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

Date of decision: 05th November, 2015

+ CRL.L.P. 284/2015

STATE (GOVT OF NCT OF DELHI) Petitioner
Through Mr. Varun Goswami, APP with
Insp. Mohan Singh, ATO/K N
Katju Marg

versus

AZAD SINGH & ANR Respondent
Through Mr. Baban Kr. Sharma and Mr.
Dharambir Chotiwalla, Advts.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J. (ORAL):

1. This leave to appeal impugns judgment dated 29.11.2014 passed in sessions case No.6/2011 arising out of FIR No.286/2010, PS K N Katju Marg acquitting respondents Azad Singh and Monu, son of Azad Singh, of the charge of having murdered, Mahender Singh and offence Section 201 of the Indian Penal Code, 1860 ('IPC' for short).

2. There is evidence to show that the dead body of Mahender Singh with ligature marks was found in a plastic sack in Haiderpur Water Treatment Plant on 14.09.2010 at 7.15 PM. There is also some evidence to suggest, which at this stage we are inclined to take on record, that the deceased Mahender Singh used to like Suman (PW-6)

daughter of the respondent-Azad Singh and sister of respondent No.2, though Suman (PW-6) in the Court deposition had turned hostile. At best this would indicate and reflect motive, but motive by itself is not sufficient to implicate the two respondents with the crime in question.

3. It is noticeable and in our opinion the trial court has rightly observed that purported recoveries do not show and establish that the offence in question was committed at the residence of the respondents or that murder was committed with the hammer or associate the cycle with the crime. Blood was not detected on the hammer or the cycle [Deposition of Kamlesh Babu (PW-10) relating to the cycle has been examined below]. It is alleged that the slippers of the deceased were recovered from the residence of the respondent Azad Singh. The said assertion is difficult to accept and believe for the reason that the dead body of Mahender Singh was found at 7.15 PM on 14.09.2010, which implies that the death had taken place even earlier and there was be no reason and cause for the two respondents to keep the slippers with them as late as on 17.09.2010, when they were arrested.

4. This leaves us with the testimony of Kamlesh Babu (PW-10). Mahender Singh was his nephew. PW-10 professes that Mahender Singh, for last one year was residing with him. They were both *halwai* by profession. Kamlesh Babu (PW-10) avers that Mahender Singh had left at night on 12.09.2010 stating that he was going to work as a *halwai* with the contractor Rishipal at village Pooth Khurd. Thereafter, Mahender Singh did not return home. Even PW-10 did not return home for two days as he was busy at work. PW-10 got perturbed on 15.09.2010 after he had received a call from Rustam (PW-4). On

16.09.2010 Rustam and Hare Lal came to Delhi and they went to the Police Station K N Katju Marg and from there to the mortuary at Sabzi Mandi, where they had identified the dead body of Mahender Singh.

5. We have some difficulty in accepting this version for it is clear that on 14.09.2010 when the dead body of Mahender Singh was found in the sack at Haiderpur Water Treatment Plant, the police had ascertained and PAN card of Rustam, SIM of Reliance mobile and some papers on which phone numbers and account number were found. It is also not understandable why Kamlesh Babu (PW-10) did not feel appropriate and necessary to talk to Mahender Singh at least on telephone between 12.09.2010 till 15.09.2010. Even if we accept that, Kamlesh Babu (PW-10) had left for his work and had remained busy, it would be normal and natural for PW-10 to remain in touch and contact Mahender Singh. The aforesaid factual position and conduct of Kamlesh Babu (PW-10) has become relevant and is significant as Kamlesh Babu (PW-10) proclaims that he was an eye witness and had seen the two respondents at about 2 - 2.30 AM on 12.09.2010 when he had come out of his room to ease himself in the *gali* (street). Respondents Azad and Monu were seen by him coming out from house with a *bora* (sack), kept on the carrier of a bicycle. They had tied the *bora* with a cycle tube. It is on the basis of this statement that the respondents are being implicated as the perpetrators of the offence, in addition to the motive noted above. Motive in the present case, looking at the factual background it could be argued, could be the reason why Kamlesh Babu (PW-10) has made the said assertion. We have carefully examined the testimony to Kamlesh Babu (PW-10) and

would have hesitation in reversing the finding of the trial court in not accepting the eye witness version about the doubtful betide at about 2 – 2.30 AM in the intervening night between 12 and 13.10.2010. If Mahender Singh had gone missing and PW-10 had seen the respondents moving about suspiciously at 2 -2 2.30 AM at night, it would have aroused scepticism and Kamlesh Babu (PW-10) would have got informed and spoken to the family members of Mahender Singh. Kamlesh Babu (PW-10) has testified that he came to know about the murder on 15.09.2010 or 16.09.2010. However PW-10's statement under section 161 Cr.P.C. was recorded on 17.09.2010. It is also noticeable that Kamlesh Babu (PW-10) did not identify the plastic sack in which the dead body of Mahender Singh was found. He did not depose that the sack was the same sack which he had seen on the said intervening night.

6. In view of the aforesaid discussion we do not find any merit in the present leave to appeal and the same is dismissed.

(SANJIV KHANNA)
JUDGE

(R.K.GAUBA)
JUDGE

NOVEMBER 05, 2015
VLD