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

+ CRL.L.P. 249/2012 & CrI.M.A.5976/2012

% ***Judgment delivered on 19th July, 2013***

STATE

..... Petitioner

Through: Mr.Dayan Krishnan, ASC with Ms.Swati
Goswami, Advocate along with
S.I. Anuj Agarwal, P.S. Prasad Nagar.

versus

RAJ KUMAR @ SONU

..... Respondent

Through: Mr.Gaurav Bhattacharya for Mr.Ajay
Verma, Advocate for respondent.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE G.P. MITTAL

G.S.SISTANI, J (ORAL)

1. The present leave to appeal has been filed by the State against the judgment of acquittal dated 2.1.2012 passed by the learned Additional Sessions Judge (Central) in the case FIR No.170/2009 under Section 302 IPC.
2. The case of the prosecution is that on 3.9.2009 at about 4:30 a.m. in front of house No.16-H/811, Gali No.8, Bapa Nagar, P.S. Prasad Nagar, the respondent herein committed the murder of Shri Mohan Lal with a fluorescent tube.
3. It is further the case of the prosecution that Manoj Kumar, PW-2, an eye witness of the case, who was the nephew of Mohan Lal, witnessed the occurrence and also saw the accused fleeing from the scene of crime after inflicting the injuries. The investigation of the case began with the

recording of DD No.10A on 3.9.2009 at 4:50 a.m. on the basis of information from PCR. The PCR information was that a person calling from mobile No.9213052700 informed that a person had killed his uncle.

4. It is submitted that the case came to be registered on the statement of Manoj Kumar, PW-2, who stated before S.I. Rakesh Yadav that while he was sleeping at his house, at about 4:30 a.m., he heard someone knocking at the door of his house. He got up and saw that the accused Raj Kumar had caught hold of his uncle Mohan Lal with his left hand while in the right hand the accused was holding a fluorescent tube. Then he narrated the manner in which the accused inflicted the injuries and fled away from the spot.
5. The crime team visited the spot and prepared a report and the photographs of the spot were also taken. At the spot PW-23, Ram Kishan, Investigating Officer picked up blood samples, blood stained earth and broken blood stained pieces of tube light, among other articles. A rough site plan was also prepared at the spot. Thereafter, on 16.11.2009, the site plan was prepared.
6. It is further submitted that the case of the prosecution is that on 3.9.2009, Dr.Pawan Kumar, PW-1 conducted the autopsy on the dead body and submitted his report. In the said report, it is clear that there was an elaborated lacerated stab wound 5 cm x 2.9 cm x 8.5 cm present horizontally over the lateral aspect of the left side of the chest with both blunt edges, anterior end 12.2 cm from anterior midline and 14.4 cm below lateral end of left clavicle and 12.8 cm above left heel and posterior end placed in anterior axillary line. The wound is directed upwards and media on opening the chest cavity, the tube light glass pieces found penetrating the third costal space and upper lob of left lung. After cutting the skin, some subcutaneous tissue, third inter-costal space and puncturing

the upper lobe of left lung (3 cm x 2 2.3 cm). It is further submitted that there can be no doubt on the plain reading of the post-mortem report that the death was caused by a stab by a broken tube light.

7. Counsel for the petitioner / State submits that the trial court has proceeded to acquit the accused on the basis that there was nothing to show that the accused was holding a broken tube when he entered the house. Counsel further submits that the trial court has erroneously come to the conclusion that since the deceased was taller than the accused by 4-5 inches, he could not have caught hold of his collar and stabbed him and thus the version of the PW-2 (eye-witness), has wrongly be disbelieved. Counsel further submits that the trial court has given undue importance to the fact that the FIR was registered at 9.10 a.m. in the morning, whereas the time of occurrence of the murder was 4:30 a.m.. It is thus contended that the delay was merely procedural and this cannot be a ground for acquitting the accused.
8. Counsel for the petitioner /State further submits that the entire evidence of PW-2, Manoj Kumar, who is an eye-witness has been disbelieved, although his evidence is reliable and should have been the basis of conviction of the accused person and moreover the evidence of PW-2 stands duly corroborated by the evidence of his brother, PW-3 and mother, PW-4, who were also present in the house where the incident took place.
9. We have heard counsel for the petitioner. The case of the prosecution before the trial court was that on 3.9.2009 at about 4:30 a.m. in front of house No.16-H/811 Gali No.8, Bapa Nagar P.S. Prasad Nagar, Delhi, murder of one Mohan Lal was committed with a fluorescent tube. Manoj Kumar (PW-2) nephew of the deceased witnessed the occurrence and the accused ran away after inflicting the injury on the person of his uncle.

DD No.10A came to be recorded on 3.9.2009 at 4:50 p.m. on the basis of information received from PCR C-2 operator. The statement of Manoj Kumar was recorded by the S.I. Rakesh Yadav, wherein he stated that he was sleeping at his house at about 4:30 a.m., he heard someone knocking the door of his house and he got up and saw that Raj Kumar (accused) had caught hold of his uncle, Mohan Lal with his left hand while in his right hand he was holding a florescent tube. He narrated the manner in which the accused inflicted injuries on his uncle. He stated that after arrival of his mother and brother he informed the police from his mobile phone. Rukka was despatched at 8:45 a.m..

10. The trial Court has disbelieved the evidence of PW-2, Manoj Kumar, who is stated to be an eye-witness. The trial Court has also found serious contradictions in the statements of PW-2 and PW-3, Mahinder Kumar (brother of PW-2). As per the testimony before Court, PW-2 has deposed that when he opened the door, he saw the accused holding his uncle by the neck with one hand and broken tube in the other hand. The accused had then inserted the broken tube on the side of the chest of his uncle, while saying that why he had not given him *BIDI* and that he would kill him. The trial Court observed that in the statement PW-2/A made to the Police, Manoj Kumar had not stated that the accused was holding a broke tube and in case had he seen any broken tube, he would have specifically stated so.
11. As per the prosecution, the deceased was staying in the house of PW-4, Smt.Shakuntala; PW-2 and PW-3 are the sons of Smt.Shakuntala. As per the version of the prosecution, PW-2, PW-3 and PW-4 were residing and present in the house when the incident took place; at 4:30 a.m. PW-2 had heard a loud noise of the door being knocked, he had seen the accused holding his uncle with one hand and with a broken tube in another hand.

The accused then inserted the broken tube on the side of the chest of his uncle, Mohan Lal, while saying as to why he had not given him BIDI and that he would kill him. The motive in this case is not providing a BIDI by the deceased to the accused. PW-4 has deposed that when she reached near Mohan Lal, deceased, he told her that he was assaulted by Sonu, son of Madan Lal, who lives near their house in the same street. The trial Court has rightly disbelieved the evidence of PW-4 as neither PW-4, nor her sons, i.e. PW-2 and PW-3 informed the Police that Sonu had killed Mohan Lal. In case the deceased had made such a statement to PW-4, she would have certainly shared the same with her sons, present at the spot, according to her. PW-3, has testified in Court that his uncle, Mohan Lal was murdered on 3.9.2009, who used to live in the same house with them. Nowhere in his statement it is stated that he came out of the house with his mother or that prior to him his mother and brother had come out of the house or regarding the presence of accused or that PW-2, Manoj Kumar was seen by him attending to his uncle when he was lying in street with blood all over his body. There is no evidence to show that PW-2 had raised hue and cry or any form of alarm or tried to chase the accused. There are also material contradictions in the statements of PW-2 and PW-3, which have been noticed by the trial Court and are reproduced below:

“Contradictions in the statements of PW-2 and PW-3

20. According to PW-2 Manoj Kumar, he had apprised his brother Mahinder Kumar about the occurrence and as to who assaulted their uncle Mohan Lal and in which manner. However, PW-3 nowhere stated that his brother had apprised him of the occurrence, the manner in which it took place and as to who had assaulted their uncle. In his chief examination he simply deposed to have identified the dead body of his uncle vide statement Ex.PW-3/A and that dead body was collected by his younger brother Manoj. In his cross examination too, PW-3 nowhere stated

to have been apprised of the by his brother Manoj Kumar, the manner in which occurrence has taken place.

It is in the statement of Ex.PW-2/A made by PW-2, Manoj Kumar before the police that his brother had informed the police dialing no.100. Had PW Manoj Kumar apprised his brother Mahinder Kumar of the occurrence and the manner in which it had taken place, as well as involvement of the accused, PW Mahinder Kumar would have informed PCR that his uncle had been assaulted by the accused. However, in Ex.PW-6/A DD No.10A recorded at 4:50 p.m. it stands recorded that the informer had informed that his uncle had been stabbed by *one person*. The informer did not inform that accused had stabbed the uncle of the informer. It remains unexplained as to why name of the accused does not find mention in the DD No.10A, in case he was involved in the commission of crime and witnessed by PW-2 Manoj Kumar while assaulting him. It is in the statement Ex.PW-2/A of PW Manoj Kumar that he used to sleep in the room situated in the middle of the house, on the ground floor. It is also in his statement that Mohan Lal (since deceased) used to sleep in the outer room of the house. It has come in the statements of PW-3 Mahinder Kumar and PW-4 Smt.Shakuntala, mother of PW-2 that Mohan Lal (since deceased) used to live in the same house i.e. in the outer room and the door of the said room opens in the street. But there is nothing in the prosecution evidence to suggest that Mohan Lal had slept in the said room during that night. It was for the prosecution to bring sufficient material on record to suggest as to where Mohan Lal was on that night i.e. whether he had gone out of the house on being called by someone or if he was out of the house having not slept in the outer room. In his cross examination, PW-2 Manoj Kumar admitted that on that night when he opened the door, the door was found bolted from inside. From this an inference can be drawn that Mohan Lal did not sleep at the house. Rather, he appears to be away from the house on that night. PW Manoj Kumar admitted that someone was knocking at the outer gate of the house from the street while he was having a sound sleep inside the house.

PW-4 Smt. Shakuntala stated in Court that on 03.09.2009, during night while present inside the house, she heard noise and got up. Her son Mahinder PW-3 also got up and both of them came out of the house. Both of them saw Mohan Lal lying in the street with blood all over his body. Further, according to PW-4, she with the

help of her son started attending Sh.Mohan Lal.

It is in the statements of PW-3 and PW-4 that Manoj Kumar had unbolted the door and gone out. When the door which he opened, was lying bolted from inside, it remains unexplained as to how Mohan Lal came out of the house. So even from the perusal of statement of Smt.Shakuntala as well, it cannot be said that on that night Mohan Lal was sleeping inside the house or that he had somehow gone out of the house in their presence.

It is not case of prosecution that Mohan Lal had raised any hue and cry or attracted by the hue and cry they had come out. PWs-2, 3 and 4 are alleged to come out, after the door of the outer room was knocked at. There is nothing in the statement of PW-2, PW-3 and PW-4 as to who had knocked at the door from outside the house.”

12. As noticed by the trial court, there are material contradictions in the testimonies of PW-2, PW-3 and PW-4. The contradictions are such which not only create a doubt with regard to the presence of PW-2 at the time of occurrence of the offence but also create a doubt with regard to the presence of the deceased at the house of PW-4.
13. It is the case of the prosecution that PW-2, Manoj Kumar had attended to his uncle at the spot, when there was blood all over his body; clothes of PW-2, Manoj Kumar were not seized, although an attractive explanation has been given in the cross-examination that PW-2 was only wearing an underwear, however, in case he had attended to his uncle, who was profusely bleeding there was every likelihood that the underwear of PW-2 would have got stained with blood. While according to the prosecution, PW-2, PW-3 and PW-4 were all present at the house where the incident took place. PW-7, Constable Khub Ram, Assistant Ambulance Officer, of CATS is stated to have reached the spot at about 4:46 a.m. and shifted Mohan Lal to LHMC hospital. There is nothing in the statement of PW-7 as to who from amongst family members of Mohan Lal accompanied him

to the hospital from the spot. It is not the case of the prosecution that PW-2, Manoj Kumar, had accompanied Mohan Lal in the CATS ambulance from the spot. In the cross-examination Manoj Kumar initially stated that he remained with his uncle only up to the time his uncle was removed to the hospital in CATS ambulance, but in the next breath he stated that he accompanied his uncle to the hospital. In reply to another question, Manoj Kumar stated that as far as he remembered only Mahinder Kumar (PW-3) had accompanied his uncle to the hospital along with Police officials, whereas he and his mother remained at home. The MLC prepared at LHMC hospital (Ex.PW-9/A) dated 3.9.2009 at 5:20 a.m. reveals that injured was brought to the hospital by Constable Khub Ram and Constable Ranbir Singh; neither the name of Mahinder Kumar, nor his brother Manoj Kumar finds mention in the MLC in the column of relatives and friends of the injured. This also creates a serious doubt in the version of the prosecution; and in case PW-2 was the eye-witness and PW-3 and PW-4 were also present at the time of the incident, at least one male member of the family would have accompanied Mohan Lal in the ambulance to the hospital.

14. As per the testimony of PW-2 the accused had used a broken fluorescent tube to cause injury on the left side of the chest of Mohan Lal. Medical evidence available in the form of autopsy report Ex.PW-1/B would reveal that one lacerated stab wound 5 cm x 2.9 cm x 8.5 cm was found present horizontally over lateral aspect of left side of the chest. On opening the chest cavity, he found pieces of tube penetrating the third intercostals space and upper lobe for the left lung. Contused lacerated over area of 18 cm X 9 cm, varying in size from 0.3 cm x 0.3 cm x 0.1 cm to 1.5 cm x 0.9 x 0.1 cm where also found present below injury bi, 1 and anterior aspect of left side of the chest.

15. As per version narrated by Manoj Kumar to the police only one injury was caused by the accused with a tube. He did not state having seen the accused causing any other injury. There is no explanation in his statement regarding the contused lacerations as observed by the doctor on the dead body of Mohan Lal, which would again create a doubt with regard to presence of PW-2 at the spot of the incident.
16. The trial Court has rightly reached the conclusion that the delay in recording of statement PW-2/A of PW-2, Manoj Kumar creates a doubt in the version of the prosecution. PW-2/A was recorded at about 8:45 a.m. although the occurrence took place at 4:30 a.m.; information regarding occurrence had reached the police at 4:50 a.m. vide DD No.10A (PW-6/A). The delay is fatal in this case as PW-2, Manoj Kumar, knew the accused who was a resident of the same street, but the name of the accused was not conveyed to the police in either of the two entries. The prosecution has also failed to explain the delay in dispatch of *Rukka* which was after 5 hours of the occurrence.
17. Another factor which has been rightly noticed by the trial court is that the occurrence took place at 4:30 a.m. in the month of September, 2009; the site plan does not reveal any electric pole or bulb near the place of occurrence and in the absence thereof it would be difficult for Manoj Kumar to witness and establish the identity of the assailant.
18. Although it is not necessary to establish motive in each and every case, but according to PW-2 since the deceased did not provide a BIDI to the accused he was murdered. It is not explained as to why the accused would require a BIDI at 4:30 a.m. in the morning. According to PW-2, who was present at the spot there was no altercation or argument between the two. No BIDI or Bundle of BIDI was found at the spot, thus, the statement of PW-2 becomes unreliable as he has nowhere stated in the

statement made to the police that the accused had a broken tube in his hand and in case non-providing a BIDI was the reason of the assault then why would the accused carry a broken tube with him or was the fluorescent tube removed from the spot broken into half and then inserted in the body of the deceased.

19. We also find it unusual that although the occurrence took place in a residential colony, none of the neighbours were joined in the investigation, as to whether they heard any hue and cry. The prosecution has also relied upon the fact that blood stained clothes were recovered from the accused. The accused was arrested on the same date. According to the prosecution even at the time of arrest accused was wearing blood stained clothes. It is highly improbable that the accused would not have changed his clothes or made any attempt to destroy them from 4:30 am. in the morning when the incident took place up to the time of his arrest.
20. On careful examination of the evidence, we are satisfied that the prosecution has not been able to prove its case beyond reasonable doubt. There is no perversity in the appreciation of evidence by the trial court. No grounds are made out for interference in the judgment of the trial Court. Accordingly, the leave to appeal is dismissed.

G.S.SISTANI, J

G.P. MITTAL, J

JULY 19, 2013
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