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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 14th May, 2015
Judgment Pronounced on: 23rd July, 2015

CRL.REV.P. 453/2007

RAMJIR DASS BUDHIRAJA

..... Petitioner

Through: Mr. Kanishk Ahuja, Adv.

versus

SANJEEV KUMAR ORS.

..... Respondents

Through: Mr. Prasoona Kumar, Mr. Deepak Chander Pal, Mr. Kshitij Kumar and Mr. Sudhanshu Shekhar, Advs. for R-1 to 5.

CORAM:

HON'BLE MR. JUSTICE P.S. TEJI

P.S. TEJI, J.

1. The State has not preferred any appeal against the judgment of acquittal passed by learned Additional Sessions Judge (hereinafter referred to as Trial Court) dated 13th April, 2007 vide which Sanjeev Kumar, Amarjeet, Manoj, Koshlendra Pal & Parminder arrayed as respondent nos. 1 to 5 respectively in this revision petition, have been acquitted in FIR No. 669/1998, PS Saraswati Vihar and aggrieved by the same, Shri Ramji Dass Budhiraja, father

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of the deceased (hereinafter referred to as the petitioner) filed the present revision petition to set aside the same and to punish the respondents no.1 to 5.

2. Factual matrix, as emerges from the record, is that the son of the petitioner, namely, Jagdish Budhiraja went to Jaipur on 22nd September, 1998. On 24th September, 1998, he telephoned his wife and told her that he would come back home in one and a half hours but he did not come back. All efforts to trace out the deceased were in vain. The petitioner got lodged a missing report of his son vide D.D. No.10A dated 26th September, 1998. The petitioner apprehended abduction of his son and lodged a complaint with the police which was registered as FIR No.669/98 under Section 365 of the Indian Penal Code (*hereinafter referred to as 'IPC'*). During the course of investigation, it was revealed by the police that Jagdish Budhiraja, son of the petitioner used to meet a girl namely Babita. On further inquiry, it was found that Babita was missing from her place of employment. On the apprehension of the police in another case, Babita was arrested in the present case as well. The said girl Babita made a disclosure statement that she had physical relations with one Parminder who is arrayed as respondent no.5 in the present case. She further alleged that as Parminder, respondent no.5 did not approve the relation of Babita with Jagdish Budhiraja, he murdered Jagdish Budhiraja in connivance with respondent nos.1 to 4. Therefore, penal sections 302, 201, 120-B IPC were added in the case.

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3. On the statement of Babita, the police arrested respondent nos.1 to 5. Statement of Babita under Section 164 of Code of Criminal Procedure was recorded by the police. Certain recoveries of belongings of the deceased were effected at the instance of respondents. The police charge-sheeted Babita and respondent nos.1 to 5 and a challan was issued against the accused.
4. The respondent nos.1 to 5 were charged under Section 120-B IPC read with Section 302 IPC and for substantive offences under Section 302/201/34 IPC on 21st February, 2000. However, the Trial Court discharged Babita of all the allegations.
5. At the outset, it has been argued by the learned counsel for the petitioner that the impugned judgment suffers from inherent infirmities and against the documents produced on record. It is argued that recovery of a golden Kara belonging to the deceased (which was identified by the father of the deceased) from the possession of respondent no.5 - Parminder; original number plates of the car of the deceased recovered from the possession of respondent no.1-Sanjeev Kumar; brief case of the deceased recovered from the possession of respondent no.5-Parminder, were not considered by the Trial Court. It is further contended that failure of recovery of the corpus delicti in the present case as observed by the Trial Court is against the settled principles of law as the Hon'ble Supreme Court has observed time and again that non-finding of the body of the deceased is not necessary to prove

the charges of murder.

6. The learned counsel for the petitioner also relies on the pronouncement of the Hon'ble Supreme Court in *Ganesha Vs. Sharanappa & Anr. (2014) 1 SCC 87* on the ground that setting aside of order of acquittal and direction as to retrial in revision is permissible only in cases (i) where acquittal is based on misreading of evidence or non-consideration of evidence or perverse appreciation of evidence or where the Trial Court shut out the evidence which otherwise ought to have been considered or overlooked the material evidence clinching the issue, or (ii) where there is manifest error of law or procedure, or (iii) where the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice.
7. The present case is based on circumstantial evidence as there are no direct evidences to the murder of the deceased Jagdish Budhiraja. While dealing with cases based on circumstantial evidence, it is a settled law that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and such circumstances must be conclusive in nature. 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 in all human probability that the act must have been done by the accused.
8. In *C. Chenga Reddy & Ors Vs. State of Andhra Pradesh (1996) 10 SCC 193* it was observed as under:-

“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 accused and totally inconsistent with his innocence.”

9. In **G. Parshwanath Vs. State of Karnataka (2010) 8 SCC 593** it was observed as under:-

“In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself of themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every except one sought to be proved. 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, where various links in chain are in themselves complete, then the false plea or a false defence may be called into aid only to lend assurance to the Court.”

10. So far as the recovery of gold Kara & briefcase allegedly belonging to the deceased at the instance of respondents, is concerned, the learned Trial Court did not believe the case of prosecution. The Kara had no identification marks on it to relate it with the deceased. Sh. Ravinder Dudeja, the then learned Metropolitan Magistrate (PW 30) who conducted Test Identification Parade ('TIP') of Kara, had stated in his cross-examination that, letters 'J' and 'B' were not

engraved on the said Kara. He also stated that the briefcase produced before him was in an unsealed condition. There were no identification marks on the Kara allegedly recovered at the instance of respondent no.5 Parminder.

11. Prosecution Witness Shri B.B. Kalra (PW 13) who allegedly sold a briefcase to the deceased, was produced in the court. Though he stated that he sold the said briefcase to the deceased, the receipt Ex.PW13/A produced by him in the court did not show that it was sold to the deceased as no name of the purchaser was mentioned therein. Even otherwise, he admitted that the deceased was the son of his real maternal uncle. In the absence of any clear and cogent evidence, it cannot be held that the briefcase allegedly recovered from one of the respondents belonged to the deceased.
12. It was alleged against respondent no.1- Sanjeev that after his apprehension by the police, he got recovered two original number plates of the car of the deceased from near the bushes at Baghpat Road. To prove this fact, the prosecution examined only the police witnesses but no independent witness was produced to prove the recovery. It has come on record that the place from where the alleged number plates were recovered, was a public place where vehicles and public used to pass, but no sincere effort was made by the investigating officer to join any independent public witness at the time of said recovery which creates doubt about the manner in which the recovery of number plates has been effected.

13. The Division Bench of the Delhi High Court in case entitled ***Chander Pal Vs. State 1999 (1) RCR (Criminal) 150***, had held that if independent witnesses are not associated in the recovery in pursuant of provisions of Section 27 of the Indian Evidence Act, then such recovery is not reliable. In another case entitled ***State Vs. Ramesh*** reported in ***1989 II A.D. (Delhi)***, the Hon'ble Division Bench has held that if public persons are not associated in the recovery then the provisions of Section 100 of Code of Criminal Procedure are not followed and such recovery becomes doubtful.
14. In the present case, the prosecution examined several public witnesses who either turned hostile to the case of the prosecution or their testimony is of no use. The only single circumstance brought on record by the prosecution to connect the respondents with the commission of murder of the deceased is the recovery of articles of the deceased i.e. gold kara, number plates of car and briefcase. The prosecution has failed to prove beyond reasonable doubt the single circumstance of recovery of articles of deceased from the respondents. In similar circumstances, the Hon'ble Supreme Court in case of ***State of Uttar Pradesh v. Jageshwar and Ors.*** ***MANU/SC/0168/1983*** has observed that the single circumstance of recovery is not sufficient to convict the accused. Relevant para from the judgment reads as under :

“The evidence regarding the recovery of a pistol, Exhibit 6, from accused Ram Vishal is less unacceptable than the evidence of the recovery of the gun from Sunder but,

considering the large mass of useless evidence which the prosecution led, this single circumstance will not be safe to act upon for convicting but one out of eleven accused viz. Ram Vishal."

15. The prosecution case is that the articles belonging to the deceased i.e. gold kara, briefcase and number plates of car were recovered from or at the instance of the respondents which is sufficient to hold them guilty for the murder of the deceased. This Court is not convinced with this contention of the petitioner that mere recovery of articles belonging to the deceased is sufficient to hold them guilty for the murder of the deceased. In ***Dhan Raj @ Dhand v. State of Haryana, MANU/SC/0454/2014***, the Hon'ble Supreme Court observed that recovery of an object is not a discovery of fact and that even if the recovery of goods is reliable then it does not indicate that the accused committed the murder. The only fact which can be inferred is that the accused are in possession of goods. Relevant paras from the judgment read as under:

"Furthermore, it appears to us that the recovery has not been corroborated by any proper independent evidence. Moreover, recovery of an object is not a discovery of fact, as per the decision of this Court in Mano v. State of Tamil Nadu MANU/SC/7266/2007 : (2007) 13 SCC 795. Recovery must be of a fact which was relevant to connect it with the commission of crime. Therefore, even if the recovery of goods is reliable then it does not indicate that the accused Appellants committed the murder and the only admissible fact which can be inferred is that they are in possession of stolen goods.

13. We would refer to the decision of this Court in Madhu v. State of Kerala MANU/SC/0019/2012 : (2012) 2 SCC 399 the facts of which are relevant in the present case. In the said

case, the body of the deceased was found near her home with her ornaments on her person missing. On the basis of the information furnished by the accused recovery of the said ornaments was made. This fact coupled with the sighting of the accused near the place of crime was the basis for conviction. However, this Court reversed the conviction on the ground that said recovery and sighting of the accused near the deceased do not lead to the sole conclusion that murder was committed by the accused only. In State of Rajasthan v. Talevar and Anr. (2011) 11 SCC 666 also it was held that where the only evidence against the accused is recovery of stolen property, then although circumstances may indicate that theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of stolen property had committed murder. Also the recovery of looted articles at the instance of the accused could not be relied upon in absence of any details as to when and where such recovery was made and in absence of any confession of commission of offence by the accused. Besides, the seizure of the goods was not corroborated by any independent witness in the present case."

16. Another deficiency in the prosecution case is the non-examination of Babita. It is a matter of record that the present case was worked out on the basis of disclosure of one Babita. It was the case of prosecution that deceased used to meet Babita. Babita was apprehended in another case and was arrested in the present case. She disclosed that she was having a physical relation with the deceased besides respondent no.5-Parminder. She also disclosed that the deceased was kidnapped and murdered by Parminder along with his associates. At her instance, the car of the deceased was recovered from the house of her uncle and on her disclosure,

accused persons were also arrested. Babita was made an accused in the present case but was discharged by the learned Trial Court vide order dated 21st February, 2000 while observing that she was not an accused rather an important material witness of the prosecution. Despite the same, the prosecution did not examine Babita as a witness in the court to substantiate its case, that is, that the respondents kidnapped or murdered the deceased or that on her disclosure, the respondents were arrested or that they had any role in the kidnapping or murder of the deceased. The testimony of Babita was an important piece of evidence which the prosecution had failed to examine and thus it proved to be fatal to the case of the prosecution.

17. The petitioner has failed to show that there is any misreading of evidence or non-consideration of evidence or wrong appreciation of evidence by the Trial Court. The petitioner has further failed to show that the Trial Court overlooked the material evidence or there is any manifest error of law or procedure which resulted into the miscarriage of justice.
18. In view of the above discussion, this Court is of the considered opinion that the prosecution has miserably failed to prove the chain of circumstances from which the inference of guilt of the respondents/accused can be drawn. The chain of circumstantial evidence put forth by the prosecution is incomplete and it cannot lead to the conclusion that the allegations against the

respondents/accused stand proved.

19. Thus, the impugned judgment dated 13th April, 2007 cannot be said to be not sustainable in the eyes of the law and the present revision petition deserves to be dismissed.
20. Consequently, the present revision petition is dismissed as devoid of merit. Trial Court record be sent back.


P.S. TEJ, J.

JULY 23 , 2015

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