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

+ **CRL.L.P.No. 487/2015**

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Date of decision: 18th April, 2016

STATE (NCT OF DELHI)

..... Petitioner

Through : Ms. Aashaa Tiwari, APP for State with
SI Sanjay Rana, PS-Mahendra Park.

versus

KALYAN SINGH@ KALLA

.....Respondent

Through : Ms. Inderjeet Sidhu, Advocate (DHCLSC)

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

CRL.MA. 8514/2015

1. This is an application under Section 5 of the Limitation Act read with Section 482 of Code of Criminal Procedure filed by the State seeking condonation of 10 days' delay in filing the present leave to appeal petition.
2. Having regard to the submissions made and in the interest of justice, present application is allowed.
3. Application stands disposed of.

CRL.L.P. 487/2015

4. The State by this Criminal Leave Petition, under Section 378(3) of the Code of Criminal Procedure, seeks leave to appeal against the

7

judgment dated 24.12.2014 passed by Sh. Yashwant Kumar, Additional Sessions Judge-03, Rohini Courts, Delhi in Sessions Case No. 01/13 thereby acquitting the respondent under Section 302 of the Indian Penal Code.

5. The necessary and relevant facts, as projected by the prosecution are as under

"On 10.09.2012, on receipt of information vide DD No.6PP, NS Mandi, Azadpur, IO Inspector Darshan Singh along with police staff in Govt. gypsy bearing registration No. DL1CM-3521 reached at the spot i.e. near shed No. 15-16, Fruit Mandi, Azadpur where SI Shailendra Kumar along with staff were present. A loaded truck bearing registration No. MP06- Hc-1613 make Ashok Leyland of ten tyres was parked at the spot and in the cabin of that truck, a dead body of a person aged about 25 years, wearing T- shirt and track suit lower was found and there were injury marks on his head and ear. The head of the driver was towards steering and legs were towards the conductor seat. The glass of driver seat window was broken. In the cabin, one blood – stained iron rod, one blanket, one old cloth and one blood stained nut wrench were found. IO gave information to Control Room, North West Distt through wireless. Crime Team inspected the spot and photographs were taken. On the spot, Complainant Amar Nath Singh met who got his statement recorded that he was working as Muneem (clerk) with Sh. Sanjeev Kumar Sachdeva, owner of Manu Fruits, A-1102, Fruit Mandi, Azadpur, Delhi. On 09.09.2012 at about 05.00 pm, a truck bearing registration No. MP-06-HC-1613 loaded with Mausami (sweet lemon) came to their Adhat at Shed No. 15, Azadpur Fruit Mandi from Hyderabad, Andhra Pradesh which was to be unloaded at their Adhat but due to Sunday, the same could not be unloaded. In the truck, two drivers namely Deepak and Kalla Came. APMC staff came for cleaning at the Adhat and there was some problem in starting the said truck. Driver Deepak brought another

8

battery from somewhere and at that time an altercation took place between both drivers. After cleaning, driver Deepak again parked the truck at Adhat. At about 05.45 pm, Amar Nath went to his house after giving instructions to both the drivers not to take the truck anywhere else in any condition. On 10.09.2012 at about 05.15 am, Amar Nath came to Mandi from his house and saw that truck was not at the Adhat. He gave the information to his owner who told him to look around for the truck. Amar Nath searched the truck and found it parked at a distance of 50 feet. He peeped in the driver cabin of the truck from conductor side and found the driver Deepak lying dead and smeared in blood. He immediately dialed at 100 number. The other driver Kalla was found missing. The condition of cabin driver revealed that there might be a quarrel between both the drivers and driver Kalla fled away from there after killing driver Deepak. He was sure that driver Kalla murdered driver Deepak. On his statement, FIR u/s 302 IPC was got registered through HC Ranjan."

6. Further it is the case of the prosecution that on 11.09.2012, the brother of the deceased namely Raj Kumar identified the dead body and he raised a suspicion over the respondent as he was missing from the day of incident. Raj Kumar also disclosed to the police that his brother used to keep one mobile with the number 8743866487. On 12.09.2012, on the basis of secret information the respondent was arrested from outside Nizamuddin Railway Station and on the basis of the disclosure statement the blood stained clothes of the respondent and the mobile phone of the deceased Deepak were seized. The respondent had the injury of a human bite over the right index finger and also injury at right eye. The respondent refused for judicial Test Identification Parade.

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7. Upon Committal of the case to the court of Sessions, the respondent was charged with having committed the offence under Section 302 of the Indian Penal Code. The respondent pleaded not guilty to the aforesaid charges and accordingly prosecution was called upon to lead evidence.
 8. To bring home the guilt against the respondent, the prosecution examined 26 witnesses in all. The statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure wherein he denied all the incriminating facts and circumstances of the case put by the prosecution against him and claimed trial. However, the respondent did not lead any evidence in his defence.
 9. Ms. Aashaa Tiwari, learned APP for the State contended that the impugned judgment passed by the learned Additional Sessions Judge is based upon conjunctures and surmises and is bad in law. The learned Trial Court failed to appreciate the factual matrix of the case and also failed in appreciating the evidence surfaced during the course of trial.
 10. Further it was urged by the counsel of the State that the case of the prosecution was based upon circumstantial evidence which were established cogently and firmly and therefore could not be brushed aside.
 11. Counsel for the State urged that the Trial Court erred in completely ignoring the testimonies of PW11, PW14, PW15 and PW16 and not given any credence to the same.
 12. Counsel for the State further contended that the Trial court erred in not appreciating that PW11 was a witness to the heated altercation

10

between the respondent and the deceased and had also seen them together on 09.09.2012 when he left the spot giving them instructions not to leave the shed. Counsel further submitted that PW15 had specifically deposed that the deceased and respondent left Hyderabad together on 01.09.2012 with the truck loaded with mausami (sweet lemon) giving way to the fact that they were both together.

13. Per Contra, supporting the impugned judgment, it was submitted by Ms. Inderjeet Sidhu, counsel for the respondent that while recording the findings of acquittal in favour of the respondent, very sound and cogent reasons have been assigned by the learned Trial Judge.
14. Counsel for the respondent further submitted that the quarrel between the respondent and the deceased involved only shouting loudly at each other due to non functioning of the truck as admitted by PW11 and nowhere resulted into a physical fight. Counsel vehemently urged that the investigation was not conducted fairly and no public person was joined at the time of arrest and recovery.
15. We have heard learned counsel for the parties, perused the record and also examined the judgment in detail rendered by the Trial Court.
16. It is a cardinal principle of criminal jurisprudence that the prosecution has to stand on its own legs. The burden is so heavy on the prosecution that blemishes in the story of the accused cannot give a right to the prosecution to claim that the version of the prosecution should be preferred, whereas the burden on the accused is slightly light as he has to discharge the burden by preponderance of probabilities.

17. PW3 Dr. V.K Jha, Medical officer conducted postmortem and prepared the examination report Ex.PW3/A opined as under:

"On the basis of examination, I opined the cause of death as cranio cerebral damage as a result of blunt force diverted upon head by other party. All injuries were anti mortem in nature and injury no.5 was sufficient to cause death in ordinary course of nature. Time since death was approximately 35 hours.

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On opening, one iron rod was taken out. After examination, I had examined the iron rod and was of the opinion that the injuries mentioned in the PM report now Ex. PW3/A could have been caused by the weapon of offence sent in sealed packet by the IO with the seal of DS or similar such weapon."

18. Perusal of the abovementioned testimony clearly establishes the fact that it was a homicidal death. Now it would be significant to determine whether the prosecution has established beyond doubt that the death of the deceased person herein was caused by or was the result of the act done by the respondent herein.

19. PW8 Raj Kumar, brother of deceased in his examination in chief deposed as under:

"My brother was driver on a truck along with accused Kalyan Singh @ Kala. Accused Kalyan Singh @ Kala is resident of same village in which I reside. I know accused Kalyan Singh @ Kala who is present in the court today (correctly identified). I am of a firm believe that accused Kala had committed the murder of my brother Deepak. My brother Deepak was carrying mobile phone at the time of the incident."

20. This witness in his cross examination stated as under:

"No quarrel had taken place between accused and my brother in my presence but otherwise I cannot tell. When my brother used to pass through the village on the truck, he came to house."

21. PW11 Amar Nath Singh, complainant in the present case in his examination in chief deposed as under:

"On 09.09.2012 on the day of Sunday, One truck No.MP06 HC 1613 was parked at Shed no.15, Azadpur Fruit Mandi in front of our Shed/shop. The said truck came from Hyderabad (Andhra Pradesh) with Mosami. Due to Sunday, the truck was unloaded. In the truck, the drivers were namely Deepak and Kala. At about 05:00 pm, the sweepers of APMC along with their staff came there for cleaning purpose. The driver of the truck Deepak tried to start the truck but it could not be started and thereafter he brought the battery from some other truck and started the truck. Due to non- starting of truck, there was a quarrel between driver Deepak and other driver Kala. After starting the truck through another battery by driver Deepak the staff of APMC cleaned the area and thereafter I directed the driver Deepak to park his truck in front of our shop (Adath). I directed both the drivers Deepak and Kala not to remove the truck from in front of our shop and I left the Shed."

On 10.09.2012 at about 05:15 am when I came back at Shed No.15 in our shop I had not seen the Truck No. MP06 HC 1613 in front of our shop (Adath). Thereafter, I made a call to my owner and informed about the missing of truck and he told me to trace the truck as it was parked nearby our shop. I went in search of the truck and at a distance of 50 feet ahead of our shop, I found said truck was parked there. I climbed the truck from the side of conductor and looked inside the cabin and found the driver Deepak was lying in a pool of blood and his legs were towards

the side of conductor seat and head was towards the driver seat. I was shocked and scared and made a call at 100 number from own mobile number i.e. 9310445679. The other driver Kala was not present there. I had a suspicion that there was a quarrel between driver Deepak and Kala and Kala had killed the driver Deepak and left the truck.

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On 09.09.12 there was no injury mark visible on the faces of deceased Deepak as well as accused Kalyan Singh @ Kala."

22. This witness in his cross examination stated:

"The quarrel between accused and deceased was not turned into a fighting. They were only shouting loudly to each other due to non starting of their truck. I had seen the accused and deceased only on 09.09.2012. Prior to that day they were not known to me and came first time at our shop."

23. PW 16 Bhujbal in his cross examination stated as under:

"My statement was recorded by the police on 03.11.2012 at PS Mahendra Park, Delhi. I had stated to the police that I was driving the truck of one Shiv Singh Gurjar (confronted with the statement Ex.PW16/DA, where it is not so recorded). I had telephoned the deceased Deepak from Sikri in MP. In my presence, no quarrel had ever taken place between the accused Kalyan and deceased Deepak and they had cordial relations with each other."

24. PW14 Dr. Sandeep Haldar on 12.09.2012 was posted as SR Medicines on BJRM hospital who examined the respondent and deposed in his examination in chief that *the patient Kalyan Singh was having alleged*

history of human bite four days back therefore, I prescribed him tetanus injection and anti-biotic.

25. PW15 Dr. Gopal Krishna, medical officer, BJRM Hospital deposed in his examination in chief as under:

"On 12.09.2012, I was posted as CMO in the above mentioned hospital and on that day HC Raj Kumar brought one Kalyan Singh @ Kalla who was in custody for medical examination at 09:45 pm. The patient had the alleged history of human bite and physical assault four days back. On local examination, no fresh external injury was seen at the time of examination. Healing wound right index finger and lateral side of right ear...."

26. PW26 Ms. Sunita Gupta, Sr. Scientific officer who prepared the FSL report deposed that *on analysis blood was detected on EX1, 2, 3, 7, 8, 10a, 10b, 10c, 12a, 12b, 13, 14a, 14b, 15, F1 to F10. She further stated that blood could not be detected on Ex.4, 5a, 5b, & 6. My detailed report is Ex.PW26/A which bears my signature at point A&B. On serological examination, Ex1, 2, 10b, 13, 14a, 14b, F1, F2, F4, F6, F8 & F10 was found to be human in origin and of A Group in ABO Grouping.*

27. From the perusal of the above testimonies of the witnesses, it has been established that a quarrel had taken place between the deceased and the respondent which restrained only to the extent of shouting. It is clear from the above mentioned testimonies that the alleged history of human bite occurred four days prior to 12.09.2012 and there is no definite evidence to prove that the bite on the respondent was caused by the deceased. Moreover, no fresh external injury was seen at the time of examination on the respondent. The FSL report shows that

blood was detected on the iron rod but there was no reaction in the column of ABO grouping/ remarks.

28. The last seen theory comes into play where the time-gap between the point of time when the accused and deceased were last seen alive and when the deceased found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in the present case to positively establish that the deceased was last seen with the accused as there was a long gap and the possibility of other persons coming in between existed. There is no eye witness to the alleged incident. Merely on the ground that PW8 firmly believed or PW11 had suspicion that the respondent had killed the deceased, it would not be justified to convict the respondent only on the basis of suspicion and circumstantial evidence unless and until the evidence is corroborative with direct proof given by the prosecution. We have scrutinized scrupulously and examined carefully the circumstances appearing in this case against the respondent and we are of the view that the prosecution has failed to complete the chain of circumstances holding respondent guilty of the crime beyond reasonable doubt.

29. It is well settled law that suspicion, however grave it may be, cannot take the place of proof. In **Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan: (2013) 5 SCC 722**, the Hon'ble Apex Court held that:

"17. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved and 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot

16

and must not be permitted to take place of proof. This is for the reason, that the mental distance between 'may be' and 'must be' is quite large and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar and Anr. v. State of M.P.: AIR 1952 SC 343; Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra: AIR 1973 SC 2622; Sharad Birdhichand Sarda v. State of Maharashtra: AIR 1984 SC 1622; Subhash Chand v. State of Rajasthan: (2002) 1 SCC 702; Ashish Batham v. State of M.P. : AIR 2002 SC 3206; Narendra Singh and Anr. v. State of M.P. : AIR 2004 SC 3249; State through CBI v. Mahender Singh Dahiya: AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P. : AIR 2012 SC 1979) It is a case of circumstantial evidence and it is well-settled that the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a Complete chain without giving room to any other hypothesis and

should be consistent with his guilt and inconsistent with his innocence."

30. In ***Rajiv Singh Vs State of Bihar and Ors.: 2016 (1) ACR 510***, the Apex Court reiterated the aforesaid principle held as under:

"60. It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well established canon of criminal justice is "fouler the crime higher the proof". In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt.

61. The above enunciations resonated umpteen times to be reiterated in Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan (2013) 5 SCC 722 as succinctly summarized in paragraph 21 as hereunder:

21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the

distance between "may be" true and "must be" true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

31. In **Prabhoo Vs. State of UP, AIR 1963 Supreme Court 1113**, it has been held that circumstantial evidence must be such as to lead to a conclusion which on any reasonable hypothesis is consistent only with the guilt of the accused person and not with his innocence:

"10. Therefore, the question before us is this: Is the production of the blood stained axe and clothes read in the light of the evidence regarding motive sufficient to lead to the conclusion that the appellant must be the murderer? It is well-settled that circumstantial evidence must be such as to lead to a conclusion which on any reasonable hypothesis is consistent only with the guilt of the accused person and not with his innocence. The motive alleged in this case would operate not only on the appellant but on his father as well. From the mere production of the blood stained articles by the appellant one cannot come to the conclusion that the appellant committed the murder. Even if somebody else had committed the murder and the blood stained articles had been kept in the house, the appellant might produce the blood stained articles when interrogated by the Sub-Inspector of Police. It cannot be said that the fact of

19

production is consistent only with the guilt of the appellant and inconstant with his innocence. We are of the opinion that the chain of circumstantial evidence is not complete in this case and the prosecution has unfortunately left missing links, probably because the prosecution adopted the shortcut of ascribing certain statements to the appellant which were clearly inadmissible."

32. In the case of **Dr. Sunil Clifford Daniel Vs. State of Punjab : (2012) 11 SCC 205**, the Hon'ble Apex Court has held :

"In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance, by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take utmost precaution whilst finding an accused guilty, solely on the basis of the circumstances proved before it."

33. A criminal offence is a crime not only against an individual but also against the society. the investigating agency have a sanctified, legal and social obligation to exhaust all its experience and expertise to ferret out the truth and bring the culprit to book. The manifest defects in the investigation in the instant case demonstrate an inexcusable failure on the part of the authorities concerned to abide by their paramount imperative.

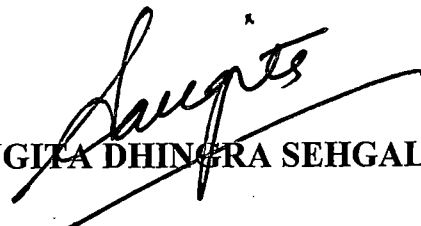
34. In **Mrinal Das and Ors. Vs. The State of Tripura** reported in **AIR 2011 SC 3753**, the Hon'ble Apex Court held that :

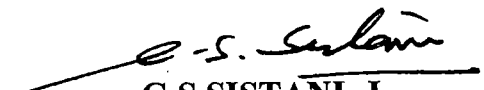
"It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order,

20

interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

- 21
35. In the case of *State of Madhya Pradesh v. Dal Singh & Ors.*, reported in *2013 (8) SC 625*, the Hon'ble Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant materials have been unjustifiably ignored, it would be a compelling reason for interference.
36. While deciding the present leave to appeal, the aforestated principles culled out by the Apex Court are to be kept in view. In the present case from the evidence which has emerged on record, we conclude that the learned Trial Court rightly observed that the prosecution failed to prove its case against the respondent beyond reasonable doubt, the prosecution has not made out a case to grant the leave to appeal and the view taken by the learned Trial Court for acquitting the respondent was possible and plausible.
37. In totality of the facts and circumstances, we do not find any infirmity in the impugned judgment. Accordingly, no grounds are made out to interfere in the impugned judgment passed by learned Trial court and the leave to appeal petition is dismissed.


SANGITA DHINGRA SEHGAL, J


G.S.SISTANI, J

April 18, 2016 / gr//