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

+ CRL.L.P. 38/2006

% *Judgment dated 02.09.2013*

STATE

..... Petitioner

Through : Ms.Rajdipa Behura, APP for the State.

versus

PREM SINGH @ FAUZI & ANR.. Respondent

Through : Mr. Anupam Sharma, Advocate with
Mr. Javed Akhtar & Mr. Kaushal
Kaushik, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE G.P.MITTAL

G.S.SISTANI, J (ORAL)

1. The state seeks leave to appeal against the judgment dated 27.01.2005 passed by the learned Additional Sessions Judge (ASJ) in Sessions Case no. 7/2001 whereby the respondents (accused before the trial court) were acquitted of the charges punishable under Sections 302/201/34/120-B IPC.
2. As per the version of the prosecution, on 16.04.1998 an information was received at P.S. Sameypur Badli and it was recorded vide DD No.30-A at about 10:15 pm that a dead body of a male person was found lying at Khara Kalan road. S.I. V.N. Mishra along with Sudershan Kumar went to the spot. Insp. Mahener Singh, SHO also reached at the place of recovery of the body. One unidentified dead body of a male person, aged about 30-32 years, completely naked with head shaved was found lying there. The body could not be identified at the spot. After completion of the inquest proceedings, the body was shifted to the mortuary, Civil Hospital. The post mortem was got conducted on 18.04.1998 and the body was

cremated on 20.04.1998. The photographs of the dead body were kept. On 28.04.1998, the photograph was identified as that of Ajay Kumar Singh, son of Shri Ram Nath Singh, resident of Village Ghatora, District Vaishali, Bihar. The brother of the deceased, Virender Kumar Singh identified the body based on the photograph.

3. The brother of the deceased had got recorded the missing report of Ajay Kumar Singh in P.S. Maurice Nagar on 19.04.1998 vide DD No.7-A.
4. The autopsy conducted opined the cause of death as asphyxia with apoplexy, consequent to mechanical pressure exerted over throat. Soft ligature over throat was found. Mechanical obstruction was sufficient to cause death in the ordinary course of nature. Time since death was opined as two to two and a half days and the death could have been caused in between 4:00 am to 6:00 am on 16.04.1998
5. On 3.05.1998, Insp. Jaan Mohd., SHO of P.S. Bara Hindu Rao took into custody respondents Prem Singh and Samson @ Raju in case of FIR no. 192/97, under sections 365/302/201/120-B IPC. The respondents disclosed that on 16.4.1998 at about 8:00 pm, they with the help of other companions killed a person named Ajay, and his naked dead body was thrown by the side of Khera Road. On the basis of the said disclosure statements of the respondents, the investigating officer of the case in hand obtained police remand of the accused persons. Both the respondents made separate disclosures and the police recovered some incriminating articles to connect the respondents with the crime of the murder of Ajay.
6. Respondent no.1, Prem Singh got recovered one charpai (cot), one quilt and one dirty cloth from a dairy in village Jaroda. He stated that the recovered cloth was used to tie down the deceased and then, he was put over the cot and was killed and thereafter, his body was wrapped in the quilt and was kept in the dairy. Respondent no.1, Prem Singh also got

recovered a bunch of keys, which were lying over the shutter of the dairy in village Jharoda and one Maruti car no. DL 8C B-4397. One wrist watch and one razor were also got recovered by respondent no.2.

7. On 07.09.1998, charges were framed against both the respondents for offences under section 302 and 201 read with section 34 IPC. It has been alleged against them that in the night intervening 15/16.4.1998 at milk dairy of respondent no.1, Prem Singh@Fauzi, Village Jharoda, both of them in furtherance of their common intention, along with their associates, committed the murder of Ajay by strangulation and then, threw the dead body of the deceased Ajay at Khera Road near AIR station with the intention of screening the offence from legal punishment and to cause the evidence of commission of offence of murder to disappear.
8. The prosecution has examined 25 witnesses to prove the charges framed against the respondents.
9. Ms. Rajdipa Behura, learned APP submits that the judgment passed by the trial court on 27.01.2005 is manifestly wrong, bad in law and contrary to the facts and evidence on record. She further submits that the impugned judgment is based on conjectures and surmises and has resulted in the miscarriage of justice. Counsel further submits that the learned trial court has failed to appreciate vital pieces of evidence such as the disclosure statements of the respondents Prem Singh and Samson whereby they have clearly disclosed that on 16.04.1998, they, with the help of other companions, killed the deceased Ajay and his naked dead body was thrown by the side of Khera road. The counsel next submits that the respondent no.1 got recovered one charpai (cot), one quilt and one dirty cloth from a dairy in village Jharoda and stated that the recovered cloth was used to tie down the deceased, after which he was put over the cot and was killed. Thereafter, his body was wrapped in the quilt and was

kept in the dairy. Counsel further submits that respondent no.1 also got recovered a bunch of keys which were lying over the shutter of the dairy. Counsel further states that the learned trial court has failed to appreciate the recovery of one watch and one razor from the house of Respondent no. 2.

10. We have heard learned counsel for the petitioner and carefully examined the judgment of the trial court. This is a case based on circumstantial evidence and no ocular evidence has been adduced by the prosecution. In the case *Babuda v. State of Rajasthan*, reported at **1992 Supp (2) SCC 438** the Apex Court held that in a case based on circumstantial evidence, the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a complete chain without giving room to any other hypothesis and should be consistent with his guilt and inconsistent with his innocence. Furthermore, it was observed by the Apex Court that mere recovery of articles does not establish the guilt of the accused, when there is no other clinching or corroborating evidence to conclusively prove the guilt of the accused and that mere suspicion, however strong, cannot be the basis of conviction.
11. While deciding the present leave to appeal, the aforesaid principles culled out by the Apex Court are to be kept in view.
12. Learned counsel for the state has placed strong reliance on the disclosure statements of the respondents and the articles recovered at the instance of the respondents. However, on careful analysis of the entire evidence, we find that the articles so recovered have not been conclusively connected with the crime committed by the respondents so as to prove the guilt of the accused beyond reasonable doubt. Admittedly, PW-18, Dr. K.L. Sharma who conducted the post mortem on the dead body of the deceased opined in the post mortem report Ex PW-18/A that the cause of death was

asphyxia with apoplexy, consequent to mechanical pressure exerted over right structure by strangulation. However, it has been rightly observed by the learned trial court that neither did PW-18 give any opinion with respect to whether the recovered cloth was or could have been used to cause the death, nor has PW-15, Vijay Kumar, brother of the deceased stated anywhere that the recovered cot and the quilt belonged to deceased Ajay. Therefore, no plausible connection has been drawn between the articles alleged to have been recovered at the instance of the respondents and the death of deceased. As discussed above, mere presence of suspicious circumstances cannot relieve the prosecution of its burden of proving the case against the respondents beyond reasonable doubt. Consequently, we agree with the opinion of the trial court that the circumstantial evidence as relied upon by the prosecution does not establish a chain so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused.

13. We are satisfied that the prosecution has not been able to prove its case beyond reasonable doubt, there is no perversity in the appreciation of evidence. There exist no compelling and substantial reasons for interference in the judgment of the trial court. Accordingly, the leave to appeal is dismissed.

G.S.SISTANI, J

G.P.MITTAL, J

SEPTEMBER 02, 2013 ssn.