

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

**RESERVED ON : 16TH OCTOBER, 2012
DECIDED ON : 8TH NOVEMBER, 2012**

+ CRL.A.186/2011

MANGRU RAM Appellant
Through : Mr.A.J.Bhambhani, Amicus Curiae.

versus

THE STATE (NCT OF DELHI) Respondent
Through : Mr.Sanjay Lao, APP.

**CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Mangru Ram impugns the judgment dated 23.08.2010 and Order on sentence dated 13.09.2010 of learned Additional Sessions Judge in Sessions Case No.138/2005 by which he was convicted for committing murder under Section 302 IPC and sentenced to undergo imprisonment for life with fine of ₹2,000/-. The prosecution case as unfolded during trial is as under:-

2. Ram Prasad and Dozai (since deceased) lived in a hut in the rear portion of Shashi Bushan Farm, Village-Asola (near Fatehpur Beri

Bhand). They were gardeners by profession. They, PW-4 (Puran Masi), PW-9 (Uma Kant) and PW-11 (Harish Chander) used to grow rose plants in their respective portions in the said farm. The deceased had brought Mangru to work with them at the farm. Mangru used to reside in a hut/jhuggi there. On 03.07.2005 Daily Diary (DD) No.4 Ex.PW-7/A was recorded at Police Post Bhati Mines, Police Station Mehrauli at 9:40 A.M. on getting information that someone had killed Ram Prasad @ Dadi and Dozai at Lekhraj Farm House, Fatehpur, Asola and the person residing with them had absconded. The investigation was assigned to SI Praveen Vats who with Const. Subhash Chand reached the spot i.e. Shashi Bushan Farm Village-Asola but did not find any eye-witness there. He made endorsement on the DD No.4 and sent rukka (Ex.PW-7/1) for lodging First Information Report under Section 302 IPC. Inspector C.K.Sharma, SHO Police Station Mehrauli reached the spot and took over the investigation. Exhibits were collected; the bodies were sent to mortuary. Dr.Sanjeev Lalwani conducted post-mortem examination of the bodies on 06.07.2005. Efforts were made to apprehend the appellant but in vain. Finally, he was arrested from his village on 02.08.2005. He was interrogated and his disclosure statements were recorded. It is alleged that one iron box was recovered from the back side of his house and it

contained various sundry articles including two pass books of Syndicate Bank in the name of the deceased Dozai. At Delhi, in consequence to the disclosure statement, the police recovered the weapon of offence i.e. axe from the bushes near the wall of Lekh Raj Farm and seized by seizure memo Ex.PW-14/E. The exhibits were sent to Forensic Science Laboratory and reports were collected. Statements of witnesses conversant with facts were recorded. After completion of the investigation, a charge-sheet was submitted against the accused for committing offence punishable under Section 302 IPC. The appellant was duly charged and brought to trial.

3. The prosecution examined 20 witnesses in all to establish the guilt of the accused. The accused was examined under Section 313 Cr.P.C. and pleaded false implication. After appreciating the evidence and documents on record and considering the rival contentions of the parties, the Trial Court convicted the appellant under Section 302 IPC by the impugned judgment. Being aggrieved, the appellant has come in appeal.

4. Learned counsel for the appellant while assailing the impugned judgment urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of PW-4 (Puran Masi), PW-9 (Uma Kant)

and PW-11 (Harish Chander) without ensuring their truthfulness and credibility. The prosecution was unable to establish any cogent incriminating circumstance to prove that it was the accused and none else who committed the murder of two brothers. He contended that the accused had no motive to commit the gruesome murder of the brothers known to him. The counsel highlighting various infirmities challenged the recovery of iron box with its contents at the instance of the accused. He urged that no independent public witness was associated at the time of recovery of the weapon of offence. There was delay of one month to apprehend the accused and no attempts were made to find out his whereabouts soon after the occurrence. When the police visited the house of the accused, he was found present at the place where he was supposed to be present. There was no abscondence. The prosecution did not collect any evidence to prove that the accused was seen in the company of the deceased soon prior to the occurrence. The investigation carried out by the investigating officer is full of lapses and PW-20 (Insp.C.K.Sharma) deputed his subordinates to undertake investigation to face cross-examination.

5. Learned Additional Public Prosecutor supporting the impugned judgment urged that it does not call for any interference. He

pointed out that the accused in his statement under Section 313 Cr.P.C. admitted that he had visited the deceased but had returned after two days. The deceased did not offer explanation as to why he visited the deceased. The prosecution has established that the accused's motive was to take revenge for the murder of his brother by the deceased. The recovery of articles of the deceased at his instance is a material incriminating circumstance to connect him with the offence.

6. We have considered the submissions of the parties and have examined the Trial Court record. At the outset, it may be mentioned that the entire case of the prosecution is based upon circumstantial evidence. The circumstances relied upon by the prosecution are discussed as under:

(A) **Homicidal death**

7. Homicidal death of both Ram Prasad @ Dadi and Dozai is not under challenge. PW-1 (Dr.Sanjeev Lalwani) conducted post-mortem examination of the bodies on 06.07.2005 and proved Post-mortem report of Ram Prasad (Ex.PW-1/A) and Post-mortem report of Dozai (Ex.PW-1/B). Ram Prasad @ Dadi had sustained eleven injuries on the body. Injury Nos.3, 7, 8 and 9 were sufficient to cause death in the ordinary course of nature individually as well as collectively. Injuries No.1, 3, 5 to 9 were caused by sharp edged weapon. Cause of death was shock and

haemorrhage due to ante mortem injuries. Dozai had sustained eight injuries on the body and cause of death was shock and haemorrhage due to injuries No.4, 6, 7 and 8 sufficient to cause death in the ordinary course of nature individually as well as collectively. Injuries No.2 to 8 were caused by sharp edged weapon. PW-1 was of the opinion that 'axe' shown to him could be the weapon of offence. Undoubtedly, it is a case of culpable homicide.

(B) Motive

8. Question of motive is of great importance in a case based solely on circumstantial evidence. The prosecution could not establish strong motive of the accused which impelled him to murder both the brothers. The prosecution witnesses did not allege any specific motive of the accused to commit gruesome murder. In the disclosure statement (Ex.PW-14/C) the alleged motive was to take revenge for the murder of his brother Babu Ram 20 years ago by the deceased. The disclosure statement (Ex.PW-14/C) itself is not admissible in evidence. Nothing emerged during trial that Babu Ram was murdered and if so, when and by whom. No particulars about his murder were collected. It is not clear whether the deceased were suspects in the said case. It is unbelievable that the accused would nurture grievance for 20 years and would suddenly

eliminate the deceased without any prior hostile relations. The deceased had no complaint against his conduct and behaviour prior to the incident. It transpires that the accused was a toddler at the time of the alleged murder of his brother. Apparently, the prosecution failed to establish ostensible motive of the accused to murder both the brothers.

(C) **Last seen**

9. PW-4 (Puran Masi) deposed that while sitting on the cot outside his jhuggi on 02/03.07.2005, he saw Mangru going to the jhuggi of deceased Ram Prasad @ Dadi and Dozai with a bag containing a liquor bottle at around 05.00 P.M. When they went to the jhuggi of the deceased next morning, they did not see him there. The statement of PW-4 (Puran Masi) was relevant to establish that prior to the incident, the accused had gone to the jhuggi of the deceased and had consumed liquor. However, the evidence of this witness is of no consequence as his examination was deferred at the request of Addl. Public Prosecutor for want of case property on 29.04.2006 and subsequently, he could not appear due to his death. The incomplete statement recorded on 29.04.2006 is not admissible under Section 32 and 33 of the Indian Evidence Act. Moreover, at the time of search of the jhuggi of the deceased, no liquor bottle was recovered. No material was collected by the Investigating Officer to infer

that the accused and the deceased had consumed liquor before the occurrence. In the post-mortem examination of the bodies, no liquor was detected. No other witness corroborated PW-4's statement about the consumption of liquor by the accused and the deceased that night.

10. PW-9 (Uma Kant) in his testimony before the Court deposed that he had seen the accused and the deceased at the farm at about 09.00 P.M. on 02.07.2005. He however, did not elaborate, if the accused and deceased were consuming liquor or he had any conversation with them. He did not specify the place where he had seen all of them together at 09.00 P.M. He did not clarify as to when the accused had come to the deceased. Rather he pleaded that the accused used to reside with the deceased for the last 20/25 days. This as noticed below is incorrect and not supported by the site plan (Ex.PW-1/5).

11. PW-10 (Badri Chaurasiya) did not support the prosecution on material facts. He expressed inability to identify the accused to be the person who had made inquiry from him about the route to Fathepur on the night of 02.07.2005. He stated that he did not know that person earlier and had not seen him. Addl. Public Prosecutor cross-examined him after Court's permission but he denied the contents of statement (Ex.PW-10/A) recorded by the police. Addl. Public Prosecutor specifically pointed

towards the accused, to which the witness replied that he could not identify and he was not the person seen by him that night. He denied that on the night intervening 02/03.07.2005 at about 02.30 A.M. the accused came to him to make inquiry and he was having a bag and small iron box. He further denied that he had enquired from the accused as to where he was going. The testimony of this witness is of no help to the prosecution. PW-10 was residing in the farmhouse of Lakhmi Ram with his maternal uncle Om Prakash. There was no occasion for the accused after committing double murder to contact him just to make inquiries about the route to Fatehpur.

12. No other witness was examined by the prosecution to establish that the accused was seen in the company of the deceased soon before the occurrence. There is no cogent evidence to prove that the accused had visited the deceased and if so, at what time. It is also not certain till which time the accused stayed in the company of the deceased. Photographs (Ex.A-1 to A-16) demonstrate that there was only one cot in the open field where the murder took place. The deceased were not inside the jhuggi and were sleeping on a single cot when the incident happened. Apparently, the accused had not stayed with the deceased to sleep as there

was no separate cot at the place of occurrence. The jhuggi/hut of the accused as per the site plan was located at a distance.

13. In the case of ‘*State of Goa v. Sanjay Thakran*’, (2007) 3 SCC 755 the Supreme Court noted general principles with reference to the principles of last seen together in ‘*Bodhraj v. State of J&K*’, (2002) 8 SCC 45 as under:

“The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.”

32. In *Ramreddy Rajesh Khanna Reddy* (2006) 10 SCC 172 this Court further opined that even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.

34. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can

be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

(D) Arrest of the accused and recovery at his instance

14. Arrest of the accused from his village Adhartiwari, Rai Bareilly on 02.08.2005 is not questionable as he was produced for transit remand before Chief Judicial Magistrate, Rai Bareilly that day. Vide order dated 02.08.2005, 24 hours transit remand was given to Delhi police with direction to produce him on 03.08.2005 before the competent Court at New Delhi. However, there are material inconsistencies and discrepancies about the manner in which arrest of the accused has been shown. The witnesses have given divergent versions as to how and when they reached Rai Bareilly for the apprehension of the accused. No Daily Diary entry was produced to prove departure to Rai Bareilly. There is nothing to infer if permission from the competent authority was sought to go out of Delhi for the investigation of the case. PW-20 (Insp.C.K.Sharma) did not depose when and how he authorised PW-17 (SI Praveen Vats) to investigate the case and visit Rai Bareilly. PW-11 (Harish Chander), PW-17 (SI Praveen Vats), PW-14 (Const.Subhash Chand) and PW-15 (Const.Nand Kishore)

gave inconsistent versions about the vehicle used to travel to Rai Bareilly. There is no consistency in the versions of the witnesses as to when they reached Rai Bareilly and apprehended the accused. The transit order reveals that Daily Diary entry No.11 was recorded at 07.10 A.M. on 02.08.2005, PS Mohan Ganj about the arrest of the accused. It is doubtful if the police officials left Delhi on 01.08.2005 or 02.08.2005. There is no Daily Diary entry to prove that Delhi police officials recorded their arrival at PS Mohan Ganj and at what time. Even DD No.11 recorded at 07.10 A.M. on 02.08.2005 was not placed on record for the perusal of the Court. PW-14 (Const.Subhash Chand) in the examination-in-chief deposed that on 02.08.2005, the accused was apprehended from his village at the pointing out of Harish Chander. PW-11 (Harish Chander) contradicted him and admitted in the cross-examination that he did not know the village of the accused and did not take the police to his house. He elaborated that one old man who was in police custody in the lockup of PS Mohan Ganj as an accused in some case had taken them to his house. There is no explanation to this major contradiction.

15. There was no information with the police about the missing articles from the jhuggi of the deceased. PW-5 (Babu Lal), deceased's brother-in-law and PW-8 (Ram Khilwan), their brother identified the

bodies on 06.07.2005 but did not disclose if any article was missing from the jhuggi. The accused pursuant to disclosure statement (Ex.PW-4/C) allegedly recovered one iron box containing /having two passbooks of Syndicate Bank in the names of Dozai , shirts, clothes, one radio (old), matchboxes and beedi from the back side of his house seized vide seizure memo (Ex.PW-11/A) on 02.08.2005. The police had allegedly visited the house of the accused prior to his arrest on 02.08.2005. However, no such iron box was recovered by the police that time. The iron box and articles contained in it were of insignificant value. It is unclear why the accused after committing double murder would carry these articles to a remote place just to abandon them. The articles were not tampered with or utilized. The pass-books of Syndicate Bank were not used for any purpose. It is unclear why the accused would conceal the iron box with its contents for a month in the back side of the jhuggi. Recovery of iron box with articles is highly doubtful. The disclosure statement (Ex.PW-4/C) dated 02.08.2005 does not bear signatures of PW-11 (Harish Chander). The Investigating Officer did not explain why PW-11(Harish Chander) an independent public witness was not associated at the time of alleged disclosure of the accused. It casts doubt about his visit to Rai Baraili. Seizure memo (Ex.PW-11/A), of course, bears his signatures at place 'A'.

It seems he was shown as a witness at serial No.4 subsequently. Besides it, seizure memo (Ex.PW-11/A) contains the details of articles recovered from the iron box. However, in the application for seeking transit remand, the Investigating Officer merely stated about the recovery of robbed box of the deceased at the instance of the accused. It was not elaborated that the articles mentioned in the seizure memo were found in the said iron box. PW-11 (Harish Chander) in the statement under Section 161 Cr.P.C. allegedly recorded on 02.08.2005 described the articles recovered from the box. However, Constable Nand Kishore, Constable Bhupesh Singh, Constable Subhash in their statements recorded under Section 161 Cr.P.C. on the same day did not disclose if any article was recovered from the iron box. There is serious doubt if the statement of PW-11(Harish Chander) was recorded under Section 161 Cr.P.C. on 02.08.2005 particularly when his signatures do not appear on the disclosure statement (Ex.PW-4/C). The iron box had no specific mark of identification. No Test Identification Proceeding (TIP) of the iron box was conducted. PW-5 and PW-8, relatives of the deceased who were the proper persons to identify were not shown the iron box and articles. PW-11(Harish Chander) never met the police prior to 02.08.2005. He was not residing at the farmhouse but was staying in a jhuggi outside the farmhouse at a distance of 7-8

kilas. He admitted that he used to visit the deceased once or twice in a month but was not aware as to what were the belongings of the deceased at his jhuggi. He did not know the make of radio (Ex.PW-11/3/2). He further admitted that there was no specific mark of identification on clothes. He identified the clothes as these were taken out of the box. Since there were two iron boxes produced due to the intervention of the court, one bigger in size and the other smaller in size brought by the investigating officer during trial, it was not difficult for PW-11 to identify the smaller box allegedly recovered at the instance of the accused. In our view, there was no proper identification of the articles recovered at the instance of the accused and it cannot be said with certainty that these articles were missing at the time of the incident. The passbooks (Ex.PW6/A) seem to have been falsely introduced to establish that the iron box belonged to the deceased. There was no occasion for the accused to carry an incriminating article of no use with him. Recovery of the iron box and its contents cannot be considered an incriminating circumstance to connect the accused with the crime.

(E) Recovery of axe

16. Axe (Ex.P-1) is alleged to be the weapon of offence. PW-1 (Dr.Sanjeev Lalwani) submitted report (Ex.PW-1/D) and was of the

opinion that the injuries mentioned in the post-mortem reports were possible with the 'axe' shown to him. It is alleged that the axe (Ex.P-1) was recovered in consequence to the disclosure statement made by the accused on 02.08.2005 from the bushes near the wall of Lekh Raj Farm and seized vide seizure memo Ex.PW-14/E. Disclosure statement (Ex.PW-14/C) was recorded by PW-17 (SI Praveen Vats) on 03.08.2005. No independent public witness was associated at the time of recording the disclosure statement. The accused allegedly disclosed to recover the axe thrown by him in the bushes near Shashi Bhusan Farm. However, in the supplementary disclosure statement (Ex.PW-14/D) recorded on 03.08.2005 too it was mentioned that the axe was thrown in the bushes of a nearby farmhouse and the clothes which he was wearing on the day of incident were thrown in a field at a distance of 2/3 Kilometres. Again no independent public witness was joined on 03.08.2005. Seizure memo (Ex.PW-14/E) was prepared on 04.08.2005 and 'axe' was allegedly recovered from near the farmhouse of Lekh Raj. Only Const.Subhash Chand was a witness to this seizure memo. The Investigating Officer did not offer reasons for not associating the independent public witnesses despite their availability on these dates and having sufficient opportunity to join them. It is strange that the Investigating Officer PW-20

(Insp.Chander Kant Sharma) himself did not undertake the investigation and deputed his subordinates to conduct the investigation without assigning the case. Finger prints of the accused were not detected on the axe allegedly recovered at his instance. The Investigating Officer did not send the axe to Forensic Science Laboratory soon after its recovery. PW-1 (Dr.Sanjeev Lalwani) in the subsequent opinion (Ex.PW-1/D) dated 14.10.2005 advised the Investigating Officer to get the weapon examined at FSL/CFSL for blood stains or otherwise. The exhibits were sent for examination to Forensic Science Laboratory thereafter, on 20.10.2005 after a delay of about three months. No site plan was prepared by the Investigating Officer of the place of recovery of the axe. No photographs were taken to ascertain as to where the 'axe' was lying. It is not clear that the place was not accessible to the public at large. The owner of the farmhouse was not associated at the time of alleged recovery. Clothes belonging to the accused could not be recovered pursuant to the disclosure statement (Ex.PW-14/D). The recovery of 'axe' thus cannot be considered an incriminating circumstance against the accused.

(F) Abscondence

17. The next circumstance relied on by the prosecution is that soon after the crime the accused absconded from the place of occurrence

and could be arrested after a month on 02.08.2005. There is divergent version as to when the accused had come to Delhi to stay at the farm house. The Investigating Officer did not examine Shashi Bhusan, owner of the farm house to ascertain since when the accused was staying there and if so in what capacity. PW-4 (Puran Masi) in his statement under Section 161 Cr.P.C. recorded on 29.04.2006 disclosed that about 20 days prior to the incident Mangru who was from the village of deceased-Dozai had started residing in a separate jhuggi at the farm house and he used to work as a labour in the fields. In his examination-in-chief as PW-4, he did not disclose when the deceased had brought Mangru to work with them at the farmhouse. PW-9 (Uma Kant) stated that Mangru was residing with both the deceased for the last 20/25 days prior to the incident. PW-11 (Harish Chander) did not depose when the accused had started residing at the farm house or whether he had seen him there in the farmhouse of the deceased. In the statement under Section 313 Cr.P.C. the accused stated that he visited the deceased only for two days about ten days prior to the incident. Thereafter, he returned to his village. In the disclosure statement (Ex.PW-14/C) the accused disclosed that he had worked for 10/12 days at the farm house prior to the incident. There is no cogent evidence to establish as to when the accused had come to the farmhouse. It is also not

certain if he was residing with the accused. Site plan (Ex.PW-1/5) shows that jhuggi of the accused at mark 'Y' was at some distance from the jhuggi of the deceased. It is not clear if jhuggi of the accused was searched and if so what articles were recovered from there. There is no investigation with whom the accused used to work, what were his wages and whether his account was settled. There is no evidence till which time the accused worked prior to the incident and with whom.

18. There is no evidence on record that the police officials had raided the house of the accused prior to 02.08.2005 and when. There is no DD entry on record to show departure from Delhi for the investigation of this case. It is also not on record if any arrival entry was recorded at police station Mohin Ganj prior to 02.08.2005 to infer their visit to the village. The police did not investigate as to where the accused remained for about one month before his arrest. The accused was arrested on 02.08.2005 from the jhuggi which belonged to his sister who was residing with her family therein. It is not clear if that was the residence of the accused also or he was staying at the house of his sister. When the police visited the village, the accused was found present in the house where he was supposed to be present. It cannot be inferred that the accused

remained absconded for one month. Moreover abscondence itself is not a factor to establish culpability of the accused.

(G) Miscellaneous

19. Radio (Ex.PW-11/P2) was allegedly found in the iron box. However, PW-13 in the cross-examination admitted that when he inspected the deceased's jhuggi, articles of daily use i.e. radio, utensils etc were lying there. The prosecution failed to reconcile this inconsistency. The assailant had inflicted several injuries with sharp edged weapon to hack the deceased. Ram Prasad @ Dadi suffered eleven injuries and Dozai suffered eight injuries. Infliction of so many injuries at a time appears to be the handiwork of more than one assailant. It is surprising that the injuries inflicted by the assailant on the victim one after the other would not alert/ awake the other. No liquor was detected at the time of post-mortem examination of the bodies to presume that the deceased were under the influence of liquor to resist. The investigation carried out by the Investigating agency is highly defective. PW-20 (Insp. Chander Kant Sharma) abdicated his duties and did not investigate the case himself. He deputed subordinates to carry out the entire investigation without assigning the case. Insp. Chander Kant Sharma made a cryptic statement before the Court. He even did not interrogate the accused and

no recovery was affected in his presence. The prosecution case is full of contradictions and inconsistencies. In the present case, double murder had taken place but the evidence collected by the prosecution is highly scanty and is not at all sufficient to establish the guilt against the accused beyond reasonable doubt.

20. In the light of above discussion, the impugned judgment of conviction of the appellant cannot be sustained and is set aside. The appeal is accepted and the appellant is acquitted. He be released immediately if not required to be detained in any other case.

(S.P.GARG)
JUDGE

(SANJIV KHANNA)
JUDGE

NOVEMBER 08, 2012

tr/ sa