



\$~14

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

+ **CRL.L.P. 117/2024 & CRL.M.A. 6299/2024**

THE STATE GOVT OF N. C. T. DELHI

.....Petitioner

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav, Adv.
Insp. Ashutosh Kr., P.S. Aman Vihar.

versus

JAIVEER

.....Respondent

Through: Mr. Aseem Bhardwaj, Mr. K.K. Vijay
& Mr. Gourav Kumar, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **11.12.2024**

1. This hearing has been done through hybrid mode.
2. The present leave petition is filed by the prosecution seeking leave to challenge by way of an appeal the judgment dated 6th April, 2022 by which the Respondent/accused was alleged to have murdered his own wife was acquitted in **SC No.52788/16** titled as 'State v. Jaiveer' in **FIR No.892/2015** under Section 302 of the IPC.
3. On 24th July, 2015, a PCR call is stated to have been received at around 5:00 A.M. by the accused himself. In the said call, he is alleged to have stated that at about 1:00 A.M. he murdered his wife by strangulating her. According to him, his wife had run away earlier on 24th June, 2015, with a boy called Raju but had returned home on 22nd July, 2015. The FIR was registered and the accused was arrested. The chargesheet was also drawn under Section 302 of the IPC and charges were framed on 15th December, 2015. The prosecution led evidence of 24 witnesses. The primary witness was, Dr. Manoj Dhingra

CRL.L.P. 117/2024

Page 1 of 4



(PW-2) who had conducted the postmortem and there were various other witnesses including the police witnesses. The learned Sessions Court found various discrepancies in the case of the prosecution:-

- (i) That the confessional statement was not admissible as it was hit by Section 25 of the Evidence Act, 1872;
- (ii) Though the call was recorded on the PCR, the officer who received the call, was not examined by the prosecution;
- (iii) The recording of the call in the CD was sent to the FSL in an unsealed condition and, therefore, the transcript could not be relied upon. There was no certificate under Section 65 B of the Evidence Act, 1872 in support of the data given in the CD;
- (iv) The recovery of the scarf (*chunni*), which was alleged to be used for causing strangulation was also held to be of no consequence as the same was not recovered on the basis of disclosure but was lying in open;
- (v) The mobile number from which the PCR call was made is also not shown to be belonging to the accused;
- (vi) Froth was noticed in the mouth of the deceased as per the police who had reached the spot but the viscera was also not preserved by the Investigating Agency to ascertain whether the deceased died of any poisonous substance;
- (vii) There was no eye witness in the matter and thus, it was based on circumstantial evidence, however, there was no link which could be established by the prosecution.
- (viii) The trial court held that the confessional statement was not admissible in law or proved on record. In the missing report dated



22nd July, 2015, which was alleged to have been given by husband on 5th July, 2015, there was no allegation of any illicit relationship.

(ix) The two police officials SI P.L. Meena and Constable Abhay, who were the first to reach the spot, were not examined as witnesses. The presence of the accused cannot be held as a circumstance against him.

4. The Trial Court, therefore, had come to the conclusion that the prosecution had not proved the circumstances pointing to the guilt. Since the circumstances were not conclusive, the Trial Court had acquitted the Respondent.

5. Today, it is submitted by Mr. Bahri, learned APP that there was sufficient evidence on record to convict the accused, including the PCR form, which recorded the call. Such evidence could not have been disputed by the Trial Court. The accused had a motive to carry out the crime and this has been completely ignored by the Trial Court. The witnesses PW-12 and PW-3 have established the motive of the accused and even this testimony has been discarded by the Trial Court. He further submits that under Section 106 of the Evidence Act, 1872 since the accused was residing with his wife at the time, it was a circumstance that would establish his guilt.

6. Ld. Counsel for the Respondent submits that the delay is not liable to be condoned as there is no sufficient cause.

7. The Court has perused the impugned judgment. Firstly, there is enormous delay of 690 days in filing of this appeal and there is no sufficient cause made out for condonation. In addition, there are several discrepancies in the manner in which the trial has been conducted. Certain discrepancies go to the root of the matter such as:



- i. non-providing of certification under Section 65 B to prove the contents of the CD;
 - ii. non-examination of the official who received the PCR call;
 - iii. not leading of the evidence of the two police officials, who reached the spot first;
 - iv. non collection of viscera. The aspect relating to froth in the mouth of the deceased having been completely ignored and no forensic examination having been made in this regard.
8. These discrepancies in the prosecution's case cannot be overlooked and the Trial Court is right in arriving at the conclusion that the prosecution has not been able to establish the case beyond doubt.
9. Under such circumstances, this Court is not inclined to grant leave in this matter.
10. The petition seeking leave is rejected both on ground of delay and on merits. All applications are also disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 11, 2024/nk/ks