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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 40/2015

Date of decision: 14th December, 2015

STATE (GOVT OF NCT OF DELHI) Petitioner
Through Ms. Aashaa Tiwari, APP with
Inspector Sudhir Kumar, SHO, PS-Jaffarpur
Kalan.

versus

RAM KANWAR @ PAPPU Respondent
Through Mr. Vinay Kumar Sharma and Ms.
Yashima Sharma.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J. (ORAL)

This petition for leave to appeal filed by the State under Section 378(i) of the Code of Criminal Procedure, 1973 impugns judgment dated 20th October, 2014, acquitting Ram Kanwar @ Pappu from the charge under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for having committed murder of Sombir (also recorded as Shyambir).

2. On the last date of hearing, learned Additional Public Prosecutor had prayed for some time to produce viscera report, but today it is stated that viscera was not preserved and, therefore, there is no viscera report.

3. The FIR in question i.e. FIR No.127/2014 was registered at police station Jaffarpur Kalan on 31st May, 2014 at about 4 p.m. under Section 308 IPC on the basis of statement made by Kanta

Devi, wife of the deceased, who had subsequently deposed as PW8 in the Court. The deceased had expired on 3rd June, 2014 at 12.10 p.m.

4. As per the post mortem report dated 4th June, 2014, marked Ex.PW4/A, the cause of death was coma as a result of head injuries by hard, blunt and forceful impact upon head. On internal examination, subdural haematoma was found to be present on the frontal and left parietal region of the brain with subarachnoid haemorrhage all over the cerebrum. Multiple haemorrhagic contusions were present over the left frontal lobe of cerebrum with generalised brain oedema and congestion. The post-mortem report (Ex.PW4/A) in brief history mentions that the deceased Sombir had as per available record, received head injury during an assault with some known person on 26.5.2014 at about 4:30 PM. On the next day i.e. 27.05.2014, Sombir was brought to RTRM Hospital on a complaint that he was suffering from head-ache and chest pain. After symptomatic treatment he was discharged. Again, on the next day, Sombir was brought to RTRM Hospital wherein his MLC was prepared and thereafter he was discharged. On the third occasion, Sombir was brought to RTRM Hospital at about 07:40 am on 30.02.2014 in a critical state and thereafter he was referred to DDU Hospital, Dept. of Neurosurgery for further treatment. He was given conservative treatment at DDU Hospital and had remained there till his death at about 12:10 pm on 03.06.2014.

5. As per the prosecution version, there is evidence to show and establish that the respondent Ram Kanwar @ Pappu is the perpetrator, who had inflicted the head injuries on 26th May, 2014 at about 4.30 p.m. and the said injuries had caused the homicidal death. Causal connect between the said injury inflicted by the respondent

and the cause of death is sought to be established. Reference is made to the testimony of Jai Pal Singh (PW5) and his wife Sunita (PW6). Jai Pal Singh (PW5) has stated that he had seen the respondent Ram Kanwar and his brother Sombir grappling with each other. At that time, Ram Kanwar had banged the head of the deceased Sombir against the wall and thereafter, Ram Kanwar ran towards his house. PW5 had subsequently enquired from Kanta Devi, wife of the deceased Sombir about the reason for the quarrel and was informed that Sombir under influence of liquor had abused her. Respondent Ram Kanwar came there and had slapped Sombir and thereafter hit his head against the wall.

6. Sunita (PW6) has stated that she had seen respondent Ram Kanwar holding the neck of the deceased and hitting his head against the wall. Thereafter, her husband and Kanta Devi (PW8) had taken Sombir to his house.

7. Jai Pal Singh (PW5) and Sunita (PW6), it is highlighted by the State, have deposed that the deceased Sombir had collapsed immediately after the occurrence and become unconscious.

8. The MLC or the casualty registration card dated 27th May, 2014 (Ex.PX-5) recorded at 10.20 p.m. mentions that the patient had complained of head ache and chest pain for last two days. It is not stated that the patient was unconscious or unable to speak. The document Ex.PX-5 does not record presence of any third person or who had brought the patient to the hospital. No history of assault is mentioned. Even the post mortem report marked Ex.PW4/A does not mention or record that on the first occasion, when the deceased was brought to the hospital, he was unconscious, or unable to speak. Thus, it would be reasonable to hold that the said evidence does not support the assertion that the patient, i.e. the deceased Sombir, had

lost consciousness, became delirious or was benumbed consequent to the injuries.

9. The second MLC Ex.PX-4 dated 28th May, 2014 was recorded at 11.21 a.m. This MLC mentions the name of relative or friend as HC Kavar Singh. Said Head Constable had brought the patient to the hospital. It specifically records that no fresh external injuries were seen and smell of alcohol was positive. Two plus signs are mentioned after alcohol smell to indicate that the smell of alcohol was strong and palpable on 28th May, 2014 at 11.21 a.m. This would indicate alcohol intake, sometime before Sombir was brought to the hospital. It is also recorded in writing that the patient was conscious/ oriented and the vitals were stable. However, the patient was not talking and was not willing for the treatment nor he was willing for the alcohol test.

10. It is in this context and evidence that doubts arise whether there was any occurrence or a fall between the first occurrence i.e. occurrence on 26th May, 2014 at 4 p.m. and 28th May, 2014, when at 11.21 a.m. deceased Sombir was brought to the hospital. Positive smell of alcohol on 28th May, 2014 at 11.21 a.m. cannot be attributed to drinking episode on or before 4:30 p.m. on 26th May, 2014. Here the testimony of wife of the deceased, Kanta Devi (PW8) becomes important. She is the complainant and the first informant. In her Court deposition, PW8 has stated that her husband in a drunken condition had fallen on the ground on 28th May, 2014 and thereafter she had taken him to the hospital for treatment. Ultimately, he succumbed to the said injuries on 31st May, 2014. She was cross-examined by the Additional Public Prosecutor, but reiterated and stood by her stand denying having stated that her husband had died as a result of the injuries caused by the respondent on 26th May,

2014 at 4.30 p.m. Reference can be also made to DD entries Ex.PW1/A recorded on 28th May, 2014, which refers to a quarrel or fight and Ex.PW1/B, which again refers to a quarrel or fight on 31st May, 2014 at about 10.52 a.m.

11. Keeping in view the aforesaid facts, we are not inclined to interfere with the impugned judgment of acquittal, which takes notice of the relevant facts, evidence and material on record and holds that the prosecution has not been able to prove and establish their case that the respondent is guilty. The leave to appeal is declined and the petition is dismissed.

SANJIV KHANNA, J.

DECEMBER 14, 2015
NA

R.K.GAUBA, J.