State Vs AmeeruddIn @ AmeerA.

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Court : Delhi

Decided On : Sep-30-2010

Judge : Mr. Anil Kumar , Mr. Suresh Kait. J J.

Acts : Indian Penal Code (IPC) - Sections 302, 404,411, 383

Appeal No. : CRL.M.A. No.14108/2009.

Appellant : State

Respondent : AmeeruddIn @ AmeerA.

Advocate for Def. : Ms.Nandita Rao, Adv.

Advocate for Pet/Ap. : Mr.Jaideep Malik, SI Mahavir Singh, P.S.Vivek Vihar . Advs.

Judgement :
1. Whether reporters of Local papers may be YES allowed to see the judgment?

2. To be referred to the reporter or not? NO

3. Whether the judgment should be reported in NO the Digest?

ORDER

This is an application under Section 5 of the Limitation Act for condonation of delay in filing leave to appeal and seeking condonation of 94 days delay.The

respondent had been served, however, no reply to the application has been filed by the respondent.The applicant has contended that on account of many factors e.g time was taken in procuring the certified copy of the judgment and thereafter in preparing the report and filing the appeal, delay was caused. The applicant has detailed as to who all had considered the case before opining filing of petition leading to delay of 94 days. According to the applicant in the facts and circumstances there is sufficient cause for condonation of delay in filing the petitioner seeking leave to appeal. The reasons stated in the application constitute sufficient cause for condoning the delay of 94 days in filing the petition for leave to appeal. Therefore, the application is allowed and delay in filing petition for leave to appeal is condoned.

The State has sought leave to appeal against the order dated 30th May, 2009 acquitting the respondent of charges under Section 302/404/411 of IPC and giving him benefit of doubt and setting him at liberty in Sessions Case No.21/2009 titled State v. Ameeruddin arising out of FIR No.195/2006 P.S Vivek Vihar under Sections 302/383/411 of Indian Penal Code. For grant of leave to State against an order of acquittal, it cannot be disputed that the High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusions and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the findings of acquittal, the High Court must consider each ground on which the order of acquittal is based and should record its own reasons for accepting those grounds. This also cannot be disputed that in reversing the findings of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused which is rather fortified and strengthened by the order of acquittal passed in his favour. Even if on, fresh scrutiny and reappraisal of the evidence and perusal of the material on record, the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favours the accused should be adopted and the view taken by the trial Court which had an advantage of looking at the demeanour of witnesses and observing their conduct in the Court is not to be substituted by another view which may be reasonably possible in the opinion of the High Court. For this reliance can be placed on 2009(1) JCC

482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held that the Crl.P No. 250 of 2009 Page 3 of 11 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. With this settled law regarding the scope of setting aside the order of acquittal, we have heard the learned Additional Public Prosecutor and the learned counsel for the respondent and have also gone through the Trial Court record especially the testimonies of the witnesses and the relevant documents.

The allegation against the respondent is that he is a labourer and he committed the murder of Smt.Bhagwati Devi, a 75 year old lady by strangulation. The FIR was registered on the statement of Sh.Subhash Chander, son of the deceased residing at 504/12, Circular Road, Jwala Nagar, Shahdara which he made to the police at about 5.30 AM as the respondent had come to him and told him that his mother also known as 'Amma' was not waking up. The body of the deceased was sent for post mortem and the accused was arrested after completing investigation and a charge sheet under Section 302/381/411 of IPC was filed where the accused did not plead guilty. During the trial prosecution examined 14 witnesses including the son of the deceased, Sh.Subhash Chander as PW-1; another son Tilak Raj, PW-2 and Smt.Rajni Bala, daughter-in-law as PW-3. The statement of PW-5 Islammuddin was also recorded who alleged that the respondent has confessed about killing the deceased in his presence. PW-7 Mohd Rahi, is another person whose statement was recorded who was staying in the room adjacent to the room of the deceased with the accused.

According to the learned counsel for the State the trial Court has not appropriately considered the recovery of money belonging to the deceased and the ramification of extra judicial confession of the accused which was corroborated by other evidence on record and the fact that the accused was last seen in the company of the deceased on the night of the incident. The learned Additional Public Prosecutor has also emphasised that the money which was found missing in the theli was also recovered at the instance of the respondent and that the autopsy report confirms that the deceased had died on account of manual strangulation. On perusal of the evidence of the witnesses produced by the prosecution, the trial Court had disbelieved the recovery of theli and money from the accused as the son and the daughter-in-law of the deceased had deposed that the theli with the money was recovered from under the bichona at about 9 AM whereas the prosecution has stated that after the FIR was registered the money and the theli was recovered. There are apparent contradictions in the version of the witnesses and the version of the prosecution. There is yet another major contradiction as PW-10 ASI, Charan Singh rather stated that the theli was brought by the accused. The son of the deceased could not remember whether the recovery of theli and the money was made before removing the dead body and at what time it was done. The evidence of the witnesses reflects that the recoveries were made between 9 to 10.30 AM which is contrary to the prosecution case. The learned counsel for the State has not been able to point out any fact which will show that these facts which have been observed and taken note of by the trial Court are incorrect or unsustainable. On perusal of the relevant testimonies by this Court, it is apparent that in the facts and circumstances the recovery of theli and money at the behest of the respondent cannot be believed and in the circumstances the findings of the trial Court cannot be termed to be unsustainable or perverse. The recovery of theli with money at the instance of the respondent is also doubtful because if he had strangulated the old woman, he will not keep the money in the room next to the room of the deceased where he was living with another person Mohd.Rahi. Had the respondent committed the crime of strangulating the old woman he would not have also normally remained present in the next room whereas the evidence categorically showed that the accused remained present the whole day and that he had even apprised the elder son of the deceased about

the condition of the deceased. If the autopsy of the deceased opined that she was manually strangulated, the prosecution should have tried to take the finger prints, however, no such attempt was made by the prosecution nor has it been revealed as to why finger prints could not be taken. The post mortem report opined that the death must have occurred at 12 PM midnight. The room of the deceased was not bolted from inside and was opened and the other persons including Mohd.Rahi were in the adjoining room as were the son and daughter-in-law. The trial Court has also noticed that anyone could have approached the deceased in her room and in the circumstances it is difficult to infer that only respondent could have had access to the deceased and he must have committed the crime.

This has also come in the evidence that the deceased, accused and PW-7 Mohd.Rahi were sleeping in the front rooms. The deceased was sleeping on the cot while the accused and Mohd.Rahi were sleeping on the floor whereas son and the daughter-in-law were sleeping in the back portion. From these facts which emerges from the evidence of the prosecution, the inference of the guilt of the accused only is not possible and the findings of the trial Court cannot be termed to be perverse. If the recovery of theli and money is disbelieved, there is no such conclusive evidence which will show that only accused/respondent could do it though any person could have approached the room where the deceased was sleeping. The trial Court has noticed that had the accused committed the offence he would not have intimated about the condition of the deceased to the elder son Subhash Chander and he wouldn't have remained in the premises. Had he committed the offence then he wouldn't have kept the theli with money in the room next to the room where the deceased was strangulated nor would have remained present there so that anyone could come and recover the money and implicate him. On perusal of the evidence this Court is also of the opinion that the reasons and inferences drawn by the trial Court are justifiable and sustainable and there are no grounds to interfere with the same nor this Court would come to different inferences.

The trial Court has noted that the extra judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the Court, however, the confession has to be proved like any other facts. The fact that the accused who

was known to Mohd.Rahi PW-7 would make an extra judicial confession about the killing of Smt.Bhagwati Devi is doubtful. It has not been established that within 4-5 days the accused and Mohd.Rahi, PW-7 had become so intimate and close that the accused/respondent would disclose and confess to him such a heinous crime. It is also to be noticed that PW-7 Mohd.Rahi was taken to the police station along with the accused PW-7, Mohd.Rahi who had not disclosed about the alleged extra judicial confession immediately after the son of the deceased had come. It appears that it was also notices that the accused was in police custody. Even the trial Court has noted that the extra judicial confession could not be said to be voluntary when the witness was in police custody. The learned Additional Public Prosecutor has not been able to show any such facts or grounds on the basis of which reliance could be placed on such alleged extra judicial confession. In the circumstances, the extra judicial confession cannot be accepted and relied on and consequently the findings of the trial Court also cannot be termed to be unsustainable and arrived at by ignoring material evidence. The finding of the trial Court that even motive has not been proved as the motive suggested was of murmuring or some overture, however, there is no cogent or reliable evidence about the alleged murmuring or overtures nor could these be the motive for killing the old lady by the accused who was living as a labourer for last 3-4 years. Though the accused was living for last 3-4 years and in a room adjacent to the room of the deceased, where PW-7 Mohd.Rahi also started living only 4-5 days before accused, then why is it that only the accused who of 11 could have committed the offence and no one else has not been convincingly explained. In the facts and circumstances, it cannot be held that the chain of evidence established by the prosecution is complete so as not to leave any reasonable ground for the conclusion inconsistent with the innocence of the accused.

This is no more res integra that the High Court should give proper considerations to matters such as the views of the trial judge as to the credibility of the witnesses; the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; the right of the accused to the benefit of any doubt and slowness of the Appellate Court in disturbing the finding of fact arrived at by a judge who had the advantage of seeing the witnesses. No other grounds or pleas and contentions have been raised on

behalf of Additional Public Prosecutor. In the circumstances, we are unable to hold that the judgment of the trial Court is unsustainable or perverse or the findings are against the evidence or record so as to entail any interference by this Court. The petitioner in the circumstances has failed to make out any grounds to grant leave to appeal to the petitioner against the judgment dated 30th May, 2009 acquitting the respondent by giving him benefit of doubt. In the circumstances, the petition for leave to appeal is without any merit and it is, therefore, dismissed.