

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

+ **CRL.A.179/2013**

Reserved on: 20th April, 2015

% Date of Decision: 13.05.2015

KARAN SINGH Appellant
Through: Mr.Chetan Anand, Advocate.

Versus

STATE Respondent
Through: Ms.Aasha Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

1. Karan Singh has been convicted by the impugned judgment dated 22.8.2012 passed by the learned Additional Sessions Judge, Saket Courts, New Delhi in Sessions Case No.2/2009 (refer FIR No.508/2008, P.S.Sangam Vihar) for murdering Shravan by stabbing him. By the order of sentence dated 25.8.2012, the appellant has been sentenced to undergo imprisonment for life and has been ordered to pay a fine of Rs.50,000/- and on failure to pay the same, to suffer simple imprisonment for one year for the offence under Section 302 of the Indian Penal Code ('IPC' for short).

2. The case of the prosecution according to the first information report (Ex.PW.14/A) is that one Giriraj Vashisht, PW.19 lodged his statement (Ex.PW.26/A) alleging that on 14.8.2008 at about 11 PM in the night while he was at his dairy shop in Sangam Vihar, Karan, (the appellant), whom he knows from before, was standing at the crossroads near the shop of one Rajan Singh (PW.15) and was abusing him. Many people of the locality were asking him not to abuse but he was paying no heed to such suggestions. It has further been alleged that at the same time Shravan (deceased) came and prevented the appellant from abusing. The appellant, infuriated, caught the collar of Shravan and whipped out a knife and assaulted the deceased with the knife on his chest. As a result of such assault, Shravan fell down on the ground. On hearing the noise, younger brother of Shravan namely Gulbir (PW.1), came down of his house to save and rescue his brother but he too was assaulted by knife on his body. Another brother of Shravan namely Yudhister (PW.2) was also hit on his face by means of fist. The residents of the locality made attempts to apprehend the appellant but he managed to escape. It was also stated in the First Information Report that a telephone call was made by

someone to the police whereupon PCR van came and took the injured Shravan and Gulbir (PW.1) to AIIMS hospital. Injured Shravan was declared brought dead whereas Gulbir and Yudhister were treated. On the basis of the aforementioned statement, First Information Report vide Sangam Vihar P.S case No.508/2008 was instituted for the offence under Sections 302, 307 and 323 of the IPC.

3. The appellant challenges his conviction, on the ground of failure and lack of proper appreciation of evidence. The prosecution, in order to support its case has examined 29 witnesses. It would not be necessary for us to deal with all the witnesses except the material ones whose testimony need be examined to accept or discard the prosecution case.

4. Gulbir Singh, (PW.1) who is an eye witness to the occurrence, has clearly deposed before the Court that when he heard commotion in the street, he came down from the first floor of his house and saw that the appellant along with his three associates namely Subhash, Bablu and Chotu had held of his brother Shravan captive (Subhash, Bablu and Chotu have not been put on trial). In his presence, the appellant stabbed his brother in the chest. When he tried to save his brother, Subhash held

him from behind whereas Bablu and Chotu stabbed him with a knife. After receiving injuries PW.1 lost consciousness for a moment. He thereafter regained consciousness and stood up. After the occurrence, the appellant and his three associates fled away from the spot. The incident, as stated by PW.1 was seen by others in the locality. In the meantime, a PCR van came and took him and his brother Shravan to Trauma Centre, AIIMS Hospital, where the brother of PW.1 was declared brought dead, whereas PW.1 received treatment.

5. Gulbir Singh (PW.1) has also testified to the fact that Yudhister, PW.2, his other brother, had also come and he too was given a fist blow on his face by the accused persons. The cause, as per PW.1, was that the appellant at an earlier point of time was accosted and scolded by the deceased for an act of theft in a lady's house. Appellant used to consume liquor and abuse them standing in the street. The appellant therefore nursed a grudge against the deceased.

6. PW.1 was discharged from the hospital on 15.9.2008. The doctor had taken his blood stained clothes. The blood stained clothes of the deceased was also seized by the doctor. The post mortem was done and

thereafter the dead body was handed over to the family members. The deceased was taken to the village for cremation and PW.1 returned from his village on 28/29.9.2008. It was only then that his statement under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C for short) was recorded by the police (Ex. PW.1/DA).

7. Similar assertions have been made by PW.2 Yudhister, brother of PW.1 and the deceased. He has narrated the incident and that he had seen the appellant stabbing the deceased. His statement was recorded by the police on 28/29.9.2008 (Ex. PW.2/DA). The suggestions given to him that the deceased was killed by somebody else was vehemently denied.

8. Dr.Arvind Kumar (PW.13), conducted the post mortem of the dead body of the deceased Shravan. The post mortem report (Ex.13/A) reveals the following ante mortem injuries on the person of Shravan.

- 1. Stab wound of size 3x1.6 cm present just medial to left nipple, about 14 cm deep which 5 cm left lateral to midline and 21 cm below left shoulder. Tract directed rightward, backward and upward going through intercostal space number found, cutting the intercostal muscles, pericardium and origin of pulmonary truck (1.5 cm long). Pericardium filled with blood about 500 mm. partially clotted.*
- 2. Superficial abrasion of size 2x0.4 cm, over left supra-clavicular fossa, reddish brown in colour.*

3. *Superficial abrasion 2x0.5 cm, obliquely present over right arm, frontal aspect, 11 cm below right shoulder.*
4. *Skin (epidermis) over pisiform tuberosity (antero medial) aspect of right wrist found finely sliced off. No extravassation of blood.”*

9. The opinion of PW.13 about the cause of death is hemorrhagic shock consequent to stab injury No.1 caused by sharp edged weapon which was sufficient in the ordinary course of nature to cause death. Injury No.4, it has been stated by PW.13, was also possible by a sharp edged weapon. Whereas injury Nos.2 and 3 were possible with blunt force. All the injuries were found to be ante mortem in nature.

10. PW.13 was asked to clarify regarding injuries by use of the weapon vide letter dated 6.12.2008 (Ex.PW.13/C). On receipt of the letter, he gave his opinion in detail (Ex.PW.13/D). He identified the knife (Ex.PX). However, he has stated that the knife was not shown to him prior to 6.12.2008.

11. The viscera was preserved for Toxicological analysis. The FSL report (Ex.PW.3/A) discloses that blood sample (Ex.1C) contained ethyl alcohol 415 mg/100 ml of blood.

12. It would be relevant here in this context to refer to the evidence of Dr.Shabir (PW.10) who prepared the MLC of the deceased in the first instance. Dr.Shabir, (PW.10) has stated that besides the stab injury on the left pericardium which was 4 cm in width (depth was not measured), there was no other injury. The MLC has been brought on record as exhibit PW.10/A.

13. From the deposition of PW.10 and PW.13 the fact that the deceased died a homicidal death is established and proved. During the course of arguments, it was urged that the testimonies of PW.10 and 13 are not in consonance with each other as PW.10, while preparing the MLC (Ex.PW.10/A) found only one injury on the chest and no other injury on the person of the deceased. However, post mortem report refers to four injuries.

14. From a perusal of the post mortem report it is very clear that the grave and vital injury found on the person of the deceased is injury No.1, whereas the other three injuries are only in the nature of abrasion which might have escaped the attention of PW.10 or was not considered necessary to state. We do not see any anomaly in the two reports and

have no reason to disbelieve the fact that the deceased was done to death in the same occurrence where the appellant is said to have inflicted the stab wound.

15. What is noticeable from the testimonies of PWs.1 and 2 is that both of them have not attributed the assault on them by the appellant. The first information report, on the contrary, lodged on the statement of PW.19 discloses that the appellant assaulted PWs.1 and 2; PW.1 by knife, whereas PW.2 by fist. The MLCs of PWs.1 and 2 (Ex.PW.29/A and 29/B) have been proved by PW.29 who has identified the handwriting of Dr.Lokesh who prepared the MLC. We will be referring about this aspect later.

16. Giriraj Vashisht, (PW.19) is also an eye witness to the occurrence and has testified to the assault on the deceased by the appellant. PW.19 tried to lift the deceased in order to save him but since the PCR van came at the opportune time, the injured Shravan (deceased) and Gulbir (PW.1) were taken to AIIMS hospital, where Shravan was declared dead.

17. PW.19 has stood the test of cross examination and nothing could be elicited from him so as to disbelieve him. His presence at the place of

occurrence was most natural. He runs a dairy shop and was present in front of his shop when the occurrence took place. There is some contradiction about the injuries caused to PW.1 and 2 as they have not stated about their having been assaulted by the appellant, but this would not affect and dent their testimony on involvement of the appellant Karan Singh and that they had seen the appellant inflicting the stab injury. In fact, such contradiction is of a very trivial nature and does not make PW.19 even a bit doubtful. The occurrence admittedly took place sometime before midnight. On the narration of events by the witnesses, it is very apparent that many persons had assembled there. It is quite possible that in the melee, PW.19 did not see as to who assaulted PW.1 and PW.2. The entire focus and attention was on the injured Shravan, who, in the first instance was stabbed by the appellant as a result of which he bled profusely and fell down.

18. Nem Singh, (PW.20) and Shyamwati, (PW.16) have also witnessed the occurrence and the statement by both the witnesses are quite in consonance with the prosecution version namely the appellant had stabbed the deceased.

19. The eye witnesses account which we have referred to above, brings the appellant within the four corners of the mischief of Section 300 IPC. The appellant had the intention and knowledge, both, of inflicting such injury and the impact and the end result of such injury.

20. Smt.Gyatri Devi (PW.11) had admitted of calling the police when the incident had taken place. The PCR van came only after that.

21. Rajan Singh (PW.15), before whose shop, the appellant was standing and abusing, has not fully supported the prosecution version but has admitted that the appellant was abusing in the street and he had requested him to go away.

22. We do not deem it proper to fully reject the entire testimony of PW.15. Almost ad nauseum, the position of law in this regard is settled. The whole of such evidence of a hostile witness is not to be discarded and relevant part thereof, which is true and trustworthy can be made use of. (*Refer Bhagwan Singh vs. State of Haryana, AIR 1976 SC 202; Rabindra Kumar Dey vs. State of Orissa, AIR 1977 SC 170; Khujji @ Surendra Tiwari vs. State of Madhya Pradesh, AIR 1991 SC 1853*).

PW.15 confirms the presence of the appellant on the fateful night on the street at the relevant time.

23. Sunder, (PW.15) and Vijay Kumar, (PW.18), both cousins of the deceased have identified the dead body of the deceased.

24. The learned advocate appearing for the appellant submitted that the prosecution case is highly doubtful in as much as there is no reference of any source of light and therefore, identification of the assailant especially when the allegation is about the occurrence taking place in the night, becomes doubtful. The other grounds for doubting the prosecution case is that, inexplicably, the other three accomplices of the appellant namely Subhash, Chotu and Pappu have not been made accused and the appellant has deliberately and wrongly been put to trial, and that the knife with which the appellant is said to have attacked the deceased was not shown to PW.13, the doctor conducting the post mortem prior to 6.12.2008 when the same was shown to him. A grievance also has been laid on the ground that the three scalp hair recovered was not matched with the appellant so as to ascertain whether the knife was handled by him only and nobody else. It has been further argued that there has been

inconsistent statement of the witnesses at the trial which go to the root of the case and has made the prosecution case highly suspicious.

25. The submissions on behalf of the defence has been noted by us only to be rejected. The appellant and the witnesses who have claimed to have seen the occurrence were all residents of the same street. It is a matter of common knowledge that even during night, there is some light be it street light, bulbs outside the shops, residence etc. and it would not be difficult for a neighbour or the person of the same locality to identify another known resident. The knife may not have been shown to the doctor (PW.13) prior to the post mortem, nonetheless the opinion regarding the knife was taken by PW.13 later. The knife Ex.P4 itself was recovered later on. The statements of witnesses are consistent and we have not been able to find any material inconsistency between the testimonies of witnesses inter-se.

26. In order to substantiate the allegation against the appellant and the recovery, ASI Pritam Singh, PW.26 has deposed that he had arrested the appellant on 15.9.2008. The appellant made a disclosure statement (Ex.PW.12/C) and pursuant to his disclosure a blood stained knife,

wrapped in polythene, was recovered from the right side corner of the roof inside the room. The recovery of the knife, we feel, lends support to the prosecution version. The recovery was from a private room and not a public place and knowledge about the same could have been only with the appellant and nobody else.

27. PW.26 has also testified to the fact that the clothes of the appellant which he was wearing at the time of the incident were seized. The blood group on the knife or on the clothes of the appellant though was found to be of human origin, could not be ascertained. The cut marks on the clothes of the deceased have also been opined upon by the FSL authorities (PW.5, Parshuram Singh) as having been caused by a sharp edged weapon thereby lending credence to the theory of the use of knife (Ex.P4) in the crime.

28. Cumulatively the medical, forensic and the ocular evidence which have been referred to above do not leave any room for doubt that the appellant had killed the deceased by stabbing him in his chest.

29. The presence of the appellant at the place of occurrence and his involvement, when put to the appellant in course of his Section 313

Cr.P.C statement, had elicited the response that at the time of the occurrence the appellant was under the influence of liquor. He fell down after the quarrel and received injuries on his head. However, he has denied to have known either the deceased or any of the witnesses.

30. The deceased also, according to the FSL report of viscera (Ex.PW.3/A), had consumed liquor. However, this fact, of itself, will not in any manner lessen the guilt of the appellant.

31. We have noticed that the two brothers of the deceased, PW.1 and PW.2 have spoken about the active involvement of Subhash, Pappu and Chotu, along with the appellant. The other witnesses have not adverted to their participation. Despite this, it is disquieting that Subhash, Pappu and Chotu have neither been charge sheeted nor put on trial. When specific averments were made by two of the eye witnesses during the course of trial, it was expected of the Trial Court to have deliberated on the issue whether they also ought to have been summoned and tried.

32. While scrutinizing the evidence of the witnesses, we have noticed that PWs.1 and 2 have not stated that the appellant had attacked them. The statement with respect to assault on their person is vague and there is

a general and omnibus allegation of their having been assaulted by the accused persons. No doubt PW.1 has received sharp edged injuries but who caused the same is unknown. In that view of the matter the appellant cannot be saddled with the charge of Section 307 or 323 of the IPC. He has rightly been acquitted of the aforesaid sections by the learned Trial Court.

33. We are in total agreement with the Trial Court so far as the charge under Section 302 IPC against the appellant is concerned. The prosecution has been able to prove, squarely and beyond reasonable doubts the charge of murder as against the appellant.

34. Accordingly, we see no reason to interfere with the conviction and the sentence as well.

35. The appeal fails and is dismissed.

36. Trial Court records be returned.

(ASHUTOSH KUMAR)
Judge

MAY 13, 2015
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(SANJIV KHANNA)
Judge