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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 214/2018

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Rajesh Mahajan, Additional
standing counsel.

Inspector Rajender Singh PS Narela.

versus

PANKAJ KUMAR

..... Respondent

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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09.04.2018

CrI.M.A. 6198/2018 (exemption)

1. Allowed subject to all just exceptions.

CrI.MA. 6197/2018 (delay)

2. For the reasons stated therein, this application is allowed. The delay of 90 days in filing the petition is condoned.

CrI.L.P. 214/2018

3. This is a petition by the State/Petitioner seeking leave to appeal against the order dated 11th September 2017 passed by the Additional Sessions Judge, North District, Rohini Courts, Delhi in Sessions Case No. 196 of 2017 arising out of FIR No. 864 of 2016 registered at Police Station (PS)

Narela, acquitting the Respondent for the offences under Section 302 and 201 IPC.

4. The Respondent was charged for having committing the murder of Mohit @ Buntty son of Chhotey Lal (PW-1) in the intervening night of 27th/28th November 2016 by fire arm and knife.

5. The case of the prosecution was based on circumstantial evidence. The evidence of PW-1, father of the deceased, was relied upon by the prosecution to prove that on 26th November 2016 at around 8.30 pm the deceased was in the company of the accused in the car in which he was ultimately found dead. According to PW-1, he had taken his wife to the doctor at around 6 pm on 26th November 2016 and he made a call to the deceased to purchase dinner for the family. According to PW-1, at around 8.30/8.45 pm the deceased reached outside the house and handed over the packet to one Deepanshu, the grandson of PW-1's brother. PW-1 was also waiting outside the house in the *gali* and noticed it.

6. According to PW-1, the deceased was driving the car and the accused was sitting on the front left seat. After 11 pm the mobile phone of the deceased was found switched off. The next morning at around 7 am one Vijay called PW-1 and informed him that his Santro car which was driven by the deceased was found parked in front of Angris Bharti School, Om Vihar. PW-1 immediately reached there and found that the front left side window pane was broken. There was a cut mark on the neck of the deceased and one bullet injury on his back. His track suit was in a torn condition. Some

cigarette buds were lying outside the car and were lifted. Chance prints were lifted from the car. The remote for operating the screen installed in the car was also found. The right hand of the deceased was on the steering wheel of the car. There was one plastic glass having some liquid in it between the legs of the deceased on the seat. The deceased was wearing bathroom slippers. There was no blood stain on the driver seat where the body of the deceased was found. According to the prosecution, there was one mobile phone found in the pocket of the lower of the track suit of the deceased. Second mobile phone used by the deceased was not found.

7. Certain prosecution witnesses turned hostile at the trial. The case of the prosecution was based on the evidence of last seen, the chance finger print found on the *dikki* of the car that matched the specimen finger print of the accused and the recovery of the knife.

8. As far as the last seen evidence was concerned, the trial Court noted that according to Deepanshu who actually received the food packet from the deceased, the glasses of the car were dark and he could not notice who else was in the car. In the circumstances, the chance of PW-1 noticing who was in the car was remote. Moreover, the statement of PW-1 was recorded by the police only two months after the incident and that too after the accused was already in custody. The trial Court also noted that in a writ petition filed by PW-1 in the High Court he projected the incident as an honour killing and made no mention of having seen the accused in the car driven by the deceased.

9. Although the death was proved to be homicidal, the doctor when shown the knife that was recovered, opined that the injury on the neck could not have been caused by that knife. The recovery was therefore unhelpful to the prosecution. Even the motive for the crime was not proved with PWs 16 and 17 who accompanied the accused and the deceased to a wedding the previous night in the car not supporting the prosecution in that regard. Even the recovery of the matching chance print was explained by the above fact of the presence of the accused in the car and by itself did not link him with the crime. Therefore, there was no tangible evidence that could be found guilt the accused to the crime.

10. Although knife was purportedly recovered at the instance of the Respondent there were no prints that could be developed from the knife and there was also no bloodstains. The clothes of the accused also did not have any blood stains. In the circumstances, the trial Court held that the prosecution had failed to prove the guilt of the accused.

11. Learned counsel for the State sought to again rely on the circumstance of the specimen fingerprint of the accused matching the chance print recovered from the *dikki* of the car. However, as rightly pointed out by the trial Court with the deceased having been seen in the car driven by the accused the previous evening, the above circumstance did not per se incriminate the accused as far as the crime was concerned.

12. Having learned counsel for the State and having perused the impugned judgment of the trial Court as well as the evidence on record, the Court is not persuaded that the trial Court has committed any legal error in

concluding that the prosecution has failed to prove the case against the Respondent beyond reasonable doubt.

13. No ground is made out for grant leave to appeal against the impugned judgment of the trial Court. The petition is accordingly dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

APRIL 09, 2018

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