

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

Reserved on: 28.05.2012
Pronounced on: 02.07.2012

+ **CRL.L.P. 525/2011, Crl. M.A. 17442/11, 5049/12 & 5050/12**

STATE

..... Petitioner

Through : Sh. Rajesh Mahajan, ASC with Ms.
Urvi Kuthiala, Advocate and Sh. Pawan Kumar,
PS Vasant Kunj.

versus

KULDEEP AND ANR.

..... Respondents

Through : Sh. D.M. Bhalla, Advocate.

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

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Crl. M.A. 17442/2011 (Under Section 5 of the Limitation Act)

For the reasons mentioned in the application, the application is
allowed.

Crl. M.A. 5050/2012 (for exemption)

For the reasons mentioned in the application, the application is
allowed.

Crl. L.P. 525/2011 & Crl. M.A. 5049/2012 (for modification)

1. The State seeks leave to appeal through this Petition, against the
judgment and order dated 04.05.2011, of a learned Additional Sessions

Judge, in SC No.09/2009 acquitting the respondents (hereafter referred to by the names, i.e. Kuldeep and his father Sohan Lal, the accused). The respondents were arrayed as accused and charged with having committed offences punishable under Section-304/34 IPC. The impugned judgment acquitted them.

2. The prosecution case was that one Ravinder Kumar, son of the accused Sohan Lal had married Alka, PW-1. It was alleged that Alka's relationship with her brother-in-law Kuldeep was not smooth and he used to allegedly abuse and threaten her. PW-1 complained to her parents. Consequently, on 22.10.2008, her father Mangat Ram, ("the deceased"), with her brother Jai Singh, PW-17 and Rajesh, a cousin (PW-18) went to Alka's matrimonial home. It was alleged that Sohan Lal started abusing the complainants; Kuldeep, who was not in the premises, reached there and joined his father in abusing Alka and her relatives. It was alleged that Sohan Lal caught hold of the deceased from the waist and Kuldeep pressed his neck and showered fist blows on his chest. It was alleged that PW-17 and 18, who accompanied Mangat Ram were restrained by others, who belonged to Village Rajokri, where the accused lived. In the meanwhile, Mangat Ram fell down; PW-17 freed himself with difficulty and attempted to rescue his father. Mangat Ram became unconscious. PW-17 and 18 took Mangat Ram to Deepan Hospital along with Alka, PW-1 where he was declared "brought dead". The first information, a DD entry was intimated at 12.28 PM on 22.10.2008, i.e. Ex.PW-12/A; it was conveyed to PS Vasant Kunj. The PCR van reached there and intimation was sent to Control Room. The complaint was recorded as Ex.PW-17/A on which the FIR, Ex.PW-6/A was lodged.

The IO visited the spot and seized several samples relevant for the case. The complainant had alleged that the accused knew fully well that the deceased was suffering from heart ailments and nevertheless showered fist blows on him. Some medical records pertaining to the deceased were also seized. The accused were arrested.

3. After conclusion of Post mortem, the report of the proceeding was collected, Ex.PW-13/A, and after completion of investigation, the accused were charged with the offences punishable under Sections 304/34 IPC. They denied guilt and claimed trial. The prosecution examined 22 witnesses in support of its case and relied on several materials, including exhibits. After considering all these, including the testimonies of main witnesses, i.e. PWs-1, 17 and 18, the Court concluded that the guilt of the accused had not been proved beyond reasonable doubt.

4. The Trial Court, in the impugned judgment, analysed the testimonies of PWs-1, 17 and 18 and found that they had corroborated each other as regards the prosecution version in respect of the attack upon Mangat Ram by the accused. The Court then addressed itself to the core question whether the pre-existing ailment, i.e. cardiac disease or condition of the deceased was known to the accused. The Court relied and discussed upon the decision in *Loknath Behera v. State* 1984 CrLJ 833; *K. Malles Rao v. State* 1986 CrLJ 427 and *Thuru Turi v. State* 1986 CrLJ 438. After considering these, the Trial Court proceeded to analyse the evidence before it and recorded conclusions:

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I consider that from the testimony of prosecution witnesses though it has born out from the record that deceased was a heart patient but there is no material on record to suggest that the accused persons had any intention or knowledge to attribute Sec. 299 IPC. The prosecution has also failed to prove that this fact was in the knowledge of the accused persons. Thus, this case does not fall in the category of culpable homicide. However, now it has to be seen whether the case as a whole inspires the confidence of the Court or not. The Court while deciding such cases has to take into account all the relevant facts into consideration. It was the complainant party who had gone to the house of the accused persons. They had gone there to discuss the complaints received from PW1 Alka. The record also speaks out that Alka does not seem to have any dispute with her husband. It is also matter of record that even now the said Alka is residing at her matrimonial home. Alka has stated in her testimony that she had a dispute only with her brother in law Kuldeep. Thus, deceased Mangat Ram had gone there to discuss the matrimonial problem of his daughter and in such a situation it cannot be ruled out that he must be disturbed at that moment. PW17 Jai Singh and PW18 Rajesh stated that when the quarrel tookplace certain other persons also reached there but the prosecution has not made an of such person as a witness. It is also petinent to mention here that the incident in question had taken place at around 10am whereas the first information to the police was made at 12:28 pm and the rukka was sent at 3:30 pm. It is also worthwhile to note here that though the deceased was initially taken to Deepan Hospital but the investigating agency did not considerit appropriate even to examine any doctor from the hospital. It is a matter of record that no MLC was prepared at Deepan Hospital Mangat Ram was taken to Deepan Hospital here he was declared dead. However PW17 Jai Singh and PW18 Rajesh did not take him to any government hospital. I have seen the crime

team report. As per the crime team report Ex.PW20/A, the crime team inspection was done between 3:30-4pm. The inspection by the crime team is to be done at the earliest. Prosecution has not given any explanation that why the crime team inspected the spot at such a delayed period. PW17 Jai Singh has stated that he also suffered some injuries. However, there is no indication of any kind of injury in his MLC Ex.PW14/A. The accused persons in their statement u/S 313 Cr.PC have stated that infact PW1 Alka wanted a partition in the house and accused Sohan Lal was opposing this on which there was a dispute. This fact was put to PW18 Rajesh in the cross examination and he admitted that he himself with deceased had gone to the house of Ved Ram ie father in law of Kuldeep to discuss about the complaint made by Alka. He has stated that they had proceeded with an intention to get the kitchen separated so that there was no quarrel or disharmony in the family of Alka. The investigation also seems to have been conducted in a casual manner. PW17 Jai Singh admitted in the cross examination that even clothes of his father was not seized which he was wearing at the time of incident. Jai Singh also stated in the cross examination that his shirt was torn during the grapple but no such clothes were seized by the police. The presence of Kuldeep on the spot is also doubtful.

7.7 PW7 Urmila who is an independent witness has admitted in the cross-examination that Sohan Lal was sitting at a distance of 7-8ft from the complainant party and Kuldeep was not present at the spot. She stated that Kuldee had not reached till the deceased had fallen. It was deceased who was shouting in the quarrel and Sohan Lal was was sitting calmly.

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5. This Court has carefully considered the submissions on behalf of the State, which seeks leave to appeal, contending that the collective testimonies of the eye-witnesses categorically pointed to knowledge on the part of the accused about Mangat Ram's pre-existing medical condition. Thus, their assault had to be understood as part of the intention to commit the offences punishable under Section 304 Part-II IPC.

6. The Trial Court's records have been considered by us. The testimony of PW-17, brother of the complainant, Alka suggests that she was not present at the time of the altercation. However, PW-1 asserted otherwise. PW-17 deposed that he told the accused that the deceased was suffering from a heart ailment and that they should not beat him up. However, PW-1 (who according to PW-17 was not present at the site), asserted that she had disclosed this fact to the accused at the time of incident. PW-18, the cousin of PWs-1 and 17 gave different version; he was silent as to whether either PW-1 or PW-17 in fact told the accused about the deceased's medical condition; he merely stated that they knew that he was suffering from a heart ailment. Apart from this important contradiction which casts serious doubts about the knowledge of the pre-existing medical condition of the deceased, another significant feature which the Trial Court noticed was that the doctor who examined the deceased at Deepan Hospital, was not joined during the investigation and did not even depose in Court. Having regard to this state of the record, and the Postmortem report as well as the opinion of the doctor, which clarified that there were no external injury on the deceased, the Trial Court concluded that the material before it was insufficient to convict the accused.

7. This Court recalls that the principles which permit the State to appeal against acquittal require the Court to be satisfied that the Trial Court's reasoning, *prima facie*, discloses substantial or compelling grounds for the High Court to exercise its appellate jurisdiction. In the present case, none of the circumstances constituting the offences alleged in the case has been proved. The Court is, therefore, of the opinion that the Trial Court's reasoning is justified and sound.

8. Applying the aforesaid standard, this Court is satisfied that the findings in the impugned judgment do not call for any interference as the reasoning of the Trial Court is sound and justified. It is, therefore, held that the petition is meritless and is consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P.GARG
(JUDGE)

JULY 02, 2012