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

Date of decision: 7th March, 2014

+ **CRL.A.749/2010**

DALIP KUMAR @ ALBELI Appellant
Through: Ms. Manjusha Wadhwa, Advocate

versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Rajat Katyal, APP for the State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

SANJIV KHANNA J. (ORAL)

1. The Appellant Dalip Kumar @ Albeli impugns his conviction by the impugned judgment dated 24.04.2010 passed in Sessions Case No.75/2009 arising out of FIR No.314/2006, Police Station Model Town. The appellant has been convicted under Section 302 of the Indian Penal Code, 1860 (IPC for short) for murder of Lal Bahadur between 10:30 to 11:00 p.m. on 20th May, 2006 at house No.H-107, DESU Colony, Rana Pratap Bagh, Delhi.
2. By order on sentence dated 28.04.2010, the Appellant has been

sentenced to undergo imprisonment for life and pay fine of Rs.10,000/- in default of which he is to undergo rigorous imprisonment for three years.

3. Homicidal death of Lal Bahadur pursuant to incised wounds has been proved beyond doubt and was not challenged by Ms. Manjusha Wadhwa, *Amicus Curiae* appearing for the appellant. MLC of the deceased Ex.PW-17/A was proved by Dr. Ranjan Verma, (PW-17), CMO Hindu Rao Hospital who deposed that on the intervening night of 20/21st May, 2006 at about 12:30 a.m. he had examined Lal Bahadur, son of Madan Lal, aged 50 years. Deceased was brought by Head Constable Rajinder of PP Sangan Park. He was declared brought dead and the body was sent to the mortuary. The post-mortem was conducted by Dr. C.B. Dabas, (PW-15) on 22.05.2006 and in the post-mortem report Ex.PW-15/A and as per in the Court deposition of PW-15, the following injuries were observed on the body of the deceased:-

- (1) Incised wound 1.8 x 0.5cms skin deep on right forearm on front part.
- (2) Incised wound 2.7 x 0.5 cm muscle deep over middle front part of right thigh.
- (3) Incised wound 3.1 x 0.6 cm muscle deep over back of right thigh in middle and lower part with upper angle of the wound was round and lower angle was acute.

- (4) Incised wound 5 x 0.8 cm over front of right leg in middle part.
 - (5) Incised wound 3 x 0.5 cms over back of right leg.
 - (6) Two incised wounds measuring 4 x 0.4 cms over left leg on medial and lower part and communicating with each other.
 - (7) Incised wound two in number located on middle back part of left thigh measuring 2.5 x 0.8 cm and 2.5 x 0.6 cms respectively and communicating with each other.
 - (8) Incised wound 3 x 0.5 cm and 2.5 x 0.6 cms respectively and communicating with each other.
 - (9) Multiple abrasions of varying sizes of 0.5 x 0.5 cms to 2.5 x 1 cms over back of chest and back of abdomen around spin.
 - (10) One stabbed wound 5 cm x 0.8 cm located on left side front of chest in fifth inter costal space, 6 cms outer to mid line and 127 cms above-left heel. Wound was placed obliquely with upper and right angle being acute in lower angle being round. The wound was penetrating into chest cavity.
4. PW-15 has testified that on dissection and exploration of injury No.10, it was noticed that this injury had entered the chest cavity through fifth inter costal space cutting the lower border of fifth rib and then perforating through pericardium, anterior and posterior walls of left ventricle, posterior part of pericardium, anterior surface of left lung in its lower border of upper lobe and ended in upper part of lower lobe. There was effusion of blood alongwith track of the wound. Length of the track was 14 cms. PW-15 opined that injury No.10 had been caused by a sharp edged weapon which was sufficient to cause death in the ordinary course of nature. Injury Nos.1 to 8 were also caused by sharp

edged weapon and injury No.9 had been caused by blunt force impact with a hard surface or object. All the injuries were ante mortem in nature. The time of death was approximately 35 to 36 hours. A knife Ex.P-1 was also shown to PW-15 and he observed that the injuries in question except injury No.9 were possible with the said weapon.

5. On the question of involvement of the Appellant, the learned counsel for the Appellant has submitted that Anita, Meera and Versha, PW-1, PW-2 and PW-3 respectively have turned hostile. They were cross-examined by the Additional Public Prosecutor. She submits that this has dented the prosecution case and the Trial Court has erred in partly relying upon the statements of PW-1 and PW-2 and Shashi (PW-27). She has drawn our attention to the scaled and unscaled site plan marked Ex.PW-26/A and Ex.PW-30/A and pointed out that there was a rear door to both flats/quarters Nos.H-105 and H-107, the fact reluctantly accepted by ACP Hira Lal (PW-30).
6. We have considered the said contentions but we do not find any merit and substance in the same. Shashi (PW-27) has deposed that she had been living in quarter No.H-105, DESU colony with the deceased Lal Bahadur and his family since her childhood. Lal Bahadur was her

brother. She identified the appellant as Albeli when her deposition was recorded on 04.10.2008. She has stated that at 9:00 p.m. on 20.05.2006 Albeli and the deceased were sitting in quarter No.H-107, while she was in her quarter. At that time verbal heated exchange had taken place between the two and Albeli went away stating that he shall come back. She testified that the appellant might have borrowed money earlier from the deceased Lal Bahadur. At about 10:30 or 11:00 p.m. the appellant came back and bolted the door of their quarter, i.e. Quarter No.H-105 from outside. At that time, Lal Bahadur was in Quarter No.H-107. When they heard loud cries they became worried and tried to open the door. Thereupon their neighbour Anita came and opened the door of their quarter from outside. She saw her brother Lal Bahadur lying in a pool of blood in quarter No.H-107. She, her sisters Shallu, Neelam and Nanda and wife of Lal Bahadur, Meera started crying. Telephone number 100 was dialled and Lal Bahadur was taken to the hospital. Meera accompanied her husband Lal Bahadur to the hospital and later on they came to know that Lal Bahadur had expired. In her cross-examination PW-27 has stated that Quarter No.H-105 had three rooms, open courtyard and a kitchen. She was living in a separate room constructed between Quarter No.105 and 107 and she used to

have petty quarrels with her brother Lal Bahadur. Lal Bahadur was not residing in Quarter No.H-107 but used to spend time there. She did not know who was the owner (sic occupier) of Quarter No.H-107 but there was a *garwali*. She voluntarily deposed that at that time Quarter No.H-107 was vacant. PW-27 was unable to identify the house number of Anita but had given her name in the examination-in-chief as the person who had opened their door. She testified that Lal Bahadur used to take drugs but she was unaware of the drug and could not categorically state whether Lal Bahadur used to take smack. No household articles were lying in Quarter No.H-107. Lal Bahadur had old relationship with the appellant and they had not informed the police that the appellant had earlier come and threatened the deceased. Door of their Quarter No.H-105 used to remains open and they used to only close the door when they went out. She accepted that she had not seen anybody bolting the door from the outside. Her bhabhi Meera (PW-2) told her that the door had been bolted from outside. She accepted that statements of her sisters were not recorded.

7. Meera (PW-2) has deposed on identical lines. She accepted that her husband used to consume intoxicants and on the said date between 10:00 to 11:00 p.m. while she was present in her quarter, her husband

was sitting in a vacant room of quarter No.H-107. He was taking some substance at that time. The appellant used to reside in Kabir Nagar *jhuggi*. The appellant had met Lal Bahadur in the said room and was asked to refund Rs.3,000/-. The appellant refused and an altercation had taken place between the two. The appellant had then threatened her husband. After half an hour, the appellant came back and went to the room of her husband, *i.e.* quarter No.H-107 but prior to that he had locked the room of her sister-in-law Shashi (PW-27). She was cross-examined by the Additional Public Prosecutor. She accepted that the appellant had locked the room of their quarter No.H-105 and she was in the said quarter with Shashi. She deposed that she forgotten facts due to passage of time and sudden demise of her husband. Thus, PW-2 had initially deposed that the appellant had locked the door of the room of PW-27 but on cross-examination by the Additional Public Prosecutor accepted that the door of the quarter where she and Anita were present was bolted from outside. We do not think the aforesaid discrepancy is such that we should discard and disbelieve the testimony of PW-2 as an unreliable or untrustworthy witness. PW-2 has further stated that she had seen the appellant coming out of the room of her husband after the bolt was opened by Anita, their neighbour. She went

inside and saw her husband Lal Bahadur lying in a pool of blood. Thereupon her neighbour Varsha (PW-3) made a call to the police from her residence. In cross-examination, PW-2 had stated that she had seen the appellant killing her husband and who thereafter left the spot. This apparently was an exaggeration, as in the examination-in-chief PW-2 had stated that when she was going towards the room of her husband, when she saw the appellant coming out after killing her husband. On further cross-examination PW-2 accepted that she had not seen the appellant stabbing her husband. The Trial Court in the impugned judgment has rightly observed that PW-2 and PW-27 were illiterate ladies hailing from poor economic background. When we examine their narration of the incident in a sequential manner, some degree of latitude and room is required.

8. Anita (PW-1) had accepted that she heard noise at about 10:30/11:00 p.m. She went to the lane behind quarter No.H-106, DESU Colony and opened the door of quarter No.H-106, DESU Colony. She found Meera (PW-2) inside the house. Meera (PW-2) ran towards the adjoining house. The learned counsel for the appellant has submitted that Anita (PW-1) has deposed that Meera (PW-2) was inside quarter No.H-106 and she had opened the bolt of the said quarter. We do not

think that the said statement on the quarter number should be accepted. PW-1 has stated that quarter No.H-106, DESU Colony was her quarter. PW-1 apparently made a mistake by referring to the number of her quarter. This was clarified by PW-1 when she was cross-examined by the Additional Public Prosecutor. She has accepted the fact that upon opening the door, Meera came out from the room and ran towards Lal Bahadur in the quarter No.H-107, DESU Colony, Delhi. At that time, Meera had raised hue and cry, that the Appellant had killed Lal Bahadur. PW-1 supports the prosecution version and the testimony of PW-2 and PW-27 that Anita had opened the bolt of the quarter from outside and PW-1 and PW-2 went to quarter No.H-107, but Lal Bahadur had already been stabbed by the appellant who ran away.

9. Versha (PW-3) was declared as hostile but we notice that she has accepted that on 20.05.2006 at 11:00/11:30 p.m. at night she was present and came outside upon hearing screams. Family members of Lal Bahadur were crying. Lal Bahadur was found to be lying in quarter No.H-107 in a pool of blood. Then she had made a call to the police on number 100 and Lal Bahadur was removed from the spot by the police. In the cross-examination by Additional Public Prosecutor, PW-3 deposed that she had not seen the appellant coming out of the house of

Lal Bahadur but accepted as correct that she did tell the police that the appellant used to visit the area. She claimed that she did not know whether appellant was also known as Dalip Kumar but she knew him as Albeli.

10. The aforesaid statements of PW-1, 2 and 27 is corroborated by the testimonies of the police officers. W/Constable Urmila (PW-7) has deposed that at about 23:56 p.m. on 20/21.05.2006 she had received a telephone call from Varsha from telephone No.55358516 about a quarrel at quarter No.H-105, DESU Colony, Pratap Bagh, Delhi. She recorded this information in the Police Control Room (PCR) form marked Ex.PW-7/A. Head Constable Ishwar Singh (PW-14) has deposed that at 12:05 a.m. he had received information from the control room and had gone to the Quarter No.H-105. He was accompanied by SI Veerpal Singh, ASI Karamvir Singh and Head Constable Prem Singh. Meanwhile, Additional SHO had reached the spot and had taken the deceased to Hindu Rao Hospital. The Additional SHO had also recorded statement of Meera (PW-2) and on this basis *rukka* was prepared and the FIR was registered. In the cross-examination by the Additional Public Prosecutor PW-14 accepted that the occurrence had taken place in House No.H-107 and not in House

No.H-105 as stated by him. PCR form Ex.PW-7/A which was contemporaneously recorded as stated by PW-17 reads as under:-

“Lal Bahadur s/o Madan Lal, R/o the aforesaid (address), age 45 years was stabbed by B.C. Albeli of Kabir Nagar. The knife blows inflicted are 02 in the left leg, 02 in the right leg and 01 in the chest on the left side totalling 05 knife blows. He was declared “brought dead” by the doctor at H.R. Hospital. His wife was accompanying him who said that B.C. Albeli had come to their house at 9 o’clock in the night and the quarrel had started regarding some money matter. She said that the incident had occurred 10 minutes earlier to the call. B.C. Albeli had fled from the spot. Additional SHO, Model town and ASI Karambeer are on the spot.”

11. At this stage, it would be suffice to notice that the name of the appellant is mentioned in the *rukka* and the FIR as the perpetrator who had wounded and injured the deceased Lal Bahadur.
12. We have also examined the testimony of Insp. Sunita Sharma (PW-23), who had prepared the *rukka*, Insp. Swatantar Singh (PW-24) and SI Virpal Singh (PW-25) who have similarly deposed as to what had transpired after they reached the spot and further investigation undertaken. The Investigating officer ACP Hira Lal, (PW-30) has stated that he recorded the statement of Meera (PW-2) and had inspected the spot/place of occurrence. Blood was scattered in one room of quarter No.H-107. He had prepared the unscaled site plan

Ex.PW-30/A. The unscaled site plan prepared by PW-30 refers to location of two doors X1 and X2. X1 was the door on the rear side of quarter No.H-105. Door X2 was shown in the unscaled site plan Ex.PW-30/A, but was not specially given an indication. X2 was the entry door of quarter No.H-107. The scaled site plan makes the position clear and the door of House No.H-107 was clearly indicated in the scaled site plan Ex.PW-26/A. The door of quarter No.H-105, which was locked from outside as deposed by PW-27, PW-2 and PW-1 stands indicated at point D in the scaled site plan Ex.PW-26/A and the unscaled site plan Ex.PW-30/A. Thus, there is no real and substantial divergence in the two site plans Ex.PW-30/A and Ex.PW-26/A.

13. We do not find any merit in the contention of the learned counsel for the Appellant that PW-27 and PW-2 could have and should have exited from the rear door upon hearing cries of Lal Bahadur, instead of shouting and asking someone to open the bolt of their door. The said argument has to be rejected for several reasons. The bolted door shown in the unscaled site plan was adjacent to door of quarter No.H-107. It was natural for PW-27 and PW-2 to shout and ask someone to open the said door, when they heard cries coming from quarter No.H-107. Anita thereupon opened the said door and they ran to quarter

No.H-107 where they found that Lal Bahadur was lying in a pool of blood having suffered injuries. They saw the appellant running away from the spot, i.e. the room in quarter No.H-107.

14. The appellant was subsequently arrested as per arrest memo Ex.PW-16/B on 21.05.2006 at 9:00 a.m. as deposed to by Head Constable Amar Singh (PW-16), who had also reached the place of occurrence on the said night along with other police officers. SI Karambir Singh (PW-28) has testified on similar lines in the court. Statement of ACP Hira Lal (PW-30) is identical.
15. On the basis of the disclosure statement Ex.PW-16/D, the appellant got recovered one blood stained knife from his room which was seized by memo Ex.PW-16/G. The knife was identified by PW-30 and marked Ex.P-1. The said recovery is corroborated by the oral testimony of SI Karamvir Singh (PW-28). It was submitted on behalf of the appellant that no public witness had joined or signed the recovery/seizure memo Ex.PW-16/G. The Appellant, it is accepted, was a bad character (B.C.) of the area. The deceased apparently was a drug addict. The reluctance on behalf of the public or person from the locality to join is apparent. The FSL reports does not mention presence of blood on the

pant and the shirt seized from the appellant. However, blood was detected on the weapon of offence but the blood group could not be ascertained. In view of the aforesaid, the FSL report can only be partly relied upon by the prosecution as to the presence of human blood on the knife, Ex.P-1 which was seized. The appellant was arrested very next day at 9:00 a.m., within 12 hours of the occurrence.

16. The appellant in his statement under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has stated that he had surrendered at the Police Station Model Town the next day, that is, 21.05.2006 as his family members were put under pressure from the police. This is not acceptable in view of the fact that the appellant was arrested within a few hours of the registration of the FIR. We agree with the learned counsel for the appellant that an incorrect question was put to the appellant for answer in the statement under Section 313 Cr.P.C., as it was suggested that as per the report of the Serologist, blood group A was found on the pant and shirt, *i.e.* the clothes worn by the appellant. The said suggestion should not have been given as the said shirt/pant belonged to the deceased. However, this will not materially affect the verdict and our final conclusion. We are also not inclined to accept the contention on behalf of the appellant that absence of blood on his

clothes creates doubts as to the prosecution version on the involvement of the appellant. The ocular testimony of PW-2 and PW-27 are categorical, candid and merits acceptance. We do not think their testimony, clearly and fulgently describing and stating the appellant was the perpetrator, can be ignored for this reason. The appellant was mentioned and named at the very first instance, rather immediately after the occurrence. The appellant's name as the culprit is mentioned in the contemporaneous initial PCR record Ex.PW-7/A.

17. Keeping in view the aforesaid factual position and discussion it would be wrong and incorrect to hold that the testimonies of PW-2 and PW-27, whose presence at the spot at the time of occurrence in the house/quarter was natural and normal, should be disbelieved in spite of their categorical and explicit depositions. Thus, we have no difficulty in confirming the findings recorded by the Trial Court on the question of involvement of the appellant and hold that the appellant has been rightly convicted under Section 302 IPC. However, on the question of sentence, we feel the sentence directing the appellant to undergo rigorous imprisonment for three years in default of payment of fine of Rs.10,000/- requires modification and relaxation. The appellant before us has been represented by *Amicus Curiae*. Accordingly, we modify

the said portion of the sentence and direct that in case the appellant does not pay fine of Rs.10,000/- he shall undergo simple imprisonment for a period of six months.

18. We accordingly dispose of the appeal upholding the conviction of the appellant under Section 302 IPC and the sentence of life imprisonment with fine of Rs.10,000/- but direct that the appellant will suffer simple imprisonment for six months, if the fine is not paid.
19. Copy of the order be sent to the Trial Court for information.

(SANJIV KHANNA)
JUDGE

(G.P. MITTAL)
JUDGE

MARCH 07, 2014

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