

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

DECIDED ON : 12th April, 2012

+ CRL.A.1588/2011

STATE OF NCT OF DELHI Appellant

Through : Mr.Rajesh Mahajan, ASC.

versus

HUSSAIN @ RAJU

....Respondent

Through : Nemo.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P.GARG

S.P.Garg, J. (Open Court)

1. The State has preferred the present appeal against the judgment dated 26.02.2008 of learned Additional Sessions Judge in SC No.108/2002 by which the Respondent was acquitted of the charge of committing the offence punishable under Section 302 IPC.

2. The prosecution alleges that on 19.06.2004 Daily Diary (DD) entry No.24-A was recorded at 8.27 P.M. at PS Narela on getting information from HC Kamruddin that a boy aged about 3 years was murdered near a temple, in Safiabad border. The investigation was assigned to SI Ram Chander who, with Constable Dataar Singh reached the spot. He recorded the statement of Manmohan Sharma (uncle of the deceased) who stated that his nephew Ravi was playing with children

outside his shop at about 5.00 P.M. The accused Raju his former employee, was also standing there. He took Ravi with him inside Ekta Murgi Farm. After some time, when his father and Raju inquired from him regarding whereabouts of Ravi, he told them to search him near the temple but he could not find him. He further stated that at 7.00 P.M. while searching for Ravi, he met Kuldeep who told him that he had seen the accused going with Ravi towards nearby fields belonging to Anand Khatri. On reaching there, they saw Ravi's dead body lying there. He suspected the accused to have committed the crime as he wanted to seek revenge for terminating his employment.

3. SI Ram Chander made an endorsement on the statement and sent the rukka through Constable Dataar for registering the case under Section 302 IPC. Further investigation was taken over by Inspector Mahipal Singh who summoned the crime team to the spot. The team inspected the scene of the crime and took photographs. The IO lifted earth control sample, blood stained soil, sample soil and one dipper of the right foot by preparing a seizure memo. He recorded statements of the witnesses conversant with the facts. The accused who reached the spot was arrested. During investigation, he made a disclosure statement and pursuant to that, he recovered a pant (trouser) and shirt which he was wearing at the time of the incident. He also led the police team to the spot and recovered the blood stained brick from the millet field. The IO sent the exhibits to forensic laboratory (FSL) and subsequently, collected the report. After the completion of investigation, the accused was charge-sheeted for committing the offence under Section 302 IPC and was duly charged and brought to trial.

4. To prove the charges, the prosecution examined seventeen witnesses. The statement of the accused was recorded under Section 313 Cr.P.C. and he denied his hand in the crime. He pleaded false implication in the case. After appraisal of the evidence and considering the rival contentions of the parties, the Trial Court acquitted the accused.

5. Learned APP challenged the findings of the Trial Court and urged that it did not appreciate the evidence in proper perspective and fell into grave error in disbelieving the testimonies of PW-2 (Manmohan Sharma), PW-3 (Ajay), PW-8 (Ramanand) and PW-12 (Kuldeep) without cogent reasons. All these witnesses had last seen the child alive in the company of the accused. They had no ulterior motive to falsely implicate the accused. Minor contradictions and discrepancies in their depositions were not sufficient to discard their version. The Trial Court, urged the counsel, ignored the material circumstance of motive to commit the crime. The accused wanted to wreck revenge because PW-2 (Manmohan Sharma) had terminated his services and did not re-employ him despite repeated requests. He further contended that the recovery of blood stained clothes and weapon of offence i.e. brick pursuant to the disclosure of the accused were vital incriminating circumstances to establish the guilt of the accused which were ignored by the Trial Court. The ocular evidence of the material witnesses was corroborated by medical evidence i.e. post-mortem and FSL reports.

6. We have considered the submissions of the learned APP and have scrutinised the Trial Court records.

7. Undoubtedly, the entire case of the prosecution rests on circumstantial evidence. The prosecution heavily relied upon the

circumstance of last seen, motive and recovery of blood stained clothes/weapon of offence. On analysing the evidence, the Trial Court did not find the accused guilty and held that the prosecution failed to prove all these circumstances beyond reasonable doubt.

8. The prosecution witnesses gave inconsistent versions in their depositions as to when the deceased was last seen alive in the company of the accused. The information was received by the police at 8.27 P.M. and DD No.24-A (Ex.PW-16/A) was recorded in this regard. The rukka (Ex.PW-1/B) was sent for registering the case at 11.00 P.M. The prosecution failed to explain the inordinate delay in registering the case. In his statement (Ex.PW-1/A) Manmohan, star witness for the prosecution, stated that when he was present at his 'house' at 5.00 P.M., he saw his nephew Ravi playing with children in front of Ekta Farm. However, he did not inform the investigating officer at what time the accused took the child with him inside the Ekta Murgi Farm. In his deposition as PW-2, he narrated a contradictory version and stated that he saw Ravi playing with children at 6.00 P.M. during his presence at his 'shop'. The material inconsistency in the two versions remained unexplained. In the statement (Ex.PW-1/A) Manmohan disclosed that when he was going in search of Ravi, PW-12 (Kuldeep) met him at about 7.00 P.M. and informed him that he had seen the deceased with Raju at the back portion of the farm house; thereafter, they both reached there and saw the dead body of Ravi there. He deviated from the earlier statement made to the police in the Court and introduced a new version that he came to know from Kuldeep, a gardener in the farm house, that Ravi's body was lying at Red Rose Farm. He immediately went there and identified

the dead body. He did not depose that Kuldeep had accompanied him to the spot. Only in the cross-examination, he stated that Kuldeep and his father had accompanied him to the spot. However, the prosecution did not examine Manmohan's father as a witness to corroborate him. He contradicted PW-12 (Kuldeep) stating that before proceeding to the spot, Kuldeep had come to his house and informed them that he had seen the accused with the victim. PW-12 (Kuldeep) whose identity was in dispute did not testify if he had gone to Manmohan's house and had given any such information. PW-12 further contradicted PW-2 (Manmohan) and claimed that intimation to PCR was given by him. PW-1 and PW-3 spoke differently and stated that Manmohan had made telephone call to PCR at 100. The statement of PW-8 (Ramanand) was not believed by the Trial Court as it was recorded after a delay of four days and the prosecution failed to explain that delay. In the information given at the earliest by DD No.24-A, none of the witnesses gave the name of the accused as 'suspect'. Mere presence of the accused at the place where the children were playing was not sufficient to incriminate him. PW-2 (Manmohan Sharma) admitted that the accused used to work there and he used to provide him work in the absence of his Rikshaw-puller. The accused did not anticipate arrival of the child Ravi to play there. PW-1 never noticed any abnormal behavior on the part of the accused. The accused never extended any threat to the witness or his family members. The prosecution did not collect any evidence to ascertain if the accused was expelled by PW-2 (Manmohan Sharma) on account of misappropriation of money. Moreover, the expulsion (if any) occurred a year before the incident and after that the accused continued to regularly visit the witness and

succeeding in getting work from him. In the absence of any immediate provocation, there was no reason for the accused who used to earn his livelihood by doing sundry jobs, to suddenly plan to murder an innocent child, son of Manmohan's brother with whom he had no animosity whatsoever. After the crime, the accused remained at the spot among the crowd and did not attempt to flee. It is unbelievable that after committing the crime the accused would reach the spot and assist to recover clothes and the weapon of offence. The Trial Court for valid reasons disbelieved the disclosure statement and the recoveries pursuant to it.

9. The standards to be applied by the High Court while considering an appeal against acquittal is one where the prosecution establishes substantial and compelling reasons, which by and large are confined to serious or grave mis-appreciation of evidence, wrong application of law and an approach which would lead to complete miscarriage of justice. In the present case, the Trial Court listed various grounds on which it acquitted the respondent/accused. All of them, to our mind, are reasonable and none of them can be termed as misapplication of law or wrongful appreciation of the evidence placed before the Court by the prosecution.

10. Appeal against the acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is cautious in taking away that right. The presumption of innocence of the accused is further strengthened by his acquittal after a full trial, which assumes critical importance in our jurisprudence. The Courts have held that if two views are possible on the

evidence adduced in the case, then the one favourable to the accused, should be adopted.

11. In the light of above discussion, we approve the findings of the Trial Court and find that the prosecution failed to prove circumstances beyond reasonable doubt.

12. Considering all the facts and the circumstances of the case, we find no infirmity in the impugned judgment. The appeal is unmerited and is consequently dismissed.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

April 12, 2012
tr