

(2011) 05 DEL CK 0278

In the Delhi High Court

Case No : Criminal L.P. No. 155 of 2011

Stae Govt. of NCT of Delhi

APPELLANT

Vs

Deepak and Another

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Evidence Act, 1872 — Section 25, 27

Citation : (2011) 3 JCC 1754

Hon'ble Judges : S. Ravindra Bhat, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Lovkesh Sawhney, app, for the Appellant;

Final Decision : Dismissed

Judgement

1. This order will dispose of a petition by the State seeking leave to file appeal against the judgment and order of the learned Additional Sessions Judge dated 30.04.2010 in Sessions Case No. 36/2008.

2. The prosecution case is that on 10.06.2006 at around 1:50 A.M., the respondent Deepak visited the Police Station Najafgarh and provided information that he had killed Rohtas, his uncle, resident of Najafgarh by strangulating him with a cloth, the previous night and had thrown the dead body in a field near Surakhpur road. The police reached the T-Point at Surakhpur road leading to Sanik Enclave. The prosecution alleged that the respondent led them to a service lane leading in turn towards Sainik Enclave and after about 250 yards, pointed to a dead body lying on the slope of a field. The respondent is alleged to have identified the body as that of Rohtas. The dead body's neck contained white colour ligature with thin green border. There were no other visible injuries. The police allegedly recovered a plastic box, a broken liquor bottle and one pair of brown colour leather sandals. The crime team arrived at the spot; the scene of occurrence was photographed and several articles were taken into possession. The dead body too was taken into possession. The FIR was registered, inquest papers were prepared and the dead body was sent for autopsy. After recording

the statement of witnesses, the police also recorded the disclosure statement of the respondent. It was alleged that in the statement recorded by the respondent, what emerged was that the deceased's wife had abandoned him and eloped with someone else and that he used to habitually consume liquor. The deceased's job had been terminated and he was undergoing financial crisis. It was alleged that the respondent Deepak had borrowed a motorcycle from one Sunil under the pretext of dropping his uncle. Rohtas was made to sit in between Deepak and Rajiv. He was taken to the place where his dead body was found and strangled with the help of gamcha that he was wearing.

3. After concluding the investigation, the prosecution filed the chargesheet against the accused in this case. The respondents denied guilt and claimed trial.

4. The Trial court after considering the entire record and the materials placed before it, held that the accused guilt has not been established beyond reasonable doubt and consequently acquitted them.

5. Learned APP argues that the impugned judgment discloses glaring errors because the Trial Court completely ignored the recovery of the dead body and the gamcha which was possible only on account of the respondent's/accused knowledge. These, as well as the pointing out of the dead body, established not only the knowledge but also the accused complicity in the commission of the crime. Under the circumstances, the accused was under a duty to explain these either through acceptable evidence or in his statement to the Court u/s 313. Since he did neither, his guilt was writ large on the record.

6. Noticing that the case primarily was one of circumstantial evidence and that the prosecution, had relied on the extra judicial confession of the accused which was sought to be proved by PW-1, the Trial Court held that there was no acceptable evidence in that regard. PW-1 Sunil was examined for the purpose of establishing the confession. He, however, did not support the prosecution story as he admitted that he met the accused in a marriage party where he had reached in a tractor and he stayed there till 11:30 PM. Crucially, PW-1 denied having handed over a motorcycle to the accused Deepak or receiving it back after commission of offence and the making of extra judicial confession. Dealing with the aspect of the confession and the recovery, the Trial Court held as follows :--

As per the prosecution version, accused Deepak went to police station Najafgarh to make confession statement on the intervening night of 9/10.6.2006 and made confession, that, he, has committed murder of his uncle and on the basis of which police recorded DD No. 4A Ex.PW10/A at about 1.50 am on 10.6.2008 and thereafter while in custody accused led the police party to the spot where the dead body was found lying alongside the Surakhpur road, barely 3 feet away from the road in the open. PW7 SI Jitender Daggur, PW14 Ct. Dhiraj Kumar, PW19 S.I. Amar Pal singh and PW20 Inspector Kailash Chand have stated in their examination in chief that they along with SI Anand Parkash. Ct. Yashpal, ASI Om

Parkash, left, police station along with accused Deepak, who, was in police custody. Accused Deepak led them to a place on foot, to a tree (aank) where a dead body was lying and accused pointed out the dead body to be of his uncle. All the aforesaid witnesses are the police officials and there is, no, explanation, on record, as to why the public witnesses were not joined at the time of discovery of the dead body particularly when, they were going to discover the body of the deceased Rohtas, in pursuance to the confession made by accused Deepak vide DD No. 4A, ExPW10/A from the police station, to the spot, which is just 2.5 kms away, as per the version given by PW19 SI Amar Pal.

The statement of the aforesaid recovery witnesses further suffers from the material contradiction.

As per PW7-SI Jitender Daggar, he alongwith SI Anand Parkash, SI Amar Pal Singh, Ct. Dhiraj, Ct. Yashpal, ASI Om Prakash and Inspector Kailash Chand left notice station alongwith accused Deepak in custody, but during cross-examination, he has stated that he was not at the police station but was on patrolling duty and on receipt of information he directly reached the spot at about 3.30-3.45 am where the police officers from the police station and the officers of the Crime Team had already reached there in their respective vehicles. No senior officer came at the spot on that day. The dead body was not sealed till he reached there.

The examination in chief of PW7 SI Jitender Daggar falsifies by departure entry DD No. 4A, Ex. PW10/A, in which his name is missing, which means PW7 SI Jitender Daggar is a introduced witness in the present case.

PW7 SI Jitender Daggar, PW14 Ct. Dhiraj Kumar, PW19 S.I. Amar Pal Singh and PW20 Inspector Kailash Chand are the alleged witnesses to the recovery of the dead body at the instance of accused Deepak, but, the evidence of these witnesses does not inspire confidence as there are serious infirmities and contradiction in their evidence.

As per PW7 SUIitender Daggar, police reached at the spot at about 3.30-3.45 am whereas, as per PW 14 Ct. Dhiraj Kumar, police reached at the spot at 4.00 am, in their respective vehicles.

The version of the prosecution creates doubt when there is a distance of only 2.5 kms from the police station to the spot. What and where they were between the period from 1.50 am to 4.00 am? The story of the prosecution that between 1.50 am to 4.00 am, they were covering the distance of only 2.5 km, in the early morning, is just not believable and rather gives strength to the defence version that the accused Deepak was picked from his house by the police at about 12.30-1.00 am on the aforesaid date. In this respect, the admission made by PW2 Ram Dass, who is neighbour of accused Deepak, is reproduced as under :--

Accused Deepak resides in front of my house at a distance of about 15 yards. Police came to our village at about 12.30-1.00 am on the intervening night of 9th

and 10th. On that night, I was sleeping outside my house. Police awakened me and asked about the house of deceased. I pointed out the house of the deceased. Police officials went inside the house and brought accused Deepak out. I asked the police and they instructed me to go away and sleep. Police had taken accused Deepak.

Accused Rajiv @ Raja is not named in the DD No. 4A Ex.PW10/A. DD No. 4/A is stated to be the confession made by accused Deepak. The said contents, as per section 25 of the Evidence Act, cannot be read against him as held by the Hon"ble Supreme Court in the case of Aghnoo Nagesia Vs. State of Bihar, .

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In the present case, admittedly, the recovery of the dead body is alleged to have taken place from the open field. The exclusive knowledge of the dead body, being kept in the open field, cannot be imposed upon accused directly in the present case as the said field is an open field. It has been so held by Hon"ble Supreme Court of India in Kara Ghasi v. State of Orissa, 1983 Cri.LJ 692 (2).

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Thus, discovery of the dead body in the open field alongside the busy Surakhpur Road, is no discovery within the meaning of Section 27 of Evidence Act. So far as recovery of the motorcycle bearing registration No. HR 05 D6534 is concerned, the prosecution has failed to examine its register owner.

7. It is thus clear that the Trial Court applied settled authorities on the question of whether the statements made by the accused which formed part of the information furnished to the police were inadmissible particularly having regard to the judgment of the Supreme Court in Aghnoo Nagesia (supra). Barring the extra judicial confessional statement, of the accused, the only other corroborative evidence was in the form of statement by PW-1 who did not support the prosecution story. Furthermore, involvement of both the accused was not established in any manner whatsoever. It is well settled that mere recovery of anything--howsoever gruesome or prejudicial--without the necessary linkage between such article and the accused is insufficient to return the finding of guilt. The prosecution has to necessarily lead other credible evidence in the form of witnesses or circumstances. The present case is one where such evidence is missing.

8. It is well established for several decades now that the High Court while considering the petitions for grant of leave to appeal, has to be alive as to whether the impugned judgment discloses substantial and compelling reasons to warrant such a course. The acquittal recorded by a competent Court is an affirmation of the presumption of innocence which every accused has a right to claim in this country. Therefore, unless the High Court is satisfied that the Trial Court has committed a substantial error in the appreciation of evidence, application of law or has returned the findings which are glaringly erroneous, as

would cause miscarriage of justice, leave would not be granted.

9. Having regard to the entirety of the circumstances and the facts found and having examined the Trial Court's record, this Court is satisfied that the petition is lacking in merit; it is, therefore, dismissed.