

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

Date of Hearing & Decision : 9th May, 2011

+ **CRL.L.P. 417/2010**

NARESH DEVI ... PETITIONER

Through: Mr. Ashwin Vaish, Adv.

Versus

STATE & ANOTHER ... RESPONDENTS

Through: Mr. Lovkesh Sawhney, APP for the State.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

- | | |
|---|-----|
| 1. Whether reporters of local papers may be allowed to see the Order? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Order should be reported in the Digest? | Yes |

J U D G M E N T

G.P. MITTAL, J.

Crl.M.A.No.17253/2010 (under Section 5 of the Limitation Act.)

1. There is a delay of just one day in filing the appeal. The delay is condoned for the reasons as stated in the application for condonation of delay.

Crl. L.P. No.417/2010

2. The Petitioner Smt. Naresh Devi seeks leave to file an appeal under Section 378(3) Cr.P.C. Section 372 Cr.P.C. stands amended w.e.f. 31.12.2009, whereby the complainant has been given the right to prefer an appeal against an order passed by the Court acquitting an accused or convicting for a lesser offence or imposing inadequate compensation.

Since, the Petitioner is entitled to file an appeal without seeking any leave of the Court. The leave petition stands disposed of. The appeal be registered.

Crl. A No. /2011 (To be numbered)

3. This is an appeal under Section 372 Cr.P.C. filed by the complainant against the judgment of the learned Addl. Sessions Judge dated 31.07.2010 by which the Respondent was acquitted of the charge of having committed offences punishable under Sections 302/201 of Indian Penal Code.
4. The facts of the case as are necessary for disposal of this appeal are that Preeti (the deceased) and Respondent No.2 Lalit were in love with each other. On 18.10.2008 Preeti returned home at about 8:00 a.m. after attending her typing classes Naresh Devi PW6 and Smt. Dhanpati PW3 (mother and grandmother of Preeti respectively) were present in the house. Preeti prepared and served tea to both of them. They heard the noise of starting of a motor cycle; Naresh Devi came out and saw that Respondent Lalit was taking away Preeti on his black colour motor cycle.
5. Smt. Naresh Devi called Lalit (to stop) but he did not listen and went away with Preeti. She (PW6) raised an alarm but to no avail. She preferred not to lodge the report with the police for fear of loss of respect in the society.
6. According to the prosecution the deceased did not return and, therefore, on 20.10.2008 PW6 went to Police Station Najafgarh to lodge the report with the police. Police showed her a photograph of a dead body, which she identified to be that of her daughter.
7. During investigation Respondent No.2 was arrested. He made a disclosure statement and in pursuance thereof got recovered a *darati* Ex. P -11/1-2 purported to have been used by him in commission of the murder of Preeti. According to the prosecution Respondent No.2 was annoyed with

Preeti as he came to know of the alleged illicit intimacy between Preeti and Haridas Manipuri, who was a tenant in Preeti's house.

8. In order to establish its case the prosecution examined 29 witnesses.
9. PW3 Dhanpati, PW6 Naresh Devi are the witnesses of the last seen evidence relied upon by the prosecution. PW6 Naresh Devi, PW8 HC Vijender, PW10 Constable Ashok Kumar and PW27 Inspector Abhey Singh are also witnesses to the making of the disclosure statement, recovery of the *darati* i.e. the weapon alleged to have been used for committing the murder of Preeti, blood stained clothes and the Tata Indicom mobile phone of the deceased.
10. Respondent No.2 in his examination under Section 313 Cr.P.C. raised an accusing finger on the family of the deceased Preeti as the persons responsible for her unfortunate death. Respondent No.2 stated that Preeti was known to him much prior to this incident as she was in love with him. Both of them wanted to marry each other. His grandfather Jeet Singh (PW-29) and other members of his family had no objection to the marriage but the parents of the deceased were against this relationship. The family of the deceased considered the Respondent to be of a lower caste and thus they (family of the deceased) were of the view that it will result in insult and humiliation to their family if the alliance is allowed to happen. In the month of October, 2008 they (being agriculturists) were harvesting *bajra* crop and in the process he and other members of his family sustained injuries on their hands. On 18.10.2008 at about 6:30 a.m. he went to the market to bring electricity wire and returned after 7/10 minutes and thereafter went to the field with his grandfather. On 19.10.2008 two police officials from P.S. Najafgarh took him and all the male members of his family to the Police Station. He was arrested and falsely implicated. The mobile phone, which his family members were carrying was kept by the police.

11. By impugned judgment the Trial Court held that PW3 Dhanpati (grandmother of the deceased) did not support the prosecution case that she saw Preeti leaving with Respondent No.2. Testimony of PW6 Naresh Devi (mother of the deceased) was unnatural as she did not lodge any report with the Police immediately after Preeti left home along with Respondent No.2. The motive for commission of the offence as set up by the prosecution, according to the Trial Court, was also not proved as no evidence was produced that there was any tenant in the name of Haridas Manipuri staying in the house of the deceased with whom the deceased, according to the prosecution, was suspected of having illicit relations. The circumstances to draw an inference of guilt against Respondent No.2 having not been established, Respondent No.2 was acquitted for want of sufficient evidence.
12. We have heard Mr. Ashwin Vaish, counsel for the complainant and have perused the record.
13. It is argued by the learned counsel for complainant that there was sufficient evidence in the form of testimony of PW6 Naresh Devi, who deposed about the deceased leaving with Respondent No.2 on his motor cycle on 18.10.2008 at about 8 a.m., which testimony was not shaken in the cross-examination. Since, the Appellant and the deceased were last seen alive together, it was for Respondent No.2 to explain as to how the deceased parted company with Respondent No.2. In the absence of any explanation, an inference of guilt can be drawn against Respondent No.2, which coupled with recovery of darati and blood stained clothes establishes the guilt of Respondent No.2. It is submitted that mere delay of two days in lodging FIR on the part of PW6 Naresh Devi was not sufficient to paint her as an unreliable witness.
14. We have bestowed our thoughtful consideration to the contentions raised on behalf of the Appellant. In this case, the prosecution of Respondent No.2 was based on circumstantial evidence. It is a well settled law that a

criminal court can record a conviction in a case based on circumstantial evidence only when all hypothesis inconsistent with the innocence of accused is ruled out and the circumstances established unerringly point to the guilt of the accused. In *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622, the Supreme Court held as under: -

“(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 acts 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.”

15. The most crucial circumstance in this case is the evidence of last seen. To prove this circumstance the prosecution examined PW2 Dhanpati and PW6 Naresh Devi. The witness PW2 Dhanpati did not support the case of the prosecution and was thus declared hostile. She admitted that she was the grandmother of the deceased. She denied regarding a relationship between the deceased and Respondent No.2. She denied having seen the deceased leaving with Respondent No.2 on 18.10.2008 at about 8:00 a.m. The witness stated that for the last 16 years, she was not on speaking terms with her son Ashok Kumar i.e. father of the deceased and his family.
16. PW6 Naresh Devi deposed about the deceased leaving with Respondent No.2 on his motor cycle on 18.10.2008. She deposed that she went to the Police Station on 20.10.2008 to lodge a complaint as the deceased did not return even on 19.10.2008. She gave an explanation that she did not

inform the Police due to fear of disrespect in the society and she kept waiting for her daughter to return. Even if the testimony of PW6 is accepted on its face value as to why she did not approach the Police for two days, it was very natural for PW6 to have at least approached the family of Respondent No.2 and to enquire about the whereabouts of the deceased and Respondent No.2 on 18.10.2008 itself and at the most on 19.10.2008 in view of the fact that the deceased was an unmarried girl residing in the village. It is highly improbable that the mother of a young girl would not even approach the family of the boy with whom her daughter leaves her home without any specific information.

17. The recovery of darati in pursuance of the disclosure statement made by Respondent No.2 is of no consequence. Rather the same is not admissible as there was no discovery of any fact as neither the darati nor the blood stains on the T-Shirt and Shorts alleged to be recovered at the instance of Respondent No.2 were found to be containing the 'O' blood group belonging to the deceased. It is very intriguing that although the recovery of darati and the blood stained clothes was effected at the instance of Respondent No.2 on 30.01.2008, it took almost two months to send the same to the CFSL, Rohini.
18. The circumstance of motive i.e. the deceased having illicit intimacy viz. Haridas Manipuri was not established. The prosecution did not lead any evidence that there was any tenant by the name of Haridas Manipuri in the house of the deceased. It seems that this aspect was not even seriously pursued by the Police.
19. The motive having not been established we are left with the circumstance of some injuries alleged to have been found on the person of Respondent No.2. According to the prosecution these injuries were sustained by him while inflicting injuries on the deceased. Respondent No.2 gave an explanation regarding these injuries i.e. the same were sustained by him and other members of his family while they harvested *bajra* crop in their

fields. This explanation by the respondent cannot be said to be totally improbable. Otherwise also this circumstance by itself is insufficient to draw an inference of commission of deceased's murder by Respondent No.2.

20. It is well settled law that the High Court would be slow in interfering in an order of acquittal recorded by a competent Court. It is a confirmation of the presumption of innocence to which every accused is entitled unless proven guilty. The High Court would not interfere in an order of acquittal unless it is satisfied that the conclusion reached by the Trial Court is perverse; there is misapplication of law resulting into miscarriage of justice or there are substantial and compelling reasons to interfere with an order of acquittal.
21. Having regard to the facts and circumstances of the case we are of the opinion that there is no error or infirmity in the judgment of the Trial Court.
22. The appeal is without any merit and has to fail. It is accordingly dismissed.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

May 9, 2011
hs