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

+ **CRL.L.P. 547/2015**

Date of decision: 22nd September, 2015

STATE

..... Petitioner

Through Ms. Aashaa Tiwari, APP with
Inspector Om Prakash Pawar, SHO, NDRS.

versus

SARVAN @ SANJU

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA (ORAL)

The impugned judgment dated 18th February, 2015, acquits Sarvan @ Sanju from the charge that he along with his associates Firoz and Dharmender (not arrested and proclaimed offenders) had committed murder of Rakesh in the intervening night between 3rd and 4th May, 2013 at platform Nos.6 and 7 of New Delhi Railway Station. It is alleged that deceased Rakesh has suffered homicidal death as he was hit by a heavy stone and other objects and was made to lie on the railway line as a result of which, he was run over by a train.

2. The impugned judgment records and accepts that the deceased Rakesh may have suffered homicidal death in view of the post mortem of Rakesh marked Ex.PW4/A proved by Dr. S. Lal (PW4), which records ante mortem injuries in the form of lacerated wounds and bruises. Dr. S. Lal (PW4) has also affirmed crushed injury on

the left upper limb of the middle arm. The cause of death was shock due to cranio-cerebral damage consequent upon blunt object injury on the head, which was sufficient to cause death in ordinary course of nature. This injury, PW4 opined, was ante-mortem in nature. The other words, the crush injuries were post-mortem i.e. after Rakesh had died.

3. On the question of involvement of the respondent, the prosecution charge sheet relies and is predicted on the testimony of one eye witness i.e. Deepak (PW18). The trial court in the impugned judgment has elucidated and given several reasons as to why the said witness is not trustworthy and should not be relied for convicting the respondent. We have examined the said grounds and find that the reasoning and findings recorded by the trial court do not require interference. The elucidation by the trial court is meritorious and credible.

4. As per the prosecution version, dead body of Rakesh was recovered and came to the notice of the police after DD No.2A dated 4th May, 2013 was recorded at about 12.30 midnight. The DD entry mentions that a dead body was lying between railway tracks going from platform No.10, New Delhi Railway Station. Thereafter, ASI Raghubir Singh (PW8) had visited the spot and had seen a dead body of a male, whose right hand had been chopped. PW-8 filled up the inquest form and deposited the dead body in Subzi Mandi mortuary. PW8 had again visited the spot in question at about 6.40 A.M. Crime Team was called and evidence and material at the site were collected. It is apparent that ASI Raghubir Singh (PW8) did meet

and could not ascertain whether any eye witness had seen the occurrence. No one came forward or had informed ASI Raghubir Singh (PW8) or any other police officer that he or someone else had seen the occurrence or elucidated and stated how the deceased had died.

5. Deepak (PW18) accepts that he had visited and got himself medically examined at the Lady Harding Medical College vide MLC Ex.PW2/A at about 2.15 P.M. on 4th May, 2013 i.e. nearly 14 hours after the dead body of Rakesh was noticed lying on the railway track. He had abrasions over the right knee and left leg and swelling on the right distal eye. There were also abrasions and swelling below the left eye. The injuries, it was opined, were simple. The MLC marked ExPW2/A was written and signed by Dr. Harvinder Dev (PW2). Dr. Debashis (PW3) has deposed that as per the X-ray, no bone injury was found. It is only after Deepak (PW18) had come to the hospital and was examined, as per the police version that they came to know about the involvement of the respondent. Sarvan @ Sanju and others. Thus, Deepak (PW18), who claims himself to be an eye witness, did not report about the occurrence to the police. Relevantly, Deepak (PW18) avers that he was working in NDRS in the parcel department. He was employed and earning.

6. Deepak (PW18), however, asserts that he had known the deceased Rakesh for about 5-6 months prior to the date of incident. Rakesh was a pick pocket and on the date of incident both of them had consumed liquor in the evening. He claims that deceased Rakesh used to keep a knife and some wooden sticks, which had

been stolen by the respondent and his friends. Thereupon, deceased had threatened the perpetrators that if the articles were not returned, he would kill the respondent and his associates. This was the motive and reason why Sarvan @ Sanju and his associates had attacked and killed Rakesh at midnight intervening between 3rd and 4th May, 2013.

7. Deepak (PW18) has stated that after seeing the occurrence, he ran away from the spot and had gone to bridge No.16 and had slept there. Next day, he went to the hospital where police met him and he had disclosed and narrated the facts. It is interesting to note that respondent Sarvan @ Sanju was arrested on 1st July, 2013, again at the instance of Deepak (PW18), who had signed the arrest memo (Ex.PW18/A). In his cross-examination, PW18 claimed that that in the morning, he came to know that Rakesh had expired, yet he did not make any complaint. He claimed that he had also sustained injuries because of the attack by Sarvan @ Sanju and his associates. In his cross-examination, Deepak (PW18) had asserted that he had gone to the hospital at about 9.00 A.M. or 10.00 A.M., which obviously, is an incorrect statement as the MLC (Ex.PW2/A) records his presence at the hospital at 2 P.M. on 4th May, 2013. One of the suggestions given to Deepak (PW18) was that he had killed deceased Rakesh and had falsely implicated the respondent and others.

8. On going through the testimony of Deepak (PW18), we notice gaps and flaws. There was considerable delay in Deepak (PW18) coming forward and informing the police. Injuries suffered by Deepak (PW18) were simple in nature. We have noticed the suggestion given to Deepak (PW18) in his cross-examination.

Motive as alleged is vague and weak. The trial court has rightly not relied upon the said witness as the sole and exclusive reliable version and ground to convict the respondent. PW18's testimony was not entirely credible and trustworthy and required corroboration and support from other circumstance and material, but this is completely absent and lacking in the present case. Apart from the testimony of Deepak (PW18), there is no other convincing incriminating fact, which would show or signify involvement of Sarvan @ Sanju. Alleged recoveries are a suspect and again doubtful. We do not think that we can solely and only on the basis of the testimony of Deepak (PW18) safely opine and hold that Sarvan @ Sanju was one of the perpetrators and participant in the attack, which had led to the death of Rakesh. Leave to appeal, therefore, should be dismissed.

9. There is delay of 67 days in filing of the leave to appeal and an application for condonation of delay has been filed. As we find that the leave to appeal lacks merit, we are not inclined to issue notice on the application. Consequently and as a sequitur, the application for condonation of delay will be treated as dismissed.

SANJIV KHANNA, J.

R.K.GAUBA, J.

SEPTEMBER 22, 2015 NA