

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

RESERVED ON : 3rd SEPTEMBER, 2013

DECIDED ON : 12th NOVEMBER, 2013

+ CRL.A. 230/2000

RAM PARSHAD

....Appellant

Through : Mr. M.M.Singh, Advocate with Mr.Sunil
Singh, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)

....Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Ram Parshad (the appellant) challenges the correctness and legality of a judgment dated 08.03.2000 in Sessions Case No. 398/94 arising out of FIR No. 233/91 under Section 302 IPC registered at PS Gokal Puri by which he was convicted for committing offence punishable under Section 304 part-II IPC and awarded RI for seven years with fine ₹ 3,000/-. The factual matrix of the case are as under :

2. Meera, (Ram Roop's sister) married to Radhey Shyam, appellant's son, had come to stay at her parents' house on the occasion of delivery of a son to her sister-in-law (Devrani), Rustam's wife. On the day

of incident i.e. 25.07.1991, Radhey Shyam had come to her in-laws' house to bring her back and after some time, the appellant also came there. Meera's brother – Raj Kumar promised to send her back after some days as certain formalities regarding the birth of the child were yet to be performed. Ram Parshad confronted Raj Kumar for not sending Meera with his son – Radhey Shyam and hit him (Raj Kumar) with a danda in a scuffle. When Ram Roop intervened, Ram Parshad took out a scissor from the pocket and inflicted blow on Ram Roop's neck, as a result of which, he fell down and became unconscious. Ram Roop breathed his last on the way to GTB Hospital and was declared 'dead' on arrival. The police machinery was set in motion after Daily Diary (DD) No.4A (Ex.PW-15/A) was recorded at PS Gokal Puri on receiving intimation from PW-15 (Cont. Chaman Singh) about Ram Roop's admission in the hospital by his wife. The investigation was marked to SI Baldev Singh who with Const.Rajpal proceeded for the spot. Subsequently, the investigation was taken over by SHO – Ram Singh Chauhan and he lodged First Information Report after recording Raj Kumar's statement (Ex.PW-4/A). Post-mortem examination on the body was conducted. Statements of the witnesses conversant with the facts were recorded. The accused was arrested and on completion of investigation, he was charge-sheeted for

committing offence under Section 302 IPC. To establish its case, the prosecution examined eighteen witnesses in all. In his 313 statement, the appellant pleaded false implication and came up with the plea that Raj Kumar had attempted to injured him with a scissor but it hit Ram Roop on his intervention and caused his death. He was falsely implicated in an attempt to save the actual perpetrator of crime Raj Kumar. DW-1 (Radhey Shyam) and DW-2 (Narain Giri) appeared in his defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment held Ram Parshad, guilty of the crime under Section 304 part-II IPC and sentenced him accordingly. It is relevant to note that State did not challenge the judgment whereby the appellant was acquitted of the charge under Section 302 IPC.

3. I have heard the learned counsel for the parties and have examined the record. It is admitted case of the parties that Meera married to Radhey Shyam – appellant's son had come to stay at her parents' house about eight days prior to the incident due to birth of a male child in the family of her brother – Rustam. It is also not in dispute that on the day of occurrence, Radhey Shyam and his father – Ram Parshad had come at Meera's parents' house to take her back to the matrimonial home. Her brothers had not agreed to send her back at that moment of time and a

scuffle ensued between Ram Parshad and Raj Kumar, in which Raj Kumar suffered a danda blow at the hands of the appellant. Counsel for the appellant urged that danda blow enraged Raj Kumar and he brought a scissor from the house to inflict injuries to the appellant. Ram Roop intervened to save Ram Parshad and the churi blow hit him and caused his death. The prosecution witnesses have denied the allegations and have held Ram Parshad responsible for Ram Roop's death. Counsel urged that Raj Kumar did not take the injured to the hospital and fled the spot after the occurrence. The injured was taken and admitted in the hospital by the appellant and his son. Vital discrepancies in the testimonies of interested witnesses whose concern was to save their close relative and to put the blame upon the appellant were ignored without sound reasons. Adverse inference is to be drawn against the prosecution for withholding crucial witness – Meera from appearance in Court. The appellant had no motive to bring scissor in his pocket from his residence as his only purpose was to bring back his daughter-in-law to the matrimonial home. The ocular testimony is inconsistent with the medical evidence. Learned Addl. Public Prosecutor urged that statements of the relevant and material witnesses who had witnessed the incident are consistent and there are no valid reasons to deviate from the finding recorded by the Trial Court.

4. The crucial question to be ascertained is whether the scissor blow was given by the appellant to Ram Roop or he sustained injuries accidentally when allegedly, Raj Kumar attempted to injure Ram Parshad. The occurrence took place at about 07.30 A.M. Daily Diary (DD) No. 4A (Ex.PW-15/A) was recorded at 09.18 A.M. on information given by Duty Const. Chaman Singh regarding Ram Roop's admission in the hospital. MLC mark 'Y' records arrival time of the patient at GTB Hospital at 09.00 A.M. It further records that Sohan Devi brought Ram Roop and admitted him in the hospital. Statement of the complainant – Raj Kumar was recorded and the Investigating Officer lodged First Information Report promptly without any delay at 10.40 A.M. by making endorsement (Ex.PW-18/A) thereon. In the statement, Raj Kumar gave vivid description of the occurrence and specifically named Ram Parshad to have inflicted injuries with a scissor to his brother Ram Roop. He also attributed specific motive prompting Ram Parshad to cause injuries when he declined to send Meera with his son Radhey Shyam that time. Since the FIR was lodged without any delay, there was least possibility of a false story to have been created in a short interval. FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object to insist prompt lodging of FIR is to

obtain the earliest information regarding the circumstances in which the crime was committed. While appearing in the Court, Complainant – Raj Kumar proved the version given to the police at the first instance without any major variations or improvements. He deposed that when he told Ram Parshad that Meera would be sent after performing necessary ceremonies, Ram Parshad reacted by uttering ‘Ki Tu Bahut Dada Banta Hai’. Thereafter, Ram Parshad hit him with a danda lying nearby. Ram Roop, Sohan Devi, Santosh and Jyoti reached there and tried to intervene in the dispute. When his brother – Ram Roop tried to make Ram Parshad understand that he should not pick up the dispute, he (Ram Parshad) took out a scissor from the pocket and hit him on the left side of his neck. He was taken in a three-wheeler scooter by his wife - Sohan Devi and Brij Mohan to the hospital. The neighbours apprehended Ram Parshad and gave beating to him. In the cross-examination, he disclosed that the incident took place in the gallery near the door. He denied the suggestion that beatings were given by them to Radhey Shyam. He fairly admitted that he had not accompanied Ram Roop to the hospital and explained that on the way he had gone to the police station to lodge report. He categorically denied that he had attempted to inflict injury to Ram Parshad with a scissor or by an accident it hit Ram Roop. On scrutinising the

complainant's deposition, it transpires that the appellant could not elicit any vital discrepancy to disbelieve and discard his version. PW-1 (Sohan Devi), deceased's wife also held Ram Parshad responsible for the death of her husband – Ram Roop when he inflicted injuries with a scissor on his neck. She denied the role assigned to Raj Kumar in attempting to inflict injury with a scissor to Ram Parshad. She rather explained that she pacified the quarrel that took place with Ram Parshad over sending of Meera to her matrimonial home. She corroborated the testimony of PW-4 on all material aspects and nothing material could be extracted in the cross-examination to disbelieve her. She had lost her husband and was not expected to falsely implicate an innocent and to let the real culprit go scot free. PW-5 (Santosh), Raj Kumar's wife, also deposed on similar lines. PW-12 (Brij Mohan), a neighbour, who went to the spot after hearing the commotion also supported the prosecution and implicated Ram Parshad for causing injury with a scissor on Ram Parshad's neck. He had taken the injured in a three-wheeler scooter with deceased's wife Sohan Devi to the hospital. Being a neighbour, his presence at the spot was quite natural and probable. All the witnesses referred above are consistent in their version whereby specific role was attributed to the appellant for causing injuries to the deceased with a scissor. All of them were living in a joint family

and had no history of animosity among them over any issue. It is not believable that Raj Kumar would attempt to cause fatal injuries by a scissor to the father-in-law of his sister Meera in the presence of his brother-in-law Radhey Shyam.

5. Medical evidence is not in conflict or variance with ocular evidence. PW-14 (Dr.L.T.Ramani), autopsy surgeon, proved the post-mortem examination report (Ex.PW-14/A). Ram Roop had sustained two incised wounds on the body which were ante mortem in nature caused by sharp edged weapon. Injury No.1 was sufficient in the ordinary course of nature to cause death. The injuries were not accidental in nature. These were caused with great force and the victim had no time to react and succumbed to the injuries while being taken to the hospital. Ram Parshad was medically examined after arrest on 25.07.1991 vide MLC (Ex.PW-18/A) by Dr.R.A.Gautam at GTB Hospital. Since, he was beaten by the public at large after the occurrence, he suffered simple injuries by blunt object on his body. The appellant or his son Radhey Shyam appearing as DW-1 did not explain as to how and in what manner injuries were caused to Ram Parshad. Ram Parshad did not lodge report with the police to accuse Raj Kumar for causing fatal injuries to Ram Roop. MLC mark 'Y' does not record that he had taken the victim to GTB Hospital. PW-1

(Sohan Devi) whose name finds mentioned in the MLC denied Ram Parshad to have accompanied them to the hospital. Suggestions were put to the PWs to create an impression that relations between the brothers were strained on some issues but there was no cogent material to infer any animosity among them and they all lived in a joint family without any confrontation. Ram Parshad did not give plausible explanation as to what forced him to go to the spot to fetch his daughter-in-law when Radhey Shyam had already gone there for that purpose. He had no occasion to hit Raj Kumar with a danda despite his refusal to send Meera to her matrimonial home. Discrepancies and improvements highlighted by the appellant's counsel are inconsequential as they do not go to the root of the case. Non-examination of Meera is not fatal. It is unclear if Meera lived with Radhey Shyam in the matrimonial home after the occurrence. In that eventuality, the appellant was at liberty to examine her in defence. It is true that the witnesses examined by the prosecution are all related to the deceased. However, that itself is no ground to reject their testimonies in its entirety. The occurrence had taken place during morning time at the Meera's parents' house. Outsiders / neighbours were not expected to be present to witness the incident. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he / she was

related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of surrounding circumstance and probabilities of the case to be true, it can provide a good and sound basis for conviction. Prior to the occurrence, there was no animosity of these witnesses with the appellant to falsely implicate him in the incident.

6. In the light of above discussion, the findings under Section 304 part-II IPC cannot be held unreasonable to interfere with and are affirmed. The appellant was sentenced to undergo RI for seven years. Nominal roll dated 18.07.2000 reveals that he had already undergone one year, one month and one day incarceration as on 18.07.2000 before enlargement on bail. He is not a previous convict and has no criminal antecedents. There was no ulterior motive for the appellant to cause death of his close relative. The incident occurred suddenly in a heat of passion over a trivial issue on refusal of Meera's brothers to send her to the matrimonial home with her husband that day. Considering all the facts and circumstances of the case, sentence order is modified and the substantive sentence of the appellant is reduced from seven years to five years. Other terms and conditions of the sentence order are left undisturbed.

7. The appellant is directed to surrender to serve the remaining period of sentence before the Trial court on 20th November, 2013. The Registry shall transmit the Trial Court records forthwith.

(S.P.GARG)
JUDGE

NOVEMBER 12, 2013/*tr*