

Talewar Sharma Vs. State and ors.

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Court : Delhi

Decided On : Nov-20-2012

Judge : Pratibha Rani

Appellant : Talewar Sharma

Respondent : State and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

31. t October, 2012 Pronounced on :

20. h November, 2012 % + CRL.REV.P.292/2001 TALEWAR SHARMA Through :
.....Petitioner Mr.P.K.Sharma, Adv. versus STATE & ORS. Through:
Respondents Ms.Rajdipa Behura, APP for State/R-1. Mr.G.P.Thareja and Mr.H.C.
Kamra, Advs. for R-2 and R-3. CORAM: HON'BLE MS. JUSTICE PRATIBHA
RANI % PRATIBHA RANI, J.

1. The petitioner is father of deceased Bhagwati Prasad who is aggrieved by the order dated 13.02.2001 in Sessions Case No.33/2000 by the learned ASJ whereby respondents No.2 to 4 have been acquitted of the charge under Section 302/34 IPC.

2. Respondent No.1/State has not impugned the order of acquittal in Sessions Case No.33/2000. Though prayer of the petitioner to file an appeal against the order of acquittal was turned down by the State, he was permitted to file a private

petition against the order of acquittal and no objection dated 08.05.2001 to this effect was given by the State.

3. The petitioner is challenging the order of acquittal mainly on the following grounds : (i) The learned Trial Court failed to appreciate the testimony of PW-6 Anita, wife of the deceased who fully supported the case of prosecution ignoring that for purpose of conviction, the Court can rely on the sole testimony of an eye witness. (ii) The learned Trial Court ignored the circumstantial evidence of last seen in the company of accused Anil Chhabra and Bhagwat Kishore i.e. respondents No.2 and 4 respectively. (iii) The learned Trial Court failed to appreciate the recovery of blood stained clothes and the weapon of offence i.e. icepick (Sua) recovered from the house of accused Bahgwat Kishore on the basis of disclosure statement of Anil Chhabra. (iv) The delay of few hours in recording the FIR was considered fatal by the Trial Court ignoring that in view of the murder of deceased being committed in presence of wife (PW-6), her utmost attention was not to rush to the Police Station to lodge FIR but to be by the side of her husband who was bleeding profusely. (v) The learned Trial Court committed serious error in observing that statement of the witnesses forming basis of registration of FIR was hit by Section 162 Cr PC.

4. The petitioner has prayed for setting aside the acquittal order in view of the serious miscarriage of justice caused in the case while acquitting the accused persons by disbelieving the testimony of PW-6 Smt. Anita, the complainant.

5. Notice of the revision petition was given to the State/Respondent no.1 and also respondents no.2 to 4.

6. I have heard learned counsel for the parties and carefully gone through the record. Written synopsis have also been filed on behalf of petitioner as well as respondents no.2 & 3.

7. Mr.P.K.Sharma, learned counsel for the petitioner has submitted that the impugned order is liable to be set aside in exercise of revisional jurisdiction for the reason that merely because PW-3 R.S.Chauhan turned hostile and another public witness Madhu Sudan remained untraced, the testimony of PW-6 Anita the

complainant and wife of the deceased could not be treated as untrustworthy. It has been submitted that the finding given by learned ASJ being contrary to the evidence on record, a serious error of law was committed by overlooking the unimpeachable evidence of PW-6 Anita, the eye witness despite the fact that her testimony stands unscratched inspite of vigorous and prolonged cross examination. It was also urged that the learned Trial Court should have considered the odd hours when the incident has taken place thereby ruling out the presence of independent witnesses. Learned ASJ also ignored the circumstance of deceased being last seen in the company of Anil Chhabra and Bhagwat Kishore as well the recovery of blood stained clothes Ex.P1 & 2 and weapon of offence i.e. icepick Ex.P3 pursuant to the disclosure statement made by accused Anil Chhabra.

8. On behalf of petitioner, it has been further submitted that the findings by learned Trial Court being perverse and based on fallacious presumption ignoring the convincing testimony of the complainant, deserves to be set aside being contrary to the settled principles of law. Learned counsel for the petitioner has relied upon Gurshinder Singh vs. Joga Singh & Another 1999 SCC (Cri) 1311, Ayodhya Dube & Ors. vs. Ram Sunder Singh MANU/SC/0116/1981, Santosh Kumar Singh vs. State through CBI (2010) 9 SCC 747. Paramjit Singh alias Mithu Singh vs. State of Punjab through Secretary (Home) (2007) 13 SCC 53. and Jitender Kumar vs. State of Haryana (2012) 6 SCC 20. in support of his contentions.

9. Mr.G.P.Thareja, counsel for respondents no.2 and 3 has submitted that the scope of interference by this Court in exercise of revisional jurisdiction is very limited. The learned ASJ has given reasons for which the testimony of PW-6 was disbelieved. Not only that, the statement made by PW-6 on the basis of which FIR was registered cannot be treated as first information for the reason that prior to that, the complainant had informed ASI Rampal that Anil Chhabra had run away after telling her Maine tere pati ka murder kar diya hai. ASI Rampal has not been examined by the prosecution and in respect of the commission of offence, the first statement made by PW-6 before ASI Rampal has to be treated as FIR wherein she disclosed only to the extent referred to above. It is only later on that she has been cited as an eye witness to the incident. Learned counsel for respondents No.2 and 3 further submitted that in this case, FIR is ante-timed. Though date and

time of occurrence is 11/12.09.1996 between 11.00 pm to 12.00 (midnight), the police had also arrived at the spot immediately thereafter, despite that the special report was received by the Magistrate on the next day in the evening i.e. 12.09.1996 at about 3.00 pm which is sufficient to infer that after due manipulations, the FIR was registered. Referring to the recovery of blood stained clothes or icepick at the instance of respondent No.2 Anil Chhabra, it was urged that there is nothing on record to suggest that the clothes recovered were worn by the accused at the time of occurrence and failure to join independent witnesses at the time of recovery of blood stained clothes of accused or icepick, despite the public witnesses being available, the recovery has to be disbelieved by the Court being weak type of evidence. It was urged that DD No.46A was recorded on the information given by ASI Rampal, In-charge PCR which was to the effect that murder of deceased Bhagwati Prasad had been committed and Anita (PW-6) was present at the spot who informed that Anil Chhabra left after saying that he has murdered her husband. Referring to Chapter 23 Rule 24.1 of Punjab Police Rules that Every information covered by Section 154 Cr PC must be reduced into writing as provided in that Section and if that information discloses cognizable offences, then FIR must be recorded upon that, it has been submitted by learned counsel for respondents no.2 and 3 that the information given to ASI Rampal by PW-6 Anita forms FIR. However, the first information report was recorded after due deliberations on the subsequent statement of PW-6 Anita which infact has to be treated as Statement under Section 161 Cr PC. Learned counsel for respondents No.2 and 3 has submitted that initially Anita did not claim herself to be an eye witness and was introduced later on as an eye witness, thus, rightly disbelieved by the learned Trial Court. The statement of PW-6 forming basis of FIR, is concocted one to solve a blind murder. As per PW-6 Anita, after being hit, the deceased fell on the spot and died in front of house of Anil Chhabra and if deceased fell and died at the same place, traces of blood could not have been found at the distance of 250 feet.

10. Learned counsel for respondents no.2 and 3 has further submitted that as per PW-6 Anita, she reached the spot after about 30-35 minutes and at that time, her husband was dead. The postmortem report and the deposition of PW-8 Dr.Ashok shows that patient must have survived for about 30-35 minutes after receiving the

injuries and if PW-6 has witnessed the occurrence when she reached the spot, she should have found her husband alive at that time. Learned counsel for the respondents No.2 and 3 has also referred to the distance between the house of the complainant i.e. PW-6 Anita and the place of occurrence which are situated in two different galis, thus making it impossible for PW-6 to witness the occurrence from her house. He has relied upon Johar & Ors. vs. Mangal Prashad & Ors. II (2008) SLT 183. Mobina Begum Vs. Nawab Ali & Ors. 2008 (100) DRJ 67. and Baleswar Ghelot & Ors. vs. Shri Chand & Ors. 2008 CrL.J.

306 in support of his contentions.

11. I have considered the submissions made on behalf of the petitioners as well as respondents No.2 and 3 and also perused the record. The learned ASJ, after considering the material evidence, acquitted the accused persons for the following reasons as given in paras 23 and 24 of the impugned judgment :23. xxx xxx xxx xxx The rough site plan prepared by PW14 is Ex.PW14/M8 shows that there are items (a), (b), (e) (sic), (d), (e) and then this document has been signed by the Inspector. But after such signatures item not F has been written in another ink; showing the place from where the complainant saw the incident. This court has no doubt in its mind that item E has been written later on. It renders the fact of seeing incident by PW6, totally doubtful. PW14 could not explain it while in the witness box. It appears that PW6 was made eye witness, whereas she was not. 24. It appears that the prosecution could not travel the distance of May to Must. It is the duty of the prosecution to stand upon its own legs and prove the guilt of the accused persons to the hilt. The case of the prosecution is tainted one and the Investigating Officer has created a new story suiting to his mind. PW6 is male (sic) eye witness, whereas series of facts and circumstances show that she did not witness the occurrence. Her deposition reveals that she was compelled to depose that she saw the accused persons inflicting injuries upon the person of the deceased.

12. The learned ASJ while observing that in a case based on eye witness account, the motive is not relevant, still discussed the motive attributed to the accused persons for committing the murder. As per prosecution, the motive of murder was

the grudge the accused persons were nursing against the deceased that he used to buy grocery items from the adjoining shop and tether his cow to the Neem tree in front of shop of Anil Chhabra. Learned ASJ considered that not only was the motive attributed not strong to eliminate the deceased, but even as per PW-6 Anita, respondent Bhagwat Kishore had very good relations with the deceased. Thus, he had no reason to join hands with accused Anil Chhabra and his wife to do away with the life of deceased Bhagwati Prasad.

13. The learned ASJ has duly considered that the testimony of family member, which is even otherwise trustworthy, cannot be discarded just because he/she may be interested witness and that the wife of the deceased cannot be disbelieved solely on the ground that she was related to the deceased. The reason for considering her testimony to be not trustworthy was that from the evidence appearing on record, the learned Trial court was of the considered view that she could not have witnessed the occurrence. Not only that, the manner in which rough site plan Ex.PW14/M8 was prepared and subsequently certain manipulations were done, were duly highlighted observing that point-F had been written later on the rough site plan Ex.PW14/M8 in another ink after it had already been signed by Addl. SHO.

14. The observations made to this effect by learned Trial Court are as per the rough site plan Ex.PW14/M8 which not only indicates that on the marginal notes, point-F depicting the place from where the complainant had witnessed the occurrence, has been inserted later on as can be observed from the pattern of writing in respect of marginal notes from point-A to E which is different from marginal notes of point-F. Here it would be relevant to refer to the testimony of PW-6 Anita to ascertain as to whether from her house, the place of occurrence could have been witnessed by her, which is as under : My house number is 49/12. I do not know the number of house of Anil Chhabra. After my house, there is one vacant plot, then there is house of Smt. Veena, then there is one vacant plot. Then there is one another house which opens in other street. My house is in gali No.113. House of Anil Chhabra may be in gali No.114. It is correct that there are houses opposite my house. If we start from gali No.113 then we will reach Gali No.114. When one takes right turn in gali No.114, then, there is the house of Jagjit

Singh and then there is house of Anil Chhabra.

15. The site plan Ex.PW14/M8 does not show two different galis i.e. Gali No.113 where the complainant resided and Gali No.114 where in front of house of Anil Chhabra, the incident had taken place. The photographs placed on record also do not indicate that from the house of complainant, the view of house of Anil Chhabra was unobstructed so as to enable PW-6 to witness the occurrence.

16. The first information in respect of the occurrence was recorded vide DD No.46, PP Burari, PS Timar Pur, Delhi at 1.18 am on the basis of information given by ASI Rampal, PCR, I/C 0.81 PC Van. This information is to the effect that ASI Rampal has informed through wireless that Bhagwati Prasad, S/o Talewar Sharma, aged 29 years, R/o B-49/2, Sant Nagar, Burari, on whose head and face, there were injury marks, tongue protruded, was lying dead in front of house of Chhabra in Sant Nagar. ASI Rampal also informed that his (deceased) wife was present at the spot and informed that Chhabra mujhse yeh keh kar bhag gaya hai ki maine tere pati ka murder kar diya hai. The DD entry was marked to SI O.P.Pandey who alongwith ASI Bhim Singh, HC Rajinder Singh and Ct.Yograj left for the spot. Addl. SHO was also informed through wireless.

17. Since ASI Rampal of PCR is not cited as a witness and the record of information to PCR pursuant to which ASI Rampal reached the spot, has not been placed on record, it is difficult to say as to who informed the PCR, at what time, from which number and what was the information given. The information as recorded in DD No.46, PP Burari Ex.PW11/A indicates that the complainant came to know about the murder of her husband only on being told by Chhabra (respondent No.2) to this effect. The learned Trial Court had dealt with this aspect in detail observing :(i) For all purposes, the information recorded vide DD No.46-A was complete to record the FIR as it has all the ingredients of FIR. (ii) ASI Rampal from PCR was present at the spot when the IO and Addl. SHO reached the spot and conducted the investigation but ASI Rampal was not cited as a witness. (iii) As per PW-6 Anita, the deceased left with respondents Anil Chhabra and Bhagwat Kishore at 10.00 pm and after about one hour, she heard the noise of Mar Liya - Mar Liya meaning thereby that incident took place at about 11.00 or 11.30 pm and

what happened from 11.30 pm till 1.18 am remained unexplained. (iv) The dead body was sent to Mortuary at 4.00 pm and what happened between 1.18 am till 4.00 pm when the dead body was received at Mortuary remains unexplained. Not only that, the dead body was sent without inquest papers which were made available to the doctor later on.

18. For disbelieving the testimony of PW-6, the learned Trial Court has not only considered her position as shown in the site plan Ex.PW14/M8 which was considered to be inserted later on but has also given other following reasons to discredit her testimony : (i) The injured was not taken to the hospital nor his wife (PW-6) helped him at all and her clothes were not blood smeared. (ii) PW-6 claimed to have witnessed the incident but did not try to help him. (iii) The explanation given by PW-6 that she did not help her husband stating that there was no occasion for her to rescue her husband from the accused persons because on hearing her noise, they fled away from the spot, shows that when she reached the spot, the accused were not there, still no effort was made to remove the injured to the hospital. (iv) She did not ask anybody to bring any taxi or TSR though two of her neighbours used to ply TSR. (v) She claimed that by the time, she reached the spot, she found her husband dead but as per PW-8 Dr. Ashok Jaiswal, none of the injury was on heart and patient with such injuries can survive for half-an-hour. (vi) There were traces of blood at places other than a place where body was lying which could not have been there, had the deceased after receiving the injuries fell and died at the same place. (vii) It was a dark night as the incident was close to Amavasya and neither the area was electrified nor there was any moon light in which PW-6 could have witnessed the incident from her house. PW-6 had stated that when the police reached the spot almost entire locality was present there and their number could be 100 but none had been joined as a witness during the investigation at the spot or subsequently at the time of recovery.

19. I agree with learned counsel for the petitioner that merely because PW-6 Anita the complainant happens to be wife of the deceased is no ground to term her as interested witness and disbelieve her. In the case State of A.P. vs. S.Rayappa & Ors. (2006) 4 SCC 516.it was observed that relative witness cannot be termed as interested witness. The term interested witness postulates that the person

concerned must have some direct interest in seeing the accused being connected somehow or other either due to enmity or some other reason. The Court has to be on its guard while appreciating the evidence of such witness.

20. The effect of delay in lodging the FIR is not always fatal to the case of prosecution if it is properly explained. But here, the situation is somewhat different. I fully agree with learned counsel for the petitioner that in a case where the wife happens to see her husband lying dead before her eyes, her natural conduct would not be to rush to the Police Station but to ensure necessary medical aid to save the injured. In the instant case, though the occurrence had taken place at about 11.00 pm, the first information received by PP Burari was at 1.18 am, the Addl. SHO also got the message on wireless at 1.20 am and reached the spot, on finding the dead body lying there, noticing the part of the body where injuries have been inflicted, he recorded the statement of the wife of deceased immediately and also summoned the photographer and the crime team at the spot. He directed to send the report through special messenger to the senior officers. The rukka has been sent at 3.30 am on 12.09.1996, FIR has been recorded vide DD No.26-A at 3.50 am. But as endorsed on the FIR Ex.PW7/A, the special report has been received by learned MM only at 3.00 pm on that date. If the FIR was registered vide DD No.26-A on 12.09.2996 at 3.50 am, it could not have taken about 11 hours in sending the special report to the Magistrate. Learned Trial Court had deliberated this aspect in the impugned judgment. It is noticeable that neither the special messenger was cited as a witness nor the departure entry vide which he left the police station to handover the special report to senior officers was placed alongwith chargesheet to ascertain at what time, special messenger left the police station to deliver the special report.

21. Reliance placed by learned counsel for the petitioner on Gurshinder Singh vs. Joga Singh & Another (Supra) is on the maintainability of the revision petition by a private party in a case of acquittal. Vide order dated 05.03.2004, this Court has already held that this petition is maintainable because of having been filed by a private party against acquittal.

22. In the case *Ayodhya Dube & Ors. vs. Ram Sunder Singh* (Supra) relied upon by the petitioner, the Apex Court affirmed the order of High Court vide which the order of acquittal was set aside and re-trial was ordered for the reason that the learned Trial Court failed to consider the probative value of the FIR, testimony of eye witness was not discussed and their reliability was ignored, thus, resulting into material evidence being overlooked. It was further observed by the Court that the Trial Court judgment misquoted the evidence at some places and consisted of faulty reasoning thus showing lack of judicial approach. In para 2 of the report, the Supreme Court observed :

2. In our view the High Court has given adequate reasons for interfering with the acquittal and ordering a retrial of the appellants. We may add that the High Court also expressed the view that the instances mentioned by this Court in *K. Chinnaswamy Reddy v. State of A.P.* MANU/SC/0133/1962 as justifying interference with orders of acquittal in the exercise of revisional powers were illustrative and not exhaustive. We agree with the view expressed by the High Court and we only wish to say that the criminal justice system does not admit of pigeon-holing. Life and the law do not fall neatly into clots. When a court starts laying down rules enumerated (1), (2), (3), (4) or (a), (b), (c), (d), it is arranging for itself traps and pitfalls. Categories, classifications and compartments, which statute does not mention, all tend to make law less flexible, less sensible and less just.

23. Learned counsel for the petitioner has referred to the judgment of Apex Court in the case *Santosh Kumar Singh vs. State through CBI* (Supra) in support of this contention that in case of perverse finding by learned Trial Court resulting in acquittal, the Appellate Court has the power to reverse the acquittal by re-appreciating the evidence. It has been contended in this case also that it was not the quantity but quality of the evidence that was required to be taken into account by the learned Trial Court. The learned Trial Court, though, did not doubt the presence of complainant at the spot which fact is even noticed in DD No.46-A, did not consider PW-6 convincing and trustworthy, but it is not sufficient to opine that finding of the Trial Court is perverse.

24. In the case *Jitender Kumar vs. State of Haryana* (Supra) it was held that omission to mention name of one of the accused in FIR is not fatal if definite role is attributed to him and proved beyond reasonable doubt during trial. It was further held that every omission in the FIR is not fatal to the case of prosecution as main purpose of the FIR is to satisfy the police about commission of a cognizable offence so as to conduct investigation in the matter.

25. On the aspect of delay in FIR, the learned counsel for the petitioner has placed reliance on *Paramjit Singh alias Mithu Singh vs. State of Punjab through Secretary (Home)* (Supra). It has been submitted that in this case, the statement of complainant was recorded at the spot itself immediately and FIR was registered at 3.50 am, hence delay, if any, in sending the report to Magistrate cannot be considered fatal to the case of prosecution. In this regard, suffice it to say that if the ocular evidence by the prosecution is worthy of credit, then the element of delay in registration of FIR or sending of the same to Ilqa Magistrate by itself does not weaken the case of prosecution.

26. The ambit of power of High Court in Revision Petition filed by a private party was considered by Supreme Court in *Thankappan Nadar & Ors. vs. Gopala Krishnan & Anr.* (2002) 9 SCC 393. The categories, wherein interference by the High Court with the finding of acquittal in exercise of revisional jurisdiction may be required, was dealt with in detail as under :

6. In a revision application filed by the de facto complainant against the acquittal order, the court's jurisdiction under Section 397 read with Section 401 of the Cr.P.C. is limited. The law on the subject is well settled. Instead of referring to various judgments, we would only refer to few decisions rendered by this Court. In *Akalu Ahir and Others v. Ramdeo Ram* MANU/SC/0076/1973 :

1973. riLJ1404 , this Court has (in para

8) observed thus: "This Court however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision: (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused; (ii) Where the trial court has wrongly,

shut out evidence which the prosecution wished to produce; (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible; (iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and (v) Where the acquittal is based on the compounding of the offence which is invalid under the law. These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of the acquittal." The Court further observed: "No doubt, the appraisal of evidence by the trial judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court. (Emphasis added) 7. In our view, the emphasised portion of the aforesaid judgment is applicable in the present case. It is unfortunate that such a serious offence inspired by rivalry in the matter of election should go unpunished. However, that would not be a valid ground for ignoring or for not strictly following the law as enunciated by this Court, which does not empower the court exercising the revisional jurisdiction to re-appreciate the evidence.

8. In *Vimal Singh v. Khuman Singh and Another* MANU/SC/0643/1998 :

1999. riLJ16 , this Court after considering various decisions, observed as under: "Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered

or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial."

9. Same is the view taken by this Court in Logendra Nath Jha and Others v. Polaital Biswas MANU/SC/0029/1951 : [1951]2SCR676 , K. Chinnaswamy Reddy v. State of A.P. MANU/SC/0133/1962 : [1963]3SCR412 , Mahendra Pratap Singh v. Sarju Singh MANU/SC/0398/1967 :

1968. riLJ665 , Pakalapathi Narayana Gajapathi Raju and Others v. Bonapalli Peda Appadu and Others MANU/SC/0179/1975 : AIR 1975 SC1854 and Ayodhya Dube and Others v. Ram Sumer Singh MANU/SC/0116/1981 :

1981. riLJ1016 .

27. The settled legal position is that Revision Court does not function as a Court of Appeal, it cannot re-appreciate the evidence.

28. It is only when there is some procedural irregularities or overlooking of material evidence or misreading of same manifest on record resulting in miscarriage of justice that an order of acquittal can be interfered with by this Court in revisional jurisdiction.

29. In so far as the present case is concerned, learned Trial Court has discussed the evidence of material prosecution witnesses especially PW-6 Anita the complainant giving reasons as to why testimony of sole eye witness PW-6 Anita, wife of the deceased was not considered trustworthy so as to convict respondents No.2 to 4 for the offence of murder. The recovery of blood stained clothes and

icepick was considered doubtful giving reasons for disbelieving the evidence in this regard.

30. The view taken in this regard in the impugned judgment is duly supported by decision of this Court in Raj Kumar @ Raju vs. State 169 (2010) DLT 51.(DB) wherein it was observed as under :

18. The recoveries of blood-stained clothes at the instance of the appellant have to be viewed in light of various decisions of the Supreme Court where such kind of recoveries have been held to be very weak evidence. 19 . In the decision report as AIR 196.SC 1113.Prabhu v.State of U.P. recovery of a blood-stained shirt and a dhoti as also an axe on which human blood was detected was held to be extremely weak evidence. Similarly, in the decision reported as AIR 197.SC 1753.Narsinbhai Haribhai Prajapati etc. v. Chhatrasinh & Ors., the recovery of a blood-stained shirt and a dhoti as also the weapon of offence a dhariya were held to be weak evidence. In the decision reported as AIR 199.SC 110.Surjit Singh & Anr. v. State of Punjab the recovery of a watch stated to be that of deceased and a dagger stained with blood of the same group as that of the deceased were held to be weak evidence. As late as in the decision report as, I (2008) SLT 48.= I(2008) CCR 15.(SC) = JT 200.(1) SC 191.Mani v. State of Tamil Nadu recoveries of blood stained clothes and weapon of offence stained with blood were held to be weak recoveries. 20.We may only add that the part of the disclosure statement of the accused that the clothes which he was wearing at the time when he committed the crime got stained with blood of the deceased and his getting the clothes recovered attracts Section 27 of the Evidence Act limited to the extent that the accused got recovered blood stained clothes. Independent evidence has to be led to prove that the said clothes were being worn by the accused at the time when the crime was committed and said fact cannot be proved through his disclosure statement.

31. The learned Trial Court has considered that PW-3 did not support the prosecution and presence of PW-6 at the scene of crime was also not proved beyond reasonable doubt. At this stage, even if this Court, on appreciation of evidence, were to reach a different conclusion, that by itself does not justify interference with an order of acquittal as evidence cannot be re-appreciated in

revision petition.

32. On perusal of the impugned judgment, it cannot be opined that learned Trial Court had not considered the relevant material while appreciating the testimony of material witness i.e. PW-6 Anita the complainant.

33. I find that the judgment of Trial Court does not suffer from any perversity or defect of procedure or manifest illegality of such nature as would result in miscarriage of justice.

34. In view of the above, this petition fails and accordingly dismissed. PRATIBHA RANI, J November 20, 2012/st

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