

(2013) 07 DEL CK 0210
In the Delhi High Court
Case No : Criminal L.P. 55 of 2013

State		APPELLANT
	Vs	
Naushad		RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 378(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 3 JCC 1861

Hon'ble Judges : Kailash Gambhir, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : Dayan Krishnan, ASC and Rizwan Khan, SI, PS Welcom, for the Appellant;

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—By this petition filed u/s 378(1) Cr.P.C., the petitioner seeks Criminal Leave to Appeal to challenge the order of the acquittal dated 16.04.2012 passed by the learned Additional Sessions Judge-01, North East, Karkardooma Courts, New Delhi thereby acquitting the respondent/accused person of the charges framed against him under Sections 302 IPC read with Sections 25 /27 /54 /59 of the Arms Act. Addressing arguments in support of criminal leave to appeal, Mr. Dayan Krishnan, Additional Standing Counsel for State, submits that the chain of circumstantial evidence is complete in the present case, which clearly traces the guilt of the accused but yet the learned Trial Court has passed the order of acquittal. Learned ASC also submits that the weapon of offence was also recovered at the instance of the accused Naushad and even blood stained clothes of the accused were found at the scene of the crime and therefore, the prosecution has established its case beyond any reasonable doubt to prove the guilt of the accused person. Learned ASC further submits that the most incriminating evidence against the accused is that the body of the deceased was recovered from the tenanted room, which was

indisputably in possession of the respondent/accused person.

2. Based on the above submissions, learned Additional Standing Counsel for the State submits that this is a fit case for the grant of criminal leave to appeal so as to challenge the said order of acquittal.

3. We have heard learned counsel for the State at considerable length and given our thoughtful consideration to the arguments advanced by him. We have also gone through the judgment dated 16.04.2012 passed by the learned Trial Court and the other materials placed on record.

4. At the outset, we express our great anguish and displeasure to notice the complete failure of the prosecution in carrying out investigation in a just and fair manner in the present case involving the murder of a married lady aged about 30-35 years, whose body was found in a tenanted room being part of property bearing No. H. No. B-86/4, Gali No. 5, Sudama Puri, Babar Pur, Delhi, which was under the occupancy of accused Naushad, the respondent herein. The said incident was reported by Mohalla persons on 02.12.2009 at 11.00 p.m. when they found that the room was lying locked from outside and a fiendish smell was coming out from there. A PCR van had reached the spot and thereafter an information was passed on to the concerned police station and investigation in the said crime was commenced by Insp. R.K. Jha assisted by other police officials. In the process of investigation, the IO of the case in the presence of the landlord of the said tenanted room had seized the bed-sheet, two pillow covers, blanket and cotton mattress having blood stains vide seizure memo Ex. PW-5/A. The officer had also taken into possession an orange colour salwar suit and bra of the deceased lying on the floor having blood stains vide seizure memo Ex. PW5/6 and gents white shirt and a sky blue inner which was lying on the floor vide seizure memo Ex. PW-5/B. He had also seized one lady's purse containing an amount of Rs. 85/- and one anklet vide seizure memo PW-5/E. The accused Naushad was apprehended by the police from his native place in Bihar and he was produced before the IO on 23rd December, 2009. During the course of his interrogation, the accused Naushad in his disclosure statement Ex. PW20/J had disclosed that he had murdered Bhuri with "churries" and he can get the weapon of offence recovered from the tenanted room and on the same day, the accused Naushad got "one churi" recovered from the slab/taand of the tenanted room and three "churries" from the wooden almirah fitted with wall. He also disclosed that one churi which was lifted from the slap/taand was used to commit the murder of the deceased and other three churris were arranged by him earlier. All the "four churris" were sealed in four separate clothes by the police. The police had also seized mobile phone of the deceased from the possession of the accused Naushad vide seizure memo Ex. PW4/A. As per the post mortem, the deceased had received 24 incised stab wounds, out of which injury Nos. 1 and 24 were post mortem in nature and injury Nos. 2 to 23 were ante mortem in nature and cause of death was due to shock as a result of ante mortem injuries to abdominal organs caused by a sharp edged weapon. It was further certified that

injury Nos. 2 to 23 were sufficient to cause death in ordinary course of nature independently and collectively.

5. In such a shoddy manner the investigation of the present case has taken place that it appears that the I.O. was not a properly trained officer to undertake the task of investigation. The police failed to find out the motive of the crime as no efforts in this direction were made. The police did not bother even to record the mobile number from which initial complaint was made. The police failed to take the finger prints from the spot of crime, which is the first step to be taken by the police in any investigation. The police could not trace out the weapon of offence from the small room of the tenanted accommodation but later on, four "churries" were found on the disclosure of the accused altercating that they had no control over the said room. The police did not take help of any witness at the time of seizure of four "churries" from the spot of crime. The police failed to explain as to how they can connect the blood stained shirt and blue inner with the accused. The police failed to find out and record the statements of two karigars who were working with the accused tailor. The police further did not make efforts to find out as to whether the accused was paying any rent to the landlord and if so in what manner and any rent receipt being issued by the landlord to the tenant. The police did not send all the "churries" for scientific opinion. The police failed to bring on record the IMEI number of ownership of the mobile phone, which was belonging to the deceased and was recovered from the possession of the accused. For any investigation into a crime there is a total dependency on the investigating agency and it is the statutory obligation of every investigating agency to carry out investigation into each and every crime whether big or small in a most fair and impartial manner with complete devotion, honesty and promptness. The investigating officer Mr. R.K. Jha who was also a SHO of the area police station, as told to us, has not performed his duty delinquently, fairly and honestly and due to which an order of acquittal has been passed by the learned Trial Court against the accused. There is enough suspicion arisen in the present state of affairs as to whether the respondent is behind the murder of the said lady or some body else or there may be more than one criminal behind the said ghastly murder of a married lady 35 years of age.

6. Punishment serves as a deterrent to crime and a shield for the innocent. Therefore, an investigating officer cannot afford to be conducting an investigation with haste as any unscrupulous and slack approach may prove lethal to the case. Prosecution plays a key role in assisting the court to reach at a just decision. Evidence that challenges the credibility of the accused or fosters even a slight doubt that if he/she was entirely blameless, increases the burden on the prosecution to clearly prove the entire set of facts. However, it is the cardinal principle of criminal jurisprudence that "no innocent man is punished and no criminal is let scot-free". Therefore, it is important that investigation on which the entire case of the prosecution rests should not be done with lackadaisical approach as it forms the basis to decide whether to save an innocent or put such grimed criminals behind the bars.

7. While dismissing the present criminal leave to appeal we direct the Commissioner of Police, Delhi to hold an inquiry into the role of investigating officer Mr. R.K. Jha and other police officials assisting him in the investigation and take prompt and suitable action against them for not discharging their duties honestly and diligently. Compliance report shall be filed by the police within a period of one month from the date of this order. With these directions, the present criminal leave petition is disposed of.