
(2011) 08 DEL CK 0340
In the Delhi High Court
Case No : Criminal L.P. 122 of 2004

State	Vs	APPELLANT
Narender @ Bholu and Others		RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

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

Citation : (2011) 08 DEL CK 0340

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

Bench : Division Bench

Advocate : Richa Kapoor, app, for the Appellant; Rajesh Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The State by the present petition seeks leave to appeal against a judgment and order of the learned ASJ dated 17.02.2004 in State v. Dhananjay and Ors.. By the impugned judgment, the Trial Court convicted one of the six accused and acquitted others (who are Respondents in this petition).

2. The prosecution allegations were that on 18.04.2001, one Sunil, who used to work with a gas agency - M/s. Gemini Enterprises, was entrusted with Rs. 75,000/- by his employers. He apparently took it and was riding a bicycle. The prosecution alleged that the accused/Respondents as well as the convicted accused (Dhananjay) went alongside Sunil and fired a bullet at him. The further allegation was that money was robbed. The prosecution sought to implicate the accused on the alleged confessional statements made by the Respondents Narender @ Bholu and Parveen, who were arrested along with Dhananjay on 22.04.2001 in connection with another case at Rohtak. The prosecution further alleged that some recoveries were made in this case, which included two guns - one of 3.5 bore (at the behest of Narender) and the other, a Countrymade.32 bore pistol (at the behest of Parveen).

3. The case was entirely based on circumstantial evidence. Besides the Countrymade pistols, the bullet extracted from the deceased and the cartridge was sought to be relied upon to fix criminal responsibility on the Respondents.

4. After considering the materials and the prosecution evidence - one of the alleged chance witness, who turned hostile during the course of trial, the Court was of the opinion that the prosecution established the guilt of Dhananjay beyond reasonable doubt. He accordingly convicted him of the offences charged and sentenced him to undergo rigorous imprisonment for life. The Respondents were acquitted since the Court disbelieved the evidence presented against them, primarily in respect of the seizures and the recoveries allegedly made, as well as the improbability of the bullet having been fired from the Countrymade Pistol.

5. The State had sought leave to file appeal against the acquitted Respondents, urging that the Trial Court failed to consider material evidence against them. Importantly, it was urged during the hearing today that the significant incriminating circumstance as to the use of the pistol which caused vital injuries upon the deceased Sunil - the firearm having been recovered at the instance of Parveen, ought to have been duly given weightage. It was urged that this infirmity is substantial enough for the Court to grant leave.

6. The Trial Court's reasoning so far as the present Respondents are concerned, is contained in the following extract of the judgment:

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As regards other accused, evidence against accused Parveen is confined that when apprehended on 22.4.01 by police force of CIA Staff Rohtak he was in possession of a fire arm.32 bore and later on the empty cartridge recovered at the instance of accused Dhananjay from his car DL 2CJ 8346 on a microscopic examination was found tallying characteristics as fired from this fire arm. Except this evidence there is No. other evidence against accused Parveen besides his disclosure which is inadmissible. Merely an empty cartridge as per report of FSL is opined could have been fired from the fire arm shown recovered from possession of Parveen that by itself cannot be taken as a circumstance clinching the guilt of accused in this offence of murder or to say murder committed in conspiracy. Rest all accused are shown involved by the confessions given by them except that accused Sunil was show to have been found in possession of an amount of Rs. 5000/- bearing bank slip and then stamped M/s. Gemini Enterprises stepped on that currency notes packet. This accused Sunil has been arrested on 25.4.01 and in the circumstance that he was moving in a car in Najafgarh Area and currency note packet comprising Rs. 5000/- was recovered from underneath back seat of the car which accused had taken out and delivered it to the police. There appears a ground in the contention of Ld. Counsel that accused Sunil would carry an incriminating piece of evidence in his car while travelling in a public place. So is the testimony of PW5 on this fact is to be taken by any kind of possible doubt about recovery of this amount as well on the

probable natural human behavior that accused Sunil would carry this incriminating piece of evidence in his car. IO PW 25 fails to elaborate in what circumstances they apprehended accused Sunil and then accused Sunil keeping this amount of Rs. 5000/- took it out from the car. All that IO states that on 25.4.01 he arrested accused Sunil in this case and on interrogation he confessed his involvement and that confession was recorded as Ex. PW25/B. He was arrested from near Jharoda Kalan Nala while he was moving in a maruti car DL 2CC 0473. Accused opened diggi (sic dicky) of his car and then putting rear seat of the car down took out currency note bundle of Rs. 5000/- which was found bearing a slip Punjab and Sind Bank and Stamp of M/s. Gemini Enterprises. Even there is No. corroboration from a police official who could state that accused Sunil was in fact arrested while carrying this currency amount accordingly, I find prosecution fails to prove the fact that in fact Sunil was arrested while carrying this amount of Rs. 5000/-. Even otherwise, this whole fact may not by itself suggest that accused committed this murder or was a part of criminal conspiracy in this murder, as such, charge against accused Sunil also fails. As regards accused Narender and then later on accused Rajbir @ Langda arrested by police, only incriminating evidence against them is there confessional statements, same is the situation as regards accused Rajesh. Except their confessions given to the police after they had been arrested or confession of co-accused implicated that there is No. other evidence against them. Prosecution has already failed to establish that by use of mobile telephone instruments these accused were in conversation before and after commission of this crime, there is No. other admissible any kind of incriminating evidence against them. Accordingly, rest all assured namely accused Narender, Parveen, Rajesh, Sunil and Raju Langda are entitled to be acquitted of the charge. Prosecution thus proves its charge against accused Dhananjay alone and convict accused Dhananjay u/s 397 and 302 Indian Penal Code, 1860.

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7. We notice that the Trial Court took into consideration the circumstance that the FSL report with regard to the pistol clarified that the bullet recovered from the body of the deceased Sunil could not specifically match the firearm in question which was a countrymade pistol.

8. Apparently the individual cross-examination was insufficient to render the exact opinion in this regard. Such being the case, recovery of empty cartridge is insufficient to have resulted in the conviction of Parveen. So far as the other Respondents who were before this Court, are concerned, we are of the opinion that the reasoning of the Trial Court is based on probability and cannot be faulted.

9. It has been held often that the High Court interferes in the judgment of the acquittal by criminal Courts in order to grant leave to the State only if it discerns substantial or compelling reasons, comprehending overlook of material evidence, misappreciation of law or adoption of an approach which would result in miscarriage of justice. Sans this, elements such as existence of errors in facts

would not persuade the High Court to interfere. In our opinion, the Trial Court's reasoning does not reflect any substantial or compelling reasons which would persuade us to grant leave. Crl. Leave Petition 122/2004 is unmerited and is accordingly dismissed.