
(2012) 01 DEL CK 0501

In the Delhi High Court

Case No : Criminal L.P. 524 of 2011 and Criminal M.A. 17438 of 2011

State		APPELLANT
	Vs	
Arun Kumar		RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 394, 397

Citation : (2012) 01 DEL CK 0501

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

Bench : Division Bench

Advocate : Rajesh Mahajan, for the Appellant;

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

1. The State seeks leave to appeal against a judgment and order of the learned Additional Sessions Judge, dated 22-03-2011, in SC No. 98/2008, acquitting the respondent of the charges of having committed the offences punishable under Sections 394/397/302/34 IPC. The prosecution alleged that during the night intervening 20th and 21st October, 2003, the respondent/accused Arun Kumar, with the co-accused Rahul (not arrested, and declared a PO) in furtherance of their common intention, robbed Narain Singh (the deceased) of Rs. 4,000/-and inflicted fatal injuries on him. The deceased used to work as a night watchman in the employment of Sanjeev Kumar (PW-6) owner of a fishery tank or pond, falling in the jurisdiction of PS Nangloi.

2. The accused was arrested on 27-10-2003; it is alleged that pursuant to his disclosures recorded by the police, the weapon of offence was recovered. After completion of investigation, the accused was charged with committing the crimes; he denied guilt and claimed trial. The prosecution relied on the testimonies of 12 witnesses, and several material exhibits. After considering all these, and the parties submissions, the Trial Court concluded that the evidence

led was insufficient to convict the accused; he was therefore, acquitted of all charges.

3. The Additional Public Prosecutor argued that the Trial Court fell into error in concluding that the prosecution had not been able to establish the accused's guilt beyond reasonable doubt. In this regard it was submitted that the recovery of the weapon, a daub, used to chop meat, seriously incriminated the respondent accused, and the Trial Court did not attach importance to this aspect, erroneously. Counsel also submitted that the recovery of an amount of Rs. 1,500/- as well as the clothes, at the accused's pointing out, showed that he and Rahul, and no one else, could have committed the offences.

4. The main witnesses on behalf of the prosecution were PW-3, Surender, (neighbor of PW-6, at whose farm Rahul used to work) and PW-6, the accused's employer. In the cross examination of PW-3, what emerges is that he knew the deceased only by face, and that the latter had told him that he belonged to Nepal. PW-6 affirmed that both Rahul (the PO) and the deceased were employed by him as watchmen, in his fishery; he testified about becoming aware of some quarrel in his premises. This witness went there, and found the deceased's body, and informed the police. He deposed having told the police that he had disbursed wages the previous day (19-10-2003) and having paid the deceased Rs. 4,000/-. PW-6 stated that Arun Kumar, the respondent, had introduced Rahul and that he too was missing after the murder of Narain Singh.

5. The impugned judgment doubted the veracity of PW-6, because he took about three hours to inform the police, after having allegedly discovered the crime. This delay in informing the police was not explained by the prosecution. Similarly, the circumstances surrounding Arun's arrest have been doubted as suspicious. The court noted that the complainant was with the police most of the time; yet the accused was allegedly absent, and somehow, he was arrested near the village water tank on 27-10-2003, when attempting to flee the spot. It was surmised that merely because the accused tried to flee would itself not be a suspicious, or incriminating circumstance. Another reason that persuaded the Trial Court to doubt the prosecution version was that though the complainant had employed Rahul, he was unable to give details of where he belonged to. Similarly, the variation in the depositions of the complainant and IO Ran Singh, about the chaddar said to have been used to cover Narain Singh, at the time the body was found, was noted by the impugned judgment. According to PW-6, the body was covered with a chaddar; Ran Singh, however deposed that the body was not covered at all. We notice that the Trial Court also doubted the recovery of the blood stained clothes, and the daub at the accused's instance.

6. This Court has considered the submissions as well as the Trial Court's records. It is well established that in all criminal cases, the prosecution has to establish the guilt of the accused beyond reasonable doubt through unimpeachable evidence. Further, the Code of Criminal Procedure permits an appeal against convictions and in others, in a limited category of cases. It does not include an

appeal against acquittal. The Courts have uniformly construed this to mean that while considering petitions for grant of leave by the State -against acquittal of accused, there ought to be substantial and compelling reasons, apparent from the record. These compelling reasons may include misappreciation of evidence, wrong application of law and glaring omissions on the record.

7. We have carefully considered the submissions of the APP, on behalf of the State, and also read the record of the Trial Court. It can be seen from the previous discussion, that the prosecution case was based entirely on circumstantial evidence; the standard of proving an accused guilty, are well known. Each circumstance, as well as all the links to such circumstances have to be proved conclusively, and the prosecution further has to prove that it was the accused, and none else, who was responsible for the crime. Every hypothesis consistent with his innocence has to be, likewise ruled out, during the trial. Seen from the touchstone, the prosecution's reasons for doubting the accused, are at best suspicious circumstances. The fact that a daub was recovered at his instance - one week later, from an open area, accessible to all, is not of much consequence. Further, the recovery of blood stained clothes, containing blood grouping similar to that of the deceased, at the instance of the accused, cannot by itself, or with the other recovery, constitute decisive factors pointing to his guilt. We are of the opinion that the reasoning of the Trial Court does not disclose any substantial or compelling reasons, requiring a second look, as an appellate court, at the judgment. The findings are based on a reasonable, and plausible view, which we do not wish to disturb. The petition, being insubstantial, merits rejection; it is dismissed.