

\$~R-48.

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

+ **Date of Decision: 18.02.2015**

% **CRL.A. 226/2009**

STATE

..... Appellant

Through: Mr. Lovkesh Sawhney, APP.

versus

L.S. BRAR

..... Respondent

Through: Ms. Jasvinder Kaur, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. This appeal preferred by the State has been directed against the judgment dated 06.03.2006 rendered by Sh. Rajesh Kumar Singh, MM, New Delhi in the case No.134/2 arising out of First Information Report (FIR) No.190/2002 under Sections 420/ 467/ 468/ 471/ 120-B of the I.P.C. registered at Police Station N.F. Colony (Crime Branch) titled *State Vs. Mukesh Kumar Gaur, etc.*

2. The respondent/accused Sh.L.S. Brar has been acquitted by giving benefit of doubt while convicting the first accused Mukesh Kumar Gaur of the offence under Sections 120-B/ 465/ 467/ 471 I.P.C. The conspiracy against the respondent/accused was also not proved. The role attributed to the accused was that he had attested the Will (Exhibit PW-7/A) by putting his thumb impressions at points 'Q1' and 'Q2' and his signatures thereon.

The co-accused Mukesh Kumar Gaur did not produce the original Will. The photocopy, on the basis of which the prosecution was launched, was recovered from the Revenue Branch. Adverse inference was drawn against Mukesh Kumar Gaur while convicting him, as aforesaid.

3. The photocopy of the Will (Exhibit PW-7/A) upon being sent for forensic examination, firstly, drew the response that opinion could not be given on the basis of a photocopy, and for the purpose of examination, original thumb impression on the document was required, vide letter (Exhibit PW/DA) of the Director, Finger Print Bureau (FPB).

4. The FPB was again asked to give the opinion on the basis of the photocopy. Then the opinion (Exhibit PW-4/A) was given. PW-4 Ravinder Nath, the expert witness justified his report. However, he stated in his cross examination that the theory of transplant of thumb impression could not be ruled out. So far as the signatures attributed to the respondent/accused were concerned, the prosecution had sought to produce handwriting expert's report, which was marked as 'A' on the statement of PW-9, the Investigating Officer (IO) of the case. Despite the handwriting expert of the said report being summoned, he did not appear. Consequently, he was not examined by the prosecution and his report was not accepted by the Court.

5. Learned counsel for the appellant submits that the short issue which arises for consideration is whether in the face of the reasoned report of the FPB supported by PW-4, the Court could resort to rejection of the report (Exhibit PW-4/A) by merely observing that the questioned thumb impressions at points 'Q1' and 'Q2' are not similar in size and some

difference in pattern is also visible. He further submits that the expert report of the handwriting expert mark 'A' did not require formal proof under Section 293(4) of the Cr.P.C.

6. It is not in dispute that the possibility of transplant of the thumb impression could not be ruled out, as admitted by the witness PW-4 himself. Therefore, in my view, there is sufficient doubt created with regard to the thumb impression at points 'Q1' and 'Q2' attributed to the respondent/accused.

7. It is not disputed that under Section 293 Cr.P.C., it is open to the Court to summon the witness for his examination. Despite being summoned, the expert witness did not appear and was not examined by the prosecution. Therefore, in my view, the Trial Court rightly did not exhibit the report of the handwriting expert and no question under Section 313 Cr.P.C. was put to the respondent accused with regard to the report of the handwriting expert mark 'A'.

8. The subsequent conduct of the respondent/accused, as discussed by the Trial Court, does not show his involvement in the conspiracy.

9. Accordingly, I find no merit in this appeal and the same is dismissed.

VIPIN SANGHI, J

FEBRUARY 18, 2015

B.S. Rohella