

**State Vs. Alam Ramesh**

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**SooperKanoon Citation :** [sooperkanoon.com/948008](http://sooperkanoon.com/948008)

**Court :** Delhi

**Decided On :** Mar-27-2012

**Judge :** The Honourable Mr.Justice S. Ravindra Bhat & S.P.Garg

**Appeal No. :** CRL.L.P. 433 OF 2011

**Appellant :** State

**Respondent :** Alam Ramesh

**Judgement :**

### **S. RAVINDRA BHAT**

1. The State seeks leave to appeal against the judgment and order of learned Additional Sessions Judge dated 29th April, 2011 in SC No.27/2007; the respondent was acquitted for the charge of having committed offences under Section 302/380/411 IPC.

2. The prosecution's case in brief was that the concerned police, i.e., PS Mandir Marg, received information about the death of an STD Booth owner at 9:55AM on 1.2.2007 near the OPD of Lady Harding Hospital. The body was that of a handicapped individual; he appeared to have been strangled. CRL.L.P.433/2011 Page 2 His body was preserved and sent for post mortem examination. The police case is that on 4th February, 2007, PW30, the Investigating Officer along with staff went to the concerned PCO booth and seized one passbook, some cheques, ration card etc; statements of the deceased's

relatives were recorded; the prosecution claimed that it then discovered that deceased used to own a mobile phone the number of which 9891788582 and that he used to keep his cash in a steel box which was missing from the scene. The police claimed a break through when upon receipt of information the respondent was arrested. The prosecution also alleged that the mobile phone details had been collected and the instrument itself was seized from the possession of Om Prakash, i.e., PW4; the latter claimed that it had been sold by accused to him. The respondent/accused was charged with the commission of the crime described previously. He denied his guilt and claimed trial. During the proceedings, the prosecution relied upon the testimonies of 30 witnesses and also placed on the record several material exhibits.

3. On an overall consideration of the pleas, the Trial Court held that the prosecution was unable to establish respondent's guilt beyond reasonable doubt; he, therefore, was acquitted.

4. It is contended by the APP for State that the impugned judgment is in error and requires to be interfered with. Learned counsel highlighted the important circumstance that PW4 in the statement recorded during the investigation claimed that the mobile phone had been sold by the accused to him on 1st February, 2007. His statement remained unshaken. The next circumstance, according to the counsel, was the recovery of two rings and certain golden ornaments, which connected the respondent with the crime. The third and the most important circumstance against respondent which according to learned counsel was not taken into consideration was "last seen evidence" as deposed by PW9. PW9 had claimed to have seen the accused with the deceased at 10 PM, the previous evening. The post mortem report in this case, established that the death had taken place approximately an hour or so later. The counsel submitted that the testimony of PW9 was erroneously rejected on the ground that the witness was not reliable and that his statement was recorded more than 15 days after the incident. The APP here emphasized that the police had no clue regarding whereabouts of the witnesses and stumbled upon the last seen circumstance much later; and that this was the cause for the delay.

5. We have considered the Trial Court records and the State's submissions.

6. The most important circumstance directed against the accused was the "last seen evidence" of PW9. The Trial Court had this to say in the impugned judgment about the trustworthiness of the witness.

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The testimony of PW9 does not also appear to be credit worthy. According to him, he had seen the accused with the deceased at about 10:00-10-15 p.m.. On the next day, he went to the hospital and came to know that Tulsidas was murdered. His statement was recorded on 15/2/2007. He has stated that he knew Alam since he was working in the mess of Lady Harding hospital where he used to go. PW30 is totally silent about making inquiry or recording of his statement during the investigation. Even if it is presumed that PW30 had recorded the statement of PW9 on 15/2/2007, what had stopped him from making inquiry from the staff of the mess of Lady Harding hospital about the accused as to whether he used to work in the mess and after the incident or whether he had come thereafter. It could not be known, what effort the IO made, to trace the accused after getting this clue. In the present case, as stated by PW30 he got the clue only on 16/3/2007 i.e. after about 1 month of the murder.

PW2 has stated that he had lifted four chance prints from the booth. Surprisingly the finger prints of the accused were not got matched with the chance print lifted from the booth. No explanation has been given by the prosecution in this regard. This could be the vital piece of evidence in order to rule that it was only the accused who was lastly in the company of the deceased before his murder.

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7. As far as the recovery of the mobile phone is concerned, the relevant discussion in the impugned judgment is as follows:

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As per the case of the prosecution, on 1/2/2007 PW1 had informed the IO that the mobile set of the deceased was missing since then. The best course with the IO was to put the mobile set on active mode with the service provider so as to know who was using it after its theft. As per the call details ExPW13/A which the IO had requested the service provider on 1/5/2007, the number 9891788582 was active on the mobile set having IMEI no. 357583005355973 (before 31/1/2007) on which IMEI no.the mobile no.9910526460 became active after 1/3/2007. So on 1/3/2007, the IO could have known who was using the stolen mobile set though according to the prosecution, the clue about this case was first got on 16/3/2007 when the accused was arrested in the case FIR No.100/07 PS Tilak Marg. The mobile set was recovered from the possession of PW4 Om Prakash. According to him, he had purchased the mobile phone from the accused around Holi in the presence of staff. Surprisingly noone from the staff was examined by the prosecution to corroborate this fact. PW4 has stated that the police had taken the address of the accused from Kalawati Hospital, had it been so, the police could get the whereabouts/address of the accused on 15/2/2007 when the statement of PW9 was recorded.

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8. Similarly, the Trial Court rejected the recovery of two rings from the accused's trouser's pocket at his instance. This, apparently, took place considerably later, i.e., 1 months after the incident and more than a month after the arrest of the accused. We also noticed that no Test Identification Parade of such an article-apparently of a common nature, was conducted. The Trial Court's finding is, therefore, sound and reasonable.

9. The testimony of PW9, in our opinion, was correctly discarded as noticed previously. The deceased's STD Booth was in a public area accessible to all. If statement of PW9 was that he saw the deceased in the company of accused at around 10:00 or 10:15 PM, though he became aware about the murder on the very next day, he did not mention anything to the management or staff of the hospital. PW30, the Investigating Officer, too was silent on this aspect about whether he made any inquiry from members of the staff. It is undisputed that PW9 used to

regularly visit the area being a cable operator in the premises. The Trial Court correctly wondered that PW30 failed to record the statement of PW9 about this material circumstance, and did so much later.

10. We are alive to the fact that the last seen circumstance can in many cases, be determinative of an accused' guilt. It has to be, therefore, proved beyond reasonable doubt. The Court has to be acutely cautious that this crucial piece of evidence should be proved to eliminate the possibility of anyone else's involvement in the crime. That the accused was last seen with the deceased in a public area, by itself, in our opinion, is an inconsequential fact, if seen together with the delay in recording of statement of the witness. The said circumstance cannot be said to have been proved at all.

11. So far as the second important circumstance put against the accused, i.e., recovery of the mobile phone is concerned, the Trial Court's conclusions are reasonable and sound. The absence of any call details for 31st January, 2001 in our opinion puts a question mark about the alleged transaction which PW4 claims to have been taken place between him and the deceased. Moreover, apart from the statement of PW4, (which was recorded much later), there is nothing to substantiate that, in fact, the accused had taken the mobile phone and sold it to this witness. PW4 himself is a member of the staff in the hospital and the possibility of the mobile phone having been acquired by him in some other manner cannot be ruled out.

12. Having regard to the overall circumstances of the case we are of the opinion that the reasoning of the Trial Court is sound and unexceptionable. In line with the settled rule that High Courts would interfere with the findings and acquittal only if substantial and compelling reasons are disclosed in the petitions for leave to appeal, we are satisfied that no such element has been shown in facts of the present case. The Petition, being unmerited, is consequently dismissed.