

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 721/2014**

Reserved on : 06.02.2015
Date of decision: 24.02.2015

STATE OF NCT OF DELHI Appellant

Through: Ms.Aasha Tiwari, APP for the State.
Insp.Raj Singh, P.T.C.

versus

NARESH AND ANR. Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The State has preferred this leave to appeal against the judgment dated 7.8.2014 passed by the learned Additional Sessions Judge/Special Judge (NDPS), North District, Rohini Courts, Delhi in Sessions Case No.27/2010 (reference FIR No.213/2000, PS Bawana, Delhi) whereby Respondent No.1 Naresh and Respondent No.2 Nitin @ Sonia have been acquitted of the charges under Sections 302/506 and 34 of the Indian Penal Code, 1860.

2. The aforementioned Respondents had been charged for murder of Satish, since he had failed to return money which he had borrowed

from the Respondents-accused.

3. After having gone through the Trial Court records and the judgment of the Court below, we are of the opinion that the order of acquittal is justified as there is no legal evidence to connect the Respondents with the murder of Satish.

4. The case of the prosecution is that on 1.6.2010, a putrid smell was emanating out of flat No.619, Block 7, Sector 3, Bawana. This caught the attention of somebody, who informed the Police Control Room. The duty officer, PW.9 ASI, Bhagwani Devi registered a DD No.15A (Ex.PW.9/A). The information was then transmitted to PW.25, SI Jai Kumar who reached the spot. PW-25 found two persons roaming near the flat from where the bad smell was emanating. It transpired that the two persons were Kuldeep Kumar, employer of the deceased (PW.1) and the other was Sanjay (PW-4) owner of the flat No.619. The police officer broke open the door of the house in the presence of PWs.1 and 4. A decomposed dead body was found inside the flat. PWs.1 and 4 identified the dead body as that of Satish. As has been stated earlier, PW.1 was an ex employer of the deceased, whereas the deceased was staying in the flat of PW.4. Immediately

thereafter one Nikhil (PW.5), a friend and neighbour of the deceased, was also examined who has also identified the deceased.

5. From the information provided by PWs.1 and 4, it was learnt by the police party that the deceased hailed from Gorakhpur. The family members of the deceased were informed about the death and the police party awaited their arrival. The post mortem of the deceased was postponed for the same reason and a request was made to the Chief Medical Officer of BJRM Hospital to keep the body in morgue.

6. Subsequently, post mortem was conducted on 5.6.2010, as nobody came forward to claim the body. The post mortem report is Ex.PW.19/A.

7. PW.19, Dr.K.Goel conducted the post mortem on the deceased on 5.6.2010 and found that the neck of the deceased was surrounded by a muffler without any knot. A discoloured area was detected by the autopsy surgeon around the neck of the deceased. No other injury was found on the dead body. The opinion regarding death is stated to be asphyxia as a result of a ligature pressure over neck. The ligature mark was found by the doctor to be ante-mortem. The time of death was fixed at approximately 9 to 10 days before the date of the post

mortem. The death, decidedly, is homicidal.

8. What appears rather strange is that even after the post mortem was done on 5.6.2010, no FIR was registered. The FIR regarding the death of the deceased was registered belatedly on 28.8.2010 that is after about 2½ months.

9. One cannot fathom the cause of such delay in lodging the FIR. Even if nobody had claimed the body, or no clue/lead came forthcoming, then also FIR ought to have been registered against unknown as the death was homicidal.

10. In order to find out the actual sequence of events, we have thought it proper to examine the evidence of PWs.1, 4 and 5 first.

11. PW.1, Kuldeep has stated before the Trial Court that he knew the deceased since 1994. The deceased was expected to visit him on 26.5.2010 for getting his car repaired, but for some reason he could not come on that day. The deceased is said to have given a telephone call to him wherein he promised to come on the next day. He did not come on the next day as well. This led PW.1 to enquire from Nikhil, PW.5, a friend and neighbour of the deceased. PW.5 reported that the flat where Satish lived was locked from outside and bad smell was

emanating therefrom. PW.1 thereafter informed about this to Sanjay (PW.4) and both of them went to the flat. Finding some foul play, PW.1 informed the police. Similar statements have been made by PWs.4 and 5.

12. As we have noticed earlier, on such information, the police party arrived, whereafter the dead body was identified as that of the deceased by PWs.1 and 4.

13. Thus the identity of the deceased has been fully established.

14. It further appears from the records that Inspector Raj Singh, the second I.O, inspected the room and found a pocket diary. From the pocket diary he could ascertain the telephone numbers of the associates of the deceased. The telephone number of the deceased was provided by PWs.1 and 5. It has been stated by PW.29 that on the analysis of the Call Record Details of the mobile phone of the deceased, it was found that the last call was made to one Rakesh who also joined the investigations and had appeared as PW.16 at the trial.

15. During the investigation, aforesaid Rakesh (PW.16) stated before the police that the deceased was murdered by one Naresh (Respondent No.1) and Nitin @ Sonia (Respondent No.2) and that he

witnessed the occurrence. His statement was also recorded under Section 164 of the Code of Criminal Procedure. On the information provided by aforesaid Rakesh (PW.16), investigation took a different turn and efforts for apprehending Respondent Nos.1 and 2 began.

16. PW.29, Insp. Raj Singh, the second I.O has stated that two of his constables namely Baljeet and Virender visited the village of Respondent No.1 Naresh on 9.9.2010. They were made to understand that Naresh, was made an accused in FIR No.215/2010 of P.S.Dharuhera and in connection with the aforesaid case he was lodged in Bhondsi jail. Similarly PW.29, by chance met an informer who provided clue about Respondent No.2. Nitin @ Sonia, Respondent No.2 was allegedly taken in custody on the same day and Respondent No.2 made a disclosure on 13.9.2009 leading to the recovery of a black bag which contained a Pan Card, clothes and two photographs of the deceased. A copy of the RC of car No.DL-6CC-0989 was also recovered from the bag. Respondent No.1 while in remand made a disclosure leading the police party to the flat No.619 as the place where the murder had been committed. Both the Respondents disclosed about a place where the mobile phone of the

deceased had been thrown.

17. From the evidence of PW.29 we get a clue as to why the gaze of the investigation was directed towards Respondent Nos.1 and 2.

18. PW.16 Rakesh is stated before the Trial Court that he had known Respondent No.1 since his stay in jail in the year 2008. He has also stated that the deceased was known to Jony @ Sri Ram (PW.3). On 26.5.2010, deceased is stated to have given a call to him at around 9 to 10 AM asking him to accompany him to Filmistan. PW.3 also accompanied the deceased and Rakesh. The aforesaid persons along with Respondent No.2, by using the car of Respondent No.1 went to Filmistan and from there after staying for about 5 to 10 minutes PW.16 and PW.3 came back to their respective home. Respondent Nos.1 and 2 left that place in the car of the deceased for Bawana along with the deceased. The deceased is said to have called Rakesh again from the mobile phone of Respondent No.1 at about 5 to 6 PM asking him to come over to his flat as Respondent Nos.1 and 2 were fighting with him.

19. Rakesh has not supported such story during the trial and has been declared hostile.

20. PW.3, Jony @ Sri Ram confirms the fact of his having accompanied Rakesh, deceased and Respondent No.2 to Filmistan where they met Respondent No.1 (Naresh). PW.3 has further deposed before the Court that on the deceased asking Rakesh to come over to his flat as Respondent Nos.1 and 2 were fighting with him, he accompanied Rakesh to the flat. He carries forward the story alleging that the house of the deceased was opened by Respondent No.1 and Respondent No.2 was also found inside the room. The deceased was lying on the floor. Respondent No.1 flipped a pistol and threatened him of running away from that place otherwise he would also be put to same fate. He says that perhaps the Respondents were trying to conceal the dead body. Seeing this, PW.3 states that he got frightened and returned home and did not speak about the occurrence to anybody.

21. From what has been deposed by PW.16 and PW.3, it transpires that neither of them have seen the actual occurrence of assault. PW.3 portrays himself as a witness to the Respondents being in the flat of the deceased, where PW.3 and PW.16 were threatened by Respondent No.1 of dire consequences if they did not go away. This part of the story also appears to be doubtful as the telephone number of PW-3 of

which Call Record Details was obtained and analysed does not confirm of his having been somewhere around Bawana, the place of occurrence at the relevant time. His location on 26.5.2010 at 3.10 PM was shown to be at Mukundpur and then at about 5.46 PM at Jahangirpuri. The location of PW.3 at about 6.20 PM is again found at Pusa Road and till about 9.30 PM he was at Jahangirpuri. Thus the location chart of the telephone number of PW.3 makes it very clear that he did not visit Bawana during this period.

22. The testimony of PW.3 is further doubted for the reason that after what he saw on 26.5.2010, he did not reveal it to anyone and joined the investigation only on 7.9.2010. The explanation offered by him that he was afraid of the Respondents is not acceptable. Respondent No.1 was also in custody in connection with another case from 17.7.2010. If at all there was any fear from Respondent No.1, nothing prevented PW.3 from approaching the police authorities after the arrest of Naresh, Respondent No.1.

23. Having now disbelieved PW.3 entirely, the only materials which are left to be considered so far as the complicity/participation of Respondent Nos.1 and 2 in the occurrence is concerned, are the

motive for eliminating the deceased and the so called recoveries pursuant to the disclosures made by them (Respondents).

24. As per the disclosure of Respondent Nos.1 and 2, the deceased owed money to them. Such motive surfaces only on the basis of the disclosure statements made by Respondent Nos.1 and 2. So far as other witnesses are concerned namely PWs.3 and 16, their statement with respect to the motive is not cogent. PW.3 has stated that there was some issue which had to be sorted out between Naresh and the deceased. The testimony of PW.16 is that when the deceased was sitting with Naresh in his car, the tenor and the manner of their conversing with each other did not disclose that there was any hostility between them. It is apparent that there is no motive on the part of the Respondents to murder the deceased. We do hasten to add, that motive to commit a crime may not be very relevant in cases where there is direct evidence but it does assume some relevance when the perpetrator is being sought to be implicated on circumstantial evidence.

25. The recovery of wearing apparel of the deceased at the instance of Respondent no.2 cannot be used against him as there is nothing on

record to suggest that those discovered apparels were identified to be that of the deceased, or could be linked with the offence of murder. The PAN card and the photographs of the deceased stated to have been recovered pursuant to the disclosure of Respondent No.2 are of no help to the prosecution as such documents would not have kept by Respondent No.2 in his possession for such a long time. One does not know as to why those documents were first taken and then preserved by Respondent No.2. The only inference which we can draw, if at all the recovery is to be believed, is that Respondent No.2 was known to the deceased.

26. Similarly, the registration certificate of the car of the deceased, which also is said to have been recovered at the instance of Respondent No.2, cannot be read as a piece of incriminating evidence against the Respondents. The recovery was nearly 2 months after the occurrence. Time gap is substantial.

27. This leaves us with the disclosures made by Naresh (PW.1) namely his pointing out the place where the deceased was done to death, namely the flat of the deceased. This is not an admissible piece of evidence as the dead body was recovered earlier by the police,

themselves. The recovery of car of the deceased and the pistol also is of no consequence. The pistol, which was used by Respondent No.1 to allegedly scare away PWs.3 and 16 have not been identified by them. The barrel of the pistol was also found to have been damaged. The car of the deceased was seized by the police which was investigating FIR No.215, in which Respondent No.1 was cited as an accused and in connection with which offence, he was in custody. There is no evidence with respect to the Respondent No.1 having stolen away the car of the deceased or that he had any intention of appropriating the same, by, perhaps, selling it. Mere recovery of the vehicle, which stands registered in the name of the deceased, is an incriminating a fact, but the time gap between the date of occurrence and recovery is rather long. It would well be taken as indicative that the appellant was using a stolen car.

28. To tie the strings together, the abnormal delay in lodging the First Information Report, PW.3 and 16 not reporting about what was seen in the flat of the deceased to anybody, for a long time; the recoveries pursuant to the disclosures of the Respondents being of no value so far as their link with the offence is concerned and absence of

any motive on the part of the Respondents who have committed the crime, leaves us to the only conclusion that the prosecution has failed to bring home the charges of murder as against Respondent No.1 and Respondent No.2.

29. The learned Trial Court has rightly rejected the prosecution case as against the Respondents. We find no reason to interfere with the same.

30. Yet another case where a human life is done away with but who did it could not be ascertained.

31. For the reasons stated above, we stoutly decline the prayer of the State for grant of leave to appeal.

32. The application is dismissed.

33. The Trial Court records be sent back forthwith.

(ASHUTOSH KUMAR)
Judge

(SANJIV KHANNA)
Judge

FEBRUARY 24, 2015
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