

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRIMINAL LEAVE PETITION No. 36/2013

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Date of decision: 19th May, 2015

STATE

.....APPELLANT

Through: Mr. Sunil Sharma, APP for State.

Versus

VINOD KUMAR YADAV

.....RESPONDENT

Through : Mr. Ajay Verma, Advocate.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. By the present Leave Petition filed under Section 378 (1) of the Code of Criminal Procedure, the State seeks leave to appeal against the judgment dated 17.03.2012 passed by the learned Trial Court in Session Case No. 30/10, whereby the respondent (accused before the Trial Court) was acquitted of the charge punishable under Section 302 of the Indian Penal Code.
2. The facts of the case, as noticed by the learned trial court, are that on 05.11.2009 a dead body was recovered near Sonia Vihar water treatment plant; that the information was conveyed through wireless operator that a person had been shot; that SHO, Police Station – Khajuri Khas and Inspector Pankaj Sharma PW24 reached the spot and found lot of blood on the right side wall of the footpath and six empty cartridges along with one bullet led, one

green cap, a pair of slippers, a wooden log and one bicycle lying there; that the victim had been taken to the Guru Teg Bahadur hospital in a PCR Van, where he was reported “brought dead”; that during the personal search of the victim at Guru Teg Bahadur hospital a pocket diary, few keys and a visiting card in the name of V. K. Cycles was recovered having the mobile numbers of PW2 Om Prakash and PW4 Mahendra Singh, who were called to the hospital; that PW2 Om Prakash identified the deceased as Rajab Ali, a rickshaw Puller and PW4 Mahendra Singh also identified the deceased as his tenant; that Rabia, wife of the deceased was also called, who identified the dead body of her husband and suspected that the respondent may be responsible for the murder of her husband; that an FIR No. 312/09 under Section 302 of Indian Penal Code was registered on 05.11.2009 against the respondent; that the respondent was arrested on 16.11.2009 and during investigation, he confessed his guilt; that on completion of investigation, the prosecution filed chargesheet under Section 302 of the Indian Penal Code against the respondent.

3. To bring home the guilt against the respondent, the prosecution examined 25 witnesses in all. Statement of respondent was recorded under Section 313 of Code of Criminal Procedure by the learned Trial Court wherein he claimed to be innocent and denied all prosecution charges and examined 8 witnesses in his defence.
4. Mr. Sunil Sharma, APP for the State argued the case on behalf of the State and opened his submission by contending that the impugned judgment was erroneous in law and suffered from serious

infirmities; that the view taken by the learned Trial Court is contrary to the established principle laid down by the Hon'ble Apex Court; that learned Trial Court failed to appreciate the evidence adduced by the prosecution and overlooked the complete chain of circumstantial evidence without any missing link; that learned Trial Court overlooked the fact that the respondent and the wife of the deceased had illicit relations and the respondent wanted to get the custody of his son, born to the wife of the deceased out of their illicit relationship and on the day of incident or a day before, when the respondent had called the wife of the deceased on phone and asked her to bring his son 'Sonu' with her, the deceased reacted and shouted at the respondent that ***"teri maa ne doodh pilaya hai to aa kar le ja"***; that the only motive for the occurrence was fully established which was apparent but overlooked by the learned Trial Court; that the deceased was a rickshaw puller and had hired a rickshaw from PW2 Om Prakash which was found in possession of the respondent at the time of his apprehension; that on the pointing out of the respondent, his blood stained clothes were recovered and samples of his blood were taken; that the samples of blood matched with the blood group of the deceased; that similarly, a country made pistol was got recovered by the respondent on his pointing out; that the impugned judgment is liable to be set-aside as the prosecution has successfully proved its case beyond any reasonable doubt.

5. On the other hand, Mr. Ajay Verma, Advocate appearing for the respondent refuted the aforesaid submissions in the strongest

possible manner and arguing in favour of the impugned judgment passed by the learned Trial Court contended that the acquittal of the respondent is justified and the impugned judgment does not call for any interference. Expanding his arguments, he submitted that respondent is an innocent person and the rickshaw, weapon of offence and blood stained clothes have been planted upon him to falsely implicate him in the present case. Mr. Verma further contended that the learned Trial Court rightly observed that the respondent had no motive to murder the deceased nor the same has been proved. It is further contended that the prosecution has not been able to bring forward any evidence to connect the weapon of offence with the respondent and recovery of weapon is not duly proved and is a case of planting of a weapon.

6. We have carefully considered the rival contentions of both the parties in detail and perused the testimonies of the witnesses as well as the relevant record.

Motive

7. According to the prosecution, the motive behind the killing of the deceased was illicit relations between the respondent and the wife of the deceased and the respondent wanted the custody of a child born out of this illicit relationship. The respondent called the wife of the deceased on phone to bring the child to him but the deceased came on line and challenged him by saying *“teri maa ne doodh pilaya hai to aa kar le ja”*. In support of this, prosecution examined PW16 Afsaroon @ Rabia, wife of the deceased but she

turned hostile and failed to support the case of the prosecution. She deposed:

“xxxxxxx Accused started treating me as his sister and told me that since he was living alone, I should cook for him also. I had no brother and on request of accused, I started treating him as my brother and used to tie rakhi. xxxxxxxxxxxx

xxxxxxx One day accused took me to the side of Madanpur Khadar and started living with me after taking a room on rent and after that he came to house of Kiran, who used to reside in Sonia Vihar and accused made to talk with Kiran on telephone. Kiran told this fact to my husband Rehman.....After my son was born accused threatened to have relation with him otherwise he will kill my husband. Under that threat, I developed physical relation with him, but it was without my consent. When I was living in the house of Attar Singh, at that time, I had not physical relation with accused.”

8. On being cross examined by the learned APP, this witness deposed:

“It is correct that I had stated to the police that in the beginning of 2004 I went to Vinod to his village Tikrahar. It is correct that I had stated to the police that in Tikrahar, I was blessed with a son, namely, Sonu. It is correct that I had stated to the police that in September, 2007 I again started living with my husband deceased Rehman in Delhi. It is also correct that I had stated to the police that after some Vinod had also come to Delhi. It is correct that I had stated to the police that I started meeting with accused. It is correct that I had stated to the police that one day my deceased husband seen myself with the accused on which a quarrel and taken place between my husband and accused Vinod. It is correct that I had stated to the police that in April,

2009 I started living with accused Vinod in village Jedpur in a rented house. It is correct that I had stated to the police that in September, 2009 I again started living with my husband Rehman. It is correct that I had stated to the police that in September, 2009 I again started living with my husband Rehman. It is correct that I had stated to the police after few days when I had started living with my husband, Vinod used to call me through a mobile no. 9313693715 that he had vacated the house and I should come alongwith his son Sonu to him. It is correct that altercation took place between Vinod and Rehman on telephone also and Rehman had told Vinod “teri maa ne doodh pilaya hai to aa kar le ja”.

9. On careful examination of the testimony of this witness, it is evident that PW16 Afsaroon @ Rabia is not a trustworthy and reliable witness. Her testimony needs to be discarded as she has put forth a concocted and totally improbable version, which does not inspire confidence. At one juncture, she deposed “Accused started treating me as his sister and told me that since he was living alone, I should cook for him also. I had no brother and on request of accused, I started treating him as my brother and used to tie rakhi” and at the same breath she deposed “after my son was born accused threatened to have relation with him otherwise he will kill my husband. Under that threat, I developed physical relation with him, but it was without my consent. When I was living in the house of Attar Singh, at that time, I had not physical relation with accused.” Moreso, there is nothing on record to prove that the respondent was father of ‘Sonu’, son of PW16 Asfaroon @ Rabia and he wanted his

custody and when he was unable to do so, he killed the deceased. The motive behind the crime has nowhere been proved.

Recovery of articles

10. According to the prosecution, the deceased was a rickshaw puller and had hired a rickshaw from PW2 Om Prakash on 05.11.2009 and the rickshaw was recovered after 10 days of the incident from the possession of the respondent on 16.11.2009. No explanation has come forth why PW2 who was running the business of giving his rickshaws to rickshaw pullers on hire basis failed to lodge a missing report for 10 days. Moreso, PW2 has failed to specify the date when he came to know that his rickshaw had been seized and was lying in the Police Station – Khajuri Khas. These unspecific deposition and information furnished by this witness casts serious doubt on alleged recovery of the rickshaw.
11. As per the record, the weapon of offence i.e. country made pistol along with two live cartridges, blood stained shirt and jeans of the respondent were recovered on 16.11.2009 at the instance of respondents. The death of the deceased took place on 05.11.2009. It is not understandable as to why the respondent would hide his blood stained clothes from 05.11.2009 to 16.11.2009 in his house. The normal conduct of the respondent would have been to wash his clothes at the first available opportunity to hide the crime.
12. PW18 Puneet Puri, Senior Scientific Officer (Ballistics) proved his report Ex.PW18/A and opined that two bullets exhibited ‘EB2’ and ‘EB3’ recovered by the doctor while undressing the pant of the deceased. Ballistic Expert Ex.PW18/A in his report stated that

bullets 'EB1' and 'EB2' were fired from the firearm country made pistol 'F1' but because of insufficiency of characteristic of striation present on the bullet mark 'EB3' & 'EB4', it cannot be opined that those were discharged from the country made pistol 'F1'. The report further reveals that the empty cartridges 'EC1' to 'EC6' which were seized from the spot as alleged by the prosecution, had been fired from the country made pistol 'F1'. As per the version of PW14 Dr. strangely enough two fired bullets were found in the pant pockets of the deceased and the prosecution has failed to explain how and why the fired bullets were in the pant of the deceased and the bullets recovered from the pant of the deceased has been identified as fired from pistol 'F1'. These unanswered questions cast a doubt in the story of the prosecution and strengthen the possibility of false implication of the respondent

13. It appears to us that the recovery of rickshaw from the possession of the respondent and weapon of offence, two live bullets and blood stained clothes at the instance of respondent are not free from doubt and have been pressed into aid to buttress the prosecution's case. We are, therefore, unable to place reliance on the recoveries, the genuineness of which are in doubt.
14. In *Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637*, it has been held by the Apex Court that :

“In criminal cases mere suspicion however strong cannot take the place of proof. The court must be satisfied that the case of the prosecution is not only substantially proved, but the guilt of the accused has also been established beyond reasonable doubt.”

15. In a case where two views are possible from the perusal of evidence and application of law, the view which favours the accused should be taken. In ***Main Pal & Anr. v. State of Haryana & Ors, 2004 (2) RCR (Criminal) 466***, the Apex Court has held that :

“12. ...The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.”

16. The law with regard to the grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more plausible. In ***Arulvelu and Anr. vs. State 2009 (10) SCC 206***, while referring with approval the earlier judgment in ***Ghurey Lal vs. State of Uttar Pradesh : (2008) 10 SCC 450***, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:

“1. The accused is presumed to be innocent until proven guilty. The accused possessed this

presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

17. While deciding the present leave to appeal, the aforesaid principles culled out by the Apex Court are to be kept in view. In the present case from the evidence which has emerged on record we conclude that the learned Trial Court rightly observed that the prosecution failed to prove motive, recovery of rickshaw of the deceased, recovery of weapon of offence and also the recovery of blood stained clothes of the respondent.
18. The prosecution has not made out a case to grant the leave to appeal and the view taken by the learned trial court for acquitting the

respondent was possible and plausible. Thus, the learned trial court has rightly acquitted the respondent. Also it is well-established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.

19. In the totality of the facts and circumstances, no other view is possible than the view taken by the Trial court that the evidence adduced by the petitioner is insufficient to implicate the accused. The petition is without any merit and is hereby dismissed.

SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

MAY 19, 2015

sc/gr