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**Court :** Delhi

**Decided On :** Nov-14-2011

**Judge :** Mr. Justice S.Ravindra Bhat, J.

**Acts :** Indian Penal Code (IPC) - Sections 302, 201, 120B, 34

**Appeal No. :** CRL.L.P.274 of 2011 And CRL.M.A.7637 of 2011

**Appellant :** State

**Respondent :** Jai Singh and ors

**Judgement :**

1. The State seeks leave to appeal against the judgment and order of the learned Additional Sessions Judge dated 27.01.2011 in S.C. No.60/2009 whereby he acquitted the respondents of the allegations of having committed the offence punishable under Sections-302/201/120B/34 IPC.

2. The prosecution's allegations in brief were that information was received in the morning of 18.05.2004 by the PS Najafgarh that a male dead body had been discovered in the drain. A pair of chappals and a scooter with blood stains was also found at the spot. There were no eye witness; the Crime Team, upon being called, reached the spot.

The photographs of the place of occurrence were taken and two chance prints were lifted from the right handle of the scooter. The police registered a case of

homicidal death and proceeded to investigate the incident. On the basis of secret information, the first respondent Jai Singh was arrested on 19.05.2004. It was alleged that pursuant to disclosures made by him, articles were seized; it was also alleged that Jai Singh led the investigation team to Narender and Rajneesh; it was further alleged that they were also accomplices in the crime. They too were arrested. Subsequently, one Sushila was arrested on the basis of the disclosure statement of the other accused. The prosecution alleged that Jai Singh agreed to kill the deceased - who, in the meanwhile, was identified as Suresh - for ` 20,000/- and received an advance of ` 4,500/- from the co-accused. The seizures included a Nokia make mobile phone and a motor cycle. The prosecution alleged that a danda (stick) with blood stains was recovered from a distance of about 400 meters from the place of occurrence.

3. The accused were charged with committing the offence described in the previous portion of the judgment. They denied guilt and claimed trial. The prosecution examined several witnesses and also placed on record material exhibits. The prosecution's case was entirely based on circumstantial evidence, particularly, the "last seen" evidence based on the statement of PW-6. The prosecution also relied heavily on an extra judicial confession allegedly made to PW-4 by Sushila, one of the respondents in this case. The relevant portions of the impugned judgment which discusses the prosecution's case and discards the last seen evidence as well as the extra judicial confession relied upon, is extracted below: -

"28. Evidence of last seen :

PW6 Mahavir Singh, who is the elder brother of the deceased, has claimed that he had seen the deceased in the company of accused Jai Singh, Narender and Rajneesh on 17.05.2004 at about 9.30 p.m. On 18.05.2004, at about 6.30 a.m, the dead body of deceased Suresh was found lying in a drain. In this context, the most important evidence is the medical evidence i.e the postmortem report Ext.PW43/A. PW43 has given the time of death of the deceased which does not support the case of the prosecution. According to PW43, the deceased Suresh died in between 1.45 a.m to 1.45 p.m on 17.05.2004 whereas the case of the prosecution

is that he was killed in the night of 17.05.2004 after 11.10 p.m. The present case is based on circumstantial evidence and if the time of death is not getting support from the autopsy surgeon then the whole case of the prosecution collapses. It is also pertinent to note that accused persons and PW6 were known to each other and in such circumstances it is highly improbable that the accused persons would have killed such a person whose real brother had seen them in the company of the deceased shortly before the incident.

29.Extra Judicial Confession made by accused Sushila : To examine the veracity of the extra judicial confession, the deposition of P.W4, PW6 and PW36 is relevant. These three witnesses moved in different directions as far as their deposition with regard to extra judicial confession is concerned. The most important witness of the prosecution in this regard is PW4 Smt Beermati. She is the wife of the elder brother of the deceased. She was not on visiting terms with accused Sushila nor she was a close aide or a person of confidence of the accused. PW4 was also not capable to save the accused Sushila from legal action. PW4 did not disclose about the alleged extra judicial confession to anyone in the family including her motherinlaw (who is not even a witness in this case). The accused Sushila also never shared her alleged involvement in offence with PW4 on the previous night whereas admittedly they had talked to each other. Further, the manner in which it has been communicated to others, including the Investigating Officer, is also highly suspicious and does not inspire confidence. Above all, the deposition of PW4 with regard to extra judicial confession does not find any support from statement of PW6. All other accused persons had already been arrested prior to the extra judicial confession and disclosure statement made by accused Sushila. It shows that nobody was arrested pursuant to the extra judicial confession or the disclosure statement of accused Sushila. Furthermore, it is difficult to rely upon the extra judicial confession as deposed by PW4, as the exact words or even the words as nearly as possible have not been reproduced by PW4. For taking this view I am supported with the judgment C K Ravinderan (Supra).

30.PW6, another witness to the extra judicial confession, has virtually demolished the statement of PW4. He has stated that after the arrest of the other three

accused persons, he reached the house of accused Sushila and that before him accused Sushila stated that she got her husband killed and that she had committed mistake and also that she wanted help from him to save her. Contradicting the deposition of PW4 and also his own statement under Section 161 Cr P C, PW6 has stated as under :

" I had not told IO in my statement under Section 161 Cr P C that Sushila had made confession before me and that I had stated that Sushila had confessed before my wife who had further told him about confession."

Thus, PW6 himself has shaken the credibility of the deposition of PW4 particularly with regard to alleged extra judicial confession as PW6 in his examination in chief at page 2 (para 2) has categorically stated "thereafter we went to the house of Sushila and where Sushila confessed having committed the offence before me. She stated that she had got Suresh killed and had committed a great mistake. She wanted him to help her and save her. She also told me that she had got Suresh killed."

4. In addition to the Trial Court's reasons that the deceased was the maternal uncle (mama) of PW-10 and that the possibility of his having disclosed the alleged illicit relationship between his wife and one of the accused to her, furthermore, the Court notices that PW-10 did not mention in specific as to the date, time or the place where the deceased had confided in her about the alleged extra marital relationship. The Court also disbelieved the recovery of the mobile phones as well as danda and blood stained cloths. Imparting the impugned judgment observed as follows: -

"35. There are few other factors which also create a doubt in the story of the prosecution. In the letter/complaint Ext. PW13/3 recovered from the possession of deceased Suresh, he suspected threat to his life from accused Sushila, Attar Singh and Ravinder. However, Attar Singh and Ravinder were not examined by the IO. There is no explanation from the side of the prosecution as to why Attar Singh and Ravinder were not examined particularly when the motorcycle allegedly recovered from the possession of accused Sushila was in the name of Attar Singh. In his cross examination, PW36 Inspector H S Meena has admitted that he did not

record the statement of any person residing in Bhatinda to the effect that Attar Singh was with him in Bhatinda on the day of incident. The finger prints of the accused persons did not tally with the chance prints lifted from the handle of the scooter."

5. Learned APP argued that Court should not have discarded the testimony of PW-4 who was an independent witness and who had heard the extra judicial confession by Sushila who implicated the other accused.

6. Learned counsel submitted that the testimony of PW-6 was virtually unshaken. He had deposed that accused was talking to the deceased around 09:30 PM and that he was the witness to their conversation. Having regard to the other circumstances, the Court should not have readily disbelieved the version of PW-6 by adopting the reasoning that it did in the impugned judgment.

7. We have considered the materials on record and also the submissions of the learned APP. We also had the benefit of examining the Trial Court record. As is evident from the previous discussion, the case put up by the prosecution was entirely based on circumstantial evidence specifically the last seen testimony of PW-6. Now, even though facially the last seen testimony does appear unimpeachable, the significant external factor which was dealt with the Trial Court in rejecting this theory was the postmortem report Ex.PW-43/A which clearly fixed the time of death to be 2½ days from the time the postmortem examination began i.e. 1:45 PM on 19.05.2004. There could have been no controversy on this aspect since the postmortem report was a document relied upon by the prosecution itself. The earliest point of time, therefore, when the death is said to have occurred was 1:45 PM on 17.05.2004. This fact does not in any manner lend corroboration of the testimony of PW-6, who claims to have seen the deceased eight hours later i.e. 09:30 PM on 17.05.2004. We, therefore, find no reason to disagree with the Trial Court's logic on this aspect. So far as PW-4 is concerned, even though, in the examination in chief, the witness supported the statement made (presumably previously) during the investigation implicating the Sushila and also mentioning the names of others, in cross examination she entirely agreed with the suggestions of the accused/respondents saying that Sushila never made any confession and that

she also did not know the other co-accused. In these circumstances, the Trial Court was left with no alternative but to reject her testimony.

8. It is often reiterated that the High Courts in India while considering the petitions for leave to appeal presented by the State against orders of acquittal have to be satisfied that there are substantial or compelling reasons permit leave (to appeal). As to what are the substantial or compelling reasons has been settled in many judgments; it extends to gross misappreciation of evidence, serious misapplication of law and the general approach of the Trial Court or its reasoning, leading to manifest miscarriage of justice. On an overall consideration of the materials on record, we are satisfied that the Trial Court's reasoning is sound and unexceptionable as it does not betray any of these features warranting grant of appeal. The petition - CRL.L.P.274/2011 - is, therefore, unmerited and is accordingly dismissed.

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