State Vs. Sukhlal

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Court : Delhi

Decided On : Dec-21-2010

Judge : Anil Kumar ; S.L.Bhayana, Jj.

Acts : Indian Penal Code (IPC) - Section 302/201; Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 313

Appeal No. : Crl. L.P. No. 441/2010

Appellant : State

Respondent : Sukhlal

Advocate for Pet/Ap. : Mr. M.N.Dudeja, Adv.

Judgement :
This is an application by the petitioner seeking condonation of delay in filing the petition seeking leave to appeal. The applicant has contended that the copy of the judgment dated 25th March, 2010 was ready on 16th April, 2010 and on receipt of the copy, the same was given to the legal department for its opinion and thereafter it was considered at various levels. The record was finally received by the counsel for the appellant on 20th October, 2010. The counsel for the appellant also took time to go through the records and prepare petition seeking leave to appeal and by the time, the petition seeking leave to appeal was filed, the delay of 161 days had already taken place. The applicant has contended that delay of 161 days is neither intentional nor deliberate and grave loss, irreparable harm and injury shall

occasion if the delay of 161 days is not condoned. The applicant has relied on Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors., (1987) 2 SCC 107 and State of Nagaland v. Lipok Ao, 2005 (3) SCC 752 holding that sufficient cause should be considered with pragmatism in justice oriented approach rather than a technical defection of sufficient causes for explaining every day's delay having regard to considerable delay of procedural red tape in the decision making process of the government, certain amount of latitude is permissible and should be given. The applicant has contended that the State Government is the impersonal machinery working through its officers or servants hence it cannot be put on the same footing as an individual.

In the facts and circumstances as contended by the applicant and the law relied on, there is sufficient cause for condoning the delay. Therefore, the application seeking condonation of delay in filing the petition for leave to appeal is allowed and the delay is condoned. This is a petition by the State against the judgment dated 25th March, 2010, acquitting the respondent Sukhlal of the charge of murdering his wife Sundra in Sessions Case No. 145/2007 arising out of FIR No. 1369/2007, PS Sultan Puri, under Section 302/201 of IPC. Brief facts as put up by the prosecution are that respondent/accused was residing at house bearing No. Y-76, Gali No. III, Prem Nagar, Delhi with his wife Sundra. A neighbour of the respondent, namely, Kamlesh, wife of Balwan Singh, on 30th August, 2007 heard noises outside the house of the accused and saw accused quarreling with his wife Sundra. The neighbour of the accused, Kamlesh, however, went to the market and when she came back she noticed blood coming from the drain (nali) of the house of the accused. Therefore, the neighbour Kamlesh went to Daya Ram Chandela, Pradhan of Resident Welfare Association, Y-Block, Adarsh Enclave to inform him that the wife of Sukhlal was lying naked in the house and blood was flowing out of the house. The police was informed and the Pradhan of the Resident Welfare Association also reached the house of the accused.

Constable Rajbir was on patrolling duty and reached the house of the accused and the door of the house was found closed from inside. The door was pushed open and Sukhlal/accused was found in the courtyard. The door of the room in the house was also found closed and when it was opened, constable Rajbir found a

dead body of a female aged about 60-65 years. The dead body was naked and covered with chunni, which was identified as that of Sundra, wife of the accused/respondent.

During the investigation five wooden planks (phattis) of different sizes burnt at some places with blood stains were recovered. The Investigating Officer also lifted blood, earth having blood and earth control from the spot. Chunni lying on the dead body and a blood stained knife was also taken into possession and the disclosure statement of the respondent/accused was also recorded disclosing that Sundra, wife of the respondent had refused to hand over the papers of the property registered in her name. The Investigating Officer also seized six papers from the courtyard, one white sari and mehendi colour blouse with blood stains and kurta and pajama of grey colour, which were allegedly worn by the accused at the time of the incident. The charge for the offences punishable under Sections 302/201 of IPC was framed against the respondent/accused, to which he pleaded not guilty and claimed trial. During trial, prosecution examined 18 witnesses and the statement of the accused/respondent under Section 313 of the Crl. Procedure Code was also recorded.

Before the Trial Court, it was contended on behalf of the petitioner that there was no eye-witness to the incident but the prosecution has proved from circumstantial evidence, the guilt of the accused beyond reasonable doubt as the accused was last seen with the deceased at the spot by PW-3 Kamlesh, the neighbour and he was also apprehended from the spot by PW-9 SI Dinesh Dahiya. The title documents of the property in the name of the deceased were also recovered at the instance of the accused and the clothes worn by the deceased at the time of alleged incident were also recovered at the instance of the accused.

The death of the deceased was caused by the wooden planks (phattis) recovered at the spot according to the report, which was Ex. PW 15/Y by Dr. Manoj Dhingra PW-6. The Trial Court noted that except the disclosure statement of the accused, there is no other evidence about the respondent committing the murder of his wife Sundra. The disclosure statement Ex. PW9/F was held to be inadmissible as it was made in police custody and the recovery of documents Ex. P1 to Ex. P6 at the

instance of accused, seized vide seizure memo Ex. PW9/H were held to be insufficient to establish the motive of the accused in committing the murder of his wife. The plea of the prosecution regarding the motive was that the son of the accused was of a bad character and 25 cases were pending against him and he required money, so he wanted his wife to give the document of the property so that the same could be sold and the consideration be used for defending the cases on behalf of their son.

Regarding the last seen theory of deceased seen quarreling with the accused, the Trial Court has taken into consideration that, even in cases, where the time gap between the last seen account of the person being alive and the person found to be dead is small, to exclude the possibility of any person other than the accused being the perpetrator of the crime, the Court should look for corroboration and relied on State of UP vs. Satish, 2005 (3) SCC 114 and Jaswant Gir vs. State of Punjab, (2005) 12 SCC 438. The witness deposing about the last seen theory as per the prosecution, was PW-3 Kamlesh, however, the said witness had turned hostile and was cross-examined. The only witness of the last seen proposition denied that the police had recorded her statement, rather she deposed that the police officials had never met her regarding the case. She also denied that she had seen anything inside, as from outside the house of the respondent nothing could be seen inside. She deposed that she had started to reside in the neighborhood only four days prior to the incident. She denied having seen the accused on the date of the incident. She denied the version of the prosecution and denied that she was deposing falsely in order to save the accused. Sh. Daya Ram Chandela, whom Smt. Kamlesh had allegedly informed about the quarrel between the respondent and the deceased, was also examined as PW-5. He deposed that he had received the information that Sundra was lying naked in the house and blood was flowing out and thereafter, he gave information to the police chowki, Prem Nagar. The said witness also turned hostile and was cross- examined by the public prosecutor. He denied the suggestion that the father of Guddu (son of the respondent) had killed his wife. He denied that he had met the accused in the courtyard. Another witness PW-4, Radha, who is also alleged to be a neighbour, also could not depose as to how Sundra had expired. She was also cross-examined by the prosecution, however, from her testimony, it could not be

established that the respondent was last seen with the deceased. From the testimonies of PW-14 Constable Rajbir, PW-9 SI Dinesh Dahiya and PW-15 Inspector Mohd. Iqbhal, it was noticed that when the police official reached the spot they found the door locked from inside and when they entered into the house, they found the accused present inside the house. However, PW-3 & PW-5 deposed that when they entered the house, the accused was not present. Consequently, none of the private witnesses had seen the accused present inside the house except the police official and in the circumstances, the Trial Court inferred that the petitioner has failed to substantiate the last seen theory and the presence of the accused at the time of the incident. The next point considered by the Trial Court is about the wooden planks (phattis)allegedly recovered at the instance of the respondent. The Trial Court has noted that if the respondent was not present at the spot, the wooden planks (phattis) could not have been recovered at the instance of the respondent/accused and in the circumstances, mere recovery of wooden planks (phattis) at the spot would not connect the accused with the alleged offence of murder of his wife namely Sundra. Regarding the recoveries of blood stained clothes of the deceased and the accused, it transpired that though the clothes of the deceased had blood stains of blood group-A but the blood stains on kurta pajama of the respondent, on examination and on analysis of the blood, were not found to be of blood group-A, which was allegedly worn by him at the time of the incident. The FSL report Ex. PW15/X1 did not support the case of the prosecution. Had the accused committed the murder of his wife with planks (phattis), her blood would have stained his clothes. This is not the case of the prosecution that the accused had hurt himself and so the blood stains on his clothes were that of his own blood. Considering the testimonies of other witnesses also, the Trial Court has inferred that their respective testimonies also do not connect the respondent/accused with the alleged offence and in the circumstances, has held that the prosecution has failed to prove the guilt of the accused for the offence punishable under Section 302/201 of IPC beyond reasonable doubt and acquitted him.

This is settled law that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused which is rather fortified and strengthened by the order of acquittal

passed in his favor. Even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favors 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. Reliance for this 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 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 favorable 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. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion 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 finding of acquittal the High Court must consider each ground on which the order of acquittal is based and should record its own reasons for not accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal. This Court has heard the learned Additional Public Prosecutor in detail and has also perused Lower Court Record especially the testimony of PW-3, PW-5, PW-14, PW-15 and PW-9. The learned Additional Public prosecutor has contended that even the testimonies of the hostile witnesses to the extent they support the prosecution case can be relied on. However, perusal of the testimonies of PW-3 and PW-5 alleged to be the witness of the last seen theory who had turned hostile, on the basis of any part of their testimonies, it cannot be

held that the accused was last seen with the deceased or that when the police officials had come to the spot, he was found inside the house. On the basis of the testimonies of these two witnesses, the last seen theory of the prosecution, cannot be established nor it can be established on the basis of the testimonies of the police officials. In these circumstances, the learned additional public prosecutor has not been able to show unsustainability or any perversity with the reasoning of the learned Trial Court. This is also true that if the view taken by the Trial Court, which has an advantage of noticing the demeanor of the witness is possible and feasible, the High Court in appeal, will not substitute its view, even if another view is possible, with the view taken by the Trial Court. In the circumstances, the petitioner has failed to make out any case to grant leave to appeal against the impugned judgment dated 25th March, 2010.

The reasoning of the Trial Court that if the accused was not last seen in the premises then mere recoveries of the phattis (planks) cannot be attributed to the respondent/accused and thus, pursuant to the alleged disclosure statement, it cannot be inferred that the wooden planks (phatti) were recovered at the instance of the respondent, cannot be termed to be perverse or illegal. Another glaring factor which demolishes the prosecution version is not finding the blood of the deceased on the clothes of the respondent which he was allegedly wearing at the time of the alleged incident. The FSL report Ex. PW- 15/X1 has not supported the case of the prosecution. If the case of the prosecution is that the accused has killed his wife Sundra with the wooden planks (phattis) and that there were blood stains on the cloth of the respondent/accused, then the blood stains should have matched with the blood of the deceased, as the case of the prosecution was not that the accused had also sustained injuries and that the blood stains on his cloths were from his own blood. If the blood of the deceased was not found on the clothes of the respondent, it creates doubt about the involvement of the respondent in killing his wife as per disclosure statement, stating that since his wife refused to hand over the property papers, he killed his wife Sundra with wooden phattis. In the circumstances, the learned additional public prosecutor has not been able to show any evidence which has not been considered by the Trial Court or any finding arrived at contrary to the evidence on record. The findings of the Trial Court, in the facts and circumstances, cannot be termed to be

unsustainable or perverse so as to entail any interference by this Court and to grant leave to appeal to the petitioner. Therefore, in the totality of facts and circumstances, there are no grounds to grant leave to appeal to the petitioner. The petition for leave to appeal is without any merit and it is, therefore, dismissed.