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

Date of Decision: 17th December, 2015

CRL.A. 1503/2013

+ **GYAN CHAND @ GYANU** Appellant

Through: Ms. Aishwarya Rao, Adv.

versus

STATE Respondent

Through: Mr. Varun Goswami, APP with
Inspector Sanjeev Chahar, P.S.
Kashmere Gate.

+ **CRL.A. 1525/2013**

RANVIR SINGH @ MUNIM & ANR. Appellants

Through: Ms. Aishwarya Rao, Adv.

versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP with
Inspector Sanjeev Chahar, P.S.
Kashmere Gate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R.K.GAUBA, J (ORAL)

1. The appellants were brought to trial in the court of Additional Sessions Judge, on the charge framed on 04.09.2011 that at about 01:00 AM, near central verge (pavement), opposite Kela Ghat, Ring Road, within the jurisdiction of the police station Kashmere Gate ("the police station") they, in furtherance of their common intention, had committed murder of an unknown male aged about 40 years.

2. By judgment dated 16.08.2013, the appellants were held guilty, as charged, and convicted for the offence punishable under Section 302 of Indian Penal Code 1860 (“IPC”) and by order dated 29.08.2013 they were sentenced to imprisonment for life. The conviction is challenged by the present appeals.

3. We have heard arguments on both sides. During the course of hearing, we have been taken through the trial court record in entirety.

4. The police was brought into picture upon a public person making a telephone call to police control room (“PCR”) at 09:09:53 hours on 04.09.2011 to inform that a person was lying unconscious on ring road, opposite Nigam Bodh Ghat. After logging this information in the PCR form (Ex.PW12/A), it was passed on to the local police station where it came to be recorded as DD no.14-B (Ex.PW1/A) at 09:10 AM. The mater was entrusted to ASI Om Prakash (PW15) for initial inquiry. He was joined in due course by Inspector Gurmail Singh (PW17), Inspector (Investigation) of the police station. The testimony of Inspector Gurmail Singh (PW17) traces the initial investigative steps taken at the spot leading to the registration of the FIR (Ex.PW1/B) at 13:50 hours on 04.09.2011, on the basis of *rukka* (Ex.PW1/C) sent at 01:35 PM. It is clear from the said testimony and the connected documents proved at trial that till the time of registration of the FIR, neither the identity of the victim nor that of any eye witness was known.

5. When the investigating officer (PW17) reached the spot with other police officials, he found that the victim had already been shifted to trauma centre located nearby. On arrival in the trauma centre, he found that the victim had been declared brought dead, as per MLC

(Ex.PW7/A) recorded at 10:00 AM on 04.09.2011. The MLC reflects that the victim had suffered seven incised wounds, each measuring 2 cm in length. The investigating officer having got the FIR registered under Section 302 IPC on the basis of the facts till then available completed the inquest proceedings and made efforts to get the victim identified. It is clear from the report under Section 173 of the Code of Criminal Procedure, 1973 ("Cr.P.C") submitted on conclusion of the said probe on 08.12.2011 that the identity of the victim could not be established by the police, this inspite of issuance of hue and cry notices and the photograph of the dead body of the deceased with his brief description being even uploaded on the zipnet.

6. That the victim had suffered homicidal death is confirmed by the MLC (Ex.PW7/A) and the post-mortem examination report (Ex.PW10/A) proved by Dr. S. Lal (PW10). The autopsy doctor has proved that the deceased had suffered fourteen external injuries including four stab incised wounds on the chest, three stab incised wounds in the abdominal region, some abrasions and bruises, fracture of left radius and ulna bones, a lacerated wound 3 x 0.5 cm x bone deep over top of middle skull, and another lacerated wound 1.5 x 0.5 cm x bone deep over occipital area 5 cm below the last mentioned injury.

7. In the opinion of the autopsy doctor (PW10), the cause of death was haemorrhagic shock due to ante-mortem stab injuries associated with cranio-cerebral damage. The second last injury, abrasions and bruises had been produced by blunt force impact while the stab incised wounds had possibly been caused by pointed tip single sharp edged weapon. In the opinion of the autopsy doctor, the stab injuries in the

chest and abdomen and the head injury were sufficient, individually and collectively, to cause death.

8. According to the prosecution case, as unfolded primarily through the evidence of the investigating officer (PW17), he had come across witness Subhash Kumar Mishra (PW2) in the evening of 04.09.2011, as further explained during cross-examination around 05:00-06:00 PM, in the vicinity of the place where the dead body had been found and he (PW2) revealed to him (PW17) the complicity of the three appellants, who were mentioned by their respective names in the statement under Section 161 Cr.P.C. According to the version of PW2, he had seen the three appellants in the company of the deceased sometime around 00:30 hours on 04.09.2011 as he had got up from the pavement, where he had retired for night on account of rain. According to him, while the three appellants with the victim were present in the Nepali park, he had gone beneath Hanuman Setu in the vicinity of the road on account of rain presumably to take shelter. In the morning, he saw the deceased lying in the injured condition on the road. It was further the case of the prosecution that, on 05.09.2011, the investigating officer (PW17) came across witness Suraj @ Chikna @ Narain (PW8), a rickshaw puller, who revealed that the incident had occurred in his presence and he had seen the three appellants (earlier engaged in playing cards) assaulting the victim with knife and a *bamboo stick*. The prosecution case further was that on 13.09.2011 with the assistance of Subhash Kumar Mishra (PW2), the three appellants were apprehended from beneath the old iron bridge across Yamuna river near Nilee Chhatari and upon being apprehended and interrogated, they made certain disclosures (Ex.PW2/G, Ex.PW2/H and Ex.PW2/J) revealing their respective

involvement. It was further alleged in the chargesheet that appellant Gyan got recovered knife (Ex.P-1), appellant Ranvir Singh got recovered a wooden stick (Ex.P-2) and appellant Sajjan @ Baba got recovered danda (Ex.P-3) from different bushes in the Nepali park, the said articles having been formally taken over in police possession vide separate seizure memo (Ex.PW2/L, Ex.PW2/N and Ex.PW2/M respectively).

9. We may mention at this very stage that it is difficult to act upon the evidence concerning recovery of the knife and the two wooden sticks allegedly discovered at the instance of three appellants in the manner stated above for the reasons that the said articles when sent to Forensic Science Laboratory (“FSL”) did not reveal presence of blood on any of them. The FSL reports (Ex.PW17/F and Ex.PW17/G) collectively show that the possibility of the said objects having been used as weapon(s) of offence, cannot be conclusively inferred, in the case at hand. We would discard the said part of the evidence also for the reasons that these recoveries have been made from bushes in Nepali park which concededly is a public place thronged by a large number of persons, mostly homeless, who use it night and day, on regular basis, as the place for sleeping or resting.

10. In the given facts and circumstances, the prosecution case against the three appellants rested primarily on the testimony of PW2 and PW8, the former with the objective to show that the appellants had been “last seen” in the company of the victim prior to he being fatally wounded and the latter to show that the appellants were the actual perpetrators of the collective assault. On careful scrutiny of the evidence, seen against

the overall facts and circumstances of the case and evidence, particularly of the investigating officer (PW17), we are, however, not satisfied with regard to the veracity of the evidence provided by these two witnesses. We elaborate our reasons hereinafter.

11. PW2 claims to be a person ordinarily a resident of Sonia Vihar, a locality in North-East of Delhi, far away from the place of occurrence. He claims to be engaged in a business of repairs of motorcycle and scooter on the pavement near Nigam Bodh Ghat for the last more a decade. According to him, he would even stay overnight at the place of working, if required. Though his presence at the scene of incident was claimed, the investigating officer made no efforts to bring out vividly, in the rough site plan (Ex.PW17/B) or site plan drawn to scale (Ex.PW6/A) the specific location where this witness would be working as motor vehicle repair mechanic or sleeping for the night. It is quite unusual to us that a person who is seemingly well off - in that he resides in a proper house at Sonia Vihar - would opt to stay and sleep on the pavement. Be that as it may, in his testimony he spoke about having got up after midnight hour due to rain and for shelter having gone to Hanuman Setu (flyover). The two site plans (Ex.PW17/B and Ex.PW6/A) do not show the said Hanuman Setu (flyover) or specific place beneath it where this witness would have run up to protect himself from rain on the said night. This detail was necessary for the court to be satisfied as to the possibility of this witness being able to see what was happening in or around Nepali park where the three appellants and the victim, according to the witness, were present together. The court takes judicial notice of the fact that Hanuman Setu is a structure located not in the immediate vicinity of Nepali park where the incident is said to have occurred, but

at such distance from where the scene of crime would not be within sight.

12. It is not explained in any manner by PW2 or, for that matter, by PW8 as to how they were acquainted with the three appellants by names. The appellants have been described as vagabonds. Undoubtedly, PW8 is a similarly described person. Though a vagabond, aged about 16 years at the relevant point of time, he was engaged in gainful work as a rickshaw-puller. Such pre-occupation means that he could not always be in the same location and rather would be moving around plying his rickshaw for earning his livelihood. It required some explanation as to how these two persons who had no connection whatsoever with the three appellants, except for the fact that they (the appellants) are stated to be regular feature on the scene, with large number of other similarly placed vagabonds, could have been so easily identifiable even by name by them.

13. PW2 seriously contradicted the version of PW17 by stating that when he woke up in the morning, he saw a crowd present around the victim lying in injured condition and, in his presence, police officials had come and, on inquiry, he had informed the investigating officer about the presence of the three appellants with the victim on the previous night. According to the police case, in contrast, the investigating officer had not been able to locate any person with any meaningful input till he had sent the request for FIR to be registered at 01:35 PM. According to the IO, he had come across PW2 in the evening hours. This is not how the PW2 would describe the sequence

giving rise to doubts as to how he would have come before the IO to share what he claimed to have seen.

14. Even if we were to believe the word of PW2, the “last seen” account, in our opinion, does not take the prosecution case any further. All that the witness has stated is that the victim was standing near the three appellants. He had not seen anything beyond this before he had rushed to stand under the flyover (Hanuman Setu) for the period of rain. According to the evidence, it had continued to rain throughout the night. The witness does not know as to in which direction the appellants, or the victim, had gone after he had seen them standing close to each other. Nepali park where these persons were standing is not a place exclusive for use or presence of either the victim or the appellants. There were a large number of other vagabonds or pavement-dwellers, sleeping or resting around the place. In these circumstances, the “last seen” evidence provided by PW2 cannot be incriminating, least of all clinching.

15. The evidence of PW8 also does not inspire our confidence. He claims to have been sleeping at a distance of 50 feet from the location where the incident took place. He had not known the injured person from before. On account of rain, he had rushed to stand with his rickshaw under the bus shelter, across the road. What disturbs the case of the prosecution adversely is his statement (in the cross-examination) that several persons from the area, including the witness himself and the three appellants, had been picked up by the police from the place of occurrence on 04.09.2011 and detained in the police station for interrogation. If these were the facts, PW8 was bound to inform the IO -

if he indeed was an eye witness to the occurrence - the role of the three appellants and that would have led to their interrogation and arrests on 04.09.2011 itself. The claim of the investigating officer (PW17) that he had learnt about complicity of these three appellants from PW2 only on 04.09.2011, and from PW8 on 05.09.2011, leading to their arrests at the instance of the former on 13.09.2011 is, thus, shown in poor light.

16. For the foregoing reasons, we do not find the prosecution to have proved the requisite facts to bring home the guilt of any of the three appellants beyond doubts.

17. In the result, the appeals are allowed. The appellants stand acquitted. They shall be released forthwith from custody, unless required to be detained in any other case, in accordance with law.

**R.K. GAUBA
(JUDGE)**

**SANJIV KHANNA
(JUDGE)**

DECEMBER, 17, 2015/ss