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

Date of Decision: 14th July, 2016

+ **Crl. LP No.146/2016**

STATE (GOVT. OF NCT OF DELHI) APPELLANT

Through: Ms. Aashaa Tiwari, APP for the
State

versus

PAWAN JINDAL AND ORS. RESPONDENTS

Through: Mr. Ashok Drall, Advocate

+ **Crl. LP No.160/2016**

SANJEEV GARG APPELLANT

Through: Mr. Mahesh Prasad, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Ms. Aashaa Tiwari, APP for the
State

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K. GAUBA, J

1. The respondents Pawan Jindal, accused no.1 (A1), Sandeep @ Sonu, accused no.2 (A2), Chand Veer, accused no.3 (A3) and Vikram @ Billu,

accused no.4 (A4) stood trial in the court of sessions, in Sessions case no.61/2013 registered on the basis of reports under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) submitted on conclusion of investigation into first information report (FIR) No.422/2012 of Police Station Subhash Place, on the charge of offences punishable under Sections 120B of the Indian Penal Code, 1860 (IPC), Sections 302 read with 120 IPC and 394 read with section 120B IPC, the gravamen whereof, was that all of them had entered into a criminal conspiracy in pursuit of object whereof, sometime during the day on 30.10.2012, they had committed murder of Satpal Garg (first deceased) and his wife Ram Kali Garg (second deceased) by strangulating their respective necks by rope in house no.WZ-584, Sri Nagar, Gali No.1, Shakur Basti, Delhi (in short, referred to hereafter, as house no."WZ-584") and robbery by taking away a number of valuable articles belonging to the deceased persons including cash ₹2.50 Lakhs, one gold chain, three gold rings, one set of gold jewellery, one silver tumbler, one wallet containing driving license, some documents, laptop bags and three mobile phone instruments and certain property documents, the murders having been committed in the course of committing the said robbery. A1 and A2 were additionally charged for the offences punishable under Sections 411 IPC on the allegations that they had been found in possession of the parts of the said stolen property. To be specific, the charge against A1 was that on 16.12.2012, he was found to have retained the stolen property in the nature of two Will deeds dated 14.07.1999, two agreements to sell and other documents, all in favour of Ram Kali Garg, General Power of Attorney (GPA) and related documents

in favour of Satpal Rameshwar Das, Suresh Kumar, Banwari Lai, Prem Chand and four receipts of ₹50,000/- each besides 3 photocopies of receipts dated 29.05.1992 of Upkar property dealer. Similarly, the charge against A2 referred to he having been found on 14.12.2012 to have retained in his possession stolen property in the nature of one gold necklace and one gold ring belonging to the two deceased persons. On the conclusion of the trial, the learned Additional Sessions Judge by his judgment dated 21.11.2015 held that the prosecution had failed to prove the charges leveled against all the accused persons beyond reasonable doubts and thus proceeded to acquit them.

2. The petitions at hand, one (Cr. LP 146/2016) filed by the State and the other (Cr. LP 160/2016) filed by Sanjeev Garg, son of the two deceased persons, pray for leave to appeal against the judgment of acquittal, seeking to assail the findings returned by the trial court and the result of the prosecution case mainly submitting that the evidence adduced was not properly appreciated.

3. We have heard learned Additional Public Prosecutors for the State, counsel for the petitioner at length and are of the opinion that the grounds urged to challenge are completely without merit. We thus dismissed the petitions by our short order dated 14.07.2016. By this judgment, we set out the reasons for the said decision.

4. The fact that the two deceased persons were residents of House no.WZ-584 and were found to have met with violent deaths late in the evening of 30.10.2012 at the said place was proved at the trial by evidence which is beyond reproach and which part of the prosecution case is not

even questioned by the respondents. Sanjeev Garg (petitioner in Crl. LP 160/2016), the elder son of the deceased persons, was the first informant on the basis of whose statement the FIR was recorded. After the discovery of the incident, he appeared during the trial as a witness for the prosecution (PW-14) and, with corroboration from other evidence on record, proved that he had reached House No.WZ-584 at about 8.15 p.m. on 30.10.2012 and had found the main gate open but the lights inside not functional. Since his parents would not respond to his calls, he entered and discovered his father (first deceased) lying with bleeding injuries between two articles of furniture in one of the rooms. With the help of a neighbour, he rushed his father to nearby Maharaja Agrasen Hospital, where he was declared brought dead. It is his version that he had asked his friend to go back and look for his mother only to be informed after sometime that his mother had also been found in unconscious state and had been removed to Max Hospital, also declared there to have been brought dead. The matter was brought to the notice of the local police vide Daily Dairy (DD) entry no.40A on the same evening and the matter thus eventually led to registration of the FIR, which was subjected to investigation.

5. In the course of the said investigation, the dead bodies were sent for post mortem examination. The facts pertaining to the post mortem examination of the two dead bodies and the inquest proceedings leave no room for doubt that both the deceased persons had been physically strangled to death. In these circumstances, there can be no doubt about the fact that the assailant(s), by subjecting the said two persons to strangulation, had intended to bring about their death and therefore, it has

to be concluded that Satpal Garg and Ramkali Garg died as a result of acts of commission constituting the offences of murder.

6. According to the prosecution case, in the wake of the discovery of murder of his parents, Sanjeev Garg (PW-24) had come back and checked the property kept in the house. He found an almirah kept in the back side room to be in locked condition. The said almirah upon broken open and it was discovered that cash of ₹2.5 Lakhs, some jewellery items including one gold chain, three gold rings, one gold set and one silver glass were missing therefrom. He also found the purse of his father containing cash, driving licence and some documents besides laptop bag and three mobile phones to be missing. This added the element of robbery to the investigation.

7. According to the case for the prosecution, as presented through the reports under Sections 173 Cr. PC, during the course of investigation, it was revealed that at about 12.30 a.m. on 30.10.2012 Rameshwar Dass (PW-14), elder brother of the first deceased, while passing by house no.WZ-584 had noticed three young persons coming out, two of them carrying a black coloured bag. PW-14 brought this information to the notice of the Investigation Officer (IO) expressing suspicion as to their involvement. It may be added that, according to the prosecution case, the said three young persons (referred to by PW-14) were found, upon investigation to be A2, A3 and A4. The prosecution alleged that one additional input had been received at the initial stage of investigation from Pankaj Kumar (PW-15) to the effect that a few days prior to the incidents which are subject matter of the case at hand, A3 had called him with his

vehicle and alongwith one another person had gone and met A1 and, thereafter, proceeded to the Sri Nagar Colony (the locality where house no.WZ-584 is situate) with A1 pointing out the house of the deceased persons to A3. This part of the evidence, however, was not of any avail to the prosecution since, in his court deposition, PW-15 did not confirm such visit of A-1 to A-3 for reconnaissance.

8. It is the prosecution case that A-1 and A-2 were arrested on 09.12.2012 and made disclosure statements confirming their respective involvement as also that of the other two respondents in the crimes. A2 was sent for Test Identification Parade (TIP) on 11.12.2012 but he declined to participate. The prosecution alleged that A2 was later identified by PW-14 at Rohini Court on 09.02.2013.

9. The prosecution alleged and presented evidence in the endeavour to prove that on 14.12.2012, at the instance of A2, one gold necklace and one gold ring of the deceased were recovered from his residence in Village Mehrana, District Jhajjar, Haryana and further, on 16.12.2012, at the instance of A1, a yellow coloured file containing original documents relating to an immovable property described as property bearing no.D-4, 40ft. road, Aman Vihar, Delhi (for short hereinafter referred to as property no. 'D-4') situate in Khasra no.816, Village Kirari, Suleman Nagar, were recovered from the house in Village Koyal, District Narwana.

10. The Investigating Officer (IO) relied upon the call detail reports (CDRs) of the mobile phone numbers of all the respondents to allege that all of them were present in the area of Aman Vihar, Delhi on 28.10.2012 when the criminal conspiracy was allegedly hatched. We may observe

here that this part of the prosecution case and the evidence led in its support, is inconsequential as A2 to A4 admittedly had been connected to the area in question having visited the place in the past.

11. According to the prosecution, A3 and A4 could not be arrested initially and on the basis of processes issued at the instance of the IO, they were declared proclaimed offenders. A3 was arrested on 08.04.2013 and is stated to have got recovered one gold chain and one pair of *pajeb* from his house. Similarly, A4 was statedly arrested on 14.04.2013 and led to recovery of some further stolen property being two gold rings, silver *pajeb* and some silver coins.

12. The evidence of PW-14 was one of the major planks of the prosecution case presented to support the last seen theory. This evidence is closely connected with the allegations concerning the motive, primarily of A1, to grab the property of the deceased persons by eliminating them and snatching away the title deeds. The learned trial judge has considered the evidence on both these aspects at length subjecting it to acute scrutiny, finding it difficult to believe the same in our opinion, for sound reasons.

13. A1 is the real brother of the second deceased. It has come in evidence that though PW-14, the elder brother of the first deceased, had been earlier supportive of the latter – in that having shifted residence from his native place in Kaithal, Haryana to Delhi in 1987-1988 and having set up business here, upon the first deceased following him to Delhi in 1991, he was joined by the former in a partnership business – both families concededly had eventually fallen apart, the relations having become so sore that the deceased persons would not even attend the wedding

ceremonies of the children of the witness, the interaction having been reduced to the level of occasional, each side having no concern with the other. In contrast, the evidence on record shows that A1, being the real brother of the second deceased was on cordial terms with the family, he having been earlier allowed by the deceased persons to occupy a portion of their property no.D-4, for his business and, upon being called upon by the first deceased having vacated the said portion without raising any dispute or demand.

14. Against the above noted backdrop of these facts, the evidence of PW-14 that A1 was aggrieved against the deceased persons – in that his demand of ₹25 Lakhs from out of the consideration of ₹1 Crore received by the first deceased upon sale of part of the property had not been satisfied – has been found to be vague and not believable. Since the testimony of PW-14 in this regard does not find due corroboration from the deposition of PW-24 on this crucial score, we are not inclined to take a different view.

15. The evidence on record reveals that A3 was a person well known in the area on account of his connection with a political leader. PW-14 conceded during his testimony his acquaintance with A3, *inter alia*, on account of his visits for inquiries regarding the sale and purchase of properties, the business in which he (PW-14) was engaged, running an office from property no.D-4. The crimes were committed during the day on 30.10.2012 and had admittedly resulted in PW-14 joining in the investigation from the same afternoon. In his statement under Section 161 Cr. PC made to the IO on 01.11.2012, he had vaguely mentioned the facts

constituting last seen theory. He did not give sufficient description of any of the three young persons seen by him coming out of the house of the deceased persons – not till 09.12.2012 when A2 was arrested. If he was acquainted with A3 from before, there was no reason why he would not be able to identify him from the beginning and name or at least properly describe him in the input to the IO in the first instance.

16. The allegations of motive, alleged to be primarily the intent to grab the property and the recovery of the title deeds of said property were sought to be substantiated by evidence which, upon close scrutiny, is found to be shaky and not believable. According to the evidence of PW-24, the son of the deceased, the documents which were found missing pertained to property no.WZ-584A. He is on record to state that he had checked the house more than once and had found all the property documents to be intact – reference may be made to his statements dated 31.10.2012 (Ex. PW-24/A), another dated 31.10.2012 (Ex. PW24/DX2) and the third dated 01.11.2012 (Ex. PW24/DX1) – except those pertaining to the above said property. And yet, the documents which were produced in evidence, statedly recovered at the instance of A1 from his possession, pertained to property no.D-4. The documents which were admittedly safe in his possession, custody and control even after the crimes, he having checked and satisfied himself in such regard, could not conceivably have been stolen so as to be found in possession of A1 later. Further, there is no explanation as to why upon A1 making a disclosure statement (Ex. PW34/F) after his arrest on 09.12.2012, no effort was made to make a search for the missing property documents or stolen property till

16.12.2012 when the recoveries are stated to have been effected from the house in Village Koyal, District Narwana.

17. The learned trial court disbelieved the evidence of the prosecution with regard to the recoveries of certain valuable articles from the possession of A2, A3 and A4 – in our opinion, again for good reasons. There is a conspicuous pattern to the investigation pursuant to the disclosures attributed to each of these respondents which renders the evidence statedly gathered in its wake unconvincing. A2 was arrested on 09.12.2012 and is stated to have made a disclosure (Ex. PW34/C) on the same date, resulting in the IO accompanying him to his village Mehrana, District Jhajjar on 14.12.2012 leading to recovery of two articles of the jewellery necklace and ring. A3 was arrested on 08.04.2013 and is said to have made a disclosure (Ex. PW25/D) about he having kept a part of the stolen jewellery and money in his village Kablana. On 14.04.2013, he is said to have made another disclosure (Ex. PW35/Q) now stating that the stolen property was not in village Kablana but kept concealed in a house in Kailash Vihar, Kirari, Suleman Nagar, Delhi. Pursuant to the said second disclosure, recoveries of jewellery items (gold chain and pair of *pajeb*) is stated to have been made from the said house in Kailash Vihar on 14.04.2013. A4 was arrested on 14.04.2013 and is said to have made a disclosure (Ex. PW34/M), *inter alia*, stating that some articles of stolen jewellery were lying in his house in Village Silothi. On 18.04.2013, he is said to have made another disclosure statement (Ex. PW34/P) now stating that his share in the booty was lying on the first floor of house no.384, 40 ft. road, Aman Vihar, Delhi. It is the prosecution case that recovery of

jewellery articles (two gold ring, silver *pajeb* and some silver coins) was made after the second disclosure from a room in the said house which actually belongs to A3.

18. What stands out in the evidence about above mentioned recoveries is that concededly the IO had made no efforts to search or recover the stolen properties immediately upon disclosures being made by A2 on 09.12.2012, A3 on 08.04.2013 and A4 on 14.04.2013 respectively. There is no explanation worth the name as to such omissions in general and for the need to further interrogate A3 and A4 on 14.04.2013 and 18.04.2013 leading to fresh disclosure statements. Admittedly, in his statements to the police, PW-24 had not given any specific mark of identification or description about the stolen articles of jewellery. He conceded at the trial that the articles which have been presented as stolen property recovered are easily available in open market and do not bear any distinguishing mark of identification.

19. For the above reasons, we are not inclined to reach any conclusions contrary to the ones arrived at by the learned trial judge.

20. In the information received from PW-14 (with regard to the presence of strangers coming out of the house of the deceased persons), there was no description worth the name as to their appearance, physique etc. On 09.12.2012, the IO concededly had no clue. His testimony is vague as to what was the basis for he having been led to arrest A2 on 09.12.2012. We note that A2 had declined to participate in TIP on 11.12.2012. But then, we are not satisfied with the evidence of PW-14 having identified him in the Rohini Court complex on 09.12.2013 as has been claimed by PW-34.

PW-14 in his deposition would not support the word of the IO in such regard. There is similar deficiency with regard to the alleged confirmation of the involvement of A4 in the crime by PW-14 at the time of visit to the scene of crime on 18.04.2013 during investigation. The witness would not support the evidence of the IO on this score either. We have already made sufficient observations with regard to the identity of A3. He having been a past acquaintance, the omission on the part of PW-14 in properly describing him in the initial input is a jarring circumstance rendering the accusations incredible.

21. On the foregoing facts, and in the circumstances, the view taken by the trial court cannot be said to be incorrect or perverse. It is well settled that the appellate court is not to upturn the conclusion reached in the impugned judgment only because the views to the contrary were also possible to be drawn, if the findings recorded by the trial court are reasonable, plausible and based on sound reasoning and logic based on material on record. [see *Kallu Alias Masih and Ors., Vs. State of M.P.*, (2006) 10 SCC 313]. We, thus, find no reasons to interfere with the judgment of acquittal.

22. The leave to appeal is declined. The petitions are dismissed.

(R.K. GAUBA)
JUDGE

(GITA MITTAL)
JUDGE

July 14, 2016/yg