

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

+ **CRIMINAL APPEAL No. 526/2012**

% **Reserved on: 12th December, 2012**
Date of Decision: 07th February, 2013

Anil @ Anu and Anr. Appellants
Through Mr. Pradeep K. Bakshi, with
Mr. Jitender Ratta, Advocates.

Versus

STATE OF NCT ...Respondent
Through Mr. Sanjay Lao, APP.

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

SANJIV KHANNA, J.

Anil @ Annu and Narinder @ Vicky, by this appeal, impugn their conviction under Section 302 read with Section 34 of the Indian Penal Code, 1860 vide judgment dated 20th December, 2011, arising out of FIR No. 368/2007, P.S. Uttam Nagar, Delhi, for murder of Deepak on 3rd May, 2007 at about 11.00 PM. By the order of sentence dated 21st December, 2011, they have been directed to undergo imprisonment for life and to pay a fine of Rs.10,000/- each, in default of which they have to undergo simple imprisonment for six months.

2. The fact that Deepak died an unnatural death in the intervening night of 3rd and 4th May, 2007, is not seriously disputed. Deepak, a

boy aged 19 years was brought to the casualty ward of Deen Dayal Upadhyay Hospital in an unconscious condition. The ECG was straight and BP, pulse was not palpable/recordable and he was not responding. He was declared brought dead vide MLC Ex. PW5/A proved by Dr. Udai Kumar Singh (PW-5) who identified the signatures and hand writing of the examining Doctor, Dr. Pooja Bhasin. The MLC records that patient had two CLW over epigastric region and dorsum of the left forearm. PW-5 was not cross-examined. The Post Mortem Report (Ex. PW9/A) was proved by Dr. Anil Shandil, who had conducted the post mortem. In his deposition, he has opined that on general examination, the following injuries were noticed:-

“(i) Incise stab wound present over epigastrium left side 1 cm from midline, 14.3 cm downward and medial to left nipple and 24 cm below jugular notch of size 5cmX2cmXCavity deep with clean cut, well defined regular margins with dried up blood along margins.

On further explanation injury traversed to cavity deep and penetrating through skin and underlying tissues cutting through left lower basal parts of lung, corresponding diaphragm, heart, live through and through correspondingly with liquid, blood and clots in chest cavity and abdominal cavity about four liters.

(ii) Incised wound left forearm distally just above wrist joint of size 7cmX2.5 cm Xmuscle deep, dorsal aspect, dried up blood and clots along margins.

(iii) Abrasion reddish in colour, irregular shape over right side face, cheek (below and later aspect right eye) and over cheek adjacent to mouth of size 6cm X2cm & 8cmX2.5cm respectively.

All underlying viscerae pale. Stomach had identifiable dal and chawal.”

3. The cause of death was haemorrhagic shock resulting from stab injuries to liver, lung, diaphragm and heart, which were sufficient to cause death in ordinary course of nature. The injuries were ante-mortem and were caused by sharp edged weapon. The alleged weapon of offence was shown to the said witness for his opinion and vide Ex. PW9/B, PW9 had stated that injuries in question could be possible by the said weapon. Opinion also draws out the weapon of offence. This aspect has been examined separately. For the sake of completeness, we note that the MLC of the deceased Deepak (Ex. PW5/A) records the time when Deepak was brought to the hospital as 11.55 PM on 3rd May, 2007.

4. On the question of involvement of the two appellants as perpetrators who had stabbed Deepak, the prosecution relies upon the statements of Chhagan Lal (PW-3) uncle of Deepak and Durga Devi (PW-4) mother of Deepak. Chhagan Lal (PW-3) has averred that on 3rd May, 2007, at about 11.00 P.M., he went to his nephew Deepak's

house, which is at a small distance from his house, to meet the family of his brother. There, he started talking to his Bhabhi i.e. PW-4 and she told him to check on Deepak who was unusually late from his walk. PW-3 headed out and soon he heard noise of a quarrel outside the Gali and went to see what had happened. At the corner of Hakim wali Gali, he saw that the two appellants were present and the appellant Narinder had caught hold of Deepak while the other appellant Anil stabbed Deepak in the stomach. PW-3 had taken his nephew Deepak to hospital along with PW-4. On the way, Deepak did not utter anything. PW-3 has further stated that 1 or 2 months prior to the incident, a quarrel had taken place between the appellants and Deepak. On his statement Rukka (Ex. PW3/A) was recorded and FIR was registered. The site plan was also prepared on his pointing out and identified by him as Ex. PW3/B. Blood stained saree of PW-4 was taken into possession by police and he identified the seizure memo Ex. PW3/E. He also testified that on 4th May, 2007, the appellants were arrested from Ambedkar Stadium, J.J. Colony, Uttar Nagar vide arrest memos Ex. PW3/F and PW3/G. The appellants had made disclosure statements Ex. PW3/J and PW3/K and knife was recovered at their instance and taken into possession vide memo Ex. PW3/N. His blood stained clothes were also taken into possession by the police vide

seizure memo Ex. PW3/O. PW-3 identified the sketch of the knife as PW3/R, the saree of PW-4 as Ex. P-2, the knife as P-3 and his clothes as P-4. He identified the clothes worn by Deepak i.e. T-shirt and pant (Ex. P5 and P6), clothes of Anil (Ex. P-7 and P-8) and those worn by Narinder (Ex. P-9).

5. Statement of Durga Devi (PW-4), mother of the deceased-Deepak, is in seriatim. She has stated that two months prior to the murder, there was a quarrel between Deepak and the two appellants but the matter was sorted out at that time. Then, on 3rd May, 2007 at 10 P.M. Deepak went for a walk after dinner. After about half an hour, PW-3 came to the house and she asked PW-3 to go and bring Deepak back. After a while she heard a noise and went out in the direction from where the noise was coming. On reaching the spot, she saw Deepak in pool of blood. She and PW-3 took Deepak in a three wheeler scooter to the Government hospital. The court allowed leading questions put to her in respect of the sari worn by PW-4 on that fateful day.

6. We do not think PW-3 and PW-4 have contradicted each other or there are major discrepancies in their statements. Statement of PW-3 gets fully corroborated by statement of PW-4 and vice a versa. PW-3 withstood the cross-examination and it is apparent that he was a

witness to the occurrence who testified truthfully and correctly. In the cross-examination, he has stated that he was fully confident that the two appellants were the persons who had stabbed Deepak. In the cross-examination, it was suggested to PW-3 that a fight had taken place between the appellants and the deceased Deepak on 6th March, 2007. It was also suggested to PW-3 that the appellants had been taken to Gupta Nursing Home, after the altercation on 6th March, 2007 but the suggestion was denied by the said witness. It was, however, accepted by PW-3 that the appellants and deceased Deepak had resolved their differences in the police station, after the quarrel. PW-3 has further deposed that he knew both the appellants before the incident as they reside near his house. PW-4 in her testimony has deposed that when she went outside the house, after hearing the noise, and at that moment she had seen the appellants running away from the spot. A crowd had gathered. Blood started oozing from the injuries suffered by Deepak and they rushed to the hospital. She denied that she did not see the two boys who were running away from the spot. She accepted that on 6th March, 2007, after a fight between the appellants and Deepak, the matter was compromised/settled by her. She denied the suggestion that she had implicated the appellants

because of the fight between appellants and Deepak, around two months back.

7. At this point, it may be relevant to record the effect of the deposition of PW-3 and PW-4 and whether it gets corroborated from the contemporaneous documentary evidence, i.e., the MLC (Exhibit PW-5/A), the rukka (PW-3/A) and the First Information Report (Exhibit PW-1/C). The MLC Exhibit (PW-5/A) was recorded at 11.55 P.M. on 3rd May, 2007. It records that the patient was brought by his mother Durga Devi (PW-4) and was declared as brought dead. Within 2 ½ hours therefrom the FIR No. 368/2007 was registered at 2.38 A.M. at Police Station Uttam Nagar under Section 302/34 IPC. This was after PW-3 had made a statement (Exhibit PW-3/A). The said statement mentions the names of the two appellants as the perpetrators of the crime and the factum that PW-3 had seen both of them when the stab wounds were given. There is hardly any discrepancy or material variation between the statement made by PW-3 (Exhibit PW-3/A) and his testimony in the court. PW-3 and PW-4 were cross-examined by the appellants on the question of motive and what was the probable cause behind the said occurrence. The witnesses apprised the Court regarding the fact that few months before the occurrence, on 6th March, 2007, a quarrel had taken place between Deepak and the appellants and

all of them had gone to the police station where it was settled. It is apparent that the appellants had grievance or a grudge and decided to teach a lesson to Deepak which was the motive behind the occurrence. Before the FIR was recorded, at about 12.20 P.M., information was received at Police Station Uttam Nagar about death of Deepak who had been taken to DDU Hospital by his mother. On examination as recorded in MLC No. 10007/2007 the doctor had declared that he was brought dead. The site plan (Exhibit PW-3/B) and scale site plan (Exhibit PW-13/A) corroborate the statements made by PW-3 and PW-4. Exhibit PW-3/B also indicates the location of the electricity pole. The scale site plan (Exhibit PW-13/A) is almost the same. The two site plans indicate the spot from where Chhagan Lal (PW-3) had seen the occurrence.

8. The two appellants were arrested on 4th May, 2007 at 5.00 P.M., i.e., very next day. They had also made the disclosure statements Exhibit PW-3/K and PW-3/J. In the disclosure statement made by Anil, as stated, he had thrown the knife, used for committing the crime, in the jungle behind the terminal. Pursuant to the disclosure statement, the knife was recovered on the pointing out memo Exhibit PW-3/N of Anil on 4th May, 2007. In the recovery memo the dimensions, i.e., length of the knife and other details were mentioned. We do not agree

that there are discrepancies in the dimensions of the knife recovered in this memo and the drawing/dimensions mentioned in the Post Mortem Report. The two drawings relate to the same knife. (See Exh. PW-3/R and Ex. PW-9/A)

9. The FSL Report (Exhibit PW-7/A) states that blood was detected on the knife with the wooden handle and as per the serological Report (Exhibit PW-7/B), the said blood was of group A. The said group tallies with the clothes which were worn by the deceased and the gauge piece which was sealed with the seal of DDU Hospital. The clothes worn by Anil, namely, the T-shirt and the pant were also sent for forensic examination. Blood group A was detected on the said clothes. On the shirt worn by Narender blood was detected and as per the Serological Report (Exhibit PW-7/B) the blood group was A, i.e., the same blood group as that of the deceased. Blood was also detected on the shirt worn by PW-3, at the time of occurrence, but as per the serological report blood group and the species of origin could not be ascertained. It was contended that this makes the presence of PW-3 Chhagan Lal at the spot debatable and doubtful. We do not think so. The CFSL Report (Exhibit PW-7/A) records that on the half sleeve shirt blood stain was detected but on the sports pyajama, having dirt stains, blood could not be detected. Statements of PW-3 and PW-4

show that within few seconds after the actual stabbing, PW-4 the mother had reached the spot and thereafter Deepak was moved to the hospital in a three wheeler scooter. Presence of blood of the deceased on the mother's saree is therefore understandable and established. It was natural for the mother to hug and get emotional on seeing her young son in an injured condition. The fact that there was some blood stains on the shirt worn by PW-3 is sufficient and does not in any way dent the prosecution case that he was not present at the spot because the blood group or the origin of the blood could not be ascertained.

10. No doubt PW-3 and PW-4 are the family members of the deceased Deepak, but this is no ground to disregard their statements. They are natural witnesses keeping in mind the place of occurrence. Their presence was not a mere chance. The relationship by itself does not affect the credibility as a relative normally would not conceal or protect the actual culprit and make allegations against innocent or wrong persons. This has been reiterated in *Namdeo v. State of Maharashtra* (2007) 14 SCC 150 where the testimony of the deceased's son, who had rushed to the crime spot outside their house on hearing his deceased father's shouts, and had seen the accused assaulting his father, was relied upon. Reliance was placed on various

case laws on credibility of a related witness and it was held, after much rumination, C.K. Thakker, J. held that:

“ **32.** In *Darya Singh v. State of Punjab* [AIR 1965 SC 328 : (1964) 3 SCR 397 : (1965) 1 Cri LJ 350] this Court held that evidence of an eyewitness who is a near relative of the victim, should be closely scrutinised but no corroboration is necessary for acceptance of his evidence.

33. Speaking for the Court, Gajendragadkar, J. (as His Lordship then was) stated: (AIR p. 331, para 6)

“6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. If the offence has taken place, as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eyewitnesses cannot be properly characterised as unlikely. If the criminal court is satisfied that the witness who is related to the victim

was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. *On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.*”

(emphasis supplied)

34. In *Dalbir Kaur v. State of Punjab* [(1976) 4 SCC 158 : 1976 SCC (Cri) 527 : AIR 1977 SC 472] the accused killed his own father and real brother over a property dispute. Eyewitnesses to the “gruesome, brutal and unprovoked” double murder were near relatives of the deceased. It was, therefore, contended that they were “interested” witnesses and their evidence should not be accepted for holding the appellants guilty.

35. Negating the contention, upholding the order of conviction, and referring to *Dalip Singh* [AIR 1953 SC 364 : 1954 SCR 145] this Court stated: (SCC pp. 167-68, para 11)

“There can be no doubt that having regard to the fact that the incident took place at midnight inside the house of Ajaib Singh, the only natural witnesses who could be present to see the assault would be Jaswant Kaur and her mother Shiv Kaur. No outsider can be expected to have come at that time because the attack by the appellants was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here. In the instant case there is absolutely no evidence to indicate that either Jaswant Kaur or Shiv Kaur bore any animus against the accused.”

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37. Recently, in *Harbans Kaur v. State of Haryana* [(2005) 9 SCC 195 : 2005 SCC (Cri) 1213] the conviction of the accused was challenged in this Court, inter alia, on the ground that the prosecution version was based on testimony of relatives and hence it did not inspire confidence. Negating the contention this Court said: (SCC p. 198, para 7)

“7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.”

38. From the above case law, it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence.

On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

11. Learned counsel for the appellant had relied upon ***Govindaraju Alias Govinda v. State by Srirampuram Police Station and Another***, (2012) 4 SCC 722. In the said case, the appellant-accused was acquitted for several reasons given by the Supreme Court. Firstly, the trial court had acquitted the two accused but the High Court on first appeal did not grant leave to appeal against one of the accused and granted leave to appeal against the second accused, who was then convicted and had filed an appeal before the Supreme Court. The conviction was based upon sole testimony of the police officer. It was observed that the testimony of the sole eye witness, the police officer required careful scrutiny and should inspire confidence before it can be accepted. It was noted that several witnesses, who were cited as eye witnesses, had turned hostile and completely repudiated the prosecution version. Thus, there were only two witnesses, two police officers who were the complainant and the investigating officer. Discrepancies in the statement of the police officer (PW-1) as to how and from what distance he had seen the actual occurrence was noticed in paragraphs 41, 42 and 43 of the said judgment. This decision,

therefore, is clearly distinguishable and does not support the contention of the appellants.

12. In view of the aforesaid position, we do not find any merit in the present appeal and the same is dismissed. The conviction and sentence are upheld and maintained.

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(SANJIV KHANNA)
JUDGE

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(S. P. GARG)
JUDGE

FEBRUARY 07th, 2013
Kkb/VKR/NA