

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

SLAA No.252/2014

c/w

Cr.Acq. Appeal No.240/2014

Date of order:- 12.02.2015

State of J and K
V.
Narayan Dass and anr.

Coram:

**Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge
Hon'ble Mr. Justice Tashi Rabstan, Judge**

Appearing Counsel:

For the petitioner(s) : Mr. Monish Chopra, GA.

For the respondent(s): Mr. M. P. Gupta, Advocate.

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| (i) Whether to be reported in Press,
Journal/Media | Yes/No. |
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| (ii) Whether to be reported in
Journal/Digest | Yes/No. |
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Per-Yaqoob Mir-J.

1. Leave is sought to challenge the judgement passed by the Court of learned Sessions Judge Ramban in the case of State v. Narayan Dass and ors dated 13.3.2014 wherein respondents-accused have been acquitted.

2. The police machinery was set in motion on the basis of sources information to the effect that a human body of a male in decomposed state was lying in the bushes behind Hotel Green Land, Patnitop on 21.4.2011. Inquest proceedings under Section 174 CrPC were initiated.

3. During enquiry, it surfaced that one-Sunil Kumar Doshi S/o Uttam Chand R/o Hut Post Rashian District Ahmadnagar, Maharashtra was found registered in the entry-register of the said Hotel for room no.109 of the Hotel. The family members of the deceased when contacted came to Batote and identified the dead body.

4. It also emerged that the deceased has undergone heart by-pass surgery from Bangalore. He had carried an amount of about Rs.40,000/- to Rs.45,000/-, a Mobile Phone with sim no. 8888646414, a Simex Wrist watch and a bag, alongwith him. On 15.03.2011, he rang up his family from Delhi, informing them he was going on a tour to the State of Jammu and Kashmir.

5. During investigation, it had surfaced that on 16.03.2011 the deceased had arrived at Patnitop and on way tourist guide namely Barkat Ali (respondent no.2) had taken him to Green Land Hotel Patnitop where he was allotted room no. 109. Entry was made in the entry-register of the Hotel. Allegedly waiter Narayan Dass (respondent no. 1) was assigned the responsibility to provide meals to the deceased in room no. 109. Respondent no. 2 had also come to the said room in the evening and after dinner both accused and deceased slept in the same room.

6. On 17.03.2011, Narayan Dass (respondent no. 1) had informed the manager namely Prithvi Raj that Sunil Kumar who was staying in room no. 109 left for Srinagar. He had paid the bill of food amounting to Rs.300/-. The check-out time was 6:00 am as reflected in the register.

7. Post mortem and FSL reports suggest that there was possibility of death due to throttling and torture.

8. It has also come up during investigation that the deceased after having dinner had asked for liquor and beer for which he had paid money to the accused Narayan Dass. Both the accused had seen the amount which the deceased had and both deceased and the respondents had taken the liquor and slept.

9. Allegedly it is during intervening night, accused conspired to kill the deceased so as to take the cash amount as was lying with the deceased. Both the accused throttled and killed the deceased, thereafter took wrist watch and cash amount of Rs.5000 from the bag of the deceased and broke the Mobile Phone with an intention to destroy the proof. It is also alleged that both the accused dragged the dead body from room no. 109 to veranda of the hotel. Barkhat Ali-accused threw dead body from Veranda of the Hotel which was held by the other accused Narayan Dass. Then they took a spade, dug

the pit 200 ft away behind the Hotel and buried the dead body. The spade was kept near the dead body.

10. During investigation, it had also surfaced that accused persons made disclosures, the incriminating articles were recovered on their identification. The dead body was also recovered on their identification. The case was registered for commission of offences punishable under Sections 302/279/201/34 RPC against the accused. Charge was framed by the trial Court to which both the accused pleaded not guilty as such claimed to be tried. As many as 15 prosecution witnesses were examined and in defence two witnesses were examined.

11. There is no direct evidence, therefore, case totally hinged on circumstantial evidence. It is trite that circumstantial evidence must be such which must form a chain so as to show that from all angles it is only the accused and none else who had committed the crime, any break in link in the chain of circumstances has to be to the advantage of the accused.

12. Learned trial Court while appreciating the evidence has correctly opined that except PW- Dilawar Mohd, no prosecution witness has supported the prosecution case. PW Sansar Chand has made it clear that an unidentified dead body of which some parts had been eaten up by the wild

animals was recovered from Hotel Green Land. He has proved the custody memo of the dead body EXT-P2/A and seizure memo of articles EXT-P2 has identified the articles in the Court. In the cross examination he has stated that he does not know where from the police recovered the dead body as he was shown the dead body by the police in an open place at a distance of 150 ft from the Hotel. No local was present on spot. There was also a wrist watch on left wrist of the dead body. A spade, a glass and glove were recovered. Spade was new, not rusted. Clothes of the dead body could not be identified. His statement was not recorded.

13. PW Jagdish Chand has stated that the dead body was buried in the forests near Green Land Hotel. A spade, a belcha and glass was seized by the police. He has approved the seizure memo EXT-P2 and custody memo EXT-P2/A and the seizure memo of hotel register EXT-P2/B. Further, he has stated that seizure memo was prepared on spot, signatures were also obtained.

14. PW Pankaj Kumar has stated that one month's ago, he had photographed a dead body on the asking of the police at Batote Hospital. He has identified the photographs. Further on examination, he stated that police has obtained his signatures on a couple of blank papers.

15. PW Mohd Saleem Constable has stated that a dead body was unidentified, same was kept in the Hospital for identification. He has approved the seizure memo of clothes of the dead body and rings. In cross examination, he has stated that article were shown to him by SHO.

16. PW Prithvi Raj has stated that he was working as manager in Green Land Hotel Patnitop for last 14 years. Accused Narayan Dass and 4-5 employees were working in the Hotel in the year 2011. On 16.03.2011, accused Narayan Dass allotted room no. 109 to one Sunil Kumar. Same is entered in the register. On the morning, he enquired from Narayan Dass about the deceased who told him that customer of room no. 109 had left for Srinagar. Further, stated that Chander Singh was waiter of room no. 109. The accused Narayan Dass was providing food, who served food at 10.00 PM. Narayan Dass had paid for the food. On 21.04.2011, police recovered dead body of the deceased from forest at a distance of 300-400 ft away. He admitted the seizure memo of hotel register EXPT-PT/B. On cross examination stated Chander Singh and Kamlesh Kumar were other employees of the hotel. He had seen deceased at the time of entry. Thereafter, he did not see him. He was told by accused Narayan Dass in the morning that the deceased left at 6.00 am.

17. PW Dev Raj had stated that his signatures were taken by the police. Some burnt articles were handed over to accused Narayan Dass and a watch was put in the hands of Barkat Ali by the police. He has been declared hostile but in the cross examination, nothing favourable to prosecution has been elicited. He has qualified that in his presence, no disclosure was made, and neither any article was recovered. PW Dilawar was not present at the time when the accused was taken to Bhaderwah road nor anybody else was along with the police. Signatures of Mohd Dilawar were not taken in his presence. He has heard that PW Mohd Dilawar has made a false statement and cooked a case against the accused to save his son. He has denied contents of memo of seizure, disclosure and recovery.

18. PW Darshan Singh has stated that Mansar, police recovered bag containing a watch and burnt pieces of bag. He and Lamberdar Dev Raj were told that the said articles had been recovered from the accused persons. His statement was not recorded by the police. Statement under Section 161 CrPC is attributed to him. He has also denied memos of seizure and recovery. In cross examination, he has qualified that except him and Dev Raj, no one else was along with the police.

Accused Narayan Dass and PW Dilawar Mohd were not present there.

19. PW Sumanji Sharma (Naib Tehsildar) has stated that a sealed packet marked A and sealed medicine strip was produced before him. Then he had issued letter addressed to FSL.

20. PW Pawan Abrol Assitant Sc. Officer FSL Jammu has stated that on 20.04.2011, he had received a sealed packet, forwarded by Assistant Surgeon SKM Hospital Batote. On 27.04.2011, the exhibit was found sealed with 14 seals intact which tallied with the specimen seal impression. Exhibit B contained kidney and lungs. After various chemical tests and chromatographic examination, no poison was detected in all the exhibits. In cross examination, he has stated that the death of the deceased by heart attack could not be ascertained by him. In case of Cardiorespiratory arrest, full heart is required to be tested by pathological lab.

21. PW Shakeel Ahmed (Doctor) has stated that he had conducted the Post Mortem of unknown dead body. In his opinion, no definite cause of death could be ascertained as the viscera sent for chemical examination revealed no poisoning and also in the advanced mutilation of body maggots, no external injury could be seen. A probable cause

of death could be airway obstruction leading to Asphyxia. The dead body was later on identified by the relatives of the deceased namely Ashok Kumar Doshi (Brother), Sarika Sunil Doshi (Wife) and Rahun (Son) of the deceased. On cross examination, he has stated that the death could be possible by cardio-respiratory arrest. In view of Post Mortem report, the approximate time since death could not be ascertained.

22. PW Ghulam Nabi, SHO, Police Station Batote has stated that the deceased had come to State of Jammu and Kashmir as tourists during the intervening night of 16/17 of march, 2011. Case was registered as FIR no. 44/2014 for offences under Section 302/201/297/34 RPC.

23. Accused were arrested for made disclosure in the custody to the effect that they had killed the deceased. On the cross examination of the accused, witnesses has stated that Hotel Green Land belonging to Mohd Yousuf Mir which had been obtained on contract by Dilawar Mohd and his sons. The hotel was run by Dilawar himself and the services of the accused had been hired. There were four employees in the hotel. He did not seize any record with respect to their attendance.

24. According to manager of the Hotel, accused no. 1 had proceeded on leave after the occurrence. PW Arun

Kumar SI had stated that statement of Dilawar under Section 164A CrPC was got recorded. On cross examination, neither he recovered nor he seized the bag, ashes or clothes of the deceased.

25. PW Bharat Sharma Inspector had stated that he was posted as SHO Police Station Batote on 26.6.2011. He was satisfied with the investigation of the case.

26. The aforesaid witnesses except witness-Dilawar Sheikh have not connected the accused with the commission of the offences. The another surprising situation which has emerged is that the waiter Chander Singh who as per PW Prithvi Raj (manager of the hotel) was serving room no. 109 has not cited as witness when he was the most important witness. Withholding of such witness is suspicious. Kamlesh Kumar was also an employee of the hotel, he too has not been cited as a witness. The wife, son and brother of the deceased who had identified the dead body and the articles too have not been cited as a witness. That apart, PW Sansar Chand, PW Jagdish Chand, Pankaj Kumar, Prithvi Raj, Dev Raj too have not supported the prosecution case.

27. According to PW Prithvi Raj (manager), accused Narayan Dass had served meals to Sunil Kumar. If it be so, then the waiter Chander Singh could be a star witness to support

that version but he has been withheld. Another employee Kamlesh Kumar too has not been produced as witness when according to Prithvi Raj (manager) he was another employee.

28. PW Sansar Chand as witness to the seizure memo has said that he does not know where from the police recovered the dead body and the police has also shown him seized spade which was not rusted. Said witness has belied the prosecution theory that the recovery of the dead body was on the identification of the accused. Likewise, PW Jagdish Chand has stated that the dead body and hotel register was not recovered at the instance of the accused. PW Prithvi Raj (manager) had admitted that the register was seized by the police from the hotel. His signatures on seizure memo were taken on the next day. PW Darshan Singh has denied memo of disclosure and recovery.

29. The only witness PW Dilawar Sigh has supported the disclosure memo and consequent recovery. But PW Dev Raj has stated that PW Dilawar was not present when the accused were taken for recovery or in the police station. PW Darshan Singh has been declared hostile. Nothing favourable to the prosecution has been elicited from him. Both Dev Raj and Darshan Singh have denied alleged disclosures, recoveries and seizure memos.

30. PW Dilawar Mohd in cross examination has qualified that it was I.O. Mushtaq who asked accused person as to whether they have committed the act or not.

31. PW Dev Raj and Numberdar of the village (Village Head) has given lie to the prosecution case by stating that burnt articles were put in the hands of the accused Narayan Dass and watch in the hands of Burkhat Ali by the police.

32. The condition of the recovered dead body was such which could be identified only by the family members of the deceased who have neither been produced as witnesses nor cited as witness.

33. It is unfortunate that a valuable human life is lost in mysterious circumstances. The perpetrators of the crime have gone unpunished. Humanity feels ashamed when such type of horrendous criminal acts are committed. Criminal law justice system sometimes due to circumstances beyond control and sometimes due to negligence failed to deliver. Handling of such type of mysterious deaths has remained a challenge. Crime and criminals enjoyed timely benefit.

34. Settled norms of criminal jurisprudence that prove beyond reasonable doubt for conviction and sentence of the perpetrators of crime is of essence so as to ensure that no innocent gets punished.

35. The circumstances, as emerged from the depositions of the prosecution witnesses, do not form a chain so as to hold that it is none else accused who have committed the crime. Broken links and then value of the depositions of the witnesses is such which by no standards can be said to be sufficient to hold that the crime is committed by the accused and none else.

36. In our considered view, learned trial Court has appreciated the whole case in its right perspective. Therefore, there is no scope deemed to entertain the appeal. Leave as such is declined as a necessary corollary, appeal dismissed.

Trial Court be sent back along with copy of judgment.

(Tashi Rabstan)
Judge

(Mohammad Yaqoob Mir)
Judge

Jammu.
12.02.2015
Raj Kumar.