

(2020) 02 DEL CK 0629

In the Delhi High Court

Case No : Criminal Leave Petition No. 136 Of 2020

State

APPELLANT

Vs

Sonu Singh @ Deva

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302, 394

Code Of Criminal Procedure, 1973 — Section 313, 378

Citation : (2020) 02 DEL CK 0629

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Aashaa Tiwari

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J

Crl.M.A.2704/2020 (Exemption)

Exemption allowed subject to all just exceptions.

Application stand disposed of.

Crl. L.P. 136/2020

1. The present leave petition has been filed under Section 378 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'Cr.P.C') challenging the judgment dated 20.11.2019 passed by the learned Additional Sessions Judge-03, North West:Rohini: Delhi, acquitting the respondent-accused in FIR No. 782/2015 registered with Police Station, Vijay Vihar under Sections 302/394 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. Brief facts of the case, as noticed by the Learned Trial Court, are as under: -

"1. Criminal justice delivery system was set in motion when one call was received at PCR from mobile No. 9813770930 at about 08:02:22 AM on 12/06/2015 to

the effect that murder has taken place at H. No. 88, Gali No.7, Vijay Vihar. Said information was communicated to Police Station(S) Vijay Vihar which was recorded vide DD No. 10A at the PS at 7:59 AM and SI G.R. Tanwar (PW30) was informed to visit the place of incident and take appropriate action as per law.

2.SI G.R.Tanwar (PW30) along with Ct. Rakesh (PW13) reached at the spot i.e. A-98, First Floor, Vijay Vihar, Phase-II where they found on bed a dead body whose name on enquiry was revealed as Peter Herald S/o Thomas Peter R/o H. NO., A-98, Ist Floor, Vijay Vihar, Phase-II. A nice poker (sua) was found embedded/inserted below the right side armpit of the deceased. Two pillows of blue color were lying near the dead body and door of almirah (Store well) was found open in the next room. Crime Team and FSL Team was called at the spot and inspection and photography of the spot was got done besides taking chance prints from the spot.

3. Smt. Prem Lata W/o deceased Peter Herald got her statement recorded to the effect that she alongwith her family live at A-98, Vijay Vihar, as tenant and she live at house NO. 10034, Gali Khalil Azad Market which is her old house. At A-98, Vijay Vihar her son Gladwin Peter along with his family lived as tenant and he along with his family had gone to Gorakhpur for the last one month. She and her husband had been living at the house of her son for the last 2-3 month. Brother-in-law of her son Sonu Singh (accused herein) was also living with them. Sonu Singh had been staying with them for the last 15 days and her son had left Sonu Singh 15 days ago saying that he would soon get him employed. On 11/06/2015 at about 7:30 PM she went for her duty after cooking meal. She worked as Nurse in St. Stephen Hospital. On 12.6.2015 when she became free from her duty she received a call from Kalu (PW3) who works with her son at Pitampura parking and asked her to come fast home and then she asked as to what's the matter he only told her that come fast home. She reached home by 7:35 AM and found latches were on from outside of door of the house and when she entered the house after opening the latches she found her husband lying on bed. She called him out but he did not get up and then she touched him in order to examine and she found his body cold and an ice poker embedded in him in the right side and almirah was found opened. Sonu Singh was not found at the spot. She further stated that her husband had been murdered and Sony Singh had role in it. She prayed that action be taken against him. Rs. 5000-6000/- was also found to be missing and rest her son would tell.

4. On the basis of statement of Prem Lata FIR was got registered under Section 302/394 IPC and investigation was handed over to Inspector Kanchan Lal Meena (PW33)....."

3. During the course of investigation, the accused was arrested on 02.07.2015 at about 1:32 PM and charge sheet under Section 302 and 394 IPC was filed against accused Sonu Singh @ Devi. On 13.10.2015, Trial Court framed charge only under Section 302 IPC to which the accused Sonu Singh pleaded not guilty and claimed trial. In order to bring home the guilt of the accused, the

prosecution has examined 41 witnesses in all.

4. Statement of the accused was recorded under Section 313 of Cr.P.C wherein he denied the entire incriminating evidence against him and claimed to be innocent and that he was falsely implicated at the behest of the complainant Prem Lata W/o deceased Peter Herald. The accused chose not lead any evidence in his defence.

5. Ms.Aashaa Tiwari, APP for State contended that the impugned judgment dated 20.11.2019 passed by the learned Sessions Judge is based on conjectures and surmises and thus cannot stand the scrutiny of law and the same is liable to be set aside; that the trial court failed to appreciate the testimonies of PW-3 (Vijay/Kalu), PW-4 (Gladwin Peter) and PW-29 (Preeti Singh) in correct perspective and based the acquittal of the accused on the basis of minor contradictions in the testimonies of the prosecution witnesses; that the learned trial court erred in ignoring the fact that PW-3 (Vijay/Kalu) in his testimony has clearly deposed that he and accused consumed liquor at about 06:30 PM which was not denied by the accused in his statement recorded under Section 313 Cr. P.C. and thereafter the accused went to the house of the deceased and despite knocking the door the accused did not open the door; that the trial court further erred in ignoring the testimony of PW-4 (Gladwin Peter) wherein he claimed that on 26.06.2016 he received a threatening call from the accused; that the learned trial court further erred in ignoring the Scientific evidence whereby the chance prints taken from the almirah lying in the house of the deceased matched with the finger prints of the accused; that the learned trial court further erred in ignoring the conduct of the accused after the commission of the crime, as he switched off his mobile phone after the incident and even failed to attend the funeral of the deceased; that the prosecution successfully established motive behind the murder which the learned trial court failed to consider; lastly the learned counsel urged that the trial court has failed to correctly appreciate the facts and circumstances of the case hence, the impugned judgment is liable to be set aside.

6. We have heard learned counsel for the State and have also perused the entire material placed on record.

7. Since the present case is based on circumstantial evidence, it is essential for us to determine whether or not a complete chain of events stand established from the evidence produced by the prosecution. What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the appellants to be found innocent.

8. PW-15, Dr. Mukesh Kumar and PW-16 Dr. Vijay Dhankar proved the postmortem report (Ex. PW15/A) as per which the deceased did not die due to natural causes or in ordinary course of nature but died due to 'asphyxia consequent upon throttling'. In order to scrutinize the arguments raised by

counsel for the State, it is relevant to scrutinize the testimonies of relevant prosecution witnesses i.e. PW-3 (Vijay/Kalu), PW-4 (Gladwin Peter) and PW-29 (Preeti Singh). PW-3 (Vijay/Kalu) during his examination in chief deposed as under: -

"On 11.06.2015, I alongwith brother in law of Bobby namely, Sonu Singh had consumed liquor at about 6:30 pm on the roof of my room at the time, I received a telephonic call on my mobile phone from my native village and I started talking on my mobile phone during which Sonu had gone to the flat of Bobby. At about 9:00 pm on 11.06.2015 I also visited the flat with Bobby for dinner as I used to have dinner there only. I used to bring flour (aata) from my native village and used to give the same at house of Bobby. On said date, mother of Bobby namely, Prem Lata used to prepare chapatti for me. At about 9:00 pm at Bobby's flat, the door was bolted inside. I called Sonu but none opened the door. I thereafter made a telephonic call to Bobby stating that Sonu is not opening the door, on which, he told me to go and sleep. I accordingly went back to my room and slept there.

On the next morning, at about 6:30 am, I again visited Bobby's flat, at that time, I find the bolt of door was closed from outside. I opened the same and went inside and saw father of Bobby namely, Harold Peter was lying dead. I saw a sua penetrated in the body of Harold Peter towards right side of his chest. I thereafter make a telephonic call to mother of Bobby namely, Smt. Prem Lata, who was in the hospital. I informed her about the facts thereafter she came at the flat. Thereafter, I made a call at 100 number to the police. I feel that accuse Sonu must have killed father of Bobby....."

9. PW-4 (Gladwin Peter) during his examination in chief deposed as under:-

".....On 12.06.2015, I was in the native village of Preeti Singh with her. At about 8:00 am, I received a telephonic call from my friend Vijay @ Kalu that Sonu Singh had killed my father Harold Peter and had run away after switching off his mobile phone (objected to being heard say). I alongwith Preeti Singh came back to Delhi and performed the last rights of my mother After 4-5 days of death of my father, my mother Prem Lata had also expired, after sustaining heart attack.

On 26.06.2015, at about 10:30 pm a call was received on the phone of Preeti Singh from Sonu Singh threatening to kill me stating that he will get same punishment for one murder as would be given to him after committing 10 murders.....".

During cross-examination the witness deposed as under: -

"After receipt the telephone call from Sonu on mobile phone of Preeti, no written complaint was given by Preeti to the police. (Vol. I had informed about the threatening call made by Sonu to SHO PS Vijay Vihar). Preeti in my presence had not given any statement regarding this phone to the Investigating Officer of this case.

It is wrong to suggest that I am taking a false plea of Sonu Singh threatening on the mobile of Preeti Singh to boost my false case. It is wrong to suggest that just on the basis of information I presumed accused Sonu Singh as an assailant in the present case."

10. PW- 29 (Preeti Singh) during her examination in chief deposed as under: -

"I do not remember the date or month, but it was in the year 2015. I had gone to my native village in Gorakhpur. I know the accused Sonu Singh, present in Court (rightly pointed out). He is my real brother. I do not know anything in respect of present case. I have nothing more to say..."

During cross-examination the witness deposed as under: -

".....It is incorrect to suggest that out of my earnings, I

had purchased piece of land in village Badona, Khushi Nagar, UP. In fact, the said land belonged to my father.

XXX XXX XXX

It is incorrect to suggest that Sonu Singh used to object to my selling land of my father, or that he used to say that Gladwin and his family would take away the sale proceeds of the plot., I had never so stated to police (attention of witness is drawn to statement Ex. P29/A, portion X to X1, where it is so recorded.) It is correct that on 12.06.2015, at about 8.00am., Kalu gave a telephone call to the fact that father of Gladwin had been killed. It is incorrect to suggest that Kalu informed that it was Sonu Singh, who had killed him. I had not mentioned this fact to police (attention of witness is drawn to statement Ex. P29/A, portion Y to Y1, where it is so recorded).

XXX XXX XXX

As I do not have any knowledge in this regard, I cannot say if on 26.06.2015, at about 10.30 p.m., Sonu Singh called up Gladwin on his mobile or threatened to kill him claiming that punishment for one murder would be the same as ten murders (attention of witness is drawn to statement Ex. P29/A, portion Y2-Y3, where it is so recorded)....."

11. From the perusal of the aforesaid testimonies it transpires that there are various contradictions and inconsistencies in the statement of these material witnesses: -

a. As per the testimony of PW-3 (Vijay/Kalu) 'brother in law of Bobby namely, Sonu Singh had consumed liquor at about 6:30 pm on the roof of my room at the time, I received a telephonic call on my mobile phone from my native village and I started talking on my mobile phone during which Sonu had gone to the flat of Bobby'. PW-3 (Vijay/Kalu) further deposed that 'At about 9:00 pm at Bobby's flat, the door was bolted inside. I called Sonu but none opened the door. I thereafter made a telephonic call to Bobby stating that Sonu is not opening the

door, on which, he told me to go and sleep. I accordingly went back to my room and slept there'. However, the testimony of PW-3 (Vijay/Kalu) is contrary to the statement of the complainant (Prem Lata W/o deceased) Ex. PW4/A, wherein she has stated that 'kal dinank 11.06.15 ko samay karib 7.30 baje raat ko apni Duty par khana banakar chali gayi thi'. Further, nowhere in her statement (Ex.PW4/A) it has been mentioned that while leaving for her 'Duty', Sonu Singh /accused was present in the house with the deceased.

b. As per PW-3 (Vijay/Kalu) at about 9:00 pm he called Sonu Singh/Accused but none opened the door and thereafter he made a telephonic call to PW-4 (Gladwin Peter). However, his testimony does not find corroboration with the Call Detail Records of phone number 9813770930 (the phone from which a call to 100 number was made). As per the Call Detail Records of phone number 9813770930 no outgoing calls weremade from 27.05.2015 to 12.06.2015 and it was further revealed that no call was received after 16:34:35 on 11.06.2015 on the mobile phone number 9813770930. The aforesaid revelationsshow that the claim of PW-3 that he received a phone call from his native place at 06:30 pm on 11.06.2015 and also his claim that at 09:00 pm on 11.06.2015 he made a call to PW-4 (Gladwin Peter) is not supported from the evidence on record.

c. As per PW-4 (Gladwin Peter) 'on 26.06.2015, at about 10:30 pm a call was received on the phone of Preeti Singh from Sonu Singh threatening to kill me stating that he will get same punishment for one murder as would be given to him after committing 10 murder', and thereafter he informed about the threatening call to the SHO, PS Vijay Vihar. However, the testimony of PW-4 (Gladwin Peter) is contrary to the testimony of PW-29 (Preeti Singh) who deposed that 'I cannot say if on 26.06.2015, at about 10.30 p.m., Sonu Singh called up Gladwin on his mobile or threatened to kill him.....' .Moreover, PW-33 (Investigating Officer, Inspector, Kanchan Lal Meena) failed to mention anything about the intimation received by him through phone from PW-4 or PW-29.

12. Another argument raised by learned counsel for the State is that the prosecution has successfully established motive, however, the learned trial court failed to consider the same towards the guilt of the accused person.

13. As per the case of the prosecution, accused did not want his sister Preeti Singh who was in live-in relationship with PW-4 (Gladwin Peter), to sell her land in native place and in order to prevent her from selling the land he killed the father of PW-4 (Gladwin Peter). In this regard, it is relevant to peruse the testimony of PW-4 (Gladwin Peter) who deposed that 'Preeti Singh was interested to sell of the land in Bihar in order to purchase a house in Delhi to which Sonu Singh object to'. However, the testimony of the PW-4 (Gladwin Peter) is contrary to the testimony of PW-29 (Preeti Singh) who deposed that 'It is incorrect to suggest that Sonu Singh used to object to my selling land of my father, or that he used to say that Gladwin and his family would take away the sale proceeds of the plot., I had never so stated to police (attention of witness is drawn to statement Ex. P29/A, portion X to X1, where it is so recorded.)'. From the

perusal of prosecution witnesses it has not been established that the accused has committed the alleged offence and the motive of the accused was to deter Preeti Singh from selling the land which belonged to the father of accused, hence the argument raised by counsel for the State in relation to motive holds no ground.

14. In view of the above, we find that the testimonies of PW-3 (Vijay/Kalu), PW-4 (Gladwin Peter) are inconsistent and contradictory to each other. Though the prosecution has established that the chance print taken from the almirah lying in the house of the deceased matched with the finger prints of the accused but the same does not point towards the guilt of the accused as the prosecution themselves had contended that the accused was a frequent visitor to the house of the deceased and PW-4(Gladwin Peter) had asked the accused to take care of him and look after his business. Moreover, neither the motive has been proved by the prosecution nor the prosecution was able to connect the sua/poker with the accused.

15. In the present case, on a cumulative reading and appreciation of the entire evidence on record, I am of the considered view that the evidence on record have been held to be unworthy of acceptance because the same is found to be replete with infirmities. There are considerable inconsistencies and discrepancies in the statements of the witnesses, which consequently makes them fabricated and unreliable. Therefore, the prosecution has failed to disclose the true genesis of the crime and establish the charges against the accused punishable under Section 302 of the IPC.

16. It is a settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast thereto in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case, the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favor's the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.

17. Having regard to the principles laid down by the Apex Court in the case of Ghurey Lal vs. State of U.P., reported at 2008 (10) SCC 450, we do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully analyzed the evidence of all the witnesses.

18. Accordingly, no ground to interfere with the impugned judgment is made out and the leave petition is dismissed.