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

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CRL.L.P. 600/2013

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Date of decision : 23rd August, 2016

STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for
the State with SI Ishwar
Singh from PS Pul
Prahladpur

versus

GURBAJ SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE R.K. GAUBA

JUDGMENT (ORAL)

Gita Mittal, J

1. This petition has been filed under Section 378 of the CrPC by the State praying for setting aside of the judgment dated 9th January, 2013 passed by the learned Additional Sessions Judge acquitting the respondent for charges framed against him for commission of offences under Section 302 and 201 of the IPC, arising out of FIR No. 4/09 registered by the PS Pul Prahladpur.
2. The evidence on record would show that on 31st August, 2009, Sh. K.L. Meena (PW-3), the Deputy Station Manager of the

Railway Station, Mathura Junction, U.P. was informed by the Section Controller, Agra at around 11.20 p.m. about an abandoned bag lying in the AC coach in train no. 2908, Maharashtra Sampark Kranti Express. This bag was discovered when the train stopped at Platform No. 2, Mathura Junction by the officers of the Railway Protection Force and the Government Railway Police Force. On checking, a black and blue coloured bag containing the dead body of a girl aged about 12 years, was found under seat no.1 of coach 1 of the AC-II of the train.

3. On 1st September, 2009 Constable Kishore Kumar (PW-10), who was working as Duty Officer at GRP Police Station Mathura had verified the recovery of the dead body and FIR No.49/09 (Exh.PW-10/A) under Section 302 and 201 of the IPC was registered by the Police Station GRP Mathura Junction. Subsequently, on the basis of the file sent by the Government Railway Police of Mathura, the case was registered as FIR No.4/09 (Exh.PW-17/A) on 23rd March, 2009 at PS Pul Prahladpur.

4. The dead body was identified by the respondent as being that of his niece namely Manjot Kaur. It is the case of the prosecution that during investigation, the respondent gave a disclosure statement Exh.PW-25/B), signed by him at point A.

5. On completion of investigation, the police had filed a charge sheet under Section 173 of the CrPC arraigning the respondent as an accused. The charges were framed against the appellant by an order dated 23rd March, 2010 of the trial court for commission of an offence under Section 302 IPC to the effect that on the night of

31st August, 2009 at about 3 a.m. at the premises no.GB-90, Pul Prahladpur, New Delhi, the respondent had intentionally or knowingly caused the death of the deceased by strangulation. He was secondly charged for commission of an offence under Section 201 IPC on the allegation that with the knowledge that Manjot Kaur had been killed, the respondent had put her dead body in a bag and hidden the same in the said coach of the Sampark Kranti Express to cause disappearance of the dead body to conceal his crime. At his arraignment, the appellant had pleaded not guilty and claimed trial.

6. In order to bring home the charge, the prosecution had examined 29 witnesses, in support of its case.

7. In his statement under Section 313 CrPC, the respondent had only admitted that the deceased was the daughter of his younger brother. Rest of the incriminating evidence was denied as being incorrect. The respondent had explained that on 8th September, 2009, he had gone in search of his niece after seeing an advertisement on the television about a dead body having been recovered at the Mathura Railway Station. It is his case that he was arrested when he reached the station and was falsely implicated in the case.

8. Our attention has been drawn to the prosecution evidence. There is no eye witness account of the incident. A post mortem was conducted on the dead body on 1st September, 2009 by Dr. A.K. Paliwal (PW-24) at 3.30 p.m. Initially, the doctor could not determine the cause of death, but in his second opinion (Exh.PW-

24/B), dated 6th August, 2010, it is opined that “the cause of death is due to cardiorespiratory failure”. The prosecution has not examined the reason or cause of the cardiorespiratory failure.

9. The only incriminating circumstance, if at all, as pointed out by Ms. Aashaa Tiwari, learned APP for the State, is that Smt. Manti Shah (PW-5) who was the neighbour of the respondent who had last seen the deceased on 23rd/24th August, 2009 when she was throwing garbage outside the house. This witness had declared that she had not seen the respondent ever torturing the deceased, though his wife used to ill treat her. There is some corroborative evidence in the testimony of Smt. Sushma (PW-6) another neighbour of the respondent who has deposed that in the year 2009, she had seen the wife of the respondent torturing the deceased.

10. We find that the prosecution has led evidence of misleading statements having been given by the wife of the respondent with regard to her location. While Smt. Manti Shah (PW-5) has stated that the respondent had taken her to Punjab, however, there is no evidence of the date of either when such statement was made by the wife of the respondent or when the respondent had taken her out of Delhi.

11. It is trite that the prosecution must establish a case against the accused person beyond reasonable doubt. Other than the disjoint circumstances that the deceased had been residing with the respondent and that she had gone missing from their house, no other circumstance has been established. We are unable to even

discern the evidence led by the prosecution as to the actual date from which the child went missing.

12. Ms. Aashaa Tiwari, learned APP also placed reliance on the circumstance that the respondent had not lodge a missing report. This is certainly a suspicious circumstance, but in our view it has rightly been held by the trial court as not being sufficient to bring home the charges with which the respondent was charged.

13. In any case, it is settled law that an order of acquittal is not to be disturbed lightly, merely because another view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. {Ref: *Harijana Thirupala & Ors. v. Public Prosecutor, High Court of Andhra Pradesh (2002) 6 SCC 470 (Para 12)*}

14. In view of the above, the judgment dated 4th January, 2013 of the trial court acquitting the respondent of the charges cannot be faulted on any legally tenable grounds.

Resultantly, we find no merit at all in this leave petition which is hereby dismissed.

GITA MITTAL, J

R.K.GAUBA, J

AUGUST 23, 2016/kr