

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

+ CRL.L.P. 15/2013

STATE

..... Petitioner

Through: Ms.Richa Kapoor, APP for the
State with Insp. Vijay Kumar, PS
Vivek Vihar

versus

HASNAIN & ANR.

..... Respondents

Through: Mr.K.S.Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
10.12.2013

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KAILASH GAMBHIR, J.

1. By this petition filed under Section 378(1) of the Code Criminal Procedure Code, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks grant of criminal leave to appeal to challenge the judgment dated 31.8.2012, passed by the learned Additional Session Judge, thereby acquitting the accused persons of the charges framed against them under Sections 302/102B Indian Penal Code, 1860.

2. The facts and circumstances which gave rise to the registration of the case against the accused person, as per prosecution, are that:

“Police machinery was set into motion by DD No. 22A lodged at PS Vivek Vihar at 1816 hours dated 2.7.10 regarding presence of a dead body near Railway Line, Ambedkar Camp, Vivek Vihar, This DD was assigned to ASI Desh Raj who reached at the spot. Thereafter IO PW18 Inspector Sanjay Drall reached at the spot i.e. behind ITI, Vivek Vihar, near Railway Line. The dead body was of a female and her neck was found cut. Crime team and photographer were called by IO, who photographed the scene of crime. IO prepared rukka Ex. PW18/A and gave it to HC Sarfuddin for taking it to PS for registration of the FIR. IO prepared site plan and picked samples of blood and earth control from the spot. The dead body was sent to mortuary. The mobile phone make virgin of chocolate colour was recovered from the possession of dead body. The deceased was identified as Mukarrabi by the family of the deceased in the mortuary. IO conducted the inquest proceedings. After post-mortem dead body was handed over to her relatives. The brothers of the deceased showed their suspicion on accused Hasnain, who is husband of the deceased Call details of deceased and accused Hasnain were analyzed and it disclosed that on the day of incident they had talked with each other number of times. Accused Shah Nawaj, who is nephew of accused Hasnain had also talked with accused Hasnain eleven times on the day of incident. Location of both accused and deceased as per their mobile phones were found to be at Vivek Vihar, Jhilmil Industrial Area and Dilshad Garden. On 27.7.10 accused Hasnain was arrested on the basis of secret information. During interrogation he made disclosure statement admitting his involvement in the crime. On 6.8.10 accused Shah Nawaj was also arrested. After investigation police filed chargesheet against both the accused under Section 302/120B IPC.”

3. Addressing arguments in support of the present criminal leave to appeal, Mr.K.S Singh, Counsel for the State submits that the learned Trial Court erred in ignoring the vital pieces of evidence, which emerged during the course of trial but were not properly appreciated by the learned Trial Court. Counsel further submits that the learned Trial Court has not appreciated the testimony of PW-2 and PW-3, who are the daughter and the son of the deceased respectively and who had specifically stated in their testimonies that respondent No.1, their father used to beat the deceased and used to torture the deceased and they started living with their mother in the house of PW-15, their uncle. Counsel further submits that the learned Trial Court failed to appreciate the fact that the case is based on the circumstantial evidence and the call details of the deceased's phone number i.e. 9213084293 and of the respondent No. 1 i.e. 9811588670 were from the same area on the date of the incident and there were eight calls between the deceased and respondent No.1. Counsel further submits that the learned Trial Court has also failed to appreciate the fact that the respondent No.1 had called 11 times to respondent No.2 on his mobile number 9716758181, which belong to PW-9 Raj Kumar and after the incident both the mobile phones were

switched off. Counsel further submits that the learned Trial Court had also failed to appreciate the fact that from the testimonies of PW-2, PW-3, PW-4 and PW-5, the motive of respondent No. 1 to commit murder was very clear as he was suspicious about the character of the deceased. Based on these submissions counsel for the petitioner prayed for the grant of criminal leave to appeal to challenge the said judgment on acquittal.

4. We have heard learned counsel for the petitioner and given our thoughtful consideration to the arguments advanced by him. We have also gone through the impugned judgment and other material placed on record.

5. It is a settled legal position that in an appeal against an order of acquittal, the Appellate Court should not normally interfere with the findings of fact arrived at by the learned Trial Court unless the reasoning given by the learned Trial Court is perverse or illegal on the very face of it. The Appellate Court should also bear in mind that with the acquittal of the accused persons by the learned Trial Court, the presumption of innocence of the accused persons has been given the legitimacy. It is also a settled legal position that where there is possibility of arriving at two different conclusions on the basis of the evidence on record, the Appellate

Court should not disturb the finding of acquittal arrived at by the Lower Court merely because the other possible view is a preferred view. It is useful here to refer to the judgment of the Hon'ble Apex Court in the matter of ***Rangaiah vs. State of Karnataka*** reported in **AIR 2009 SC**

1411. Relevant paras of the same are reproduced as under:-

“ From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of

innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

6. In the aforesaid background of the legal position and on appreciation of the material on record, we are not persuaded to take any contrary view as has been arrived at by the learned Trial Court in acquitting the accused. The case of the prosecution is based upon circumstantial evidence and it is a settled legal position that for proving the case based on circumstantial evidence links in the chain of evidence must be so complete that they must unerringly point towards only one hypothesis i.e. the guilt of the accused inconsistent with his innocence. Through testimonies of PW2, PW3, PW4, PW5 and PW10, the prosecution successfully proved that there were inimical relations between the accused Hasnain and the deceased and also that the deceased was residing separately with one Haji Chhote after having left her matrimonial house. Through the statement of PW12 the prosecution

sought to prove motive on the part of the accused to kill the deceased as he was desperately looking for the deceased after she started residing with one Haji Chhote. Another angle which the prosecution tried to prove was that the number of telephone calls were exchanged between the accused and the deceased and the location of both mobiles, being used by the deceased and the accused, on the date of the incident was under one tower i.e. tower No. 22098 i.e. Seelampur Shahdara. Based on these incriminating evidences against the accused the view taken by the Trial Court was that beside these two circumstances prosecution has failed to establish any other circumstance to inculcate the accused behind the commission of the said crime. It would be worthwhile to reproduce the operative para of the Trial Court judgment, which is as under:-

“ The entire case of the prosecution is based upon circumstantial evidence. The only circumstances which stand proved against accused Hasnain are that he had a strong motive to kill deceased and immediately before deceased was murdered, he talked with deceased number of times and as per tower location he and deceased were present under the towers of their respective mobile companies. i.e. Tata Tele and Vodafone, covering the spot from where dead body was recovered. Beyond these two circumstances prosecution has miserably failed to establish any other circumstance. These two circumstances are insufficient to draw conclusion of guilt of accused Hansnain. Moreover, the second

circumstance about presence of accused and deceased near the spot of incident immediately before the incident is also not conclusive in nature.”

7. We find ourselves in complete agreement with the said conclusion arrived at by the learned Trial Court. The learned Trial Court is right in observing that in the absence of any other clinching evidence merely based on the said two circumstances i.e. one of hostile relationship between husband and wife and second both of them having talked with each other on the date of incident from their respective mobiles and it cannot be established or proved that the accused has committed the murder of his wife.

8. In view of the above factual matrix and legal position, we find no merit in the present leave to appeal petition and the same is hereby dismissed.

KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

DECEMBER 10, 2013

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