

**(2011) 04 DEL CK 0255**

**Delhi High Court**

**Case No:** Criminal L.P. 44 of 2011

State (NCT of Delhi)

APPELLANT

Vs

Giripal @ Ginni

RESPONDENT

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**Date of Decision:** April 27, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378(3)
- Limitation Act, 1963 - Section 5
- Penal Code, 1860 (IPC) - Section 201, 302, 34

**Citation:** (2011) 4 Crimes 347 : (2011) 2 JCC 1501

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

**Bench:** Division Bench

**Advocate:** Saleem Ahmed, app, for the Appellant; Nemo, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

G.P. Mittal, J.

Crl. M.A. No. 1003/2011 (under Section 5 of the Limitation Act.)

1. Delay condoned for the reasons as stated in the application.

Crl. L.P. No. 44/2011

2. The State by virtue of this petition seeks leave to file an Appeal against the judgment dated 13.08.2010 passed by the learned Additional Sessions Judge (ASJ) acquitting the Respondent of the offence punishable under Sections 302/201/34 Indian Penal Code (IPC).

3. The facts of the case can be extracted from Para 1 of the impugned judgment. The same are:

1. The accused Giripal @ Ginni and the accused Rajat Panchal @ Monu (juvenile) were sent up for trial by police of Police Station Gokalpuri for offence punishable under Sections 302/201/34 IPC on the allegation that on 26.11.2004 on the receipt of PCR call vide DD No. 2A regarding recovery of male dead body, ASI Gajender along with Ct. Tej Pal Singh reached as Transformer Wali Gali, Sadatpur Delhi, where a dead body was found facing the sky and sharp edged weapons wounds were seen over deceased neck and abdomen. The pant of deceased was having open Zip and underwear was visible. ASI Gajender made appeal to the crowd for identification of the deceased and on his appeal one lady named Roshni wife of the deceased came forward and identified the deceased as that of her husband Sujan Singh and made her statement to ASI Gajender Singh. District Crime Team and photographer was called on the spot and SHO Gokalpuri Inspector Satyapal Singh was informed. Smt. Roshni stated in her statement that her husband Sujan Singh used to work as Tent Tailor, sometimes at home and sometimes at the vendors home. He was stitching tent at home for last 15 days. Yesterday i.e. 25.11.2004 about 7:00 on the one tent vendor from Libaspur namely Virender, whose tent was stitched by her husband, came to her house and gave Rs. 2400/- and took away his tent. At about 8:00 pm, her husband returned back at home and she told him about Virender and Rs. 2400/-. On this her husband told her that work was worth of Rs. 3500/- and Virender gave less money and he is going to Virender's relative Prahalad at Chand Bagh for remaining money. At about 8:30 pm her husband took dinner and went on his cycle. At that time, he wore blue colour shirt and black full sleeves banian (vest), and black leather chappals. Her husband did not return in night and now one Vishnu, known to her, came to her house at about 8:00 am and told that dead body of her husband was lying at Gali Transformer wali Gali. On this information, she along with her elder son Sikander reached at the spot where police met her. Somebody killed her husband. On her statement FIR was registered. Inspector Satyapal Singh, the then SHO PS Gokalpuri took up the further investigation. The postmortem on the dead body was got conducted. Blood on gauze from earth, blood stained earth and earth control were taken from the spot. Statement of one Yasin was recorded. IO collected the telephone number of Virender Singh and contacted him, and interrogated Vishnu and recorded his statement and also recorded statement of Virender Singh. IO also recorded the statement of Rakesh Kumar from whose STD deceased Sujan Singh made telephone call to Virender Singh. IO also interrogated one Gopal Singh who disclosed that the cycle of the deceased was lying in his shop and on whose instance one cycle was taken into possession. IO also recorded statement of Dinesh, who informed the police about lying of dead body. IO interrogated Ginni Panchal, Rajat Panchal and his sister Usha but all of them narrated different stories. On 27.11.2004 postmortem on the dead body was conducted at Mortuary, GTB Hospital by Dr. Arvind Kumar, who gave cause of death as hemorrhagic shock as a result of ante-mortem injury to neck and abdominal vessels produced by pointed blunt weapon and found 24 injuries on the body of deceased Sujan Singh. Thereafter IO along with Raju Togadiya, son of deceased reached at the house of accused Ginni

Panchal and IO interrogated accused Ginni Panchal and Rajat Panchal and on thorough interrogation both confessed their crime and gave disclosure statement. They were arrested and in pursuance to their disclosure statement they produced one blue shirt of deceased Sujan Singh. IO took shirt of accused Ginni Panchal and Rajat Panchal into his possession and two blood stained dusters were also recovered at their instance. Accused Ginni Panchal also got recovered blood stained knife. They pointed out the place i.e. Gali Transformer wali Sadatpur where they dropped the dead body and also pointed out the place i.e. Shiv Tent House, Gali No. 8, Prem Nagar, from where they had taken the wooden rickshaw rehri whose floor was blood stained. On 29.11.2004, Sh. Naresh Kumar, Expert Biology Division, FSF Rohini came to scene of crime and inspected the room and lifted one sample from wall, which was seized by Inspector Satyapal Singh. Subsequent Opinion regarding weapon of offence was taken. Dr. Arvind, who conducted the postmortem on the dead body, gave the subsequent opinion that injury No. 2,3 and 6 can be caused by weapon. After completion of the investigation, the chargesheet was filed in the court.

4. In support of its case, the prosecution examined 26 witnesses.

5. PW-2 Gopal Singh is the witness of the last seen evidence whereas PW-6 Raju Tobaria, SI Suman Kumar and PW-17 HC Raj Kumar are the witnesses of the making of the disclosure-cum-confessional statement Ex.PW-21/A (by the Respondent), recovery of blood stained shirt belonging to the deceased, recovery of the blood stained shirt of the Respondent and recovery of the weapon of offence.

6. In his examination u/s 313 Code of Criminal Procedure the Respondent denied the prosecution's allegations. He took up the plea that he was implicated in the case falsely on account of business rivalry with Virender, Yasin and Prahlad. The Respondent stated that he was called to the Police Station where Virender, Prahlad and Yasin were already present; the police official released them and falsely implicated him and Rajat Panchal (Juvenile) in this case.

7. The Respondent further urged that her sister had no relationship with the deceased. She was married and living happily with her husband at Village Subanpur, District Bagpat, U.P.

8. We have heard Mr. Saleem Ahmed, learned Additional Public Prosecutor for the State and have perused the record.

9. The law does not allow the State to file an Appeal against an order of acquittal. u/s 378(3) Code of Criminal Procedure., the State has to seek leave to file an Appeal. The powers of an Appellate Court are not limited, while hearing an Appeal against the acquittal and it has the same powers as it has while hearing the Appeal against an order of conviction. Yet, the fact remains that the presumption of innocence which is attached to every accused, unless proven guilty, is strengthened and reinforced by an order of acquittal. Thus, the Courts interfere in an order of acquittal where the

finding of the Trial Court is perverse or there is gross mis-application of law. The Appellate Court interfered with the order of acquittal where there are compelling and substantial reasons.

10. The Supreme Court in [Syed Peda Aowlia Vs. The Public Prosecutor, High Court of A.P., Hyderabad](#), summed up the law after referring to various earlier decisions as under:

5. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. See [Bhagwan Singh and Others Vs. State of Madhya Pradesh](#). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

11. From the testimony of PW-1 Roshini, PW-5 Sikandar, PW-6 Raju Tobaria, PW-11 Dr. Arvind Kumar who conducted the post mortem examination on the dead body of the deceased, there is no manner of doubt that the deceased met a homicidal death on or about 10:00 P.M. on 25.11.2004. There is no direct evidence about who caused the death of Sujan Singh. The case of the prosecution rests on circumstantial evidence. The Trial Court relied upon [State of U.P. Vs. Satish](#), as to how the circumstantial evidence should be appreciated when there is no direct evidence to connect the accused with the commission of an offence. The same is:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (iii) the circumstance, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The accused can be convicted on the basis of circumstantial evidence, if the chain of circumstance is complete.

12. According to the prosecution, on 25.11.2004, the deceased Sujan Singh reached his home at about 7:00 P.M. He was informed by his wife Roshini (PW-1) that one Virender (Tent Wala) took a stitched tent from his home and paid her (PW-1) Rs. 2,400/-. Deceased Sujan Singh expressed displeasure against Virender and left to see one Prahlad at Chand Bagh, who is Virender's relative to obtain the balance money. The other part of the prosecution version is that on 25.11.2004 when the Respondent entered his house, he found the deceased Sujan Singh in an objectionable position with his sister Usha and in order to take revenge of the loss of prestige, the Respondent along with co-accused done the deceased to death.

13. The Trial Court found the prosecution version to be unbelievable and the alleged recovery of the blood stained clothes of the deceased, blood stained clothes of the Respondent and other articles to be doubtful to convict the Respondent on the basis of circumstantial evidence.

14. We fully agree with the view taken by the Trial Court. We are convinced that there are too many holes in the circumstantial evidence relied upon by the prosecution which would make it quite unsafe to believe the prosecution version.

15. Firstly, according to the prosecution, the cause for murdering the deceased was that he was seen in an objectionable position with his sister Usha, when the Respondent along with co-accused entered the house at about 10:00 P.M. According to the prosecution, deceased returned to his house at about 7:00 P.M. on 25.11.2004 when the information of payment of an amount less than what was due to him was given to the deceased by his wife (PW-1). The deceased wanted to meet Prahlad at Chand Bagh whose house was at a short distance. According to PW-2 Gopal Singh, the deceased came to him at about 8:45/9:00 P.M. The deceased requested him to accompany him to Roshan Vihar as he (the deceased) had some urgent work. He took his two wheeler and accompanied the deceased to Roshan Vihar. They reached Ginni Panchal's house who used to deal in tents. PW-2 deposed that at that time two males and one female were present in the house. The Respondent was one of the two males. He and the deceased conversed for 2/3 minutes for providing tent on the next morning. The Respondent enquired from the deceased if he would like to leave with him or would he stay there. According to this witness, the deceased at that time told him that the place was just like his own home and he would return by himself. PW-2 further deposed that he waited in the shop for 10/15 minutes but the deceased did not return. He, therefore, left his cycle in the shop, locked it and left

for his house.

16. Thus, according to PW-2, the deceased reached the house of the accused persons after 9:00 P.M. At that time, PW-2 noticed two males including the Respondent and one female. According to the prosecution, Respondent's house was quite small. One of the rooms, was tenanted and there were two other small rooms. If the Respondent and the co-accused were present past 9:00 P.M. in their own house, it was not possible for the deceased being noticed (or sleeping) in an objectionable position (with his pants down) with Usha, the Respondent's sister.

17. According to the prosecution, PW-1 (the deceased's wife) waited for the deceased for some time and then came to the shop of PW-2 who informed her that the deceased went to the house of the Respondent. It is improbable that deceased's wife would visit PW-2 Gopal Singh's on being worried about absence of her husband (the deceased), but, would not travel another 11/2 kilometers to the house of the Respondent to enquire about her husband.

18. Although, as per PW-1 she visited Gopal's shop on 25.11.2004 and was also informed about the deceased having gone to the house of the Respondent, by Gopal. Yet, no such statement was made by PW-1 to the police immediately at the time of recovery of the dead body on the morning of 26.11.2004.

19. PW-23 Inspector Satpal Singh, IO of the case, deposed having visited the house of the Respondent on 26.11.2004 to enquire from them and they had given evasive replies. It is strange that he did not notice any blood stains on the wall of the room which were later on found by him on 27.11.2004. On 29.11.2004 Mr. Naresh Kumar, an Expert from FSL Rohini was summoned to take the sample of the blood from the wall, which according to the prosecution matched with the blood of the deceased.

20. Another, intriguing fact is that there is no public witness to the recovery of the blood stained shirts, duster and the knife at the instance of the Respondent. Although, PW-1 is not a signatory to the recovery memos she stated that the accused was arrested and the recoveries effected in her presence and in presence of her son Raju. According to PW-1 her elder son PW-5 Sikandar accompanied the dead body on 27.11.2004 to the native village (in District Mahendergarh which is about 200-250 kilometres from her residence). She claimed that she returned to Delhi in the evening by about 6:00 P.M. The post mortem of the dead body was performed on 27.11.2004 at 10:05 A.M. The body may have been received somewhere near noon time. It was impossible that a distance of 400-450 kilometres, including the time for cremation could be covered in 6-7 hours.

21. The circumstances on the record create doubts in the prosecution version. They are compatible with the innocence of the Respondent. In view of the law laid down with regard to the circumstantial evidence, the Trial Court correctly gave benefit of doubt to the Respondent and acquitted him.

22. We do not find any error or infirmity in the impugned order. Under these circumstances, the State is not entitled to the grant of leave to file an Appeal; the leave petition is accordingly dismissed.