

SC No.7092/2016
FIR No.172/2011
PS. South Campus
State Vs. Bhullai Ram

03.08.2018

Present : Sh. Santosh Kumar, Ld. Addl. PP for State
Sh. Rajesh Pandey, Counsel for accused
Accused produced from JC

PW30 Dr. B.K.Mohapatra and PW31 Insp. Mahesh Kumar examined, cross examined and discharged.

Bail application of accused Bhullai Ram is also pending consideration.

Arguments heard on the application.

Accused Bhullai Ram is stated to be in JC for more than 7 years. Counsel further argued that in view of the testimony of Dr B.K.Mohapatra, who has been examined as PW30, entire case of the prosecution has got demolished. He submits that in the instant case the dead body of deceased was never recovered. Deceased was missing since year 2007 and a missing report was filed by the deceased's sister Smt. Patrika Rajmohan on 02.11.2010. After more than four years of the missing of the deceased, accused was arrested in this case on 24.03.2012, on the basis of suspicion and pursuant to his disclosure certain belongings of the deceased i.e. his vehicle, clothes and briefcase etc. were recovered from the possession of accused and later on, he also allegedly made disclosure about having murdered the deceased Captain Anurag Raj at his house at

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Satya Niketan and having buried his dead body at his own house at Rai Bareilly and pursuant to said disclosure, the police dug out said place and residue of few bones, teeth, hair, pieces of clothes were exhumed and all said exhibits were sent to forensic lab for getting the DNA of complainant compared with DNA of said residues. However, as per FSL report EX.PW30/B, DNA from said exhibits could not be matched with the DNA profile of the complainant, who is the sister of deceased. Therefore, prosecution has miserably failed to establish the very material link of chain of circumstances i.e. the identification of deceased because without the matching of DNA profile of said exhibits with the DNA of complainant, the identification of deceased has remained unestablished on record.

On the other hand Ld. Addl. PP opposes the application on the ground that allegations are grave and serious in nature and there are other material circumstantial evidence in the form of last scene evidence for proving the case of prosecution.

It is a matter of record that as per the DNA report CFSL 2012/B-0520 dated 09.08.2012 which is available on record as Ex.PW30/B, the Exhibit-4 (Firearm), 5 (Piece of bone), 7 (Hair), 8 (Buttons), 9 (Cloth pieces), 10 (pieces of polythene), 11 G-1 (Earth material), 11 G-2 (Earth material), 11 G-3 (Earth material), 11 G-4 (Earth material), 11 G-5 (Earth material), 11 G-6 (Earth material), 11 G-7 (Earth

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material), 11 G-8 (Earth control) & 13(iron box) did not yield DNA for analysis. Whereas Ex.6 was found to be of human male in origin. It is pertinent to note that said FSL report has been proved on record by PW30 Dr. BK Mohapatra from CFSL(CBI Delhi), and in his deposition before court, he clarified that only partial DNA profile could be generated from the source of Ex.6 i.e. teeth which was found to be human male in origin but no further comparison could be established with regard to Ex.6 as the profile was not complete. Therefore, DNA of Ex.6 could not be matched with the DNA of the complainant because Ex.6 was not sufficient as the required genetic markers which were necessary for the purpose of comparison could not be amplified.

Considering the fact that DNA profile of aforementioned exhibits (teeth, nail, hair etc), which were collected from the place where the dead body of deceased was allegedly buried, could not be matched with the DNA profile of sister of the deceased, there is no evidence to establish the fact that Captain Anurag Raj is dead.

It was very material for the prosecution to prove that Captain Anurag Raj, for the accusation of murder of whom, the accused is facing trial before this court, is dead and his death was a homicidal death. Since the dead body of deceased was never recovered not got identified by the police, therefore, matching of DNA of the exhibits i.e. the alleged exhumed remnants of the dead body of the

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deceased with the DNA profile of the deceased's sister or any other blood relative was very essential for establishing the identity of deceased as the same in my view is the first very material link in the chain of circumstances and there is no evidence on record to establish said material link.

Keeping in view the aforementioned facts and circumstances, which has so far come on record and further considering the long period of detention of accused, I am inclined to grant bail to the accused. Hence accused Bhullai Rai is admitted to bail on his furnishing personal bond in the sum of Rs.30,000/- with one surety of the like amount.

List for PE on **28.09.2018**.

(Sunena Sharma)
Addl. Sessions Judge-03 (South)
Saket Courts/New Delhi/03.08.2018