

*** IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRIMINAL LEAVE PETITION No. 8/2013**

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Date of decision : 27th January, 2015

STATE

..... APPELLANT

Through : Mr. Firoz Khan Ghazi, APP for the State

Versus

**SUNIL KUMAR @ SAGAR @ RAHUL
& ORS.**

.....RESPONDENTS

Through : Ms. Jyoti Batra, Advocate for respondent
Nos. 1 to 3.

**CORAM :
HON'BLE MR. JUSTICE G. S. SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

JUDGMENT (ORAL)

Crl.M.A.No.76/2013

1. This is an application filed by the petitioner/State seeking condonation of 201 days delay in filing the present leave to appeal. Heard. For the reasons stated in the application, the same is allowed. Delay in filing the present leave to appeal is condoned.

2. Application stands disposed of.

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3. By the present criminal leave petition filed under Section 378(3) of the Code of Criminal Procedure, the State seeks leave to appeal against the order of acquittal passed by the learned Additional Sessions Judge (ASJ) in Sessions case No.4/2009, on the ground that the impugned judgment dated 6.3.2012 is contrary to the facts and evidence on record.

4. The facts of this case, as noticed by the learned Additional Sessions Judge, are as under:-

- On 16.8.2008 at around 5 p.m. a secret informer met S.I. Pramod Kumar at Special Cell office of North Range and informed him that 3-4 members of Sunil Sansi Gang have come to house of one Desh Raj at T-417, Baljeet Nagar, Delhi and they can be caught. It was also informed that they are involved in interstate robberies, car jacking and theft and their head Sunil is an escapee from police custody. This information was reduced in writing vide DD No.7. Thereafter raid was conducted, one Jagdish Kumar of Sultan Puri was found who informed that Desh Raj and his accomplices left in golden colour Maruti SX 4 Car No.GJ-1HP-8802. Car was sighted and chased and all the accused were apprehended.
- S.I. Parmod prepared Rukka on the basis of which FIR Ex.PW1/A was registered. After completion of investigation, charge sheet u/s 186/353/307/411/34 IPC was filed. Accused Sunil, Rajeev @ Babloo, Amarjeet Singh and Desh Raj were also charged separately for commission of offence punishable u/s 25 of the Arms Act and Section 411 IPC.
- Prosecution examined 16 prosecution witnesses followed by recording of statement of accused u/s 313 Cr.PC vide which accused persons claimed to be innocent.

5. Learned Trial Court while passing the impugned order has observed that the document DD No.7 has neither been placed nor proved on record and was not even made part of charge sheet and this calls for drawing adverse inference under Section 114 of Evidence Act. The Trial Court has relied upon *B.Abdul Rehman vs State of Kerela 2002 AIR SC 1810* wherein the

Apex Court highlighted the importance of reduction of secret information in writing while terming it as a safeguard provision apart from other provisions in Criminal Procedure Code. Trial Court also relied upon *Peeraswami vs State of NCT Delhi 2007 (4) R.C.R (Criminal) 339*, wherein court ruled out that:

“the statute mandates that the police officer shall not only necessarily record secret information in writing but also casts duty on such officers to send a copy of such information immediately to his superiors. Court opined that non compliance of safeguarding procedure would make a prosecution story doubtful”

6. Trial Court has also pointed out that the site plan Ex.PW16/A is totally a non descript document and nowhere shows the distance or location of the police vehicle. The four spots mentioned qua the four accused are shown to be exactly equidistant which is improbable. Trial Court relied upon *Dinesh vs. State of Haryana AIR 2002 SC 2374* wherein Supreme Court while acquitting the accused in a murder case amongst other thing observed:

“There is no site plan available on record from which the court could have an idea of distances between place of occurrence and the place where witnesses were standing”

Learned Trial Court also placed reliance upon *Vijay Singh vs State of MP 2005 CrLJ 299*, wherein Hon’ble High Court ruled that:

“we can safely say that preparation of site plan is not a mere formality, but, it is an essential feature in order to reach the firm conclusion by the court in order to ascertain whether the offence has been committed by accused or not”

7. Trial Court further held that prosecution has not proved the case against the accused beyond shadow of doubt and accused have to be accorded benefit of doubt. Reliance was placed upon by the Court in the case of ***Sohan vs. State of Haryana 2001 3 SCC 620*** where Apex Court observed that:

“An accused is presumed to be innocent until he is found guilty. The burden of proof that he is guilty, is on the prosecution and that the prosecution has to establish its case beyond all reasonable doubts. In other words, the innocence of an accused can be dispelled by the prosecution only on establishing his guilt beyond all reasonable doubts on the basis of evidence. In this case, if only the sessions judge had reminded himself of the above mentioned basic or fundamental principles of criminal jurisprudence, direction of his approach and course of his appreciation of evidence would have been different and thereby perversity in appreciation of evidence could have been avoided”.

8. Learned counsel for the state argues that the trial court committed manifest error of law and acted wrongly in drawing an adverse inference under Section 114(g) of the Evidence Act by observing that either DD No.7 dated 16.08.2008 was never recorded or that if recorded its contents do not support the case of the prosecution.

9. Learned counsel for the state also submits that the trial court cannot draw any adverse inference against the prosecution case on the count that HC Satender was not examined. PW8 HC Shivbir along with HC Satender was chasing the golden colour SX4 car of Gujarat registered number and both had seen the car and being witnesses to the same facts only HC Shivbir was examined.

10. Learned counsel for the state further submits that the Trial Court failed to appreciate that in the present case, further investigation was handed over to SI Vikram Singh who is of equivalent rank as SI Promod Kumar and is not junior to him, so was competent to investigate the case.

11. Learned counsel for the state also submits that the site plan was an unscaled site plan as viewed by naked eye and not prepared with the scale and each and every point has been shown by the I.O clearly in the site plan which depicts the crime scene and no shops or houses existed there so no public witness were joined during investigation. Counsel further urged that in view of the overwhelming evidence adduced by the prosecution, the order of acquittal passed by the learned ASJ is liable to be reversed.

12. We have heard the learned counsel for the parties and have perused the impugned judgment. In our view, the trial court has given valid and substantial reasons for disbelieving the prosecution version of the case. We agree with the observations made by the learned trial court and are unable to be persuaded by the learned counsel for state to take a different view than the one taken by the learned ASJ. The first document qua the case in hand is DD No.7 wherein the secret information received by SI Parminder Kumar was recorded. Failure on the part of prosecution to place and prove this document calls for drawing adverse inference u/s 114 (g) of the Evidence Act. Also as per the prosecution case HC Satender alone is shown to have alarmed Inspector Brahamjeet and other police teams and there is no explanation of non examining HC Satender despite being a star witness of the case. Also the prosecution has failed to explain as to why Inspector Brahamjeet who was a leader of the raiding team did not appear as a witness. Thus this calls for an inference u/s 114(g) of Evidence Act as rightly reasoned by the trial court.

13. Regarding the site plan it can be said that it is a vital part of the investigation and that it should give a clear description of the spot to which it belongs but the site plan relied upon by the prosecution nowhere shows existence of adjoining houses or shop where public persons could have been found. Also no attempt is shown to have made to join any public person during the entire investigation.

14. The next circumstance is qua the arrest of accused persons which is improbable on the part of members of police force to chase and corner claimed gangsters totally unarmed. Also the weapons recovered which were used for firing upon the police party were sent to FSL but there is no report to show the condition in which weapons were sent and no attempt was made to lift finger prints from them.

15. In addition to that the car is shown to have cash of Rs 10 lacs in its rear hood but denomination of currency notes has neither been mentioned in the seizure memo (Ex.PW8/A) nor in the Rukka(Ex.PW11/E). Also the seizure memo of alleged Rs 7.40 lacs recovered from the pointing out of accused Desh Raj on 18.08.2008 vide memo Ex PW3/A does not contain any denomination of currency notes. Hence there is absolutely no evidence to show the source of the said money or its connection with the other alleged criminal offences.

16. After careful examination of the sequence of events narrated and relied by the prosecution we are of the opinion that trial court has rightly disbelieved the prosecution version as it failed to complete the chain of evidence in proving the guilt of the accused.

17. The law with regard to the grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is

misapplication of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more plausible. In *Arulvelu and Anr. vs. State* 2009 (10) SCC 206, while referring with approval the earlier judgment in *Ghurey Lal vs. State of Uttar Pradesh*, (2008) 10 CRL.L.P.No.764/2013 Page 6 of 7 SCC 450, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:

“1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

18. It is well settled that leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse. We are of the

view that the trial court has given detailed reasons for disbelieving the prosecution case and we are not inclined to take a different view. We find no infirmity in the judgment of the trial court. The acquittal recorded by the trial court is based on reason and thus, there are no grounds to grant leave to appeal. Consequently the appeal is dismissed.

G.S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

27 JANUARY, 2015

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