

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 20.04.2015

CRL.L.P.290/2015

STATE GOVT. OF NCT OF DELHI

..... Petitioner

versus

AJAY @ PAWWA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr. Neeraj Kumar Singh, APP with Inspector Rajeshwar Aggarwal, ATO, PS Naraina
For the Respondents	: None

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Section 378(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking leave to appeal against the judgment dated 24.12.2014, passed by the Additional Sessions Judge-04, District Courts,

Dwarka, New Delhi, whereby the respondents herein were acquitted of the charges under Sections 304/394/411/34 IPC.

2. In a nutshell, the case of the prosecution is that on the intervening night of 27/28.01.2011, the respondents along with Naseem (who has not been arrested), committed culpable homicide not amounting to murder by causing death of one Om Dutt and that they caused hurt to the latter while committing robbery. The respondents herein were charged for the offences punishable under Sections 304/34 IPC and 394/34 IPC with the respondent No.1 Ajay being additionally charged for the offences punishable under Section 411 IPC. The prosecution had examined 16 witnesses. The impugned order records that the prosecution was required to prove the following circumstances against the accused:-

“23. The case of the prosecution rest squarely on the circumstantial evidence and the prosecution intends to prove the following circumstances against the accused:

- a) Homicidal death of Om Dutt
- b) The accused persons were last seen at Naraina Flyover in s scuffle.
- c) Recovery of I Card of the deceased from the accused Ajay Pawwa.
- d) Recovery of a mobile from the accused Rakesh in which the SIM card of the deceased used.”

3. The impugned order then goes on to discuss the aforementioned circumstances in the light of the evidence on record and the submissions made

by the respective parties. The said analysis is recorded in the impugned order as follows:-

“25. **Homicidal Death of the Om Dutt:** In order to prove the homicidal death of deceased Omdutt the prosecution examined PW4 Dr. Raghvendra Baghla who conducted post mortem and proved his report as Ex. PW4/A. The witness testified that the death of deceased was caused by hemorrhagic shock due to ante-mortem injury to liver produced by blunt force impact. He also proved his subsequent opinion vide Ex. PW4/B that the injuries suffered by the deceased on the forehead were insufficient to cause death in the ordinary course of nature. His opinion Ex. PW4/B further mentions that the injuries sustained by the deceased cannot be ruled out due to accidental fall. In the light of the testimony of PW4, it cannot be conclusively held that the death of deceased Om Dutt was homicidal in nature. It is still a possibility that the death could have occurred due to an accidental fall. Therefore, the prosecution is unable to establish that the death of Om Dutt was a homicidal death.

26. **The accused persons were last seen at Nariana Flyover in a scuffle:** The prosecution has relied upon the testimony of PW5 Moolchand Mistry in order to establish the presence of the accused persons at the place of occurrence. PW5 deposed that he saw the accused persons were grappling with two other persons at about 9/09:30 pm on 27.01.2011 and the said person to whom the accused persons gave beatings fell down. However, this witness does not testify to the effect that he saw the person with whom the accused persons were grappling. During the course of his cross examination, PW5 categorically deposed that he saw the faces of only the accused persons and not of the other persons. After going through the testimony of PW5, I do not find that the presence of accused persons has been established with the deceased as the PW5 admits that he did not see the

face of the persons with whom the accused were grappling.

27. **Recovery of I-Card of the deceased from the accused Ajay Pawwa:** The prosecution has alleged that both the accused persons Ajay & Rakesh committed robbery of the purse of deceased Om Dutt containing Rs. 10,500/- in cash, his election I-Card and a MTS Mobile.

28. PW12 Ct. Diwakar and PW14 IO Inspector Sunil Kumar deposed that the accused Ajay led them to a Jhuggi no. H-472 from where he got recovered the voter I Card of the deceased which was seized by the IO vide seizure memo Ex. PW1/D. PW1 Rajiv Kumar also deposed to the effect that the election I-Card was recovered from the jhuggi of accused Ajay, however, except for the brother of deceased the IO did not join any public person from the vicinity of the Jhuggi of the accused despite the fact as per the deposition of PW1, a young boy and a lady were present in the jhuggi of accused.

29. The prosecution alleged that the accused persons committed robbery of the purse of the deceased but it has come in the deposition of PW1 that the Doctor concerned who conducted the post mortem on his brother's dead body found Rs. 30,500/- in the clothes of dead body. This fact also finds support from the statement of PW9 Ct. Naveen who testified that PW1 had told him that the Doctor handed over a sum of Rs. 30,500/- in cash, Keys and a handkerchief of deceased to him. Thus, the very fact that the deceased was robbed becomes doubtful as the huge amount of money was still with the deceased when the post-mortem on his body was conducted. In these facts, the recovery of the I-Card of the deceased from the accused Ajay becomes inconsequential, more so, when the recovery is effected in absence of any public person despite availability.

30. **Recovery of a mobile from the accused Rakesh in which the SIM card of the deceased was used:** It has also come in the evidence of IO that the SIM of the deceased which was used by the accused in his mobile phone was not recovered nor the mobile phone of the deceased was recovered, therefore, merely the recovery of phone from the possession of accused Rakesh on which the SIM card of the phone of the deceased was used does not connect him with the crime specially when it is not proved that on the date of the incident or even after that the recovered mobile phone was in possession of accused Rakesh. Nonetheless, the robbery stands not proved in the present case.”

4. From a bare reading of the above, it is observed that PW-4 Dr. Raghvendra Baghla, who conducted the post-mortem of the deceased, had deposed in his subsequent opinion being Ex.PW-4/B that the injuries suffered by the deceased on the forehead were insufficient to cause death in the ordinary course of nature.

5. Consequently, it was the opinion of the Trial Court that it could not be conclusively held that the death of the deceased Om Dutt was homicidal in nature. Furthermore, from a reading of the impugned order it is revealed that the testimony of PW-5 Moolchand Mistry does not conclusively establish that the accused was seen grappling with the deceased. It is also evident from the impugned order that the deceased was not the victim of a robbery, inasmuch as, ₹30,500/- were recovered from his clothes at the time of the post-mortem.

6. In view of the foregoing, I am in agreement with the finding arrived at by the Trial Court. Consequently, the present is not a fit case for the grant of special leave to the State to appeal against the impugned order.

7. The petition is accordingly dismissed and disposed of.

SIDDHARTH MRIDUL, J

APRIL 20, 2015

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