

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

% *Date of Judgment: 20.9.2013*

+ **Crl.L.P. No.517/2013 and Crl.M.A. No.14228/2013 (for condonation of delay of 106 days)**

STATE Petitioner
Through: Mr.Saleem Ahmed, ASC.

versus

HEMA RAM & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The State has filed the present Criminal Leave to Appeal against the judgment dated 28.02.2013 whereby the four respondents namely Hema Ram S/o Sh.Prabhu Ram, Kewa Ram S/o Sh. Jeewa Ram, Bhawna S/o Prabhu Ram and Dewa S/o Prabhu Ram had been acquitted for the offence for which they have been charge-sheeted i.e. offence punishable under Sections 302, 364, 201, 120B of the Indian Penal Code (IPC).

2 The version of the prosecution is that on 16.12.2009 at about
Crl.L.P. No.517/2013

11.00 am in the morning all the aforementioned persons in furtherance of a criminal conspiracy had kidnapped Naresh Rana (since deceased) and after committing his murder they had disposed of his body; this was for the reason that the deceased had fallen in love with Subti, the daughter of the accused Hem Ram; they had got married but the family of the accused was opposed to this marriage; litigation was also pending qua this issue. This was the motive for the criminal conspiracy having been hatched by the accused persons to commit the murder of the deceased.

3 This was admittedly a case of circumstantial evidence. There was no eye-witness. The prosecution in support of its case had relied upon six circumstances. The first circumstance was the circumstance of last seen i.e. the deceased Naresh Rana having been last seen in the company of the accused on the fateful day of incident i.e. on 16.12.2009. To substantiate this circumstance the prosecution had examined PW-3 and PW-6. Testimony of both the aforementioned witnesses has been perused. PW-3 had deposed that on the fateful day i.e. 16.12.2009 he received a phone call that the “bagris” were not giving milk to his driver, generally his driver used to go to the “bagris” for getting milk. He accordingly reached there alongwith his brother Ram

Prasad (PW-6). Many “bagris” had assembled at the spot. The deceased Naresh Rana was also there; those “bagris” were having dandas; they agreed to give milk to PW-3 on PW-3 promising them that his driver would not in future be seen in the company of Naresh Rana (deceased); Naresh Rana was sitting on his motorcycle; thereafter on a subsequent date i.e. 27-28.12.2009 he learnt that Naresh Rana had been killed. This witness had been declared hostile as he could not identify the accused. In his cross-examination he specifically denied the suggestion that the accused before this Court were present at the spot. So also is the version of PW-6. Both of them have denied the specific suggestion that the persons present at the spot were amongst those “bagris”. The circumstance of last seen was thus rightly noted by the trial court not to have been established.

4 The next circumstance relied upon by the prosecution was the recovery of the dead body of the victim which was recovered on 24.12.2009 i.e. after about eight days of the incident as also the recovery of the alleged motorcycle of the deceased Naresh Rana. These recoveries as per the version of the prosecution had been effected pursuant to the disclosure statement of the accused Hema Ram. The

version of the prosecution on this count is that two public witnesses i.e. PW-14 and PW-20 had also witnessed this recovery. The trial judge had rightly disbelieved this recovery. For this proposition he had relied upon the testimony of PW-4 who was the photographer who had been called to the spot to videograph the scene of the recovery. Testimony of PW-4 has been perused from the police file which has been shown to us by the learned public prosecutor. The testimony of PW-4 revealed that he had received a call at 8.00-9.00 a.m. on 24.12.2009; he reached the spot 10-15 minutes later; the digging work was in progress. This testimony of PW-4 clearly shows that it was at around 9.15 a.m. in the morning that the digging work for the excavation of the dead body and the motorcycle was in progress when he reached there. This is in contrast to the case set up by the prosecution which is to the effect that that the recovery of the dead body and of the motorcycle had been effected sometime in the evening of 24.12.2009. On this score the version of PW-14 and PW-20 who were depicted as the witnesses to the recovery is relevant. PW-14 had deposed that on 24.12.2009 he along with his brother Pradeep (PW-20) had gone to the police station at 3.00 – 3.30 p.m.; they had accompanied the police thereafter for the

CrI.L.P. No.517/2013

purpose of investigation. Further testimony of PW-14 evidencing that the recovery was effected thereafter revealing that the recovery was effected in the evening; so also was the version PW-20 (cousin of the deceased). The recovery memo of the dead body Ex.PW-14/D and the recovery memo of the motorcycle Ex.PW-14/F both show that PW-14 and PW-20 were the alleged eye-witnesses to the aforementioned recovery. The trial judge had rightly noted that this evidence reflects that the recovery was effected in the evening of 24.12.2009 but the testimony of PW-4 who was the videographer and who had been called to videograph the recovery is in contrast to the versions of PW-14 and PW-20. On this count a weak submission has been made by learned public prosecutor that the timing in the version of PW-4 had been wrongly typed; it should read as 8.00-9.00 p.m. and not 8.00-9.00 a.m. This submission is wholly without any merit. If this was the position, it was incumbent upon the learned public prosecutor conducting the trial to have got made the correction in the record of the trial court by moving an appropriate application but this was not done. Further version of PW-4 being that no public person was present at the time at the spot of recovery is again in contrast to the version of the prosecution that

CrI.L.P. No.517/2013

PW-14 and PW-20 (public witnesses) were witnesses to the recovery. In these circumstances, these recoveries were rightly disbelieved.

5 The recovery of the two phawdas, one lathi and one tasla pursuant to the disclosure statement of Kewa Ram was also rightly noted to have been demolished as the investigating team i.e. PW-27 and PW-18 were both confused about the person from whom the recovery was effected i.e. whether it was from Hema Ram or from Kewa Ram. Moreover, both the aforementioned witnesses have also admitted that similar types of phawdas, lathis and taslas were easily available in the market. There was no special mark of identification on the aforementioned items.

6 In a case of circumstantial evidence, the law is well settled; all the links in the chain must be proved; a single circumstance by itself would not be sufficient to nail the accused. In this case, all the links in the chain stands demolished except motive which has been projected in the version of PW-1 and PW-2 who are even otherwise close family relations of the deceased.

7 The motive has been depicted in the version of PW-1 and PW-2 which was probably the reason that the children of the warring parties

i.e. the complainant and accused has got married with one another and the respondents still being unable to accept the marriage of Subti with Naresh Rana had decided to eliminate him. This was the single circumstance which was, rightly noted by the trial court to have been proved. There is no other circumstance available with the prosecution to nail the accused.

8 In these circumstances, the burn injuries noted on the accused Hema Ram would also be of no consequence. More so, when the doctor (PW-23) had admitted that he had not opined on the history given by the patient i.e. about the manner in which burn injuries had been inflicted.

9 The courts have time and again reiterated the well settled principle of law that the court should be slow in interfering with the orders of acquittal; unless and until there is a patent illegality or perversity which is noted on the face of the record, interference with the discretion exercised by the trial judge may not be called for.

10 In Ghurey Lal vs. State of U.P. 2008 4 CCC SC 49, it has been held that the principles to overrule a judgment of acquittal by a trial

court should be strictly followed; the said principles over the years have been crystallized and the rules have to be strictly adhered to. The following rules had been enunciated in this case:-

“1. The appellate court may only overrule or otherwise disturb the trial court’s acquittal if it has “very substantial and compelling reasons: for doing so. A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court’s decision. “Very substantial and compelling reasons” exist when:

- i) The trial court’s conclusion with regard to the facts is palpably wrong;*
- ii) The trial court’s decision was based on an erroneous view of law;*
- iii) The trial court’s judgment is likely to result in “grave miscarriage of justice”;*
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- v) The trial court’s judgment was manifestly unjust and unreasonable;*
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*
- vii) This list is intended to be illustrative, not exhaustive.*

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached- one that leads to acquittal, the other to conviction- the High Courts/appellate courts must rule in favour of the accused.”

11 There is no merit in the arguments of the State. No case is made out for grant of leave to appeal.

12 This court also notes the fact that there is a delay of 106 days in filing the present petition.

13 Being devoid of merit, the petition as also the application for condonation of delay are dismissed accordingly.

INDERMEET KAUR, J

KAILASH GAMBHIR, J

SEPTEMBER, 20, 2013
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