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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. No.202/2012 & CrI.M.A. No.4648/2012

Date of Decision: 27th August, 2012

STATE OF NCT OF DELHI

Through

..... Petitioner
Mr. Rajesh Mahajan, Additional Standing
Counsel (CrI.)

Versus

DEVENDER KUMAR

Through

Nemo

..... Respondent

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL (Oral)

CrI.M.A. No.4648/2012

1. This application has been filed by the applicant praying for condonation of delay in filing the revision petition.

2. For the reasons stated, the application is allowed. Delay in filing the revision petition is condoned.

CRL.L.P. No.202/2012

3. The instant petition seeks leave to appeal against the judgment dated 5th October, 2011 passed by the learned Additional Sessions Judge holding that the prosecution had failed to bring home the guilt of the respondent in

respect of a charge under Sections 302/397/411/506/201 of the Indian Penal Code in the case arising out of FIR No.592/2006.

4. Briefly stated, the prosecution alleged that information recorded as DD No.23A (Exh.3/A) was received on 8th October, 2006 at about 4.32 p.m. that one tenant was lying in the R.K. Tyre premises located near the Red light, Shadi Pur Chowk, New Delhi. At the spot, ASI S.K. Verma found the dead body of one Ram Ishwar Sinha in a room on the first floor with a number of wounds. Shri Bihari Lal (examined as PW 7) who was running puncture shop at Shop No.2151/9A/12 at New Patel Nagar, New Delhi gave a statement to the police (Exh. PW 23/A) to the effect that the deceased was residing as a tenant in the said room for the last six months and was involved in financial matters of the ICICI Bank. So far as the shop was concerned, it had been given on contract basis to one Ramesh with whom the deceased had exchanged hot words about twenty days back. On the complaint of the deceased, Ramesh was put in the lock up of Police Station Patel Nagar. The respondent herein was brother-in-law of Ramesh who used to visit the shop in the night to sleep there. In his statement to the police, PW 7 had stated that the respondent had a quarrel with the deceased on the issue of the arrest of Ramesh and had threatened the deceased to kill him. On 7th October, 2006, Bihari Lal was present in the shop along with his worker Shohrat Ali, when the respondent visited the shop in the night to sleep there but he was not permitted to do so and was asked to leave. The respondent

went upstairs to the room of the deceased and thereafter he slept in his shop. PW 7 stated that the deceased had informed him that he would go to his native village and shall ask him to deliver the key of the room before leaving for his village. At about 1.00 p.m. when he noticed the lock at the room of the deceased, he made an inquiry about the key. At about 4.15 p.m., he asked his worker Ali to break open the lock when he found dead body of the Ramishwar Sinha and noticed blood on the bed. He asked Ramesh to inform the police control room. Based on his statement, FIR No.592/2006 was registered by the police.

5. The prosecution alleged that the respondent was arrested on 9th October, 2006 at about 9.30 p.m. from the Old Delhi Railway Station with a bag containing certain articles missing from the spot which were recovered from him. These included an ATM card of the deceased. The respondent confessed his guilt during interrogation and pursuant to his disclosure statement, one 'pana' was recovered at his pointing out. The prosecution alleged that the accused respondent also got recovered the clothes which he was wearing at the time of commission of offence and on his search, a key of a lock was recovered from his pant pocket.

6. Upon post mortem, the doctor had opined the cause of death as asphyxia resulting from manual strangulation. It was also opined that the injuries on the body of the deceased were ante mortem in nature, superficial and simple. During investigation, the exhibits were sent to the Central

Forensic Science Laboratory, Hyderabad. The police had filed a challan against the respondent for offences punishable under Sections 302/397/411/506(II)/201 of the IPC before the learned Magistrate who committed the case to the Sessions Court. Charge was, however, framed against the respondent for commission of offences punishable under Sections 302/384/397 IPC. By the order dated 22nd February, 2007, the respondent had pleaded not guilty and claimed trial.

7. The prosecution examined 23 witnesses in support of the allegations against the respondent. In his statement under Section 313 of the Code of Criminal Procedure, the respondent denied each and every incriminating circumstance put to him except the fact that Ramesh was running the tyre repair shop. He claimed that he had been falsely implicated in the case. The respondent further claimed that he used to live in his native village and visited the house of his sister (who was the wife of Ramesh since deceased) sometimes. He also stated that he had been arrested from his native village on 9th October, 2006 in the presence of persons from the village as well as Brij Mohan Sahu, the village Pradhan and the local police. Shri Brij Mohan, the Pradhan of his village, appeared in the witness box as DW 1 to support the respondent's defence.

8. Upon a consideration of the material evidence on record, by the judgment dated 5th October, 2011, the learned Additional Sessions Judge

held that the prosecution had been unable to prove the charges against the respondent beyond reasonable doubt and had, therefore, acquitted him.

9. We have heard Mr. Rajesh Mahajan, learned Additional Standing Counsel (Criminal) for the State at length who has taken us through the impugned judgment as well as the record of the trial court. There is no direct evidence in the case. The prosecution has attempted to prove the circumstances of the deceased being last seen alive in the company of the respondent; motive on the part of the respondent; recovery of the weapon of offence as well as articles belonging to the deceased upon disclosure by the accused person; recovery of blood stained clothes of the accused as circumstances which formed an unbroken chain leading to the irresistible and only conclusion which was the guilt of the respondent. The learned Trial Judge has carefully considered the evidence led by the prosecution on this issue.

10. So far as motive is concerned, as per the prosecution the arrest of Ramesh and the quarrel with the deceased was the motive for the offence. The prosecution has examined PW 1-Shohrat Ali, PW 2-Kayum, PW 7-Bihari Lal & PW 17-SI Kishan in support on this aspect. PW 7-Shri Bihari Lal did not support the prosecution witnesses and denied that there was any quarrel between the deceased and Ramesh, twenty days earlier or any quarrel between the respondent and the deceased. PW 7 denied knowledge of Ramesh having been locked up pursuant to the complaint of the deceased

and categorically stated that he did not know the circumstances in which the deceased had been murdered.

11. So far as PW 1 Shohrat Ali is concerned, he stated that the information about the quarrel between Ramesh and the deceased as well as Ramesh being taken to police and the information about the quarrel between the accused and the deceased four days earlier, was given to him by Abdul Kayum. The learned Trial Judge has, therefore, rightly observed that as per the deposition of PW 1, he had not witnessed the quarrel. Unfortunately, PW 2 Abdul Kayum did not support PW 1 and in the witness box denied that he had any idea of any quarrel between Ramesh and the deceased. He denied knowledge of the cause for Ramesh being taken to the police station. So far as PW 17 SI Sri Krishan is concerned, he had arrested Ramesh on 18th September, 2006 under Sections 107/159 of the Cr.P.C. which was exhibited on record as Exh. PW 17/A. The learned Trial Judge had found that this document makes no reference to the deceased at all and refers only to the conduct of Ramesh. In this background, the prosecution had failed to lead any cogent evidence to support that the respondent was nurturing a motive for the commission of the offence.

12. Even before us, Mr. Rajesh Mahajan, learned Additional Standing Counsel is unable to support that there was any cogent evidence to establish a motive on the part of the respondent. It has been urged that the prosecution had proved “a possible motive” on the part of the respondent.

As noticed above, the testimony of the witnesses does not support even a possible motive being nurtured by the respondent to murder the deceased.

13. We may now examine the second circumstance sought to be established against the accused. This was evidence of the deceased having been last seen alive in the company of the accused. In support of this circumstance, the prosecution relied on the testimony of PW 1 Shohrat Ali and PW 7 Bihari Lal. PW 7 completely retracted from the statement to the police Exh.PW 23/A, and submitted that he had not stated to the police that the accused had visited his shop in the night to sleep there and that he had not permitted him to sleep there. He also denied that the accused went to the room of the deceased to sleep there. On this aspect, PW-1 Shohrat Ali has stated that though the accused respondent had visited the shop to sleep there but PW 7 Bihari Lal did not permit him to do so and had asked him to leave the shop. The witness did not make any statement that he had seen the respondent going upstairs to the room of the deceased. PW 1 Shohrat Ali further stated that he had not seen the respondent going upstairs to the room of the deceased.

14. The prosecution has also relied on the testimony of PW 1-Shohrat Ali who has stated that after Bihari Lal had gone to sleep at about midnight, the accused had come back to the shop. PW 1 had left him alone in the shop when he went to have dinner. After about 45 minutes when he came back, the respondent was not at the shop and he came back after some time. PW

1 had stated that when he asked the respondent why he had left the shop, the respondent informed that he had gone to his room and had a fight with one Sardarji, owner thereof and that there were blood stains on his chappal. The learned Trial Judge has found that this deposition was contrary to the first statement made by this witness under Section 161 of the Cr.P.C. to the police and there is no explanation with the prosecution on this aspect.

15. So far as the blood stains on the chappal is concerned, PW 1 Shohat Ali had deposed that he had not seen any blood on the clothes of the respondent but blood on the slipper was shown to him by the respondent. This witness at the same time has stated that the respondent had already washed his slippers with water. The learned Trial Judge has pointed out that the police did not seize the slippers or send them for analysis to establish whether they were having any blood stains. In any case, the learned Trial Court has found the testimony of PW 1 on this issue to be vague and unworthy of any credence.

16. In his cross-examination, PW 1-Shohrat Ali stated that he had not seen the deceased on the fateful day and did not know with whom he had come; what time he had come to the room and with whom he had come. He did not know whether anyone had visited the deceased on that day. Therefore, so far as the testimony of PW 1 is concerned, it does not establish that the deceased was in his room at all; or that if he was there, he was alone in his room at the time when the respondent allegedly visited the shop. Even

Mr. Rajesh Mahajan, learned Additional Standing Counsel for the State has submitted that PW 7 Bihari Lal, who was the star witness on the issues of circumstance of motive, last seen, the complainant in the case did not support the prosecution.

In this background, the finding of the learned Trial Judge that the prosecution had failed to establish that the deceased was alone at that time or that the accused had entered his room, is based on the material placed by the prosecution on record.

17. Mr. Rajesh Mahajan, learned Additional Standing Counsel has urged at some length that upon his arrest from the Railway Station, the respondent had made a disclosure statement leading to recoveries including the key of the lock to the room of the deceased; blood stained clothes of the respondent as well as stolen articles of the deceased.

18. We find that it was the case of the prosecution that the 'pana' recovered at the instance of the respondent was the weapon of offence. The learned Trial Judge has found that as per the post mortem report, Exh.PW 21/A, three incised wounds were found on the dead body. However, no opinion has been obtained from any expert to ascertain whether such incised wounds could be caused by such pana or not. Further, the Trial Judge has found that the pana was forensically examined and as per the report of Exh. PW 23/J, no blood was detected on it. The learned Trial Judge has

disbelieved that the pana was the weapon of offence in the commission of crime.

19. Before us, learned Additional Standing Counsel has contended that in any case, the cause of death of the deceased was not the injuries suffered by him. It is urged that as per the post mortem report Exh.PW 21/A, the cause of death was asphyxia. In this background, the recovery of the pana loses significance.

20. So far as the other recoveries are concerned, it is essential to consider the controversy with regard to the place of arrest of the respondent. The prosecution has examined PW 16-SI Jitender Tiwari, PW 19-ASI Arjun Singh and PW 23-ACP Surender Kumar Verma to support their contention that on 9th October, 2006, they proceeded along with Santosh Kumar to the Old Delhi Railway Station at 9.30 p.m. apprehended the respondent at the instance of public witness Santosh Kumar. The deposition of these police witnesses does not at all elucidate as to their source of knowledge that the respondent would come to the railway station at about 9.30 p.m. The prosecution failed to examine Santosh Kumar who was stated to be an independent witness of the arrest.

21. On the other hand, the respondent took up a categorical stand that he was arrested from his native village on the night of 20th October, 2006. In this regard, it was brought in the evidence that the local newspaper Amar Ujala at the village Kachora, had published the news item on 10th October,

2006 edition (Exh.PW 20/DB) to the effect that the Delhi Police had conducted a raid at village Kachora and arrested the respondent. In support of this plea, the respondent had in his defence also examined Shri Brij Mohan, Pardhan of the village who has deposed to the same effect. This witness has also stated that the Delhi Police had visited him as well.

22. The learned Trial Judge has noted the reluctance of the police witnesses to answer questions relating to the visit of the police authorities to the native village of the accused. It has been observed that PW 23 ACP Surender Kumar Verma had, however, admitted in his statement that he had sent PW 16-SI Jitender Tiwari and PW 19 ASI Arjun Singh as well as constable Shyam Narayan to the native village of the accused at the night of 8th & 9th October, 2006 without any outstation travel permission and the police team came back in the afternoon of 9th October, 2006. In his cross-examination, PW 16 SI Jitender Tiwari has also admitted that he along with the other police officials visited the native place with the local police as well as the Pardhan of the village.

23. The learned Trial Judge has commented on the unexplained overwriting in the time of the arrest as reflected in the arrest memo Exh.PW 15/A.

24. In this background, the learned Trial Judge has accepted the case of the defence to the effect that the respondent was arrested from his native village and has found support for this finding in the independent newspaper

report. The testimony of PW 23-ACP Surender Kumar Verma to the effect that he had sent the three police officials on the night of 8th October, 2006 to the native village also lends credibility to the testimony of the defence witness. DW 1-Shri Brij Mohan, Pardhan of the village had deposed that one official visited to the house along with the local police and thereafter they had visited the house of the respondent who was arrested at about 5.00 a.m. We find that this finding is supported by the testimony of PW 23 who has stated that the police team had returned in the afternoon of 9th October, 2006.

25. So far as the recoveries are concerned, the prosecution has failed to establish that the same were effected upon disclosure and pointed out by the respondent after his arrest at 9.30 p.m. It was the prosecution case that the respondent was in police custody and had got recovered the afore-noticed weapons, clothes etc. and they conducted investigation till 11.30 p.m. Given the evidence noticed above and the doubt over the place and timing of the arrest of the respondent, the disclosure statement attributed to the respondent as well as recoveries lose credibility.

26. Several other circumstances carefully culled out by the learned Trial Judge in this regard deserve to be noticed. The prosecution has firstly claimed recovery of a key from the back pocket of the pant of the respondent which he got recovered from the house of his sister. As noticed above, the prosecution witnesses had stated that they had broken open the

lock. This lock and the seized key were sent to the Central Forensic Science Laboratory, Hyderabad to ascertain whether the said key belonged to the said lock or not. The forensic laboratory had opined in the report exh.PW 23/1, that the key could be used to open the piece of the lock. However, it could not be opined whether the key belongs to the lock and it was further observed that it could not be ascertained whether the piece of lock was opened by the key. In this background, it has been held that no presumption could be drawn that the recovered key was related to the said lock.

27. So far as the alleged recovery of the blood stained clothes belonging to the respondent is concerned, our attention has been drawn to the testimony of PW 1 Shohrat Ali who categorically stated about the chappal but did not mention any blood on the clothes of the respondent. The recovered pant and shirt were sent to the CFSL, Hyderabad along with other exhibits. The blood group testing on the pant and shirt was non-conclusive and could not be ascertained.

28. The prosecution has alleged recovery of stolen goods from the respondent. These goods include two empty boxes of telephone instruments as having been recovered from the spot. However, no such boxes were visible in the photographs of the spot nor have any boxes been mentioned in the case diary or any document filed with the charge-sheet. The phone instrument of the LG make allegedly recovered was not connected to the deceased by the prosecution witnesses. There was, therefore, nothing on

record to connect the recovery of the phones with the deceased person or the respondent. The prosecution has further claimed recovery of documents in the nature of deposit slip, pass book, deposit receipt of banks, cash credit deposit book, a cheque of the accused drawn in favour of the Reliance Phone, receipt of Tata Indicom and a blank cheque of Canara Bank. The prosecution also alleged recovery of the ATM card of the deceased from the possession of the respondent and that such recovery was effected in the presence of the public witness Santosh Kumar who was stated to be an employee of the deceased. As noticed above, the prosecution failed to produce Santosh Kumar, who would have provided independent evidence of such recoveries. The prosecution alleges that such recoveries were effected pursuant to disclosure by the respondent after his arrest. As noticed above, the manner of arrest of the respondent is shrouded in doubt and consequently, there is no reliable evidence to the support making of the disclosure statement or the alleged recoveries.

29. The prosecution has also relied on recovery memo Exh.PW 7/B whereby four glasses were seized at the spot and one liquor bottle was found at the spot and chance prints were lifted by the Crime Team therefrom. However, a crime team report Exh. PW 10/A has been placed on record to the effect that only two glasses were found. No report of the finger print expert was produced on record as the chance prints were not readable. The finger prints of the respondent was not sent for analysis.

30. It was pointed out in the proceedings before the trial court that in one of the photographs placed on record, a glass bottle seemed visible lying on its side beneath a chair with blue-lined tapestry whereas in another photograph the same bottle was depicted in standing position. The defence has urged that the crime scene was tampered with and that only two glasses were shown by the crime team in Exh.PW 10/A to create an impression that the deceased and only one person had consumed liquor. The prosecution had also claimed that finger prints were removed from the glasses and bottles.

31. In the light of the above circumstances which are in the evidence led in the case, the Trial Judge has doubted the recovery on the ground that none of the documents of the deceased (in the nature of deposit slip, pass book etc.) allegedly recovered from the possession of the respondent, were of any value to any person other than the deceased. The recoveries have also been doubted on the ground that at one place, the prosecution has contended that the respondent was clever enough to remove the finger prints from the bottle and glasses and at the same time, the prosecution would like the court to believe that he was foolish enough to be carrying documents of the deceased in his possession, despite passage of time, at the time, of his arrest.

32. As per the post mortem report, it is not possible to ascertain the time of death of the deceased. Mr. Rajesh Mahajan, learned Additional Standing

Counsel has urged that the disclosure statement of the respondent reveals that the cause of death of the deceased was asphyxia. It was corroborated in the report of the post mortem which was conducted on the next day. It has been urged that for the first time, the cause of death was revealed in the disclosure statement clearly showing the complicity of the respondent in the crime. The respondent has staunchly disputed making any disclosure. He has disputed the very genesis of the disclosure which was alleged to have been made after his arrest. In this background and in the light of the totality of circumstances, the attribution of the statement to the deceased is of no assistance to the prosecution.

33. For all these reasons, this petition seeking leave to appeal against the judgment dated 5th October, 2011 whereby the respondent was acquitted of the charges, is devoid of legal merit and is hereby dismissed.

(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

AUGUST 27, 2012
aa.