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

+ **CRL.L.P.477/2018**

RAVI

..... Appellant.

Through: Mr. R.D. Tyagi and Mr. K.M.M.
Khan, Advocates.

versus

STATE

..... Respondent

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

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT
27.07.2018

Dr. S. Muralidhar, J.:

Crl.M 28596/2018 (exemption)

1. Allowed, subject to all just exceptions.

Crl.M 28597/2018 (delay in re-filing the petition)

2. For the reasons stated in the application, the delay in re-filing the petition is hereby condoned. The application is disposed of.

Crl.M 28595/2018 (delay in filing the petition)

3. For the reasons stated in the application, the delay in filing the petition is hereby condoned. The application is disposed of.

CRL.L.P.477/2018

4. This is a petition which has been filed by the brother of the deceased, seeking leave to appeal against the judgment dated 8th December, 2017 passed by the Court of the learned Additional Sessions Judge/Pilot Court/North District, Rohini Courts, Delhi in SC No.388/2017 arising out of FIR No.141/2017 registered at PS Adarsh Nagar acquitting the Respondent Nos.2 to 4 for the offence punishable under Section 302/34 IPC.

5. The Respondent Nos.2 to 4 were charged with having committed the murder of one Vijay, the brother of Ravi (PW-1) who is the present Petitioner. According to PW-1, on whose statement the FIR was registered, at around 5 pm on 1st April, 2017 Respondent No.3/Rohit along with two other boys came outside their meat shop, where PW-1 was standing with his uncle and asked for Vijay. PW-1 replied that Vijay was at home, which was at a distance of about 20-30 feet from the shop. Respondent No.2 then asked him to go call Vijay. PW-1 went to call him and Vijay accompanied him back to the shop where the boys were waiting. The boys talked to Vijay at a certain distance from the shop and thereafter, they all including Vijay left from there. After about 2-3 hours, the body of Vijay was found near DDA Park, Moolchand Colony. The body was found with a bullet injury on the chest.

6. This is a case based on circumstantial evidence where the first circumstance sought to be proved by the prosecution was the evidence of 'last seen'. The two witnesses relied upon by the prosecution to prove this

circumstance were the present Petitioner who was examined as PW-1 and his uncle Suresh Kumar @ Sonu Pradhan (PW-3). The trial Court has in the impugned judgment in para 74 discussed in detail the circumstance of last seen. The trial Court noted therein that Pawan (PW-5), who was supposed to have been in the area in which the deceased was found, deposed that at around 6.30 pm he had seen the deceased with 4-5 strongly built boys who were speaking Haryanvi language.

7. When PW-5 failed to support the prosecution and was declared hostile with the permission of Trial Court, the APP proceeded to cross-examine him. The APP pointed out the accused in Court to this witness i.e. PW-5 but he stated that the accused persons in the Court were not the boys whom he had seen eating chowmein with the deceased. Consequently, the trial Court concluded that even if PWs 1 and 3 are to be believed as regards the deceased leaving with the accused at around 5 pm from the meat shop, the testimony of PW-5 showed that at 6.30 pm the deceased was seen with some other boys and not with the accused persons. Therefore, the prosecution had failed to prove that the deceased was last seen in the company of the accused.

8. The learned counsel for the Petitioner has been unable to persuade the Court that the above analysis of the evidence as regards the 'last seen' circumstance by the trial Court suffers from any legal error. Apart from stating that the accused did not submit themselves to the test identification

parade (TIP), the learned counsel was unable to overcome the difficulty of PW-5 having last seen the deceased at around 6.30 pm on the fateful day in the company of other persons and not the accused. This was more than an hour after PW-1 and PW-3 last saw the deceased with the accused. Consequently, the Court is unable to disagree with the trial Court on the conclusion arrived at with regard to this circumstance.

9. The next circumstance discussed by the trial Court is the recovery of the weapon of offence. The death was homicidal and due to a gunshot injury. In order to prove the manner of commission of the offence, the prosecution relied on the evidence of recovery of a pistol from a shelf of the room occupied by Respondent No.2/Imran. The trial Court noted that no public witness joined in the recovery of the said weapon. Even if this part of the evidence was accepted, the trial Court rightly noted that it was important for the prosecution to prove that the pistol that was recovered from Imran was the same pistol that was used for the commission of the offence. The trial Court noted that no bullet or empty cartridges were found at the site or recovered. Even the post mortem report did not mention that any bullet was recovered from the body. With the prosecution having failed to produce any bullet, the FSL report about the pistol being in a working condition would not really help the prosecution as a link in the chain of circumstances. It had to be proved that it was the very same weapon that was used to kill the deceased. This could not be proved.

10. The third circumstance concerns the recovery of a shirt from the accused Imran, the case of the prosecution being that he was wearing the same at the time of commission of the offence and that there were bloodstains on it as a result. The shirt was sent to the FSL for analysis. However, the report of the FSL showed that there were no bloodstains found on the shirt. Therefore, this circumstance also could not be proved.

11. The next circumstance discussed by the trial Court, which has also been adverted to by learned counsel for the Petitioner, is the Call Detail Records (CDRs) of the accused persons. On this aspect, the trial Court noticed that Dheeraj did not mention that he had seen the accused persons with the said mobile phones. He stated that whenever the accused persons used to come to meet him, they never used to carry any mobile phone. The admission forms relied upon by the prosecution mention these mobile numbers but this was not held to be proof that the accused were using those mobile numbers, as it was a requirement of the form. Two of the accused were residents of Mool Chand Colony and therefore, even if the location of those phones was in the same area as the deceased or around Mool Chand Colony, that by itself did not point to the guilt of the accused in the commission of the offence.

12. The conclusion reached by the trial Court that the prosecution has miserably failed to prove each link in the chain of circumstances cannot be faulted. No grounds have been made to grant leave to appeal.

13. The petition is accordingly dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 18, 2018
"shailendra"

