

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

Date of Decision: 22nd April, 2014

+ **CRL.A.913/2011**

CHHOTY LAL Appellant

Through: Mr. Imran Khan, Advocate

versus

STATE Respondent

Through: Mr. Sunil Sharma, APP for the
State with SHO/Inspector
Arvind Kumar, PS Kalyanpuri

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CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment and order on sentence dated 19th February, 2011 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi in Sessions Case No.63/2010 arising out of FIR No.166/2009, PS Kalyan Puri whereby the appellant was convicted u/s 302 IPC and was sentenced to undergo rigorous imprisonment for life and further sentenced to pay a fine of Rs.5000/-, in default of payment of fine, to undergo simple

imprisonment for a period of six months. The convict was granted benefit of Section 428 of the Code of Criminal Procedure.

2. The factual matrix of the case, succinctly stated, is as follows:-

3. The incident of murder of the deceased Lakhmi Chand took place on 02.07.2009 at about 8:15-8:30 A.M. at Kalyan Puri in Delhi. The deceased Lakhmi Chand was an employee of Virender Singh (PW4) who owned a PCO/STD booth where the deceased was employed. On the day of the incident, the accused Chhote Lal came to the PCO/STD and asked Lakhmi Chand to come along with him to take oath in a temple situated nearby. The deceased went along with him, leaving the PCO in the charge of Vidya Ram (PW7). Not much time had elapsed when there was a heated exchange of words between the deceased and the accused which were overheard by Vidya Ram (PW7) and he moved towards the mandir to find out what happened. He saw the accused Chhote Lal running with a knife in his hand and the injured Lakhmi Chand lying with stab wounds on his stomach and hand. Chander Prakash (PW1) who lived in the gali nearby also heard commotion outside and came out to find the deceased lying in an injured condition with blood oozing out from the middle portion of

the body. At the same time somebody called the police using his mobile phone. Virender Singh (PW4), the owner of the PCO booth and the employer of the deceased was taking music classes of some children when he was informed by some children from the neighbourhood that Lakhmi Chand has been stabbed and is lying in injured condition. He went and saw Lakhmi Chand with injuries to his hand, chest and stomach. Both, Virender Singh (PW4) and Chander Prakash (PW1) took the deceased in a rickshaw to Lal Bahadur Shastri Hospital. On the way, they were informed by the deceased that Chhotey Lal had stabbed him. Meanwhile, information received from the call made from the phone of Chander Prakash (PW1) related to the said incident was recorded at 9:04 A.M. vide DD No. 15/A (Ex.PW3/A) by HC Ashok Kumar (PW3). SI Love Atrey (PW16) along with Ct. Ajay Singh (PW13) left the police station for the spot. On reaching the place, they were informed that the deceased has been shifted to hospital. SI Love Atrey (PW16) left Ct. Ajay Singh (PW13) at the place of incident to secure it and went to the hospital. HC Ashok Kumar (PW3) also received a rukka from SI Love Atrey on the basis of which FIR No. 166/09 (vide Ex.PW3/B)

was registered. HC Ashok Kumar (PW3) also made endorsement on rukka (vide Ex.PW3/C). At 11:30 A.M. another DD No. 19A was recorded vide Ex.PW3/D of the information received from Ct. Amit Kumar (PW9) that Lakhmi Chand has died. The case was then taken over by Inspector Roshan Lal (PW18) and he also reached the crime scene. SI Love Atrey also reached back on the crime scene. Inspector Roshan Lal (PW18) supervised the seizure of earth control and blood stained earth sample, the shirt and the baniyan (vest) of the deceased which was seized in a pulanda vide Ex.PW13/C. The shirt of Virender Singh (PW4) which had blood stains on it as he shifted the deceased person to hospital was also seized vide Ex.PW4/A. Subsequently, secret information was received that accused Chhotey Lal was at his home. Inspector Roshan Lal (PW18), along with SI Love Atrey (PW16), Ct. Ajay Singh (PW13) and eye witness Vidya Ram (PW7) went to apprehend the accused, where Vidya Ram (PW7) identified the accused and he was apprehended. Search of the accused was conducted vide Ex.PW13/A where a knife was found to have been concealed on the right side dub which was seized vide Ex.PW7/B and its sketch was prepared vide Ex.PW7/C. Thereafter,

IO Inspector Roshan Lal (PW18) formally arrested accused Chhotey Lal at 9 P.M. vide Ex.PW7/D.

4. After completing investigation, charge sheet was submitted under Section 302 IPC.

5. On appearance of the accused, arguments on charge were heard. Charge for offence under Section 302 IPC was framed against him to which he pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution had examined 19 witnesses. All the incriminating evidence was put to the accused while recording his statement under Section 313 Cr.P.C. wherein he denied the case of prosecution. According to him, Chander Prakash was living in the same locality at Khichripur. He wanted him to depose in the Court in his favour in a case pertaining to the murder of his father. The accused appeared in the Court. However, Chander Prakash was aggrieved with him and threatened to falsely implicate him in some case. In collusion with PW7 Vidya Ram, he got him falsely implicated in this case. He pleaded his innocence. In support of his defence, he examined two witnesses.

7. After meticulously examining the evidence and other material on record, the learned Trial Court arrived at a conclusion that the prosecution had succeeded in proving the guilt of the accused beyond reasonable doubt, as such, he was convicted for offence under Section 302 IPC and sentenced as mentioned above.

8. Aggrieved by the same, the present appeal has been filed by the appellant.

9. We have heard Mr. Imran Khan, Advocate for the appellant and Mr. Sunil Sharma, learned Additional Public Prosecutor for the State and have perused the record.

10. Learned counsel for the appellant submitted that star witness of the prosecution is PW7 Sh.Vidya Ram on whose statement police machinery was set in motion. However, the witness is not consistent in his deposition, inasmuch as, at one stage, he claimed to be an eye witness of the incident but in the same breath he deposed that he did not see the accused stabbing the deceased. There is inconsistency in his statement even regarding the arrest of the accused as, according to him, when he was in the hospital he came to know that accused has been apprehended whereas as per the arrest memo he was arrested at

9:00 pm. Even the recovery of weapon of offence is doubtful inasmuch as according to the prosecution, the accused was apprehended while carrying blood stained knife in his pocket. It is highly improbable that after committing such a ghastly crime, the accused will move in the area while keeping the said knife in his possession. Motive to commit crime is not proved. As such, it was submitted that prosecution has failed to bring home the guilt of the appellant beyond shadow of doubt. As such, the appellant is entitled to be acquitted.

11. Sh. Sunil Sharma, learned Additional Public Prosecutor for the State, on the other hand, submitted that three key witnesses have been produced by the prosecution. PW1 Chander Prakash heard the commotion outside his house and went out to see what had transpired. When he saw the deceased in an injured condition with blood oozing out from his middle portion of the body, he along with Virender Singh took the deceased to the hospital in a rickshaw. On the way, they were told by the deceased that Chhotey Lal had stabbed him. Somebody informed the police from his mobile phone. PW4 Virender Singh was the employer of the deceased and used to run a PCO/STD

booth. He has deposed that he was taking music classes when he was informed by the neighbourhood children of the incident. He corroborated PW1 Chander Prakash regarding removing the deceased in rickshaw to Lal Bahadur Shastri Hospital, in the process of which his shirt got stained with the deceased's blood and on the way the deceased informed them that he was stabbed by the accused. The third witness PW7 Vidya Ram though had been oscillating on whether he saw stabbing of the deceased by the accused, has been consistent with regard to the accused having gone with the deceased in his presence and the abusive exchange that took place between the two and seeing the accused running with the knife in his hand. He also corroborates that Virender took the deceased to hospital and his shirt got stained with blood. The shirt of Virender Singh was found to have blood group B which was of the deceased as per the serological report and the same also proved the presence of Virender Singh at the spot. It was further submitted that PW11 Dr. Arvind Kumar conducted the *post mortem* on the body of the deceased and opined that out of three injuries, the two caused on the chest and stomach of the deceased were sufficient in nature to cause death, collectively and

independently of each other. On being asked about his opinion with regard to the weapon of offence, he opined that the injuries could have been caused by the weapon shown to him. It was further submitted that there were two defence witnesses examined by the accused namely Ranjeet Singh, who is a property dealer and Rajeev Sharma, who runs a milk dairy. Both the witnesses testified that they heard people saying that a robbery has taken place in the area. Their testimony is only hearsay. None has disputed the presence of the prosecution witnesses or the accused at the scene of crime. Under the circumstances, it was submitted that the eye witness account of Vidya Ram seeing the accused fleeing with knife, the dying declaration of Lakhmi Chand to Virender Singh, the recovery of weapon of offence and the serological report proves the case of prosecution and the impugned order does not suffer from any infirmity which calls for interference. As such, the appeal be dismissed.

12. We have given our considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

13. PW7 Sh. Vidya Ram is the witness on whose statement the police machinery was swung in motion. This witness has deposed that on 2nd July, 2009, at about 8:30 am to 9:00 am, he was sitting at the corner of the street outside the STD booth along with the deceased when accused Chhotey Lal came and started talking to deceased. Accused took the deceased towards the Mandir for taking oath. After some time he heard a noise and rushed towards the Mandir where he found accused and deceased indulging in heated exchange of words and then saw the accused running from the spot with knife in his hand and deceased, due to injuries on the stomach, fell on the ground. The owner of the STD booth Sh. Virender Singh, PW4 came at the spot and took the injured to LBS hospital in rickshaw. He also went to the hospital separately. However, he deposed that he had not seen the accused while giving the knife blow on the deceased and he had only seen the accused leaving from the spot with knife in his hand. Many public persons gathered there and some persons chased the accused but he succeeded in fleeing away. This witness was cross-examined by learned Public Prosecutor for the State and in cross-examination he admitted having seen the accused Chhotey Lal stabbing the

deceased and that accused Chhotey Lal took out the knife from inside the pocket of his shirt and had given 2-3 blows on the stomach of deceased. However, in cross-examination by learned counsel for the appellant, he again retracted from his stand by stating that he was inside the STD booth and when he came outside on hearing the noise, he saw accused running at the distance of about 20 yards. In pursuance to a court question put to the witness as to whether he had seen the accused stabbing the deceased, he replied in affirmative and deposed that he was behind the counter of STD booth when deceased asked him to take money from 2-3 persons who had made telephone call. Accused and deceased went outside the STD booth. Mandir was situated at the back side of the STD booth. It was visible from STD booth which was at a distance of 5 yards. He further deposed that the accused had taken the deceased to the temple to swear before the God as there was some money dispute between them. As such, in regard to actually witnessing the accused stabbing the deceased, the witness had been changing his stand, however, he corroborated PW4 Virender Singh that he had taken the deceased to hospital and his shirt was stained with blood. He had also seen three wounds, two on the

stomach and one on hand. Regarding the arrest of the accused, also a discrepancy has appeared in the testimony of this witness as according to him, when he was in the hospital, he came to know that accused has been arrested whereas the case of the prosecution is that the accused was arrested in the evening. Under the circumstances, there is some inconsistency in the testimony of the witness. However, same is not fatal to the case of prosecution, inasmuch as, there is ample other evidence available on record to substantiate the case of prosecution.

14. PW1 Chander Prakash, who was doing the work of selling the edibles deposed that he heard the commotion outside his house and went out to know what had transpired. He saw the deceased in an injured condition with blood oozing out from middle portion of his body. Some public persons had also gathered there and used his mobile phone to call up police. He also stated that he had heard many bystanders saying that Chhotey Lal had murdered the deceased. He also deposed that he tied chunni in the stomach of the deceased so that the blood could stop. He along with Virender Singh PW4 took the deceased to LBS Hospital in a rickshaw. On the way to hospital

deceased himself informed them that Chhotey Lal had stabbed him. Though this witness has made some improvements, i.e., tying of chunni by him on middle portion of stomach of the deceased and that the deceased had informed him that accused Chhotey Lal stabbed him and that he also accompanied PW4 to the hospital but the witness clarified that he was with PW4 while deceased was being taken to hospital. Despite the improvements, nothing material could be elicited in cross-examination to discredit the testimony of the witness. The appellant has attributed the motive of false implication of the accused at his instance as he had asked the accused Chhotey Lal to depose in the Court in the murder case of his father. However, the witness has categorically denied this fact. Nothing has come on record from the side of the accused to prove this claim.

15. The other witness in this regard is PW4 Virender Singh who was the employer of the deceased and used to run a PCO/STD booth. This witness stated that he was taking music classes when he was informed by the neighbourhood children of the incident. When he came outside, he found crowd gathered there and deceased lying on the road in injured condition. Blood was oozing from his body. He

took the deceased to LBS Hospital in rickshaw and while he was taking deceased to hospital, he was informed by the deceased that accused Chhotey Lal after giving knife blow to him, ran away from the spot. He also corroborated the testimony of PW1 that he along with PW1 had taken the deceased to the hospital and during that process, his clothes were stained with blood and he gave his blood stained clothes to the police. This witness, however, has denied that while he was taking the deceased to the hospital, he also informed that accused suspected him (deceased) that he had stolen his Rs.24000/- and on that day, he had come to demand the aforesaid money. He denied having any knowledge about any transaction of Rs.24,000/- between the accused and the deceased. Except for this fact, the witness has substantially proved the case of prosecution. The fact that he had taken the deceased to hospital stands fortified by the MLC, Ex. PW5/A where in the column of “brought by”, the name of this witness is mentioned. Moreover, blood stained shirt of this witness was handed over to the police which was sent to FSL and as per the FSL and serological report Ex. PW17/D and Ex. PW17/E, the shirt of Virender Singh was found to have blood group ‘B’ which was

that of the deceased which further proves his presence at the spot. The witness has no axe to grind to falsely implicate the accused as no enmity, ill will or grudge has been alleged against him. He is neither the relative of the deceased nor is on any inimical terms with the accused and, in fact, the accused has also not imputed any motive of his false implication by this witness. The factum that while he was taking the deceased to the hospital he was informed by him that accused Chhotey Lal had stabbed him is an oral dying declaration which is admissible in evidence and is another clinching piece of evidence against the accused.

16. The ocular testimony of the witnesses find substantial corroboration from the medical evidence, inasmuch as, when the deceased was brought to LBS hospital by PW4 Virender Singh, his MLC Ex.PW5/A was prepared by Dr. Sushil Kumar, who on local examination, found the following injuries:-

- i) Stab wound present over left side lower chest about 3x2x7 cm with sharp margin with active bleeding.
- ii) Stab on present over right side umbilical region with sharp margin about 4x2x7 cm with active bleeding.

iii) Incised wound present over left hand on palmer aspect about 7x2 cm with fresh clot of blood.

17. After giving the initial treatment, he referred the patient to Department of Surgery. However, shortly after, the injured died. His *post mortem* was conducted by PW11 Dr. Arvind Kumar, who on external examination found following injuries:-

i) Incised stab wound having two stitches, on opening the stitches a wound of size 3.4 x 0.3 cm was present over epigastria region on left side obliquely placed. Wound was 1 cm left to the midline and 17.5 cm below to middle end of left clavicle. Upper lateral angle of wound was sharp while medial angle of wound as blunt. Direction of wound was downward, backward and medially. Wound entered the abdominal cavity cutting costo-condral junctions of lower most ribs near xiphisternum, cutting the left lob of liver. Extravasation of blood present in the tract. Blood clots present around the liver. Total depth of the wound was 14.2 cm.

ii) Incised stab wound having two stitches. On opening the stitches wound of size 3.6 cm x 0.4 cm vertically placed was

present over right abdomen, 4.5 cm right to umbilicus and 8 cm below to lower margin of ribs. Upper angle of wound was blunt while lower angle was sharp. Direction of wound was backward, upward and laterally. Cutting the lower margin of right lob of liver, total depth of wound was 13.2 cm.

iii) Incised wound of size 6.3 cm x 0.5 cm present over left palm, starting from second web space to hypothenar muscles obliquely placed.

18. On internal examination, both lungs were adhered to chest wall and found pale on cut section. Peritoneal cavity was containing about 3 ltr. of blood and blood clots. Liver was 1300 gm and pale. Injury as described in external injuries. Brain was 1200 gm and pale.

19. The doctor opined that all the injuries were ante mortem in nature. Cause of death was haemorrhagic shock due to ante mortem injuries to liver produced by single edge sharp cutting/stabbing weapon. Injuries No. 1 & 2 were sufficient to cause death in ordinary course of nature collectively or individually.

20. Doctor has further deposed that on 4th September, 2009, Inspector Roshal Lal moved an application seeking subsequent

opinion regarding the weapon of offence and on opening the parcel, he found a single edged knife with metallic handle and opined vide opinion Ex.PW11/C that injuries 1 to 3 were possible by weapon under examination.

21. As per the case of prosecution, on the same day, i.e., 2nd July, 2009, on the basis of secret information, the accused was apprehended at about 9:00 pm. On his search, one knife dubbed in the right side of his pant was recovered which was having some reddish brown stains. Recovery of this knife has been challenged by learned counsel for the appellant on the ground that it is highly unimaginable that any accused after committing crime would roam around or remain in his house while keeping the knife in his pant. Moreover, the knife along with other material seized at the spot was sent to FSL and as per the report Ex.PW17/D given by Sh. Indresh Kumar Misra, Sr. Scientific Officer, blood could not be detected on the knife. It is true that recovery of the knife from the person of the accused, under the circumstances of the case, seems doubtful, inasmuch as, the incident had taken place between 8:30 am to 9:00 am whereas the accused was apprehended at about 9:00 pm and it is

difficult to believe that after committing crime, the accused would roam around or remain in his house while keeping the same knife in his pant on which the blood was also not detected as per the report of the Senior Scientific Officer. However this itself does not cast any dent on the prosecution version in view of the aforesaid voluminous evidence coming on record.

22. The appellant had examined two defence witnesses, namely Ranjeet Singh and Rajeev Sharma, both of whom have tried to give a colour of the incident as if some robbery has taken place in the area. However, this was not even the case of the appellant and their testimony was rightly not believed by the learned Trial Court.

23. Although the motive to commit the crime could not be substantiated, inasmuch as, PW4 Virender Singh has denied that while taking Lakhmi Chand to hospital, he informed him that Chhotey Lal suspected that the deceased has stolen Rs.24000/- belonging to him and on that day he had come to demand the money. However, PW7 Vidya Ram has deposed that the accused had taken the deceased towards Mandir for taking oath as there was some money dispute. Assuming that the motive to commit crime could not

be substantiated even then as held in *Tarsem Kumar vs. Delhi Administration*, 1995 Cr LJ 470, where the case of prosecution has been proved beyond reasonable doubt on the basis of material produced before the court, motive loses its importance. If each of the circumstances proved on behalf of the prosecution is accepted by the court for the purpose of recording a finding that it was the accused who committed the crime in question even in the absence of any proof of motive for commission of such crime, accused can be convicted.

24. The result of aforesaid discussion is that prosecution has been able to establish its case beyond reasonable doubt. On the other hand, the plea taken by the appellant that he has been falsely implicated by Chander Prakash who wanted him to depose in his favour in a case pertaining to murder of his father and in collusion with Vidya Ram got him falsely implicated in this case does not appeal to reason as, as per his own version, he did appear in the Court. That being so, there was no question of his being aggrieved with the accused. Moreover, such a suggestion given to Chander Prakash has been denied by him and no evidence to prove this fact has been given by the appellant.

Moreover, Vidya Ram as well as Virender Singh were residents of the same locality and no enmity has been alleged against them for which reason, they will falsely implicate the appellant in this case. Under the circumstances, the learned Trial Court, after meticulously examining the entire evidence, rightly convicted the appellant of the offence alleged against him.

25. The appeal is devoid of any merit and the same is dismissed accordingly.

26. Information be sent to the appellant through the Superintendent of the concerned Jail.

(SUNITA GUPTA)
JUDGE

(KAILASH GAMBHIR)
JUDGE

APRIL 22, 2014

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