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

+ CRIMINAL APPEAL NO.819/2012& CRL.M.A. No. 12533/2012

Date of decision: 3rd September, 2012

VIJAY SINGH Appellant
Through Mr. Rajender Yadav, Advocate.

versus

STATE & ANR. Respondents
Through Ms. Richa Kapoor, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. (ORAL):

Vijay Singh, father of the deceased Vinod Kumar, has filed this first appeal under Section 372 of the Code of Criminal Procedure, 1973 (Cr.P.C) against the judgment dated 8th May, 2012 passed by Additional Sessions Judge, Delhi in Session Case No. 90/2011 arising out of FIR No. 68/2011, Police Station, Begumpur. By the impugned judgment, respondent No. 2- Mandeep has been acquitted but the two other accused Rekha, wife of late Vinod Kumar and Naveen Dabas have been convicted under Section 302 of the Indian Penal Code, 1860

(IPC, for short).

2. We have heard learned counsel for the appellant and also perused the impugned judgment and the trial court records, including the statement of PW-13 Anjali Sharma.

3. In the impugned judgment, learned trial court has noticed that there were no eye witnesses and the prosecution's case is based upon circumstantial evidence. Three circumstances were relied by the prosecution against Mandeep, namely:

- (i) On The basis of disclosure statement, blood stained clothes (Exhibit P-11 and P-12) were recovered from the residence of Mandeep on 29th March, 2011.
- (ii) Blood stained knife (Exhibit P-8) was recovered at the instance of Mandeep from the bushes near Sukhi Nahar, Karala, Pooth Khurd village.
- (iii) Mandeep had pointed out the place of occurrence to the police in the pointing out memo.

4. The trial court rightly held that pointing out place or memo is not admissible in evidence as it does not fall within the scope and ambit of Section 27 of the Evidence Act, 1872. The place of occurrence was already known to the police. It has been further observed that mere recovery of blood stained knife or blood

stained clothes does not complete the chain of evidence and implicate or establish that Mandeep was involved in the said offence. The prosecution had failed to establish that Mandeep was a friend of Naveen Dabas or he was present at the spot at the time of occurrence. Call details of the mobile phone of Mandeep were not placed on record. There was no evidence or material to show or establish that Mandeep was near or at the spot. Accordingly, Mandeep has been granted benefit of doubt and acquitted.

5. Learned counsel for the appellant submitted that PW-13 Anjali Sharma had implicated Mandeep in her statement under Section 161 Cr.P.C. However, he admits that PW-13 Anjali Sharma did not recognize Mandeep as one of the persons, who was present at the spot. We have examined the statement of PW-13 Anjali Shamra, a friend of accused Rekha. In her examination in chief, she had clearly stated that she did not know any person by the name of Mandeep. The learned Additional Public Prosecutor cross-examined her but she reiterated her stand and had stated that she does not know accused Mandeep and had not seen him before the said date. The said PW-13 had made several statements against Rekha

and had stated there was tension between her and her husband and that she wanted divorce. She also recognised accused Naveen Dabas and had stated that he was the tutor and he used to teach children of Rekha. No TIP was conducted to identify accused Mandeep from any witness including Anjali Sharma. PW-13 does not implicate Mandeep and there is no reason and ground to disbelieve her, on the basis of her 161 Cr.P.C. statement.

6. The appellant herein Vijay Singh had appeared as PW-6 and he has not deposed anything against Mandeep. Similarly, PW-4, Jasbir Singh s/o Vijay Singh and brother of the deceased Vinod Kumar has not made any statement or implicated Mandeep with the commission of offence.

7. In the present case, Vinod Kumar was murdered at about 7.30 to 7.48 A.M. on 23rd March, 2011 near his residence in a park behind the liquor shop, Sector 20, Rohini, Delhi. There is no evidence or material to show that the respondent No. 2- Mandeep was present at the said spot on the said date. Call details of mobile phone of Mandeep have not been placed on record and proved by the prosecution.

8. Mandeep was arrested along with Rekha and Naveen

Dabas on 29th March, 2011. Against the said two accused, Rekha and Naveen Dabas, the prosecution relied upon the mobile phone call details, including the calls exchanged between both of them on the day and at the time of the occurrence. There is no evidence or material to show that Mandeep was a friend of Naveen Dabas or that they were constantly in touch with each other.

9. The only evidence relied by the prosecution against Mandeep is the alleged recovery of a knife and the blood stained clothes, which were worn by Mandeep on the date of the occurrence. As noticed above, Mandeep was arrested on 29th March, 2011, six days after the occurrence/incident. As per the FSL report (Exhibit PW-18/K and PW-18/J), blood was found on the clothes and the knife, but the blood group could not be ascertained. With regard to recovery of knife, we notice that Naveen Dabas had also made a disclosure statement and another knife (Exhibit P-7) was recovered at the instance of Naveen Dabas from the same location.

10. In view of the aforesaid evidence and material on record, we do not think that there is any ground or reason to interfere with the judgment of the trial court acquitting Mandeep by giving

him the benefit of doubt.

11. The circumstantial evidence, in order to sustain a conviction, must be complete and incapable of any other explanation or hypothesis, other than the guilt of the accused. The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

- (1) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully 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. [**See Sharad Birdhichand Sarda v. State of Maharashtra** (1984) 4 SCC 116].

12. Blood stained clothes of the accused, on stand-alone basis without any other fact or incriminating evidence, in the present case do not complete the chain of events so as to establish that the accused was guilty and involved in the said commission of offence. They only indicate a remote possibility and not a certainty, especially when the respondent No. 2 accused was not seen at the scene of crime and there was no evidence to establish his presence there. The blood was of human origin but the blood group could not be ascertained. The recovery of knife is itself debatable. The chain of evidence is not complete in order to form a reasonable ground for a conclusion therefrom that the respondent No.2 was guilty. There are inconsistencies and missing links in the present case.

13. Further, the appellate courts do not interfere with acquittal of an accused unless there are sufficient and compelling circumstances to hold to the contrary.

14. In view of the aforesaid reasons, we are not inclined to issue notice on the application for condonation of delay and

accordingly the application for condonation of delay and the appeal are dismissed. We clarify that we have not examined the case of the prosecution or expressed opinion on the allegations made against Rekha or Naveen Dabas.

The application for condonation of delay and the appeal are dismissed.

SANJIV KHANNA, J.

S.P. GARG, J.

**SEPTEMBER 03, 2012
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