

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 18.11.2019
Judgment pronounced on: 30.01.2020

CRL.A.1038 / 2015 & CRL.M.A.14654/2015

RESHAM

..... Petitioner

Versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Anwesh Madhukar, Advocate (DHCLSC) with
Mr. Pranjal Shekhar and Ms. Prachi Nirwani, Advocates
For the Respondents : Mr. Ashish Dutta, APP with Insp. Ranjan Kumar Singh,
PS- Anand Vihar

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

HON'BLE MR JUSTICE I.S MEHTA

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present appeal under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), has been filed by Ms. Resham, sister of the deceased Ashok @ Tinku, assailing the judgment and order dated 27.08.2012, passed by the Ld. Additional Sessions Judge, Karkardooma Court, Delhi, in Session Case No.108/2010, titled as '*State vs.*

Dalip @ Lala @ Kalia @ Ranjeet’, emanating from FIR No. 219/10 registered under Section 302 Indian Penal Code, 1860 (hereinafter referred to as ‘IPC’) at Police Station-Anand Vihar, whereby the lone accused, Dalip @ Lala (hereinafter referred to as ‘Respondent’) was acquitted of the solitary charge.

2. In a nutshell, the facts of the case as elaborated by the learned Trial Court are as follows:-

“Prosecution case, in brief, is that on 13.05.2010, an information was received vide DD No.7-A at PS Anand Vihar that the body of a 25-26 years old boy was lying at CBD Ground near Cross River Mall with knife injuries on neck. The DD entry was marked to SI Ombir Singh. Inspector ATO and SHO were also informed. They reached at the spot and found that the body of an unknown boy aged about 18-20 years with deep wounds on neck, back, chest and behind the right ear was lying. Crime team was called at the spot. Photographs of the spot were taken. There was a tattoo mark “Anjaly” on the left side chest and there was another tattoo mark “Trishul and Saanp” on the right arm of the body and “Tinku” was written. No one identified the body at the spot. Inspector Naveen Chandra prepared the site plan and rushed the body to Dr. Hedgewar Hospital. The doctor declared the unknown deceased as “brought dead”. The body was then sent to mortuary. Exhibits including knife and broken wooden handles of the knife were seized from the spot. The body was identified by Kishan Mandal to be that of his son Ashok @ Tinku. On 14.05.2010, the postmortem on the body of the deceased was conducted at Subzi Mandi Mortuary. One Virender Singh Pundir came at the police station and gave statement that on the night

of 12.05.2010 at about 10.30 pm, accused was quarreling with on Sunil Kumar Chauhan and he heard the accused saying that he had murdered Tinku Bihari and that his body would be discovered from the jungles of Cross River Mall and that at that time, hands of the accused were having blood stains and his T shirt, lower and shoes were also having blood. He stated that he did not take much note of the same as accused often used to inflict injuries to himself with a blade in an intoxicated state. Statements of Puran Singh Pundir, Sunil Kumar Chauhan and Balwant Singh were recorded under Section 161 Cr.P.C. On the basis of their statements, it was found that accused Dalip @ Lala had murdered Ashok @ Tinku. On 15.05.2010, accused was arrested. Police recorded his disclosure statement wherein he confessed his guilt. The blood stained lower and pair of blood stained shoes were recovered from his possession. Opinion of the autopsy surgeon was obtained with regard to the knife recovered from the spot. On 09.06.2000, exhibits were sent to FSL. The photographs of the foot prints of shoes found at the spot were sent to FSL for comparison with the shoes recovered from accused. Pending receipt of the FSL result, charge sheet was prepared under Section 302 IPC and accused was sent to court for trial. FSL result was later on obtained and filed in court.”

3. Before the learned Trial Court, the prosecution examined 18 witnesses in order to establish its case against the respondent, above named. The statement of the Respondent under Section 313 Cr.P.C was thereafter recorded wherein he pleaded innocence and asseverated false implication at the behest of police officials, allegedly on his failure to provide a bribe as was demanded by the latter; but did not lead any evidence in support of his

defence.

4. After lengthy arguments, Mr. Anwesh Madhukar, learned counsel appearing on behalf of the appellant, limited the relief in the present appeal exclusively, to the grant of compensation by the State to her, on account of the mental agony and trauma suffered by her as the sister, as a consequence of the murder of her brother Mr. Ashok Kumar @ Tinku; and further for an appropriate direction to the State, requiring the latter to take appropriate departmental action against the subject police officers, on account of the latter having conducted a shoddy investigation into the murder of the deceased.

5. Before we proceed to consider the relief now sought on behalf of the victim's sister, it would be incumbent upon us to examine the impugned judgment, whereby the Trial Court acquitted Dalip @ Lala, the respondent herein of the solitary charge, framed against him, under Section 302 IPC.

6. A close perusal of the evidence on record and upon considered scrutiny of the findings arrived at by the Trial Court; it is axiomatic that:

- (i) There was admittedly no direct eye-witness testimony, in relation to the commission of the murder; and the case of the prosecution was based entirely on circumstantial evidence; in addition to the reliance placed, on an alleged

extra-judicial confession made before PW-1 Virender Singh, PW-2 Puran Singh and PW-4 Sunil Kumar Chauhan, by the respondent at the material time.

- (ii) The prosecution also heavily relied on the recovery of the blood stained lower garment (Ex.Pw-10/P); the shoes belonging to the respondent (Ex.Pw-10/Q); and the discovery of shoe prints of the said footwear of the respondent, from the spot. The motive attributed to the respondent was to the effect that, he was aggrieved by the deceased having, prior to the commission of the subject offence forcibly snatched Rs.270 from him, after threatening him with a surgical blade, and had therefore retaliated by murdering the deceased, to seek revenge.

7. Since the case of the prosecution heavily relied on the extra-judicial confession made by the respondent at the time of his alleged scuffle with PW-4 Sunil Kumar Chauhan, as overheard by PW-1 Virender Singh, outside Sulabh Shauchalaya, it would be necessary to appreciate the relevant testimony of PW-1, which is extracted hereinbelow in full:

“ SC No. 108/10
S/V Dalip @ Lalla @ Kalia @ Ranjeet
PS. Anand Vihar

FIR No. 219/10

06.10.2010

PW-1 Sh. Virender Singh S/o Mahavir Singh, aged about 27 years, R/o H.No. E80/231, Jhilmil Colony, Krishna Market, Delhi.

ON SA

I am running a hotel n the name of Mahabir Dhaba at Jhilmil Colony Krishna Market opposite Laxmi Narain Temple and A Block bust Stand. On 12.05.2010 at about 10.30 PM I was going to my house to bring daal (pulses). After five minutes, I was coming back to my hotel after collecting Daal from my house, I reached near Sulabh Shauchalaya. Accused Dilip @ Kalia present in court today (correctly identified) was quarreling with Sunil Chauhan and Dilip was holding a brick in his hand. Dilip is known to me as he lives in my neighborhood since his birth. Accused was trying to hit the brick on te head of Sunil. My elder brother Puran Singh Pundir also happened to reach there as he had come there to Shauchalaya to answer call of nature. Me and my brother Puran Singh intervened to rescue to Sunil Chauhan. On this, accused stated "Mai Abhi Tinku Bihari Ko Suraj mal Vihar Mar ke Aaya Hoon Subah Tak Uski Las Mil Jayegee". The T-Shirt and lower worn by accused were smeared with the blood. We did not believe the words uttered by the accused as in the past we had seen the accused putting injuries on himself by blade. Thereafter, we left for our house. Sunil and Dilip were also left for their respective houses.

Next day at about 2.00-2.30 PM, one customer who took lunch in my hotel told me that Tinku Bihari has been murdered at Cross River Mall. I also heard the news of this murder on TV. I thereafter told all this beat officer who passed on the information in the PS.

At this stage, Ld. APP seeks permission to cross examine this witness at this witness is resiling from his earlier statement given to the police. Heard. Allowed.

Xxxx by Sh. Iqrar Ahmed, Ld Addl. PP for the state.

It is correct that accused was saying "Tinku Bihari Ko

Mar ke Phenk Diya hai Subah Uski Las Cross River Mall Ke Jungle Mai Milegi”. I have not heard accused saying “Tinku Bihari Dadagiri Dikhar Paisa Uss Se Paise Chhin Leta Hai tha hafta Bhar Pahle Tinku Ne Surgery Blade Dikhakar Uss Se Jabardasti 270 Rupees Le Liya Tha Usne Ushi Ka Badla Liya Hai”. It is correct that due to lapse of time, I do not remember if accused had also uttered these words. I do not remember if I had stated to the police on 12.07.2010 regarding the said fact.

XXX by Md. Hasan, Ld. Amicus Curiae for accused.

Cross examination is deferred on the request of Ld. Amicus Curiae for accused.

SC No. 108/10
S/V Dalip @ Lalla @ Kalia @ Ranjeet
PS. Anand Vihar
FIR No. 219/10
06.12.2010
PW-1 Sh. Virender Singh recalled for cross examination
(after 06.10.10.)

ON SA

XXX by Sh. Md. Hasan, Ld. Amicus Curiae for accused.

I am running a Dhaba for the last 10-12 years. The place where I am running Dhana is Government property and I am running Dhaba unauthorizedly on it. My younger brother Anil also sits with me on Dhaba. I never had any quarrel with the accused. It is correct that accused was an addict and used to self inflict the injury by blade. I had left my shop at 10.15-10.30 PM for my house for bringing Dal (lentil). At the spot, 10-12 persons were there. Sunil Chauhan and accused were standing adjoining Shauchalaya. It was half brick which accused was holding in his hand. The said brick was not seized by the police in my presence. I stayed there only for two minutes. Sunil Chauhan and accused were pacified and separated and they both had left the spot. Within five minutes I returned from my house after picking Dal and

when I crossed the spot no one was present there at that time. I had seen blood on the lower which accused was wearing. Accused was under influence of liquor at that time. It is correct that accused used to speak irrelevant when under the influence of liquor. Before that I had not seen accused with quarreling with Sunil Chauhan. I not know the reason of quarrel with Sunil Chauhan.

I know Balwant. It is correct that police had also taken Balwant and 4-5 other persons ion this case to PS. I did not make a call to the police when quarrel was going on. Neither Sunil Chauhan nor any public persons made a call to the police in my presence at the spot. It is correct that since accused used to indulge in such things frequently due to this reason I did not inform the police. It is correct that Sunil Chauhan had not received any injury.

Police had met me on the next date. Before I met with the police next day I had seen Dalip in the street at about 12 noon. After lodging of this case, I came to know that there was some enmity between Sunil Chauhan and accused. Next day, I had gone to PS alone. It is correct that I an having good relations with Beat officials and other officials of the police. It is wrong to suggest that I being running illegal Dhaba being pressurized by the police to do and work as per requirements it is correct that police can close my Dhaba at any time. I had met Ct. jagdev Malik in PS who was known to me being my beat Constable. I stayed in PS for five minutes and returned back. I had not told this thing to any one else. Same day I was called in PS at about 9.00 PM. At that time there were 7-8 persons called by the police in connection with this case. I had not seen the family members of the deceased in PS. I stayed in PS for about half an hour. My statement was recorded by some senior officials of PS but I do not know his name. My brother Pooran, Sunil and Balwant were also present there and my statement was recorded in their presence. The lower or any other cloth worn by accused was not seized by the police in my presence. Thereafter statement of my brother Pooran was recorded by the police in my presence. Me and Pooran had returned from PS after half an hour. No other witness was examined in my presence. My statement was of one page, I had read it and thereafter I had signed it. My

brother had also read the statement.

I had not gone to the house of Tinku Bihari to tell his family about the words uttered by the accused while quarreling with Sunil Chauhan. Sunil was also under the influence of liquor at that time. It is correct that Sunil Chauhan also used to quarrel frequently under the influence of liquor. It is correct that I had seen accused Dalip and Sunil Chauhan drinking alcohol together and also gambling. I had never accompanied the police at Suraj Mal Vihar. Thereafter police did not come to me for this case. It is wrong to suggest that I am deposing false under the pressure of police so that my dhaba was not closed by the police. It is wrong to suggest that no quarrel had taken place between accused and Sunil Chauhan. It is correct that police had not inquired about the incident in my presence from one except Sunil. It is wrong to suggest that the police did not record statement of any person of locality as nothing had happened there. It is wrong to suggest that I am deposing false.”

8. A plain reading of the above testimony casts a serious doubt on the substratum of the prosecution’s case that PW-1, PW-2 and PW-4 were at all present together, at the time the respondent is alleged to have made the extra judicial confession, for the following reasons:

- (i) Because PW-2 statedly did not hear the respondent saying *“Tinku Bihari Ko Mar Ke Phaink Diya Hai Subah Uski Lash Cross River Mall Ke Jungle Mai Milegi Ab Balwant or Chauhan Ki Baari Hai”*. PW-2 further categorically deposed that he had not seen PW-1 at the spot at the relevant time because a huge crowd had gathered there.

- (ii) PW-2 also stated that he did not make any complaint to the police regarding the quarrel between the accused and PW-4 Sunil Kumar Chauhan. PW-2 further testified that, PW-1 Virender Singh was called to the police station between 4 and 5 pm on the next day, whereas he had himself reached the police station at 11 pm on that day. Lastly, he admitted that, his brother operates a dhaba under the auspices of the Delhi Police and is, consequently, at the latter's mercy.
- (iii) PW-4 Sunil Kumar Chauhan deposed that, as he came out of the Sulab Shauchalaya, the respondent was standing at the corner of the street under the influence of liquor and had abused him by saying "*Aj Main Tumhe Batata Hoon*". PW-4 further stated that the respondent was murmuring "*Ek Ka Toh Kar Diya Ab Tera or Balwant Ka Number Hai*", before pouncing on him, and that whilst the two were grappling with each other, the respondent is stated to have picked up a stone from the road to assault him.

9. It is germane to observe that, when PW-4 was declared hostile and cross-examined by the prosecution, he denied the suggestion that, the respondent had told him that "*Maine Tinku Bihari Ko Maar Ke Phaink Diya*

Hai, Subha Uski Laash Cross River Mall Ke Junglon Main Milegi” and further admitted during cross-examination by the defence that PW-2 Puran Singh, PW-1 Virender Singh and PW-3 Balwant Singh were called at the police station for investigation, since the respondent had named them as the killers of the deceased.

10. The sequitur from the above depositions is the possibility that PW-1 and PW-2 were witnesses planted by the police and directed to depose at the latter’s instance, in order to continue to receive their favour for the continued running of their illegal *dhaba*, on government property.

11. Thus, it cannot be safely held that, the evidence of the extra-judicial confession comes from the mouth of the witnesses, who were either unbiased or not even remotely inimical to the accused.

12. Therefore, the evidence of extra-judicial confession is in our view far from being trustworthy and cannot safely be relied upon to sustain a finding of guilt leading to the conviction of the respondent.

13. Insofar as, the recovery of the blood stained lower and shoes of the accused concerned, we are in agreement with the finding returned by the Trial Court in this behalf, as follows:

“13. The next circumstance on which the prosecution relies is the recovery of blood stained lower and the shoes of the accused. The learned APP has argued that

pursuant to his disclosure statement, accused had got recovered his lower and pair of shoes from his house which were seized vide memos Exbt. PW-1/P and Exbt. PW-10/Q. It is submitted that exhibits were sent to FSL for confirmation about the presence of blood on the lower and shoes and the FSL result Exbt. PW-18/G confirms the presence of blood on the lower and shoes of the accused. It is argued that accused has failed to explain the presence of blood on his lower and shoes and therefore the same is a pointer to the guilt of the accused.

14. PW-4 Sunil Kumar Chauhan stated that he had noticed that the right hand of the accused was wounded and was blood soaked. In cross examination, he stated that he had seen 2-3 cut marks on the right hand of the accused. He also admitted that accused was in the habit of inflicting self injuries on his body with blade while under the influence of liquor. Thus, the blood on the lower and shoes of the accused could be his own blood which may have fallen from his wounds. The blood group on the lower and shoes of the accused has remained inconclusive as per FSL report Exbt. PW-18/H. Hence, it is not proved that the blood on the lower and shoes of the accused was the blood of the deceased and therefore the recovery of blood stained lower and shoes of the accused does not incriminate the accused.”

14. The only other circumstance relied upon by the prosecution, whilst seeking conviction of the respondent for the commission of the murder of the deceased is the presence of his shoe print at the spot.

15. In this behalf, it is necessary for us to examine the finding arrived at, by the Trial Court in this respect—with which we concur— as elaborated hereunder:

“The last circumstance on which the prosecution relies

is the presence of the shoe prints of accused at the spot. FSL result Exbt. PW-18/I proves that shoes prints present in the photographs marked Exbt. 13-a to 13-d indicate that these could have been caused by the shoes Exbt. 9-a and Exbt. 9-b. Though IO stated that he collected four photographs with negatives of the shoe impressions but did not specify who took those photographs and when. PW-14 took the photographs of the spot but none of these photographs is of the shoe prints and therefore it is not known from where and how the shoe prints were taken and sent for comparison with the shoes of the accused. The photographs Exbt. 13-a to Exbt. 13-d are also not produced on record. Therefore, prosecution has failed to prove this circumstance also. Moreover, assuming for the sake of arguments that shoe prints found at the spot matched with the shoe prints of accused, the same by itself cannot be the sole premise on which accused can be convicted under Section 302 IPC.”

16. Predicated on the evidence available on record and having had the benefit of hearing the learned counsel appearing on behalf of the parties—who have taken us through the relevant testimony—we are of the view that there are no compelling or very substantial reasons to discard the reasoned and cogent findings arrived at by the Trial Court; and we, therefore, have no hesitation in observing that the findings returned in the impugned judgment are clear, cogent, plausible; and do not suffer in any manner from the vice of being perverse; so as to enable this Court to arrive at a conclusion different from the one arrived at in the impugned judgment and order.

17. In view of the foregoing discussion, we find no infirmity with the

impugned judgment and order dated 27.08.2012, so as to warrant interference by this Court in the present appeal.

18. The prosecution has been unable to establish the guilt of the respondent beyond reasonable doubt, and due appraisal of the evidence on record, does not persuade us to arrive at a different view.

19. Even otherwise, as observed hereinabove, the only limited reliefs now prayed for by the learned counsel appearing on behalf of the appellant sister was, *qua* the grant of compensation to latter by the state, on account of the mental agony and trauma suffered in the aftermath of the murder of her deceased brother Mr. Ashok Kumar @ Tinku; and a further direction to the authorities to take appropriate disciplinary and departmental enquiry, against the erring police officers for having conducted a shoddy investigation, that eventually led to the acquittal of the solitary respondent herein.

20. In order to buttress his submissions qua the limited relief pressed for in the present appeal, learned counsel for the appellant has placed reliance on the decision of **Zahira Habibullah Sheikh & Anr vs State Of Gujarat & Ors** reported as **2004 SCC (CRI) 999**. The thrust of the argument is that, on account of the observations by the Hon'ble Supreme Court in that case qua the sloppy investigation conducted by the police in that case, it was consequently directed that a re-trial be conducted on a day-to-day basis,

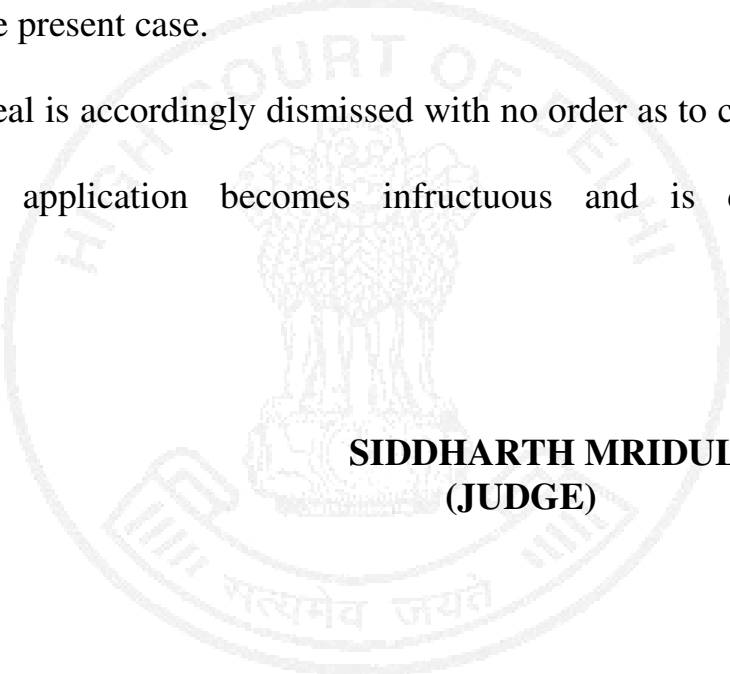
since the acts of omission and commission of the police had marred the sanctity of the entire exercise undertaken by them to bring the culprits of ghastly massacre to book, resulting in gross miscarriage of justice, similar directions are called for in the present case.

21. In our considered view, in the instant case, the dictum of the Hon'ble Supreme Court in *Zahira Habibullah Sheikh* (*supra*) is not attracted at all for the reason that we have already held that the impugned judgment and order, acquitting the respondent in the present case, does not warrant any interference. *A fortiori* when we have, upon due appreciation of the evidence on record and the findings arrived at by the learned trial court in pursuance thereto, observed that the conclusion arrived at is neither erroneous nor perverse— we see no warrant to direct a re-trial. The learned trial court comprehensively dealt with all the evidence led by the prosecution qua the murder of the deceased, including but not limited to, the alleged extra-judicial confession and the FSL reports and rendered a categorical finding that the same failed to establish the guilt of the respondent for the commission of the subject offence beyond doubt. We have accordingly, expressed our opinion hereinbefore, that the findings returned in the impugned judgment are clear, cogent and plausible and do not permit this court to arrive at a conclusion different from the one arrived

at in the impugned judgment and order.

22. We are, therefore, of the view that the present is not a case where this court can order a re-trial, as prayed for, or consider the grant of the relief of compensation, as sought. The further relief, seeking a direction to the authorities to take appropriate disciplinary and departmental action against the subject police officers is thus untenable and unsupported by the evidence on record in the present case.

23. The appeal is accordingly dismissed with no order as to costs, and the accompanying application becomes infructuous and is disposed of accordingly.



**SIDDHARTH MRIDUL
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

JANUARY 30, 2020

dw/d