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

+ CRL.A. 1180/2015, Crl.M.A.Nos.16410/2015 & 11911/2016

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Reserved on : 26th September, 2016

Date of decision : 3rd October, 2016

DALIP PASWAN

..... Appellant

**Through : Mr. Harish Pandey, Mr.
Manish Kumar and Mr.
Raghvendra Mishra, Advs.**

versus

STATE & ORS

..... Respondents

**Through : Mr. Varun Goswami, APP.
Ms. Rakhi Dubey, Adv.**

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S. TEJI

JUDGMENT

GITA MITTAL, J.

Crl.M.A.No.16410/2015 (for condonation of delay)

Heard. For the reasons stated, the delay in filing the present appeal is condoned. The application is allowed.

Crl.M.A.No.11911/2016 (for grant of leave to appeal)

By this application, the applicant (Dalip Paswan) has prayed that the appeal be listed as a leave petition under Section 378 of the Cr.P.C. and leave be granted to him to appeal against the impugned judgment dated 20th April, 2015 passed by the learned Additional Sessions Judge-5 (South) in SC No.42/2014.

Heard. For the reasons stated, the leave is granted.
The application is allowed.

CRL.A.No.1180/2015

1. An appeal number already stands assigned to the present case.
2. Mr. Harish Pandey, learned counsel for the appellant; Mr. Varun Goswami, learned APP for the State and Ms. Rakhi Dubey, Id. amicus curiae submit that the record of the lower court is available and the matter can be disposed of on the basis of the record of the case. It is further submitted that they are ready with the arguments of the case and a prayer is made that the appeal may be taken up for hearing today itself. Accordingly, with the consent of the parties, we have heard learned counsel for the parties and have been carefully taken through the record.
3. The instant appeal has been filed by Dalip Paswan (brother of deceased Pradeep Paswan) impugning the judgment dated 20th of April 2015 passed by the learned Additional Sessions Judge-5 (South) whereby the trial court has acquitted Bachu Prasad – respondent no.4 and his two sons, namely, Laxman Kumar – respondent no.2 and Pintu Kumar – respondent no.3 for commission of offence under Sections 302/201/34 of the IPC.
4. It is to be noted that the State – respondent no.1 has not assailed the acquittal of the persons who were charged. As per the case laid by the prosecution, DD No.15/A (Ex.PW12/B) was logged by the police station Vasant Kunj on the 5th of May 2011 at

3.39 p.m. upon receipt of information to the effect that in the Ridge Forest Area, behind Baba Dev Mandir, a dead body was found entangled in a tree. This information was given to Inspector Ishwar Singh (PW-21), the then SHO of P.S. Vasant Kunj who proceeded to the site along with S.I. Rajesh Kumar (PW-9); Head Constable Kailash Chand (PW-18) and Constable Arvind Kumar.

5. At the spot, the police found a dead body in a decomposed condition entangled in a *keekar* tree in a deep mine.

6. The crime team and photographer were called to the spot. The dead body could be removed only after cutting a small branch of the tree.

7. FIR No.109/11 was recorded by ASI Niranj Lal (PW-12) at P.S. Vasant Kunj (South) under Sections 302/201/34 IPC which was handed over to Inspector Ishwar Singh (PW-21) for investigation.

8. The dead body was sent to the mortuary in the All India Institute of Medical Sciences (AIIMS). On the request of the police.

9. The scaled site plans (Ex.PW11/A and Ex.PW11/B) were prepared by Constable Hardeep Singh (PW-11) on the instructions of Investigating Officer Inspector Ishwar Singh (PW-21).

10. On the 4th of May 2011, Dalip Paswan (PW-5) had lodged a missing report on 2:15 pm (Ex.PW21/1) at P.S. Vasant Kunj about his brother Pradeep Paswan, who used to reside with him at the Madhuban Farmhouse, being missing. It was stated that his brother Pradeep Paswan aged 20 years who had left the farmhouse

at about 11:30 pm on the 2nd of May, 2011 had not returned and is missing since. Dalip Paswan also gave particulars of the appearance of his missing brother.

11. On the 6th of May 2011, Dalip Paswan (PW-5) and his brother Dharmender Paswan (PW-10) identified the recovered dead body in the mortuary, as that of their brother Pradeep Paswan.

12. Post-mortem on the dead body was conducted on 5th of May 2011 at the Department of Forensic Medicine & Toxicology, AIIMS which commenced at 1:00 pm (Ex.PW20/A). As per the post-mortem report, the deceased has sustained the following injuries :

“Antemortem Injuries

1. Multiple linear scratch abrasion running in a criss-cross pattern in various direction, size varying from 4 cm to 6 cm are present over left upper arm and shoulder. Colour is reddish – brown.
2. Abrasion reddish brown in colour of size 6cmx3cm is present just below the left elbow.
3. Abrasion, reddish brown in colour of size 8cmx3cm is present just above left elbow.
3. Contusion, dark bluish, purple in colour of size 15cmx8cm is present on right shin, situated 10 cm above ankle joint.”

13. Dr. Ashish Jain (PW20) , the autopsy doctor, opined that the exact cause of death could not be ascertained due to advance decomposition of the body and that the cause of death due to traumatic asphyxia could not be ruled out. The doctor also noted that the ante mortem injuries on the body were not sufficient to cause death in ordinary course of nature.

14. The time of death has been opined as four days prior to the time of conducting autopsy which brings the timing of the offence it to the night of 2nd May, 2011. The dead body was thereafter handed over to the family members of the deceased.

15. On 26th May, 2011, Inspector Ishwar Singh (PW-21) arrested respondent nos.2 to 4 (the father and the brothers of the girl who was alleged to have been befriended by the deceased), vide arrest memos Exh.PW-9/C2, Exh.PW-9/C3, all of whom made disclosure statement/statements. Pursuant to the said disclosures, the respondents got recovered a cycle vide memo Exh.PW-9/F, iron rod vide memo Exh.PW-9/G and mobile phone vide memo Exh.PW-9/I.

16. Inspector Ishwar Singh (PW-21) collected the evidence of the call details of the mobile No.9268397346 from the Tata Tele Services for the period 2nd of May 2011 to 4th of May 2011. The prosecution examined Shri M.N. Vijayan (PW-14), Nodal Officer, Tata Tele Services who proved the call detail records of the mobile no.9268397346 which was a certificate under Section 65B of the Evidence Act.

17. Evidence was also collected to the effect that the mobile no. 9268397346 stood registered in the name of Laxman Kumar (respondent no.2 herein) – brother of Poonam which was being used by his sister Poonam during the period 2nd to 4th May 2011 vide Ex.PW14/D.

18. Additionally, though mobile no.8800205059 stood issued in the name of Smt. Sharda Devi (PW-7), mother of the deceased, it

was being used by the deceased Pradeep Paswan.

19. Shri Vishal Gaur (PW-15), Nodal Officer of Bharti Airtel Ltd. proved the call detail records and other relevant documents relating to the mobile no. 8000205059 (Ex.PW15/A).

20. After completion of the investigation, chargesheet under Section 173 of the CrPC was filed under Sections 302/201 read with Section 34 IPC. The accused persons (respondent nos.2 to 4) were charged by the order on charge dated 11th January, 2012 for commission of offences under Sections 302/201/34 IPC.

21. The respondent nos.2 to 4 pleaded not guilty and claimed trial. In support of its case, the prosecution had examined 21 witnesses. In their statements under Section 313 of the Cr.P.C., the respondents denied all the incriminating evidence against them. The respondent no.2 – Laxman Kumar took up a plea of alibi in his statement under Section 313 Cr.P.C. to the effect that he was in Daya Basti in connection with his job at the relevant date and time. No defence evidence was led.

22. It is trite that in order to bring home a charge against the accused for commission of offence premised on circumstantial evidence, the prosecution has to establish an unbroken chain of circumstances which leads to the inevitable conclusion of the guilt of the accused person and there is no possibility of any other view.

23. The prosecution has led evidence of PW-5 to the effect that the deceased Pradeep Paswan was having a love affair with Poonam who was a daughter of Bachu Prasad (respondent no.4 herein) and sister of Laxman Kumar (respondent no.2 herein) and

Pintu Kumar (respondent no.3 herein). The respondent nos.2 to 4 - father and brothers of Poonam were opposed to the relationship of the deceased and Poonam.

24. PW-5 has testified in the witness box that he had once requested Bachu Prasad not to allow Poonam to meet his deceased brother at which Bachu Prasad had got angry and scolded him.

25. So far as the incident is concerned, PW-5 has testified that in the morning of 3rd of May 2011, Tinku (PW-4), brother-in-law of the deceased, told him that Pradeep Paswan had received a missed call at 11:00 pm on the night of 2nd of May 2011 and that as a result, Tinku had accompanied Pradeep to the farmhouse of Poonam. Thereafter Pradeep had entered by scaling the outer wall of Kapil Farmhouse where Poonam was residing with the respondents. After waiting for Pradeep for 15-20 minutes outside the Kapil Farmhouse to return, Tinku returned to the farmhouse and went to sleep. PW-5 claimed to have made enquiries about his brother from the respondent no.2 who secured no reply and thereafter had lodged a missing report (Ex.PW21/1) at 2:15 pm with P.S. Vasant Kunj.

26. As per PW-5, on 5th of May 2011, the police officials have come to his house and he had accompanied them to the jungle area when Pradeep's dead body was found hanging on the *keekar* tree in a decomposed condition which he identified vide Ex.PW5/A. in the statement recorded under Section 161 of the Cr.P.C., Dalip Paswan (PW-5) expressed suspicion that Poonam's family members (the present respondent nos.2 to 4) had killed his brother

- Pradeep Paswan.

27. We have been carefully taken through the entire record. We find that the prosecution could establish only two circumstances. The first is the evidence of motive to the effect that the respondent nos.2 to 4 were opposed to the love affair of their daughter Poonam with the deceased who was the son of Suraj Paswan and brother of the appellant.

28. The second circumstance which the prosecution has been able to establish is to be found in the evidence of Tinku (PW-4) to the effect that at about 11 p.m. on the night of 2nd of May 2011, he had helped deceased Pradeep scale the wall of the Kapil Farmhouse where Poonam used to stay.

29. What transpired thereafter remains a complete mystery. The prosecution has not led even an iota of evidence to establish the presence of the respondent nos.2 to 4 in the Kapil Farmhouse on the fateful night, or for that matter, that they lived there. We also note that there is not the remotest evidence as to how deceased Pradeep reached the forest or the deep mine wherefrom his dead body was recovered. Even the place where the murder took place is not identifiable in the evidence on record. There is no evidence at all which even remotely connects the respondent nos.2 to 4 to the offence.

30. We find that the family of the deceased has waited till the morning of 4th of May 2011 to lodge the missing person's report which was logged by P.S. Vasant Kunj as DD No.15/A (Ex.PW12/B) on 5th May, 2011.

31. It is also noteworthy that the prosecution has not proved any call from the deceased Pradeep to Poonam. There is no evidence of any love affair of Poonam or of any opposition of the father and brothers (respondent nos.2 to 4) to such an affair. Allegations to this effect have surfaced for the first time after the body was recovered on the 5th of May 2011.

32. The post-mortem report (Ex.PW20/A) also does not establish the cause of death of the deceased.

33. The prosecution has also not been able to establish the recoveries to the offence or the deceased.

34. In these circumstances, nothing has been pointed out to us to enable us to form a conclusion different from the finding of the learned Trial Judge to the effect that the prosecution had not been able to establish the charges under Sections 302/201/34 IPC against the respondent nos.2 to 4.

35. We therefore, find no merit in this appeal which is hereby dismissed.

GITA MITTAL, J

P.S.TEJI, J

OCTOBER 3, 2016/aj