

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

Reserved on: 20th February, 2014

Pronounced on: 18th March, 2014

+ **CRL. L.P.509/2013**

STATE

..... Appellant

Through Mr. Rajesh Mahajan, A.S.C for the
State.

versus

BHAGWATI & ANR.

.... Respondents

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

CRL. L.P.509/2013 and CrI.M.A.14084/2013 (delay)

1. The State seeks leave to appeal against the judgment dated 17.09.2012 passed in Sessions Case No.74/2010 (FIR No.888/2003, Police Station Rohini) whereby the Respondents were acquitted of the charge for the offence punishable under Sections 302/201 read with Section 34 of the Indian Penal Code, 1860 (IPC).
2. As per prosecution version, on 08.10.2003 at about 3:30 p.m., an information was received by Sanjay Gupta (PW-4), Station Superintendent, Uttaranchal Transport Corporation that a jute bag (*bora*) was lying on the right side parking lot of Dehradun Bus Depot. He was further informed that there appeared to be a dead body in the

said jute bag. PW-4 along with other officials immediately reached the spot and noticed the jute bag from a distance of about one-two mts. He also became suspicious about the presence of the dead body in the bag and thus, passed on the information to the two police constables who were on duty at the Depot. Thereafter, S.I. V. K. Sharma (PW-28) and S.I. Satyavir Singh (PW-31) from the Police Station (PS) Kotwali, Dehradun along with other police officials reached the spot. On opening of the gunny bag, a dead body of a male was recovered.

3. According to the prosecution, one STD receipt containing some telephone numbers was recovered from the pocket of the dead body and one *khakhi* button was also recovered from the right hand fist of the dead body. On making calls on the telephone numbers, deceased's relatives, his brother Raghubir (PW-15) and his uncle Ganesh (PW-20) reached Dehradun and identified the dead body to be that of Shyam.
4. During investigation it transpired that the deceased had relationship with Respondent No. 1 Bhagwati and was staying with her. Jyoti, daughter of Respondent No.1 Bhagwati had grown young. The deceased had an evil eye on her which was being objected to by Respondent No. 1 Bhagwati. This objection, it is alleged was communicated by Respondent No. 1 Bhagwati to PW-15 and PW-20. Jyoti is also alleged to have disclosed the deceased's ill intention to their landlord, Jagdish Prasad (PW-3). The deceased's evil eye on Jyoti is alleged to have prompted the Respondents Bhagwati and her son Virender to have committed the deceased's murder.
5. On Respondents pleading not guilty to the charge, the prosecution in

order to bring home the Respondents' guilt examined 31 witnesses. In order to prove the case, the prosecution relied upon circumstantial evidence in the shape of recovery of a button from deceased's right fist, recovery of a bloodstained knife (*chhura*) at the instance of Respondent No. 1 Bhagwati and recovery of a bloodstained shirt with a missing button at the instance of Respondent No. 2 Virender in pursuance of the disclosure statements made by them, Ex. PW-24/A and Ex. PW-24/B respectively. The prosecution further relied on 'motive' as a supporting evidence to the above stated recoveries to establish the Respondents' guilt.

6. On appreciation of evidence, the Trial Court found it difficult to believe that any button was found in the fist of the dead body because of the fact that PW-5, PW-7 and PW-10 who were witnesses to the recovery of the dead body did not state about recovery of any button and stated that only their signatures were obtained on some papers only by the police. The Trial Court also observed that although a photographer was called at the spot but the I.O. did not prefer to obtain any photograph which showed the closed fist to infer that any button was recovered from the fist of the dead body.
7. The Trial Court also found the recoveries of the knife at the instance of Respondent No. 1 Bhagwati and the bloodstained shirt at the instance of Respondent No. 2 Virender to be doubtful because of the contradictions and discrepancies in the statements of the witnesses to the recoveries. The Trial Court also disbelieved that the Respondents had any motive to commit the deceased's murder because PW-15 and PW-20 declined to support the prosecution version that Respondent

No. 1 Bhagwati ever lodged any protest with them that the deceased had an evil eye on her daughter Jyoti. Although, PW-3 Jagdish Prasad did state that Jyoti once complained to him that the deceased had misbehaved with her by putting his hand on her breast, yet the Trial Court declined to attach any importance to PW-3's testimony in view of non-citing of Jyoti as a witness by the prosecution. PW3's testimony was held to be a mere hearsay evidence.

8. We have examined the impugned judgment and are satisfied that the reasoning given by the Trial Court is logical and is based on sound principles of law.
9. The alleged recovery of *churra* at the instance of Respondent No. 1 Bhagwati was inconsequential as the knife allegedly recovered could not be connected with the deceased's murder. (*Pulukuri Kottaya & Ors. v. Emperor, AIR 1947 PC 67*).
10. Mr. Rajesh Mahajan, the learned Additional Standing Counsel for the State heavily relies on the recovery of the shirt at Respondent No. 2 Virender's instance and it's connection with the button allegedly found in the right fist of the dead body. However, there are lurking doubts if any button was actually found in the deceased's fist. With regard to the recovery of the shirt at the instance of Respondent No. 2 Virender, the Trial Court observed as under:-

"103. Another witness is PW-20 Ganesh who is the uncle of the deceased. He deposed in his examination in chief that on reaching Delhi with Dehradun Police and his nephew Raghubir, he inquired from Bhagwati and her son about his nephew Shyam and then both of them told him that they had killed Shyam. He then deposed that

Dehradun police then arrested them.

104. Regarding recovery this witness deposed that accused Bhagwati produced one sword which she had taken out from the house where she was living in Delhi. The police did not do anything about the sword.

105. In his cross examination by the Ld. APP he identified the churra as a sword. He further stated "it is correct that accused Virender had produced one shirt from his scooter garage and that shirt was kept in a cloth parcel and it was seized by the police vide memo Ex.PW-20/D which bears his signatures at point A." When this witness was cross examined by the Ld. Defence counsel, he stated that his signatures were obtained by the police in Dehradun and he had not signed any paper in Delhi."

11. Since Ganesh (PW-20), witness with regard to recovery of the shirt was categorical that he did not sign any paper (with regard to recovery) in Delhi, the Trial Court was justified in declining to attach much importance to the recovery of the shirt at Respondent No. 2 Virender's instance which was otherwise very shaky.
12. It is well settled that the Appellate Court is always must be slow to interfere in an order of acquittal passed by the Trial Court. The Appellate Court reverses the order of acquittal only when the judgment of the Trial Court is perverse when there are substantial reasons to do the same.
13. In *Prem Kanwar v. State of Rajasthan*, (2009) 3 SCC 726, the Supreme Court reiterated that the Appellate Court must keep in mind that the Trial Court has the advantage of looking at the demeanour of the witnesses and observing their conduct in the witness box and if on

re-appraisal of evidence two views are possible, the view taken in favour of the accused should not be interfered with as the presumption of innocence is fortified and strengthened by an order of acquittal. Para 16 of the impugned judgment is extracted hereunder:-

“16. The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court have been set out in innumerable cases of this Court and in Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110, the following principles have been reiterated: (SCC p. 117, para 16):

“(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of

acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.””

14. Thus, it cannot be said that the view taken by the Trial Court was not the possible view on the material placed before it during trial. Rather, on the circumstantial evidence produced, the view taken by the Trial Court was the plausible view. The Petitioner/State has failed to make out any case for grant of leave to file appeal; the petition is accordingly dismissed.
15. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

(SANJIV KHANNA)
JUDGE

MARCH 18, 2014/vk