regard. Furthermore, no evidence has been gathered regarding the deceased and accused Jamuna Devi having a common business of property dealership. No evidence has been gathered to prove that the dead body was moved from the second floor of the house to the car. Therefore, the conspiracy aspect stands not proved and it can be said that since there was no motive, conspiracy does not arise.

18. As far as accused Jamuna Devi and Vishnu Sharma are concerned, there is no circumstance against them, except that they pointed out the place of incident. Even the pointing out of place of incident by them is of no use as Bhagwat Sharma and Raj Singh had already pointed out the place of incident. As no new facts were discovered by the pointing out of Jamuna Devi and Vishnu Sharma, there is as such no evidence against them. No evidence has been collected or produced to the effect that Dhananjay, in fact was murdered in a room on the second floor of accused Bhagwat Sharma's house by way of fingerprints or by way of Dhananjay being last seen in the said house. Therefore it cannot be said to be the place of incident and hence even the place of incident stands not proved.

19. It was alleged that the involvement of accused Vishnu Sharma and Jamuna Devi in the death of the deceased stands proved as they were absconding and were only arrested at a much later stage. However this cannot hold true as PW-23 stated that after people came to know about the disclosure statement by Bhagwat Sharma regarding Dhananjay being murdered in his house (of Bhagwat Sharma), the people of the locality gathered and started throwing stones at the house. Therefore accused Vishnu Sharma and

Jamuna Devi had genuine reasons to not be in the house. As far as accused Bhagwat Sharma is concerned, there are three circumstances which are alleged against him; first being that of the recovery of dead body of deceased. This circumstance stands proved against him as the dead body was found from his possession. The second circumstance alleged against Bhagwat Sharma was that of pointing out of place of incident. This circumstance has not been established as the place of incident itself is not proved and no evidence was gathered to establish that the death/murder of deceased Dhananjay actually did take place on the second floor of Bhagwat Sharma's house. The third circumstance relied upon against the accused Bhagwat Sharma is of recovery of pillow. This circumstance too has not been proved as firstly; Gopal (the guard for Bhagwant Sharma's house after the neighbours attacked) was not made a witness to the recovery even though he was present. Secondly, PW-23 stated that such a pillow can easily be purchased from the market and thirdly, the pillow could not be connected with the offence as neither blood nor saliva was found on it by the FSL. Therefore, the Trial Court correctly ruled that no case under section 302/34 IPC was made out against the accused. As discussed earlier, no case under section 302/34 IPC is made out against accused Jamuna Devi and Vishnu Sharma as well and hence all the three accused were acquitted. As noticed previously, the Trial Court convicted accused Bhagwat Sharma and Raj Singh under section 201 IPC as the prosecution was able to prove beyond reasonable doubt that they were in possession of the dead body of the deceased.

20. The standard applicable while dealing with petitions by the state, for leave to appeal is that the High Court must be satisfied that there are substantial and compelling reasons why such appeal should be entertained. The court has to be conscious that an acquittal of an accused in a criminal case, is the affirmation of his innocence; substantial or compelling reasons are not the appellate court's mere inability to agree with the Trial Court's findings, as another view is possible. The threshold applicable, on the other hand is that the Trial Court's judgment manifestly discloses grave errors, which cannot stand the scrutiny of law. The tests indicated by the authorities so far are that the Trial Court's reasoning is unsatisfactory, or that it has acted contrary to the record. In the present case, this court is satisfied, on a consideration of the entire evidence that there exist no

grounds, for which the State ought to be granted leave to appeal. For these reasons, the petition has to fail; it is, therefore, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**G.P. MITTAL
(JUDGE)**

MARCH 29, 2011