
(2011) 07 DEL CK 0218
In the Delhi High Court
Case No : Criminal L.P. 76 of 2011

State	Vs	APPELLANT
Manjit and Others		RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 120B, 302, 34, 392, 411

Citation : (2011) 07 DEL CK 0218

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

Bench : Division Bench

Advocate : Jaideep Malik, app, for the Appellant;

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.

Crl. M.A. 1706/2011 (Under Section 5 of the Limitation Act) in Crl. L.P. 76/2011

For the reasons mentioned in the application, the application is allowed.

Crl. M.A. 1706/2011 stands disposed of accordingly.

Crl. L.P. 76/2011

1. The State, by this petition seeks leave to appeal against the judgment and order of the learned Additional Sessions Judge dated 24.04.2010 in S.C. No. 62/2008. The Respondents were charged with having committed offences punishable under Sections 302/392/411/120-B/34 Indian Penal Code, 1860.

2. The prosecution allegations were that on 03.02.2007, one Pramod Kumar was attacked sometime in the forenoon in his premises - Flat No. 226, Pocket-E, Sector-17, Peepal Apartment, Dwarka. The information to this effect was received by D.D. No. 20-A by the Police Control Room (PCR), Police Station Dwarka. The initial information appeared to be, besides attack, Pramod Kumar's

chain and ring had been snatched. The police, after reaching the premises, found that Pramod Kumar had died; he appeared to have been beaten. His blood soaked body and the other personal effects were seized and investigation took place. The police recorded the statement of Meenakshi, PW-1, who claimed to have witnessed the attack. She was an Office Assistant employed by the deceased with effect from 20.12.2006 on a monthly salary of Rs. 3,000/-. She had stated that at around 11.00 am on the date of the incident, her co-worker Sunil had gone to the deceased's premises and later, after talking to Pramod, went away. About half an hour later, someone knocked on the door, and when it was opened by the deceased three persons entered. PW-1 further stated to the police that the tallest among the three - who entered the premises showed an Identity Card of Pramod Kumar and claimed that he found it on the way. Pramod Kumar, however, refused having lost it whereupon she was asked to fetch some water for the three. At that moment, Pramod Kumar was taken to the bedroom adjacent to the drawing room and given beatings. PW-1 also stated that Pramod Kumar had been tied and gagged with the handkerchief. PW-1 tried to raise an alarm upon which the same assailant, the tall person grabbed her and took her to the kitchen. The other two were alleged to have killed Pramod Kumar. The three Appellants left after taking-away the gold chain and ring besides Pramod Kumar's mobile phone.

3. The prosecution had alleged that Sunil Kumar, Jitender Kumar @ JK and Mohit were arrested on 22.03.2007 after which the other three accused were arrested. The prosecution further alleged that there was some inter se financial transaction between the accused, one of whom had been told to collect Rs. 30,000/- from the deceased Pramod Kumar, which he allegedly owed. This was the motive pressed by the prosecution.

4. The prosecution mainly relied on the testimonies of PWs-1 and 2. PW-1 had claimed to be an eyewitness to the incident. However, in the course of her deposition before the Court, she turned hostile and completely disowned making any statement to the police. She did not identify any of the accused - even the three alleged to have been seen by her at the time of the incident. So far as the testimony of PW-2 was concerned, the prosecution relied on it to establish the motive. She was the wife of the deceased. She claimed to have No. knowledge about the alleged transaction, which formed the basis of prosecution story, for motive.

5. Upon a consideration of the entire evidence, the Trial Court acquitted all the Respondents of the charges leveled against them.

6. Learned APP submits that even if the witness PW-1 did not support her entire previous statement, there was sufficient material on record to implicate the accused. It is submitted that so far as PW-2 was concerned, her not supporting the prosecution could be explained by the fear that she entertained from the accused, who were apparently known to her. Learned Counsel also urged that the

deceased's mobile phone had been recovered in this case and that formed a link between the accused and the crime.

7. The material part of the Trial Court evidence are as follows:

XXX

65 So, only eye witness relied upon by the prosecution Kumari Minakashi has not supported the case of the prosecution at all. She had stated that none of the accused present in the court was present, who came to the office of the deceased or initially manhandled him and then murdered him. She had also denied that she gave description of the accused persons or their distinguishing features or nature and colour of clothes. A bare perusal of FIR Ex. PW4/A and rukka Ex. PW29/A also reflect that No. eye witness was present at the spot and the rukka was sent at 3.35 p.m., and as such, the same also goes to show that the version of PW1 that she came out of the room and gave an information to the police do not inspire confidence as otherwise she would have been present at the spot at the time, when police reached there, in response to the said call. Similarly, her version that she have bolted the door from outside after coming out of the office does not explain the manner in which the accused persons, despite the flat being bolted from outside, manage to escape from the site. The alleged neighbour who knocked at the door had not been examined.

66. Not only PW1 had not supported the version of the prosecution regarding committal of murder but she had also denied that her mobile phone was taken away or that mobile phone of his employer was taken away by the accused persons. She had also denied that the chain and ring of the deceased were taken away by the persons who committed murder or by the accused persons.

67. So far as the aspect of conspiracy is concerned, the prosecution has relied upon the testimony of one Karam Raj, who had allegedly seen all the six accused persons together at Kakrola Mour and talking among themselves for realizing money, which Jitender owed to the accused persons from Parmod, deceased, who in turn owed money to Jitender. However, PW7 has denied that he saw Manjit, Sunil and Charan Singh at Kakrola Mour at 12 a.m. on 3.2.2007 along with Sunil Jitender and Mohit or that heard accused Manjit, Suresh, Charan Singh, Sunil Kumar, Jitender and Mohit talking amongst themselves to realize the entire money from that very day from Parmod, which were due to them or that in case Parmod protests then he should be finished and has rather stated that on 3.2.2007 at 11 a.m. he was present at Laxmi Nagar, where he had gone to meet N.K. Mishra. He has also denied of having any knowledge of Jitender giving money to Parmod or that he made a statement to the aforesaid fact before the police on 30.3.2007 or that on 30.3.2007 he along with Mirdula wife of Parmod Kumar went to police station on 30.3.2007 for ascertaining the status of the case or found Manjit, Suresh and Charan Singh present at the police station or came to know of their names on inquiries. So, the sole witness relied on by the prosecution with regard to entering into conspiracy has also not supported the

case of prosecution at all. It is also to be seen that as per PW1, sunil was present at the office at 11 a.m. on 3.2.2007 and as such also Sunil could not be present at Kakrola Mour at the same time. Further as per PW1 Sunil stayed for 15-20 minutes and thereafter went away. It must have taken some time to reach Kakrola Mour, where conspiracy was allegedly hatched and Similarly three of the accused persons after hatching conspiracy with Sunil, could not have reached the office at 11.30 a.m.

68. It is also to be seen that No. evidence has been gathered that in fact, Parmod was indebted to Jitender or that Jitender in turn was in indebted to accused Manjit and Mohit. So the aspect of conspiracy is not proved.

69. So far as the recovery of mobile phone of Sony Ericsson having IMIE No. 359302007495780 from accused Manjit and Gold ring from accused Suresh is concerned, prosecution has examined PW2 Smt. Mirdula, regarding the fact that such articles belonged to her husband.

XXX

8. The Trial Court discussed the evidence of PW-2, who had deposed that the deceased was in the business of finance and the Respondents - Raj, Jitender Kumar and Sunil were working with him. She claimed that Sunil had gone to her house at 04.00 pm on 03.02.2007, stating that her husband had called her to his office premises. She had also stated before the police that her husband used to wear gold chain, ring and owned a mobile phone. She disclosed the mobile phone number. The Trial Court noted that the witness was unable to identify the mobile phone and the previous statement recorded by the police was only to the extent that a gold ring and chain belonged to the deceased. The Trial Court further noted that the said witness was declared hostile and in the cross-examination, she denied the incident involving Sunil and also denied going to her husband's premises after the incident, which she had earlier stated to the police.

9. We have considered the submissions of the APP. We have also gone through the Trial Court records. As noticed previously, the prosecution relied heavily on the testimony of PW-1, who claimed to be an eyewitness. She turned completely hostile and did not support the statement made previously. The prosecution had pressed before the Trial Court that the refusal of the Test Identification Parade (TIP) by the accused was a strong circumstance which warranted an adverse inference to be drawn against them, which in turn ought to have been taken into consideration.

10. However, PW-1, in her deposition stated as follows:

XXX

At this stage, Id. APP has pointed out towards accused Manjit Kumar, Charanjit @ Sonu and Suresh @ Sanjay Painter and the witness has stated that it is correct that she has seen these three persons at the Police Station but has volunteered that even at that time she had stated that these three are not the said three

persons.

XXX

11. The only other evidence left with the prosecution was the testimony of PW-2, who had not witnessed the attack and was not a party to the recovery. Even her testimony had significant and grave inconsistencies in the statement recorded by her earlier, not only as to what had been looted but also as to the material aspect, i.e. her presence at the site of occurrence after attack and death of her husband. The Court also noticed that the prosecution did not link the mobile telephone service operator with the deceased. It has been often reiterated by several judgments that the standard applicable when the State seeks leave to appeal against the judgment of a Court on an acquittal is that the Court ought to be satisfied that there are substantial and compelling reasons for a second look Crl. L.P. 76/2011, Crl. M.A. 1706/2011 Page 5 into the matter. Such substantial and compelling reasons include wrong application of law, material errors in appreciation of evidence or adoption of an approach which would lead to miscarriage of justice.

12. Having regard to the entire conspectus of facts and circumstances, we are unperceived that such compelling or substantial reasons exist, warranting the State request for leave. In the circumstances, the Criminal Leave Petition being unmerited, is dismissed.