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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.L.P. 686/2017

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr.Avi Singh, ASC with Ms.
Purnima, Advocate.
Inspector Sohan Lal, PS-Mehrauli

versus

RAVI SEJWAL & ANR

..... Respondents

Through: Mr. Bijender Singh, Advocate.

And

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CRL.L.P. 18/2018

KAJAL SEJWAL

..... Petitioner

Through: Mr. Bijender Singh, Advocate.

versus

STATE & ORS

..... Respondents

Through: Ms. Kusum Dhalla, APP
Inspector Sohan Lal PS Mehrauli.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

22.02.2018

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1. These are two petitions, one by the State and other by the Complainant, seeking leave to appeal against the impugned judgment dated 8th June 2017 passed by learned Additional Sessions Judge-02 (ASJ), South District, Saket

Courts, New Delhi in Sessions Case No. 66 of 2015 acquitting Respondent No.2, Ravi Sejwal (A-1), and Respondent No.3, Manoj @ Kheemu (A-2) of the offences under Sections 302/34 IPC and 25, 27, 54, 59 of the Arms Act .

Background

2. The background to the present petitions is that information was received at Police Station ('PS') Mehrauli about a dead body lying at the Qutub Stadium near Qutub Minar. Consequent thereto, at around 8 am on 24th May 2015, Sub Inspector ('SI') Ramphal and the Investigating Officer ('IO'), SHO Raman Lamba reached the spot along with other staff. They found the dead body of Deepak Sejwal in a semi-nude condition. Gunshot injuries had been inflicted and, from the pockets of the deceased, one debit card, a driving licence, a broken Micromax mobile phone and one key of motorcycle was recovered. An address was found on his driving licence. Head Constable (HC) Mukesh was sent to the said address. At 9 am, Manjeet Singh (PW-2), uncle of the deceased came to the spot and identified the body.

3. PW-2 gave his statement to the police alleging that in the morning hours, at around 4:30-4:45 am, he had seen the deceased in the Swift car driven by A-1 and A-2. He had also seen Honey (PW-7) getting down from the car. On this basis, the *rukka* was prepared and an FIR was registered at around 2:30 pm.

4. Almost 70 days after the incident, on 3rd August 2014, the police recorded the statement of PW-7 in which he stated that in the night of 24th May 2014 he was roaming in the car of A-2 along with A-1. They met the deceased

near girls' school when A-2 asked the deceased to park his motorcycle and to sit in the car to have some fun. The deceased then sat in the car. All of them consumed beer and liquor in the car. When the liquor was over, they went to Gurgaon, where they again consumed liquor and beer and returned at around 4:30-4:45 pm. PW-7 was dropped by A-2 at Village Lado Sarai. At that time, PW-2, the uncle of the deceased, called out from the rear but A-2 did not stop the car. All three, i.e. A-1, A-2 and the deceased, went away. Later that morning, PW-7 learned that A-2 had killed the deceased.

5. On the day of the incident, i.e. 24th May 2014, A-2 was arrested from Lado Sarai bus stand at around 10:15 pm by the police on the receipt of secret information. Pursuant to the arrest of A-1, he was subjected to a personal search and the blood-stained shirt worn by him at the time of incident was taken into possession. At the instance of A-1, two used cartridges and one lead was recovered from the spot, i.e. Qutub Stadium. At his instance, motorcycle of the deceased was also recovered.

6. The post-mortem examination of the deceased revealed that he died as a result of two gunshot wounds which were sufficient in the ordinary course of nature to cause of death.

7. According to the prosecution, A-2 was arrested on 28th May 2014 upon secret information being received. He is purported to have disclosed that after the commission of the crime, he fled to Shimla in his car. The toll slips of the trip to Shimla were also recovered from the car. He is also supposed to have disclosed that he had thrown the country-made pistol used to kill the deceased at a place in Himachal Pradesh. On police custody remand, A-2

was taken to Himachal Pradesh and, at his instance, a country-made pistol was recovered from near Shiv Mandir at Narcanda. The CCTV footage from the camera installed at Blue Frog Bar & Restaurant, near the place of incidence, showed the entry of Swift car at 5:00 am and exits at around 6:00 am. During investigation, the call detail records ('CDR') of the mobile phones of A-1 (ending in 8868) A-2 (ending in 8551) and the deceased (ending in 8866) were collected. Analysis of the records showed that all three mobile phones were found to be in the same location.

Trial proceedings

8. On completion of the investigation, charge sheet was filed. By the order dated 17th April 2015, both the accused were charged with the commission of the aforementioned offences. After the charges were framed, both the accused claimed trial and pleaded their innocence. The prosecution examined 27 witnesses during the course of the trial.

9. Both the accused denied all the incriminating evidence in their respective statements under Section 313 Cr PC. According to A-1, he was picked up from his house on 24th May 2014 during the day time. He claimed that at around 4:00-4:30 am, he was sleeping in his house and was not in touch with A-2. However, he disclosed that the deceased had called him between 4:40-5:00 am on the mobile number ending with 8868 which is in the name of his father Sunder Singh. As per the viscera report, the deceased had not consumed alcohol, contrary to the prosecution case, and even in the Medico-Legal Certificate, no alcohol was detected.

10. As far as A-2 is concerned, he too claimed that between 4:30-5:00 am on

24th May 2014, he was present in his house at Lado Sarai and was sleeping there. The mobile number ending with 8551 was stated to be used by his younger brother whereas he used another phone number ending with 8386. He claimed not to have been in touch with A-1 on that day.

Trial Court's analysis of circumstantial evidence

11. In the impugned judgment, the trial Court has analysed each of the following circumstances put forth by the prosecution:

- (i) that the deceased was last seen in the company of A-1 and A-2 as spoken to by PW-2 and PW-7;
- (ii) the CDRs of their respective mobile phones and that of the deceased showed the same tower location at the time of the incident;
- (iii) the CCTV footage proved that the Swift car driven by the deceased entered the Qutub Stadium at around 5:00 am and left it at around 6:00 am;
- (iv) the blood stains on the shirt worn by A-1 at the time of his arrest matched with the blood group of the deceased. Recovery of the motorcycle of the deceased at the instance of A-1 was another circumstance pointing to his guilt;
- (v) the arrest of A-2 and the consequent recovery of the Swift car, and of the country-made pistol used in the commission of the murder from Narcanda, HP at the instance of A-2 was another circumstance.

12. As regards the second circumstance, the trial Court found from the CDRs that the deceased, Deepak Sejwal, had called A-1 six times on the night of 24th May 2014 between 4:40:28 am and 5:04:08 am and that too for

durations of 36 seconds, 50 seconds, 138 seconds, 170 seconds, 8 seconds and 9 seconds. This meant that the deceased was not with A-1. Even A-2 could not be said to be with the deceased because there was a call at around 4:33:04 am for 221 seconds between the mobile number of A-2 and that of the deceased. If they were together, it would be unnatural that he would be calling for such a long duration.

13. The trial Court has also analysed the evidence of PW-2 and PW-7 with regards to the circumstance of 'last seen'. The trial Court pointed out that the statement of PW-7 that they had gone to Gurgaon for taking liquor and beer was not corroborated from the mobile phone tower location of the mobile phone of PW-7 or even the accused and the deceased. Further, PW-7 turned hostile in the Court during trial. As regards PW-2, he was a related witness. in his examination-in-chief , he failed to explain how he was present on the road at around 4:35 am. In his cross-examination, he states that he was on his morning walk. There was nothing on record to show that PW-2 would habitually go for his morning walk at that time. The said explanation, therefore, appeared suspicious to the trial Court.

14. The second circumstance pointed out by the trial Court was that although PW-2 reached the spot at around 9:00-9:45 am and identified the body as that of Deepak Sejwal, his statement was not recorded, and *rukka* was not prepared till 1:30 pm. Further, PW-2 stated that he went to the PS at around 2:00-3:00 pm for making the report and the delay in recording his statement remained unexplained. He appeared to have remembered the car number upon having a glimpse of the car. He failed to give any description of the car

in which the accused persons were sitting.

15. The trial Court also disbelieved the arrest of A-1. Ct. Pawan (PW-10), in his cross-examination, stated that they left the PS at 7:00-8:00 pm on 24th May 2017 they met the secret informer between 8:00 and 8.15 pm. He told them that A-1 was planning to leave Delhi and could be apprehended from the bus stand at Lado Sarai. This was within the vicinity of the house of A-1. The deceased and both the accused were the residents of Lado Sarai village in the adjoining streets. The trial Court wondered how A-1 would remain in Lado Sarai after the incident. Secondly, although secret information was received at 8:00 pm about his presence at Lado Sarai bus stop, he was arrested there only at 10:15 pm. It was unlikely that he was waiting for such long time at the Lado Sarai bus stand. This created doubt about the manner of his arrest.

16. As regards the recovery of the blood-stained T-shirt, no separate seizure was prepared and recovery of the T-shirt was not mentioned in the statement under Section 161 Cr PC of HC Krishan Kumar and Ct. Pawan (PW-10). The recovery of the motorcycle was also doubtful. According to PW-25 (IO), after his arrest and recovery of the shirt, A-1 first took them to the spot, i.e. Qutub Stadium. Thereafter, the motorcycle of the deceased was also recovered from the girls' school at Lado Sarai. However, it is stated that after his arrest, A-1 was taken for search of the lead and empty cartridges. After that he was taken for recovery of the motorcycle. There were no public witnesses for any of the recoveries.

17. As regards the recovery of the cartridges, PW-10 again stated that

despite the accused pointing out the place, nothing could be recovered from that place at that time. On the next date, empty cartridges were recovered at the instance of A-1. This is despite the fact that the CFSL-CBI team, upon searching the spot in broad day light, could not find any empty cartridges. Ultimately, the empty cartridges were recovered at around 10m from the place where the deceased was shot.

18. The CCTV footage was seized through a pen drive. However, it failed to play in Court. Further, PW-25 admitted that he had not sent CCTV footage to the CFSL although the charge sheet stated that it had been sent so said. PW-25 also had not obtained any certificate under Section 65B Indian Evidence Act. Therefore, the CCTV footage could not be proved by the prosecution.

19. The arrest of A-2 from Lado Sarai was also doubtful. There were inconsistencies in the deposition of the police witnesses in this regard. The trial Court discussed in detail the evidence produced by the prosecution to prove that A-2 took them away to Narkanda in HP and got recovered the country-made pistol near a Shiv Mandir there. SI Ramphal (PW-16) stated that they went to Shimla with A-2 in a private Innova car. He was unable to give the car number or even the name of the driver. Secondly although they claimed to have travelled by road to Narkanda beyond Shimla, no toll slips were produced. From the local police, Constable Devender joined the investigation. He stated that photographs were taken at the place of recovery and site plan was also prepared. However, no such photographs were produced. It also transpired that the recovery of the country-made pistol was

shown to the police post in-charge and not produced before the Duty Magistrate at Narkanda. No public witness was associated with the said recovery.

20. The proof of motive was also stated to be conspicuously absent. According to the accused, the motive for the murder was an issue of becoming of gang leader but this was not proved by the prosecution.

21. For the aforesaid reasons, the trial Court gave both the accused the benefit of doubt and acquitted them for all the charges.

22. This Court has heard the submissions of Mr. Avi Singh, learned Standing counsel for the State, and Mr. Bijender Singh, learned counsel for the Complainant.

Analysis and reasons

23. As regards the circumstance of last seen, according to Mr. Avi Singh, the trial Court misread the CDRs and wrongly came to the conclusion that they proved that the accused, A-1 and A-2, were not in the company of the deceased till 6:00 am on the morning of 24th May 2014. According to him, CDRs showed that the cell tower locations showed that the phones were in the same area. According to him, the burden lay on A-1 and A-2 to prove their plea of *alibi*, i.e. that they were in their respective houses during that time. It is submitted that inasmuch as A-1 and A-2 failed to prove their alibi, CDRs should be taken to prove the location on the same spot. Mr. Singh tried to explain the calls made by the deceased to A-1 and A-2 by saying that

they were probably in different locations in Qutub Stadium and were probably therefore, calling each other.

24. The above explanation is too weak to be considered satisfactory. It is not the case of the prosecution that instead of at the Qutub Stadium, the deceased and the accused were in different locations. In fact, the scientific evidence in the form of CDRs disproved the case of the prosecution that the deceased and the accused were last seen together at around 4:30 am on 24th May 2014. The evidence of PW-2 is again too sketchy and raises serious doubts as to its trustworthiness. PW-7 also turned hostile and did not support the prosecution.

25. The State and the complainant are unable to point out to any mistake committed by the learned trial Court in its analysis of the CDRs. As pointed out by the trial Court there were calls made by the deceased to A-1 as well as A-2 during the very period they were together. The deceased called A-1 six times on the night of 24th May 2014 between 4:40:28 am and 5:04:08 am and that too for durations of 36 seconds, 50 seconds, 138 seconds, 170 seconds, 8 seconds and 9 seconds. As regards A-2, he was on a call with the deceased at around 4:33:04 am for 221 seconds. The suggestion by Mr. Avi Singh that the three of them were at different locations inside the stadium and were calling each other is an afterthought. This was never the case of the prosecution in the trial Court. In any event, it is inconceivable that after entering the Qutub stadium together, the deceased and the accused would be calling each other on the mobile phone.

26. In the circumstance, the conclusion reached by the trial Court that the prosecution has not been able to prove the circumstance of last seen qua the deceased and A-1 and A-2 appears to this Court to be well-founded.

27. With the very first circumstance of last seen not being proved, the remaining circumstances do not complete the chain and satisfactorily explain the guilt of the accused.

28. Mr. Avi Singh has made a valiant attempt to persuade the Court to hold that the recovery of the country-made pistol from Narkanda (HP) could not be taken to be a weak piece of evidence. According to him, it was a strong piece of evidence which unmistakably pointed the guilt of A-2.

29. The trial Court has discussed the entire circumstance in para 68 of the impugned judgment. The failure to produce photographs taken of the recovery, site plan of the place of recovery and the toll slips to prove the journey in the Innova car by the police in the company of A-2 upto Narkanda (HP) threw the serious doubt about the manner of recovery of pistol. The Court is unable to be persuaded to hold that the impugned judgment of the trial Court analysing the evidence as regards this issue is erroneous.

30. As rightly pointed out by the trial Court, there was no proof of the motive for the commission of crime. Although the prosecution claims that a dispute over leadership of the gang was the trigger for the killing, learned counsel for the complainant vehemently denies that the deceased belonged to any gang whatsoever. Learned counsel for the complainant also sought to

suggest that CDRs revealed calls being made to another person who might be a girl, and that this was perhaps the motive for the crime.

31. This theory of a call being made to a girl which was the trigger for the crime, is being advanced for the first time in this Court. At no point during the trial was any such suggestion made. This new story cannot be made out by the complainant before this Court. The present petition is to be viewed in light of the trial Court record.

Conclusion

32. In the considered view of the Court, there is nothing in the impugned judgment of the trial Court that can be said to be perverse or unsustainable in law.

33. No ground is made out by either the State or the Complainant for grant of leave to appeal against the impugned judgment of the trial Court. The petitions are accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

FEBRUARY 22, 2018

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