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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 8/2012**

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Sunil Sharma, Additional
Public Prosecutor for the State

versus

TAJ MOHD. @ TAJU & ANR.

..... Respondent

Through: Mr. G.S. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

18.07.2013

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CRL.L.P. 8/2012

1. This criminal leave to appeal has been preferred by the State under Section 378(4) of the Code of Criminal Procedure to challenge the judgment dated 7th August 2010 passed by the learned Additional & Sessions Judge VI, Rohini Courts, Delhi, thereby acquitting the accused person of the charge under Section 302/34 of IPC.

2. In brief, the case of the prosecution as culled out from the charge sheet is that on 28th December 2002 on receipt of DD No.19B, ASI Azad Mohd. alongwith constable Tej Singh reached the spot situated at 100 ft wide road at Sector 21-22, Rohini, Delhi, where he found a dead body of a male aged about 45 years lying inside a pit by the side of the road. One

Kailash Chand reached there and identified the dead body as that of his brother-in-law namely Nanak Chand. The Police recorded his statement to the effect that the deceased– Nanak Chand was a resident of F-945, Mangolpuri, Delhi, having a ration shop in E-Block, Mangolpuri and was missing since 27th December 2012 from 4 p.m.. Kailash Chand further stated that a missing report to that effect was lodged at about 10 a.m. at Police Station Mangolpuri on 28th December 2002 and based on this statement an FIR concerning the said incident was registered. The investigation of the case was handed over to Inspector Sushil Kumar who got prepared the site plan without sketch, got the spot photographed, summoned the crime team at the spot, seized the exhibits from the spot and later got conducted the post mortem of the dead body at SJM Hospital, Mangolpuri, Delhi. It is further the case of the prosecution that on 29th December 2012, accused Taj Mohd. was arrested in the case, who made a disclosure statement that as he owed some money to the deceased and the deceased was demanding back that money again and again from him, therefore, with a view to get rid of the deceased itself, he alongwith his associate – Prabhu hatched a conspiracy to kill the deceased. He further stated in his disclosure statement that when on 27th December 2002 he alongwith his associate – Prabhu reached at the Ration Office

around 4.30 PM and met the deceased - Nanak Chand alongwith his son Rohit, they took the said Nanak Chand alongwith them on a scooter on the pretext that they would return his money back. He further stated that the son of the deceased Rohit was sent back to his house and he alongwith the deceased and the associate – Prabhu after consuming liquor at Sector 21, Rohini reached at 100 ft road, Sector 21-22, Rohini, where, when the deceased got the scooter stopped for a natural call, both of them pushed the deceased while he was urinating near a pit by the side of the road. He further stated that after pushing the deceased in the pit, he caught hold of the feet of the deceased and his associate – Prabhu took out a sharp razor and gave a blow on the neck of the deceased and thereafter he took the said razor from his associate – Prabhu and also gave a blow on the neck of the deceased, due to which Nanak Chand died and thereafter both of them left that place on scooter and after about half a kilometer away, accused Prabhu threw the shaving razor at kacha place by the side of the road. As per the prosecution, the accused got the razor recovered and also got his associate – Prabhu arrested. It is further the case of the prosecution that the said shaving razor was shown to the Doctor who conducted the autopsy and the said doctor gave a subsequent opinion with regard to the injuries found on the dead body of the

deceased having been caused by the said shaving razor. The Appellant sent the exhibits to the FSL and also recorded the statement of witnesses. Police had also seized the documents which were in the handwriting of the deceased and the same were sent to FSL for the opinion of the handwriting expert. The co-accused Prabhu had also surrendered before the concerned Metropolitan Magistrate who made a disclosure statement and pointed out the place where the weapon of offence was found and also the spot of the incident, whereafter the police had filed a supplementary charge sheet against him. On the basis of the charge sheet and evidence on record, the learned Trial Court had framed charges against both the accused persons punishable under Section 302/34 of the IPC, to which they pleaded not guilty and claimed trial.

3. The prosecution in order to prove its case examined as many as 21 witnesses. The statement of accused – Taj Mohd. was recorded under Section 313 of the Cr. P.C. He denied the incriminating evidence against him and pleaded his innocence. The accused – Taj Mohd., however, did not lead any defence evidence. The proceedings against the co-accused Prabhu stood abated vide order dated 10th February 2005 on account of his death.

4. After taking into consideration the evidence adduced by the prosecution witnesses, disclosure statements of the accused persons, medical evidence, post mortem report, FSL report and other material on record, the learned Sessions Judge found that all the links tried to be proved by the prosecution in the chain of circumstances could not establish the guilt of the accused beyond reasonable doubt and as such, it could not be said that the prosecution succeeded in establishing the guilt of the accused for committing murder of the deceased Nanak Chand. Giving a benefit of doubt to the accused, the learned Sessions Judge acquitted the accused of the charges punishable under Section 302 of IPC. Feeling aggrieved by the said judgment, appellant State has preferred the present petition seeking criminal leave to appeal.

5. Addressing arguments on behalf of the State, Mr. Sunil Sharma, Additional Public Prosecutor submits that the prosecution had successfully proved its case beyond reasonable doubt. He further submits that the learned Sessions Judge passed an order of acquittal by ignoring the unrebutted testimonies of PW1 and PW11 and by giving undue weightage to the minor contradictions in the testimonies of the prosecution witnesses. Learned Additional Public Prosecutor for the State further submits that the prosecution has also successfully proved that

there was a clear motive on the part of the accused persons to carry out the murder of the deceased Nanak Chand as both the accused persons never wanted to return back the loan amount taken by them from the deceased – Nanak Chand after the same was repeatedly demanded by him. Learned Additional Public Prosecutor for the State further argues that PW-1, the son of the deceased and PW-11, the wife of the deceased are the last seen witnesses and as per the settled legal position, the evidence of the last seen witness cannot be brushed aside casually. Learned Additional Public Prosecutor for the State also argues that the Learned Sessions Judge wrongly held that there were two different versions given by PW-11. He submits that if the said two versions of PW-11 are considered in totality, then no inconsistency or contradiction can be seen between the two. Learned Additional Public Prosecutor further argues that even the minor contradictions in the two versions of PW11 cannot dismantle her testimony of having last seen the accused persons accompanying the deceased before the incident. Learned Additional Public Prosecutor also argues that when PW 1 visited the residence of the accused Taj Mohd. on 27.12.2002 at 11 p.m., the accused Taj Mohd. had himself disclosed to PW1 that the deceased had accompanied him and the co-accused – Prabhu and they left him at the bus stand of B-Block

Mangolpuri. Learned Additional Public Prosecutor further argues that the disclosure statement of the accused – Taj Mohd. led to the recovery of the weapon of offence i.e. the shaving razor and the bloodstained shirt of the accused and this incriminating evidence itself was sufficient to nail the respondent-accused. Learned Additional Public Prosecutor further argues that there was documentary evidence in the shape of various slips which evidenced the advancement of loan by the deceased to the Respondent – accused, but such documentary evidence was also ignored by the learned Trial Court.

6. We have heard learned Additional Public Prosecutor for the State at considerable length and given our anxious consideration to the arguments advanced by him. We have also carefully perused the judgment of the learned Additional Sessions Judge and the record of the case.

7. It is a settled legal position that the powers of the court in appeal against an order of acquittal are limited. The Hon'ble Supreme Court in ***Ghurey Lal vs. State of U.P., 2008 4 CCC SC 49*** has laid down the following principles before granting leave to appeal against an order of acquittal:

"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."

8. Examining the case in hand on the touch-stone of the aforesaid principles, we do not find that there is any illegality or perversity in the reasoning given by the learned Additional Sessions Judge in disbelieving the case of the prosecution.

9. It is an admitted case that there is no eye witness to the murder of the deceased – Nanak Chand and the entire prosecution case is based on

circumstantial evidence. The Apex court in its recent judgment, ***Rumi Bora Dutta v. State of Assam, 2013 (7) SCALE 535***, has observed that when a case totally hinges on the circumstantial evidence, it is the duty of the Court to see that the circumstances which lead towards the guilt of the accused have been fully established and that they lead to a singular conclusion that the accused is guilty of the offence and rule out the probabilities which are likely to allow the presumption of innocence of the accused. The Apex court placed reliance on various judgments in Paras 11, 12 and 13. The said Paras are reiterated as under-

11. More than six decades back this Court in Hanumant Govind Nargundkar v. State of M.P. AIR 1952 SC 343, had laid down the principles as under:

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

12. In Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116, the five golden principles which have been stated to constitute the panchsheel of the proof of the case based on circumstantial evidence are

(i) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,
(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
(iii) the circumstances should be of a conclusive nature and tendency,
(iv) they should exclude every possible hypothesis except the one to be proved, and
(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

13. In C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, it has been held that in a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

10. Scrutinizing the circumstantial evidence in the present case in the light of the aforesaid legal principles, the motive theory as propounded by PW1 and PW11 in the case at hand do not inspire any confidence as both the said witnesses, in whose presence no money transaction had taken place, have given their own versions regarding the advancement of loan amount by the deceased to the accused persons. PW-1 deposed that his father had advanced a loan of Rs.1,50,000/- to the accused Taj Mohd, while, PW-11, wife of the deceased gave a different version of advancement of loan amount of Rs.2,30,000, which included a chit

amount of Rs.1 lac, separate loan amount of Rs.1 lac and also loan against purchase of wheat and rice worth Rs.30,000 by the deceased to the accused Taj Mohd. It is also an admitted fact that no documentary evidence was available so far as advancement of loan amount to the co-accused – Prabhu was concerned. Even the documentary material that was collected did not clearly reveal any direct transaction between the deceased and the accused. Such documents were found to be mainly signed by the deceased himself without any signatures of the respondent. The learned Additional Sessions Judge in the following paragraphs has discussed the import of the said documents, which are reproduced hereunder:-

“25. The said documents Ex.PW11/X1 to Ex.PW11/X6 are in the handwriting of the deceased, as per report of the handwriting expert Ex.PW18/A1 and Ex.PW18/A2. I have gone through the said six documents. There are certain entries and at Ex.PW11/X1 at the top the word “Tajuddin” is written and against his name, above and below his name, the number “33,000/211, 20,000/2611, 50,000/16112001” is mentioned. Thereafter the number 1560 against which the alphabets “TB” is written and there are many numbers mentioned with the said alphabets TB on the same and against some entries the word “Gaihoon” (wheat) is mentioned. Again there are certain entries in Ex.PW11/X2 against which the words “Jama” (deposit) “TB”, the word “committee” are mentioned. On Ex.PW11/X3, there are 10 numbers against 10 persons which are Radhey Shyam, Labhan Singh,

Tajuddin, Panna Lal, Om Parkash, Taju Khan, Post, Munni Raju, Allahabad Bank, Lakhan Singh, are mentioned and on the Sl. No.11, no number is mentioned but name of Jagdish of D Block is mentioned. Ex.PW11/X4 and Ex.PW11/X5 are piece of paper written on both the sides mentioning certain numbers and against the numbers the words Tajuddin, TB, 410,1010, committee, 159, Jama 1810 and total has been shown as 21,455/and on Ex.PW11/X5, certain sums have been totaled. Ex.PW11/X6 is a very small unevenly cut piece of paper from a note book on which the number 20,000/- is mentioned against which the words "Taju Khan" is mentioned, the number 50,000/-is mentioned against the words "Lakhan Singh" and 25,000/- is mentioned against "Taju Khan". These all exhibits are not signed by the deceased who used to sign in English as per his admitted handwriting on Ex.PW18/1, Ex.PW18/2, Ex.PW18/3, taken from the bank.

26. *Even if it is taken that Ex.PW11/X1 to Ex.PW11/X6 are written by the deceased, the said documents were rough kind of notes not fixing any liability of alleged loan towards anyone or not mentioning that the said numbers were in fact the amount outstanding against any of the persons mentioned in the said account or was it a record of some continuous money transaction for the purpose of memory of the deceased. One thing is very specific that name of the deceased accused Prabhu nowhere appeared in the said documents as per claim of PW1 and PW11 that the deceased had given some loan also to the said deceased accused. The said six documents are more or less memory papers and the same are not mentioning as to what amount was due and to whom and if at all any amount was due as loan.*
27. *In the said circumstances that PW1 specifically admitted that no loan was ever given in his presence to the accused and admission of PW11 that the deceased never discussed about his income and expenditure with her coupled with the manner in*

which the said documents have been recorded, it cannot be inferred that any amount as such was due as loan against the accused. The alleged demand of the money by the deceased from the accused was an improvement before the court by PW11 as the said fact was not found mentioned in her previous statement. Hence, the motive as a circumstance has not been established on record beyond reasonable doubt.”

11. With regard to the ‘last seen evidence’, the learned Additional Sessions Judge rightly disbelieved the testimonies of PW-1 and PW-11 because of the inconsistencies and contradictions in their statements. The inconsistency in the statements of PW-11 cannot be held to be a minor inconsistency as in the first version, PW-11 said that on 27th December 2002 evening, her husband alongwith her son – Rohit had gone to the ration office at Mangolpuri and from there both the accused took her husband alongwith them, as told to her by his son (PW-1) and in her second version, PW-11 told that on 27th December 2002, the accused – Taj Mohd. and the co-accused came to her house and then her husband accompanied the deceased and did not return back. Surprisingly, when the learned presiding judge questioned her about the veracity of the said two versions, she replied that both the versions were correct.

12. It is unfathomable that how come the wife of the deceased – Nanak

Chand would not know exactly as to when her husband had left from the

house and in whose company. PW-1 in his deposition stated that he had gone to the ration office where he met his father and then saw him accompanying the accused Taj Mohd. and the co-accused Prabhu on a two wheeler scooter sitting in between them. The two versions of the PW-11 and the testimony of PW-1 are irreconcilable and therefore, we do not find any fault in the reasoning given by the learned Trial Court for disbelieving the testimonies of the said two material witnesses.

13. In our view, the circumstances of the recovery of the razor, the scooter and the bloodstains on the shirt of the accused – Taj Mohd. also do not inspire confidence and the reasoning given by the Trial Court in paragraphs 31 to 33 of the judgment is free from any perversity or illegality. The said paragraphs are reproduced for ready reference as under:-

“31. Next are the circumstances of the recovery of the razor, the scooter and the bloodstained shirt of the accused Taj Mohd. The said recoveries were effected pursuant to the disclosure statement. The recording of the disclosure statement in the manner as deposed in the examination in chief by PW 14 and PW 15 and PW 21 becomes doubtful in view of the fact that there is a material contradiction with regard to recording of the disclosure statement in the respective deposition of said three witnesses. For PW14, the disclosure statement was recorded by the IO i.e. PW21 while standing on the bonnet of the vehicle but for PW15,

the disclosure statement of the accused was recorded by him at the dictation of the IO and same was recorded while sitting at the Mongol Puri Bus Terminal whereas for PW21, it was not in his memory as to whether the disclosure statement was recorded by him or at his dictation by some other staff member.

32. *The recovery of the shaving razor (ustra) is admittedly from an open place accessible to all and no public witness was joined in the investigation at the time of recovery of the said razor despite their admitted availability by PW14, PW15 and PW21. For PW15, it was recovered from kuccha ground, 20 to 25 sq. Yards away from the main road which was lying in a pit and for PW21, there was no pit at the place from where the said having razor was recovered. No site plan of the recovery of the shaving razor was prepared. The said razor was allegedly bloodstained but the blood detected on the same could not be linked with the blood group of the deceased which was of "B" group as per FSL result Ex.PW17/B.*
33. *The recovery of the alleged bloodstained shirt of the accused Taj Mohd. which he was wearing at the time of the incident was again deposed with material contradictions by said three witnesses. For PW14, the shirt was recovered by the IO when they started from the house of the accused and the same was seized at the time of reaching the PS. For PW15, the said shirt of the accused was recovered from the house of the accused whereas for PW21, the shirt of the accused was seized after reaching the PS and its seizure memo was also prepared at the PS and he did not remember if other shirt was arranged for the accused or not. Further jolt to the deposition with regard to said shirt having bloodstains is given by the FSL result Ex.PW17/B which mentioned that no blood was detected on the said shirt. The recovery of the scooter is not very material because it is a thing having specific registration number and the accused has*

admitted the same to be in his name but it could not be linked otherwise by any other evidence on the record, as discussed above.”

14. Another fact, which cannot be lost sight of is that as per the own case of the prosecution, accused – Taj Mohd remained available throughout and even visited the house of the deceased in the morning of 28th December 2012 so as to enquire about his whereabouts.

15. It is a cardinal principle of criminal jurisprudence that every accused person is innocent unless proved guilty and this presumption of innocence gets strengthened when such an accused is acquitted by the Trial Court after passing a well-reasoned order.

16. Finding no illegality or perversity in the impugned judgment dated 7th August 2010, the present petition deserves to be rejected being devoid of any merit. Therefore, the same stands dismissed. It is ordered accordingly.

KAILASH GAMBHIR, J

INDERMEET KAUR, J

JULY 18, 2013

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