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

Crl. Rev. P. 677/2018

Reserved on : 18.12.2019
Decision on : 20.12.2019

IN THE MATTER OF:

STATE

..... Petitioner

Through: Ms. Manjeet Arya, APP for State with
Insp. M.P. Singh, P.S. C.R. Park.

versus

VIR PAL & ANR.

..... Respondents

Through: Mr. Rajesh Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present revision petition has been filed by the State assailing the impugned order dated 20.04.2018 passed by Addl. Sessions Judge in SC No.1468/16 arising out of FIR No.97/08, registered under Sections 302/460 IPC PS C.R. Park. Subsequently, charge-sheet was filed under Sections 302/411/460/34 IPC.

2. As per the prosecution case, the FIR was registered on 02.06.2008 on the statement of Sudhir Maheshwari who stated that on 01.06.2008, when he returned home, the main door of his house was open and his mother was found murdered. He stated that before going, he locked the main door of the house and the mother was present inside the house. The house was also ransacked and the articles including the mobile phone of the deceased were missing.

3. The investigation was carried; however, no clue could be found. On 14.09.2012 i.e. after a period of four years, the respondents along with third accused namely Shripal were arrested on suspicion of being involved in burglaries/house breaking and certain house breaking tools were recovered. The respondent confessed to their involvement in the present FIR. During investigation, two spectacles and a camera were recovered at the instance of Vir Pal/respondent no.1 and a tape recorder and two watches were recovered at the instance of Bijender @ Vishal/respondent no.2. On disclosure of respondent no.1 & 2, co-accused Shripal was also arrested. Three silver coins were recovered at the instance of the third accused Shripal. The seized articles were identified by the complainant in the TIP proceedings on 06.11.2012. The charge-sheet was filed against the present respondents under Section 302/460/34 IPC and against Shripal for the commission of offence under Section 411 IPC. Accused Shripal is stated to have expired.

4. The Trial Court, after considering the material placed on record along with the charge-sheet, came to the conclusion that no session triable offence was made out and accordingly discharged the respondents/accused for the offence punishable under Section 302/460/411/34 IPC. The matter was directed to be placed before the concerned CMM for appropriate orders.

5. The relevant portion of the impugned order reads as follows :

“In the present case, three accused persons namely Veer Pal, Bijender @ Vishal and Shripal have been charge-sheeted for offence punishable u/s 302/460/411/34 IPC. A complaint regarding murder and missing of articles had been lodged by complainant Sudhir Maheshwari on 01.06.08. Investigation was conducted but a report of untraced was filed on 16.10.10.

On 15.09.12, a Kalandra was filed qua accused Bijender @ Vishal, Veer Pal and Shripal. On 20.09.12, accused Shripal was arrested. Recovery of two spectacles and camera was effected from the possession of accused Veer Pal on 05.09.12. Recovery of tap recorded and two watches was effected from the possession of accused Bijender @ Vishal on 15.09.12. Recovery of three silver coins was effected from the possession of accused Shripal.

There is no direct evidence, scientific evidence or the circumstantial evidence qua all the three accused persons. Only recovery of few articles have been effected from the possession of all the three accused persons after four years from the date of incident. There is no incriminating evidence for commission of offence of murder by all the three accused persons. Only recovery of few articles were effected in this case and these articles were duly identified by the complainant in judicial TIP on 06.11.12. So, no Session Triable offences are being made out in the present charge sheet.”

6. I have heard learned APP for the State and learned counsel for the respondents and have gone through the case record.
7. A perusal of the prosecution case reveals that except for the disclosure and the identification of the case property, there is no other material collected during the investigation to connect the respondents with the commission of murder.
8. The time gap between the date of occurrence and the recovery of articles is about four years. Such a belated discovery of the articles raises a doubt and difficult to believe as to why the respondents would keep the articles with them for such a long period of time. It also raises a doubt about their intrinsic evidentiary value (Refer Pancho Vs. State of Haryana reported

as **(2011) 10 SCC 165**). Further, looking at the time gap of four years, no presumption of guilt is permissible which would be applicable in case the person is found in possession of the articles soon after the murder. Section 114 Illustration (a) of the Indian Evidence Act, 1872 provides for presumption which can be drawn on the basis of recovery of stolen articles, however, the same is subject to the time interval. In State of Rajasthan Vs. Talevar & Anr. reported as **(2011) 11 SCC 666**, the respondents were arrested after about one week of the incident and at his instance, initially one silver glass and Rs.1,000/- and later the scooter alleged to be used in the dacoity were recovered. From the second accused, who was arrested after about a month, a silver key ring, key of the ambassador car and Rs.2,000/- were recovered. It was held that the recovery on the basis of disclosure statements of either of the accused persons was not in close proximity of time from the date of the incident.

9. The scope and ambit of powers of trial court under Section 227 of the Cr.P.C provides that if upon consideration of the record of the case, the Court comes to a conclusion that there are no sufficient grounds to proceed against the accused, he shall be discharged. For assessing whether sufficient ground exists, the trial court has power to sift and weigh the material only with the limited purpose to find out whether or not prima facie case is made out against the accused (Refer State of Karnataka vs. L. Muniswamy & Ors., reported as **(1977) 2 SCC 699**, Onkar Nath Mishra vs. State, reported as **(2003) 2 SCC 561** and P. Vijayan vs. State of Kerala, reported as **(2010) 2 SCC 398**).

10. Additionally, if two views are made out and the evidence produced on record leads only to a case of suspicion and not grave suspicion, then the

benefit of doubt should go to the accused (Refer Union of India Vs. Prafulla Kumar Samal & Anr. reported as (1979) 3 SCC 4.

11. I am of the view that mere recovery of articles pursuant to the disclosure statements would not lead to a conclusion that a case of grave suspicion is made out against the respondents. I do not find any illegality, infirmity and perversity in the impugned order passed by the Addl. Sessions Judge. Accordingly, the revision petition is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 20, 2019