

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

RESERVED ON : 17th February, 2012
DECIDED ON : 12th March, 2012

+ CRL.L.P.NO.474/2011
CRL.M.A.12077/2011
STATE Appellant.
Through: Mr.Sanjay Lao, APP for the State.
versus

NARINDER KUMAR @ BHALLU Respondent.
Through: Counsel for the respondent.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P.GARG

S.P.GARG, J.

Crl. M.A.12077/2012 (U/S 5 of the Limitation Act)

For the reasons stated in the application, the delay is condoned.
The application stands disposed of accordingly.

CRL.L.P.NO.474/2011

1. This judgment will dispose of a petition by which the State seeks leave to appeal against the judgment of the learned ASJ dated 18.04.2011 in Sessions Case No.43/2008 by which the respondent was acquitted of the charge of having committed offences punishable under Section 302/201 IPC.

2. The prosecution story is that on 13.11.2006 at about 7:50 P.M. Daily Diary (DD) Entry No.31A Ex.PW-3/B was recorded at
LPA No.474/2011

PS Dabri on telephonic information given by an unknown person that one Narinder Kumar @ Bhallu S/o Hari Singh Sharma had committed murder of his tenant Ashok at his residence and was in the process of disposing of the dead body in a gunny plastic bag. Investigation was assigned to Insp. Vijay Singh Chandel who, with his staff reached the spot where one Hari Singh opened the door. Accused Narinder present there became perplexed on seeing the police party. Inside the house, one gunny plastic bag was found lying and blood was coming out of it. On checking the gunny plastic bag, it was found containing two plastic bags and one dead body having injury marks on the neck and head. On interrogation, the accused Narinder disclosed that the dead body was of his tenant Ashok Kumar, who was residing there for the last about seven years and left the tenanted premises on 01.11.2006.

3. Inspector Vijay Singh Chandel made an endorsement on DD No.31A(Ex.PW3/B) and sent the rukka at about 10:00 P.M. for registering the case under Sections 302/201 IPC. He summoned the crime team, which inspected the spot and photographed it; site plan of the spot was prepared; the accused was arrested and his personal search was conducted. SI Nar Singh (PW-9) prepared inquest proceedings and sent the dead body to DDU for post mortem.

4. The accused was produced before the court and during police remand, his disclosure statement was recorded, pursuant to which, he led the police to his house, got recovered a kitchen knife and a piece of cable wire from neighbour's roof. He also got recovered his blood stained shirt from the roof of his house.

5. During the course of investigation, IO recorded statements of witnesses conversant with the facts and sent the exhibits to the FSL; collected the FSL report. After conclusion of the investigations, the accused was charge-sheeted for committing the aforesaid offences. He entered the plea of not guilty and claimed trial.

6. The prosecution relied upon the testimonies of 13 witnesses and also produced several exhibits. After considering them, the Trial Court, by the impugned judgment concluded that the respondent's guilt has not been proved beyond reasonable doubt and accordingly acquitted him.

7. Learned APP argued that the Trial Court fell into error in not appreciating the deposition of PW-5 (Padma) in its proper perspective. She categorically testified that the accused had taken her husband Ashok Kumar with him at about 8:00 A.M. on 13.11.2006 on the pretext that his wife Kusum Lata feeling unwell had to be taken to the hospital. Ashok Kumar did not return thereafter and was found murdered in the accused's house. The accused failed to explain how and under what circumstances the dead body of the deceased was found in his house. The accused's blood stained shirt proved his complicity in the commission of the offence and he failed to explain this circumstance. There was no occasion for the Trial Court to disbelieve recoveries of knife and cable wire pursuant to his disclosure statement. The police came to know about the crime on getting telephonic information from an unknown person and this information turned out to be true when the accused was found in possession of the dead body. Having regard to all these circumstances,

there was no scope for the Trial Court to acquit the accused. It was urged that the prosecution had produced several materials on record.

8. This Court had called for the Trial Court records. A careful consideration of the records reveals that it has noted various infirmities in the prosecution case.

9. The entire case of the prosecution rests on circumstantial evidence only. The prosecution heavily relied upon the circumstance of 'last seen' and examined PW-5 (Padma), deceased's wife, and PW-8 (Sandeep Kumar), his nephew. PW-8 (Sandeep Kumar) aged 19 years residing with the deceased apparently did not support the prosecution and was declared hostile. PW-8 did not claim that on 13.11.2006, the accused had come at the house and had taken the deceased with him on any pretext. The accused denied the contents of Ex.PW8/A made by him to the police under Section 161 Cr.P.C. In the cross-examination on behalf of the accused, he demolished the prosecution case asserting that the police had informed him about the incident at about 9-10 A.M. on 13.11.2006. The prosecution claimed to know about the murder only at about 7:15 P.M. on 13.11.2006. PW-5 (Padma) claimed that the deceased was taken by the accused at about 8:00 A.M. from the house on 13.11.2006 stating that his wife Kusum Lata was ill and he wanted to take her to the hospital. She did not elaborate when she came to know about the murder of her husband Ashok Kumar. Nothing was explained by her about what steps were taken, when her husband did not return after considerable time. She did not reveal that the deceased used to go to any specific place for job/work. The natural conduct of this witness would have been to make inquiries from the accused or his family members

about the whereabouts of the deceased when he did not return till night. In the cross-examination, this witness pleaded ignorance as to from where the body of her husband was recovered. She also introduced a new case stating that she received information regarding death of her husband on 13.11.2006 at 8:00 A.M.

10. The Trial Court rightly observed that as per post mortem report (Ex.PW-4/A) the time of death was 18 hours to 24 hours which came to 1:30 P.M. on 13.11.2006. The prosecution failed to prove that the deceased remained in the company of the accused from 8:00 A.M. to 1:30 P.M and if so at which place.

11. In the case of *State of Goa v.Sanjay Thakran* (2007) 3 SCC 755 the Supreme Court noted general principles with reference to the principles of last seen together in *Bodhraj v.State of J&K* (2002) 8 SCC 45 as under:

“The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.”

32. In *Ramreddy Rajesh Khanna Reddy* (2006) 10 SCC 172 this Court further opined that even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of

the crime becomes impossible, the courts should look for some corroboration.

34. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

12. The prosecution thus failed to adduce cogent evidence to establish the circumstance of ‘last seen’.

13. The accused categorically denied that the deceased and his family members ever resided as tenant under him or that the deceased had vacated the premises on 01.11.2006. The accused further claimed that the house from where the dead body was allegedly recovered did not belong to him and he never resided there. The police failed to collect any title documents to prove ownership of the premises in question. The prosecution did not claim that the house in question was in the exclusive possession of the accused and no one else was residing there. Contrary to that, PW-13 alleged that the door was opened by Hari Singh, the accused’s father. The accused produced DW-6 (Sudesh Kumar) who categorically stated that the house where the murder took place was owned by him and it was lying locked since its purchase on 28.11.2005. He proved copy of the original sales deed (Ex.DW6/A) to establish his ownership. These assertions remained uncontroverted in the cross-examination. Due weightage is to be given to the defence evidence.

14. Another glaring aspect of the case is that in the post mortem report Ex.PW4/A the death was opined due to *“asphyxia caused by strangulation by means of ligature material which was sufficient to cause death in ordinary course of nature. It was homicide death, may be caused by more than one person.”* The police allegedly recovered the cable wire (Ex.PW2/1-1) pursuant to accused’s disclosure statement. However, when this exhibit was shown to PW-4 (Dr.L.C.Gupta), he categorically stated that T.V. cable wire (Ex.PW2/1-1) could not be the weapon of offence and the injuries found on the neck and body of the deceased could not have been caused by the said wire. The police, thus, failed to recover the weapon of offence. No opinion was sought from PW-4 (Dr.L.C.Gupta) that injuries on the deceased were possible with the knife (Ex.PW2/1) allegedly recovered at the instance of the accused.

15. Recoveries of knife, cable wire and shirt are doubtful as no independent public witnesses were joined despite their availability. The accused was arrested on the spot. However, his disclosure statement was recorded next date after getting police remand. It is unbelievable that the police would not have searched the house in question or the nearby area to recover the incriminating articles on reaching the spot on 13.11.2006 itself. Recoveries of these articles from an open space (i.e.roof) accessible to others do not have any evidentiary value.

16. The prosecution thus failed to prove cogent and reliable circumstances to connect the accused with the commission of offence. No motive was assigned to him for committing the heinous offence in a residential house occupied by his family members. Nothing emerges from the record to show if during stay for about seven years as tenant in the

house of the accused, any serious quarrel took place prompting him to take the extreme step. The Trial Court also doubted that the contents of DD No.31/A (Ex.PW3/B) were recorded at the time mentioned in it. An examination of DD No.31/A (Ex.PW3/B) reveals that telephonic information was received at 7:15 P.M. However, neither did it contain the informant's name nor the telephone number from where the information was received. The house number of the accused also does not find mention in the entry. It is not clear when the FIR was delivered to the concerned Magistrate under Section 157 Cr.P.C. The prosecution witnesses have given contradictory version regarding information about death to PW-5 (Padma). No memos were prepared at the spot bear her signature and rule out if she reached the spot on the night intervening 13/14.11.2006. It contradicts prosecution case that her statement under Section 161 Cr.P.C. was recorded on 13.11.2006 as IO in his cross-examination admitted that no family member of the deceased reached the spot on 13.11.2006.

17. Since the prosecution failed to prove that the dead body was in the exclusive possession of the accused, there was no compulsion for him under Section 106 of the Evidence Act to explain the incriminating circumstance.

18. It has been repeatedly reiterated that the standards to be applied by the High Court while considering the petitions for leave to appeal against acquittals 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 has listed various grounds on which it acquitted the respondents/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.

19. Applying the standards while hearing leave petition, we are satisfied that the acquittal recorded by the Trial Court is based on sound reasoning and analysis which does not call for interference.

20. In view of the above, we are satisfied that there are no substantial or compelling reasons to grant leave to appeal to the State against the impugned judgment. In the circumstances, the petition is unmerited and is consequently dismissed.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

MARCH 12, 2012

sa