

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

RESERVED ON : 9th July, 2012

DECIDED ON : 19th July, 2012

+ Crl.A.779/2011

NAVEEN KUMAR AHUJA Appellant

Through : Ms.Manjusha Wadhwa, Advocate.

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. The present appeal is directed against the judgment dated 27.11.2010 and order on sentence dated 29.11.2010 of learned Additional Sessions Judge in SC No.69/2009 by which the appellant was convicted for committing the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life with a fine of ₹3,000/-. The brief facts of the case are as follows :

2. Daily Diary (DD) entry No.35A (Ex.PW-20/A) was recorded at PS Vasant Vihar on 22.10.2005 at about 11.20 P.M. on getting information that a person has been stabbed with a knife at JNU, Saraswati

Puram, B & C Employees Quarters. The investigation was assigned to SI Bhawar Singh who along with Const.Manveer Singh reached the spot and came to know that the injured had already been shifted to Safdarjung Hospital. SI Bhawar Singh (IO) on reaching Safdarjung Hospital moved an application to record the statement of injured Rajesh Kumar. The injured was declared unfit to make the statement. The IO returned to the spot and met Pravesh, Security Guard who informed him that some boys left scooter No.DL3SM 3166 at the spot after they failed to start it. The IO made endorsement (Ex.PW-20/B) over the Daily Diary (DD) entry (Ex.PW-20/A) and sent the rukka through Const.Manveer for lodging the First Information Report (FIR). He summoned the crime team at the spot. The IO conducted necessary proceedings including preparation of site-plan, seizure of blood samples, earth sample, seizure of scooter and the relevant documents kept inside the dicky and prepared necessary seizure memos.

3. On 23.10.2005, the injured succumbed to the injuries at the hospital and the investigation was taken over by Insp.B.S.Rana. He conducted inquest proceedings and sent the body for post-mortem examination. Dr.Komal Singh conducted the post-mortem of the body on 24.10.2005.

4. Mool Chand, deceased's father in his statement informed the police on 23.10.2005 that on 22.10.2005 at about 10.30 P.M. when he was going to see his son Rajesh and reached inside JNU campus near STD Booth, he saw Naveen along with three more boys i.e. Neeraj, Tejpal and Manoj (facing trial before the Juvenile Court) quarrelling with his son. Naveen inflicted knife blows to his son Rajesh while other three juveniles caught hold of him. Thereafter, the assailants fled the spot. He rushed to seek assistance of his acquaintance residing in a nearby flat inside JNU Campus but in vain. When he returned the spot, he was informed that the injured had been taken to AIIMS. However, he did not find his son at AIIMS and came to Safdarjung Hospital where he found him unconscious and under treatment.

5. During the course of investigation, Manoj, Tejpal and Neeraj were arrested and interrogated on 26.10.2005. Pursuant to their disclosure statements, they recovered the knife thrown in the bushes. The knife was seized after preparing its sketch. The IO also seized the blood stained shirt of accused Manoj. On 26.10.2005, the accused Naveen was arrested near the East gate of JNU at about 10.30 P.M. He was interrogated and pursuant to his disclosure statement, blood stained shirt was recovered from the bushes near the power house. The IO also seized his blood

stained pant. The accused declined to participate in the Test Identification Proceedings (TIP). During the investigation, the IO recorded the statements of the witnesses conversant with the facts. After completion of the investigation and collection of the Forensic Science Laboratory (FSL) reports, a charge-sheet was filed against the accused for committing the offence punishable under Section 302/34 IPC. The accused was duly charged and brought to trial.

6. The prosecution, to substantiate the charge, examined twenty one witnesses at the trial. To afford an opportunity to explain the incriminating circumstances appearing against him in the evidence, the statement of the accused was recorded under Section 313 Cr.P.C. in which he pleaded false implication.

7. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment held the appellant responsible for the murder of the deceased and sentenced him for imprisonment for life. Aggrieved by the said orders, the appellant has come in appeal.

8. Learned counsel for the appellant has assailed the findings of the Trial Court and urged that it did not appreciate the evidence of PW-2 (Mool Chand) in its true and proper perspective and fell into grave error in

placing reliance on the ocular testimony of PW-2 who was closely related to the deceased and whose presence at the spot was highly doubtful, his chances of deposing falsely could not be ruled out. The Trial Court, urged the counsel, failed to observe the unnatural conduct of the witness at the time of incident making his presence at the spot highly suspicious. No incriminating article was recovered from the possession of the accused or at his instance. The accused was not named in the FIR by the deceased's father.

9. Learned APP supported the judgment of the Trial Court and urged that it did not call for any interference. The incident was witnessed by PW-2 (Mool Chand) when he came to visit his son Rajesh residing in JNU Campus. No adverse inference can be drawn against PW-2 (Mool Chand) for not intervening to save his son. He being an old man of 65 years, got frightened on seeing the horrible incident when his son was brutally killed by the accused and his associates. The natural instinct of the witness would have been to seek assistance from his close relative/acquaintance residing in the campus itself. On the very next day, in his statement under Section 161 Cr.P.C., he narrated the entire incident in detail and attributed specific role to the each accused. Adverse inference is to be drawn against the accused for declining to participate in

the Test Identification Proceedings. The recovery of the weapon of crime pursuant to the disclosure statement of one of the associates of the accused is an incriminating circumstance to connect him with the commission of the crime. PW-2 (Mool Chand) the deceased's father has no axe to grind to falsely implicate the accused and to let the real culprit go scot free. Close relationship is not a factor to discard his otherwise cogent version. He was not going to be benefitted by false implication of an innocent person with whom he had no prior animosity.

10. We have considered the submissions of the parties and have scrutinised the Trial Court record. Undoubtedly, the case of the prosecution is based upon an eye witness account. The prosecution claimed that the incident was witnessed by PW-2, Mool Chand (deceased's father). We are conscious that the testimony of close relatives cannot be discarded only because of their relationship with the victim. Ordinarily a close relation would be the last to shield/ or protect the real culprit and falsely implicate an innocent person. However, the law demands that their evidence should be scrutinised with care and caution to safeguard against the temptation to implicate a person on suspicion or hunch, and attempt to make them eye witnesses, when they in fact have not witnessed the occurrence. But a note of caution was sounded

observing that when the feelings run high and there is personal cause for enmity, there may be an attempt to implead/drag an innocent person against whom a person has a grudge along with the guilty. However, foundation for the said criticism should be laid. (Dalip Singh vs. State of Punjab AIR 1953 SC 364). In '*Hardeep Singh Vs. State of Rajasthan*' (2000)7 SCC 11 it was observed by the Supreme Court that the Court before acting upon the testimony of relatives and interested witnesses must scrutinised their evidence with care and circumspection and could also look for corroboration and their testimonies in material particulars, when necessary and required.

11. A perusal of the impugned judgment would reveal that the Trial Court accepted the testimony of PW-2 (Mool Chand), without testing his credibility and reliability by applying the yardstick of probabilities on the basis of normal human conduct. The Trial Court seems to have overlooked the highly unnatural conduct of PW-2 (Mool Chand) at the time of occurrence. Strangely, PW-2 (Mool Chand) did not raise hue and cry when he witnessed the assailants inflicting stab injuries on his son's vital organs. He even did not bother to intervene to save him. So much so, he did not attempt to take the injured to the hospital to provide him immediate medical assistance. He even did not report the

incident to the police. He conveniently left the spot leaving his son in a pool of blood to seek the assistance of his acquaintance. When he did not find his friend and returned the spot, again he did not deem it proper to put the police machinery into motion. Even after reaching AIIMS and Safdarjung Hospital, no attempt was made to inform the duty constables posted there. His statement under Section 161 Cr.P.C. was recorded on 23.10.2005 the next day. The reaction, conduct and behaviour of PW-2 renders his testimony highly improbable and beyond comprehension of a prudent human mind. It is quite unnatural that PW-2 (Mool Chand) being the father of the deceased would remain silent after witnessing the brutal and gruesome murder of his son. The only explanation given by him for his said conduct is that he was frightened and could not inform the police. This explanation does not inspire confidence as after the assailants had fled the spot, he had ample opportunity to report the incident to the police. PW-2 is not residing in Delhi but was a permanent resident of Alwar, Rajasthan. His presence in Delhi and at the location at the time of occurrence is a grave doubt. His unnatural conduct confirms the said doubt and makes his testimony unreliable and shaky.

12. In '*State of Rajasthan vs. Bhawar Singh*' 2004 (13) SCC 147, it was observed by the Supreme Court that the improbability of presence

of the eye witnesses at the scene of crime, their unnatural conduct post incident and medical evidence, improbabilising ocular evidence and delay of one day in filing of FIR is enough to render the prosecution case improbable.

13. The testimony of PW-2 is full of omissions, variations and inconsistencies. There is inordinate delay in recording the statement of PW-2 (Mool Chand) under Section 161 Cr.P.C. PW-2 in his deposition did not reveal the date and time when he went to the police station to make statement. PW-21 (Insp.B.S.Rana), who took over the investigation on 23.10.2005 also did not disclose the date when PW-2 (Mool Chand) met him and recorded his statement. In the cross-examination, he admitted that when he received the investigation file from the previous IO SI Bhawar Singh, Mool Chand's statement had already been recorded. He, however, did not verify from the previous IO as to at what time, he recorded the statement of Mool Chand. PW-20 (SI Bhawar Singh), the initial IO in his deposition did not claim that he had recorded statement of Mool Chand before the investigation was transferred to the SHO. The investigation remained with him till 03.00 P.M. on 23.10.2005. There is contradictory and inconsistent version if the statement of Mool Chand

under Section 161 Cr.P.C. was recorded and if so, at what time and by whom.

14. PW-2 (Mool Chand) is a chance witness. He was not residing in Delhi. He was not known to the assailants. He claimed that at the time of occurrence he came to visit his son at JNU Campus. However, the investigating officer did not carry out any investigation to substantiate his plea that he had travelled from Alwar to Delhi that day and on reaching the spot happened to witness the occurrence. The IO did not examine any relative of the witness residing in JNU Campus or in Delhi to corroborate that he had visited Delhi on 22.10.2005. The ticket purchased by the witness for travelling to Delhi by bus was not seized. PW-2 (Mool Chand) did not meet the Security Guards including Pravesh and the STD Booth owner to intimate the incident to them. The Security Guard was available at the spot and he had reported the occurrence to the police from the STD Booth. There was no hitch for the witness to rush to the STD Booth to report the occurrence to the police.

15. The delay in making the statement to the police even on 23.10.2005 has not been explained. In the case '*Mehraj Singh (L/Nk.) v.State of U.P.*' (1994) 5 SCC 188, the Supreme Court has held :

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“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story....”

16. Earliest reporting of the occurrence with all its vivid detail gives an assurance regarding truth of its version. Deliberate delay in lodging the complaint/FIR may be fatal, unless the delay is explained. It appears that the IO was deliberately marking time with a view to give a particular shape to the case and on failure to find evidence/material, help and assistance of PW-2, the father was taken.

17. The investigating officer did not sent the special report through messenger to the concerned Area Magistrate for compliance of Section 157 Cr.P.C. The FIR was sent to the concerned Area Magistrate in routine through *Naib Court* on 23.10.2005 and it was delivered to the learned Magistrate on 10.02 A.M. in the Court. The delay in sending the

special report to the area Magistrate has not been explained. In the case of ‘Anil Rai vs. State of Bihar’ JT2001(6)SC515, Supreme Court observed:

“Extraordinary delay in sending the copy of the F.I.R. to the Magistrate can be a circumstance to provide a legitimate basis for suspecting that the first information report was recorded at much later day than the stated day affording sufficient time to the prosecution to introduce improvement and embellishment by setting up a distorted version of the occurrence.”

18. The injured is alleged to have been taken from the spot to Safdarjung Hospital in JNU ambulance. However, the investigating officer did not examine the driver of the ambulance to find out under what circumstances and at what time he had taken the injured to the hospital. This is important in this present case, as presence of PW-2 at the spot is doubtful. PW-20 (SI Bhawar Singh), the initial IO testified that on receipt of DD No.35A (Ex.PW-20/A), he first reached the spot and on coming to know that the injured had already been shifted to the hospital, he reached Safdarjung Hospital. The record however, reveals otherwise. Perusal of the MLC (Ex.PW-18/A) prepared at Safdarjung Hospital contains the name and address of the injured. The person who brought the injured to the hospital has been shown SI Bhawar Singh, PS Vasant Vihar. There is no mention that the injured was brought by some driver in an ambulance. At other place there is specifically mentioned that the patient was brought

to the hospital by the police. It seems that the police has not presented true facts as to who shifted the injured to the hospital. The whole testimony of PW-20 (SI Bhawar Singh) becomes discrepant.

19. The assailants were not known to the complainant. It is mystery how PW-2 (Mool Chand) came to know the names of the juveniles with their parentage. The accused Naveen was also not known to him prior to the occurrence and as per the prosecution version, he came to know his name when one of the juveniles uttered '*Naveen marvayega kya*'. This description of accused was not sufficient to fix his identity. While appearing, PW-2, (Mool Chand) even failed to substantiate the version given to the police in this regard in his statement (Ex.PW-7/A). In the examination-in-chief, he disclosed that accused Naresh had uttered the words to Neeraj, '*Sale marvayega kya*'. The prosecution failed to reconcile the inconsistent version in the two statements one made before the police and the other made before the Court.

20. The scooter No.DL3SM 3166 recovered at the spot belongs to PW-1 (Balwant Singh) who in his deposition before the Court stated that he had given the said scooter to his nephew Kesar Singh. PW-8 (Kesar Singh) corroborated the testimony of PW-1 (Balwant Singh) and deposed that the scooter was parked by him at 06.00 P.M. in front of the

staff quarters when he went to JNU. He denied that the said scooter was given by him to his friend Manoj on 22.10.2005. The seizure of the scooter from a public place cannot be taken as incriminating material against the accused. PW-5 (Ram Pravesh), the Security Guard did not support the prosecution that he had seen some boys attempting to start his scooter hurriedly or that when the said scooter did not start, the said boys fled the spot leaving the scooter there. Learned APP in the cross-examination did not put any question to this witness if the accused Naveen was among the said boys attempting to start the scooter. There is, thus, no cogent evidence about the identity of the boy/boys who attempted to start the scooter.

21. The prosecution did not establish the motive of the accused or his associates for killing the deceased. No investigation was carried out by the police to ascertain the genesis of quarrel among the assailants and the deceased. In the absence of any strong motive, the accused is not expected to plan murder of the deceased in furtherance of common intention with his associates. It is uncertain if there were any strained relations between the assailants and the deceased.

22. No weapon of offence was recovered from the possession of the accused or at his instance. The knife (Ex.PW-21/A) is alleged to have

been recovered pursuant to the disclosure statement of co-accused Manoj. Involvement of the appellant is not established.

23. Recovery of blood stained shirt (having the blood 'B-group' of the deceased) at the instance of accused is not sufficient to prove the guilt of the accused. PW-2 (Mool Chand) did not identify the shirt and pant in the Court to depose that he had seen the accused wearing these clothes at the time of occurrence. No independent public witness was associated at the time of recovery of clothes. There is no substantive, reliable evidence to prove that these clothes belonged to the accused. The accused is not expected to continue to wear blood-stained clothes for about three days after the commission of the crime. The circumstances in which the arrest of the accused has been shown are also doubtful.

24. The investigating officer did not examine the STD Booth owner or any Security Guard who reached the spot and witnessed the occurrence.

25. The investigating officer did not collect any call details of the mobile phones of the accused or the deceased (if any), to ascertain as to what transpired among them soon before the incident. The prosecution failed to examine PW Sudhir Kumar before the Trial Court. Inquest papers were prepared and sent to the autopsy doctor on 24.10.2005. The

IO did not explain the delay in getting the post-mortem conduct. Probably, the IO was waiting for the arrival of PW-2 Mool Chand from Alwar. PW-2's statement was made the corner-stone of the prosecution case. His testimony is not credible and reliable.

26. In the light of above discussion, we are of the considered view that the impugned judgment of the Trial Court cannot be sustained and is set aside. The appeal is allowed. The accused shall be released forthwith, if not required in any other case. The Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

(SANJIV KHANNA)
JUDGE

JULY 19, 2012

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