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IN THE HIGH COURT OF DELHI AT NEW DELHI

R-22

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CRL.A. 582/2002

MOHD. JAVED ANSARI

..... Appellant

Through: Mr. S.M. Tripathi, Advocate

Versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for State with
ACP Sanjeev Tyagi, Crime Branch and ASI Ram
Roop PS Subhash Palace, Delhi

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

JUDGMENT

08.02.2018

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Dr. S. Muralidhar, J.:

1. This is an appeal against a impugned judgment dated 30th January 2002 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.1/2001 arising out of FIR No.682/2000, registered at Police Station ('PS') Saraswati Vihar, convicting the Appellant for the offence under Section 302 Indian Penal Code ('IPC'). The appeal also seeks to impugn the order on sentence dated 31st January 2002 whereby the Appellant was sentenced to imprisonment for life along with a fine of Rs.500/- and, in default of payment of fine, to undergo further rigorous imprisonment ('RI') for two months.

2. The Appellant was working at Star Printing Press, WZ-48, Shakurpur

Village which was owned by Jagmohan Sikka (PW15). Laxmi Narain ('deceased') was a supervisor at the said printing press. Along with the Appellant, Madan Mishra (PW2) was also employed there. The crime was committed on the premises of the printing press on the intervening night of 15th-16th September 2000. The charge against the Appellant was that with the help of his roller (a steel rod) used in the printing press, he inflicted fatal blows upon the head and face of the deceased.

PW2's initial statement to the police

3. The case of the prosecution rested heavily on the evidence of Madan Mishra (PW2), the co-worker of the deceased. In his initial statement to the police under Section 161 of the Code of Criminal Procedure ('Cr PC'), PW2 stated that the deceased used to taunt the Appellant by uttering the derogatory slur '*katwa*'. On that night, when the Appellant and PW2 were working, at around 11 pm, the deceased went to sleep in the printing press itself. Both the Appellant and PW2 continued working. At 1am, PW2 is stated to have awoken the deceased for inspection of the printing blocks. According to PW2, in his initial statement to the police, when the Appellant the deceased if the print was alright, the deceased uttered the words '*katwa jyada acha kaam kar nahi sakta*'. In reaction to this, the Appellant is stated to have muttered to PW2 that he had to deal with the deceased as the deceased had made his life hell.

4. PW2 then stated to the police that he himself had thereafter gone to sleep in the printing press premises. When he woke up at 5 am, he saw the deceased in a pool of blood with blood oozing out from his head. The

Appellant was nowhere to be seen. PW2 then called up the owner, i.e. PW15, who came to the spot and informed the police on No.100. PW2, in his first statement to the police, stated that he had every reason to believe that it was the Appellant who killed the deceased on account of the bad behaviour of the deceased towards the Appellant.

5. The counsel for the accused in the trial Court, asked the following question while cross-examining PW2:

“Question: I put it to you that the accd. got up at 4.30 AM on the night of and he saw the dead body of Laxmi Narain lying in a pool of blood and you were missing from the printing press at that time and the accd. got frightened and he also left the factory lest he may also be murdered or falsely involved for the murder of Laxmi Narain. What have you to say?”

6. PW2 denied the same as incorrect and in turn questioned as to why the accused did not inform the owner of the printing press or the police itself upon finding the dead body of the deceased.

7. It is to be noted that PW2, who was detained in the aftermath of the incident, made a written complaint (Ex.PW-2/DA) to the Joint Commissioner of Police (Northern Range) with regard to the alleged torture and coercion he was subjected to by the SHO and Addl. SHO of PS Saraswati Vihar. In that written complaint, PW2 complained that the SHO and the Addl. SHO of PS Saraswati Vihar were “continuously putting illegal pressure on me and the members of my family to become an eye witness for the said murder of Shri Laxmi Narayan by a co-worker, Ranjeet, at the factory site on 16.09.2000, while I was also sleeping in the same factory premises **but did not see the committal of murder by Shri Ranjeet**, to

which he has since confessed to the police. Sir, the Addl. SHO Shri Sanjeev Tyagi has even visited my home on 26.09.2000 personally to put pressure on my family members to persuade me to become an eye witness”. (emphasis supplied)

8. It is not in dispute that the person being referred to as ‘Ranjeet’ in the complaint was in fact the Appellant herein. When he deposed in the Court, PW2 turned hostile. He admitted that he and the Appellant were, in fact, working at the printing press of PW15 on the intervening night of 15th/16th September 2000 and that the deceased had gone to sleep at around 11 pm, waking up once at 1 am to check the printing blocks before going back to sleep. He claimed that, after a while, he too went to sleep and when he awoke the next morning at around 5 am, he noticed the deceased lying in a pool of blood with a steel press roller lying by his side stained with blood. He further added that he could not find the Appellant at the printing press and thereafter informed the employer.

9. PW2, however, denied that he had ever stated to the police about the deceased taunting the Appellant not just on one occasion but even in between, when he woke up at around 1.00 am.

10. In his further cross-examination by the counsel for the Appellant, PW2 admitted that from the adjoining factory one could enter into the printing press “without opening the lock of the main gate of our factory”. He further stated that he could not say if the Appellant had remained inside the printing press or had gone out that night till PW2 woke up at 5.00 am in the morning.

11. While in the present case, the circumstance against the Appellant is that he went missing after commission of the crime and did not give a complaint to his owner after finding the deceased lying in a pool of blood, the motive for the commission of the crime cannot said to have been proved by the prosecution with PW2 having turned hostile. If one keeps PW2 out of the picture, there appears to be a huge gap in the chain of circumstances inasmuch as the motive for the commission of the crime is entirely absent. This lacuna cannot possibly be supplied by the Court. What happened in the intervening night of 15th/16th September 2000 could have only been spoken to by PW2 and no one else. If the motive could be traced to some event to date earlier than 15th/16th September 2000, then there is no such evidence and even such evidence could have been provided only by PW2 and nobody else.

12. Furthermore, there is a possibility that somebody else could have entered the factory since the door was not locked from inside. It does not rule out the possibility of the murder having been committed by someone else.

13. It is unfortunate that PW2, perhaps as a result of the extreme torture to which he was subjected to, failed to support the prosecution. But, at the same time, this factor cannot be overlooked while appreciating his evidence. His evidence cannot be treated as providing sufficient proof of the motive for the commission of the crime.

14. For the aforementioned reasons the Court is unable to agree with the trial Court that the prosecution has proved the guilt of the accused beyond all

reasonable doubts. The Court is not satisfied that the prosecution has succeeded in establishing that the circumstances proved point only to the guilt of the Appellant and no one else.

15. Consequently, granting benefit of doubt to the Appellant, the Court acquits him of the offence under Section 302 IPC and reverses the judgment of the trial Court dated 30th January 2002 and the order on sentence dated 31st January 2002. The bail bonds and the surety bond furnished by the Appellant hereby stand discharged. He will satisfy the requirement of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

16. The appeal is accordingly allowed. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

FEBRUARY 08, 2018
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