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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 419/2018**

STATE

..... Petitioner

Through: Mr. Kewal Singh Ahuja, APP
for State.

versus

SURAJ PAL & ORS.

..... Respondents

Through: None.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE V. KAMESWAR RAO

ORDER
04.09.2018

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1. The State seeks leave to appeal against the judgment dated 9th March 2018 passed by the Additional Sessions Judge-03, North West, Rohini Courts, Delhi in SC No.31/2015 arising out of FIR No.234/2015 registered at PS Bharat Nagar whereby Respondents No.1, 2, and 3 (arrayed as A-1, A-2, and A-3 respectively) were acquitted of the offence under Section 302/201/34 IPC with which they were charged.

2. The charge against the three accused was that in the intervening night of 3rd/4th May 2015, near the Railway Line, Phatak No.3, Sawan Park, they committed the murder of one Bhalla @ Balram @ Bablu (deceased) and then concealed the body in the bushes and covered the place stained with blood with earth in order to screen themselves.

3. The prosecution relied extensively on the evidence of Meena (PW-8) who claimed that at around 10:30 pm the previous evening, i.e. 3rd May 2015, she was going towards Mukundpur and as she crossed the railway line, she saw the deceased having a fight with the three accused. She claimed to know all the three accused and also the deceased. According to her, the deceased was under the influence of liquor. She claims that she stopped and tried to persuade him to leave the spot and return home. At that time, Respondent No.3 was stated to have been abusing the deceased. According to PW-8, the deceased told her that he was returning home and had in fact crossed the nearby wall. Thereafter, she too returned home.

4. PW-8 claimed that the following day, while going to work at around 6 am in the morning, she came to know that a dead body was lying near the railway level crossing. She rushed to the spot and noticed the dead body of the deceased lying in the bushes near the railway line. She claimed that she informed the police officials sitting nearby at the police post and then gave a statement mentioning all the incidents of the previous night. Thereafter, that very evening, when called by the police, she joined the investigation. When the police went in search of the accused persons, she accompanied them and on her identification all three accused were arrested. According to PW-8, at the time of their arrests at 6 pm, there was blood on the hands of Respondent No.3 and on the clothes of Respondent No.1. Her

statement was also recorded before the learned Metropolitan Magistrate under Section 164 Cr PC.

5. The trial Court has found numerous inconsistencies in the case of the prosecution as spoken to by PW-8. Although she claimed to have come to the spot first at 6 am, according to SI Rakesh (PW-14), it was only after he reached the spot and while he remained there that PW-8 came there and gave her statement. On this aspect, Inspector Satya Pal Singh (PW-19), the Investigating Officer ('IO') of the case, claimed that he reached the spot at 7:15 am, whereas PW-8 reached at around 1 pm. Even according to PW-16, PW-8 reached the spot only at around 1 pm. This, therefore, completely contradicted the claim of PW-8 that she had reached the spot at 6 am.

6. The trial Court also pointed out that the inquest papers prepared on 4th May 2015 did not make any mention of the presence of PW-8. In the cross-examination of the IO PW-19, he claimed that the police party returned to the police station after 2:30 pm and an arrival entry to that effect (Ex.PW-19/J) was made at the PS. There was no mention again of the arrival of PW-8 at the spot or of the recording of her statement. Even the DD entry concerning the arrest of the Respondent No.1, 2, and 3 did not mention that the accused had been arrested at the instance of PW-8.

7. PW-14 who spoke about the arrest of the accused did not mention that the hands of Respondent No.3 were bloodstained even at the time of arrest or that there was blood on the clothes of Respondent No.1. Further, although PW-8 claimed that the accused persons were under the influence of liquor and were so highly intoxicated that they were not in a position to stand, PW-19 denied the suggestion to that effect.

8. Consequently the position that emerges is that statement of PW-8 was corroborated neither by PW-14 nor by PW-19. Her evidence was both untruthful and unreliable and therefore was rightly rejected by the trial Court.

9. Although the prosecution claimed to have found a button at the spot which presumably matched the buttons of Respondent No.1, the trial Court noted that there was an inordinate delay in sending the clothes and the button for analysis to the Forensic Science Laboratory ('FSL'). This was done only on 17th June 2015, i.e. well over a month after the incident. Ct. Daryao Singh who reportedly took the *pulandas* from the *maalkhana* to the FSL was not examined by the prosecution. Further, in the relevant column of the register maintained at the *maalkhana*, there was no signature of Ct. Daryao Singh. Therefore, the trial Court concluded, and in the opinion of this Court rightly so, that the prosecution had not adequately proved that the parcels and *pullandas* remained untampered while being taken to the FSL from

the *maalkhana*. Therefore, the trial Court rightly placed no reliance upon the FSL reports.

10. If the presence of PW-8 at the spot itself was doubtful, all the subsequent steps including the arrest of the accused and the disclosures purportedly made by them, were all equally doubtful.

11. Having carefully examined the evidence of the PWs and the other documents on record and after considering the submissions of the learned APP for the State, this Court is unable to discern any legal infirmity in the analysis, reasons, and conclusions reached by the trial Court in holding that the prosecution failed to prove the guilt of the Respondents beyond reasonable doubt.

12. No grounds have been made out for interference. The petition is accordingly dismissed.

S. MURALIDHAR, J.

V. KAMESWAR RAO, J.

SEPTEMBER 04, 2018

"shailendra"