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

Date of Decision: 02.11.2015

CRL.A. 528/2015

+ DASHRATH

..... Appellant

Through: Mr. Azhar Qayum and Mr.
Narender Kumar, Advs.

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP with SI
Praveen Kumar, P.S. Barakhamba
Road/N.O.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J (ORAL)

Dashrath challenges his conviction, under Section 302 of the Indian Penal Code, 1860 ("IPC" for short), for having murdered Sanju @ Puaa, in the intervening night between 19th and 20th February, 2011 by hitting him with a stone on the head under the Metro Bridge at Sikandra Road, New Delhi near ITO. By the order on sentence dated 27th May, 2014, the appellant has been sentenced to imprisonment for life. Noticing that the appellant was a vagabond and with no source of income, no fine or penalty has been imposed. Benefit of Section 428 of Code of Criminal Procedure, 1973 (Cr.P.C., for short) was directed to be given.

2. At about 07:30 A.M. on 20th February, 2011, a caller had informed the police control room ('PCR') about a dead body lying

underneath the metro bridge near ITO. The said information was recorded as DD no.4-A at Police Station Barakhamba Road vide Ex.PW4/A and marked for verification to ASI Sukhbir Singh (PW18) and Constable Dalbir Singh Rana (PW6). The said witnesses have deposed that on reaching the place of occurrence, they saw a dead body of a male, aged about 20-22 years. Blood was oozing from his nose and ears. Crime team was called and the body was taken to Ram Manohar Lohia Hospital("RML Hospital"). Photographs were taken. Police officers met Preeti (PW7), Naushad @ Sudama (PW9) and Heera (PW1) at the spot and they identified the deceased as Sanju @ Paua. The MLC of Sanju @ Paua marked Ex.PW10/A records the time and date of arrival at RML Hospital as 10:00 A.M. on 20th February, 2011. The deceased had swelling over the right eye and had active bleeding from his nose and mouth. Blood clots were also found in the mouth and an incised - wound was noticed above the left tragus and ear lobe.

3. Police officers, namely, ASI Sukhbir Singh (PW18), Inspector V. K. Sharma (PW21) and public witnesses, namely, Heera (PW1), Preeti (PW7) and Naushad @ Sudama (PW9) have deposed about the presence of a heavy stone next to the dead body. Looking at the crime scene, the said witnesses have deposed that the death was caused by hitting the said stone on the head of the deceased. Pertinently, the Mobile Crime team report marked Ex.PW14/A records that the weapon of offence suspected to have been used in the crime was a blunt object. Photographs at the spot were taken by HC Rajpal (PW16). The said photographs, seven in number, marked Ex.PW1/9 to Ex.PW1/15, (negatives marked Ex.PW16/1 collectively) show that the deceased was wearing socks and blood had been oozing from his nose and mouth. A

pool of blood had collected on the ground. A heavy stone can be seen next to the dead body of the deceased. Heera (PW1) testified that the said stone weighed about 25-35 kgs. Preeti (PW7) has not deposed about the weight of the stone. Naushad @ Sudama (PW9) affirms that the stone was big in size and could weigh around 10 kgs. Inspector V. K. Sharma (PW21) has deposed about the weight of the stone as not more than 20-25 kgs. We have referred to the weight of the stone as it is of some relevance, when we examine and decide upon the question about the manner in which the injury was caused.

4. Heera (PW1), Preeti (PW7) and Naushad @ Sudama (PW9) have uniformly deposed that they, the appellant Dashrath and the deceased Sanju @ Paua used to reside near Pragati Maidan, Supreme Court, Tilak Bridge Railway Station. Dashrath, aged about 50 years, was friendly with them and would sleep underneath the metro bridge near the Income Tax Office. They were friendly with the deceased Sanju @ Paua and would cook food together. Sanju @ Paua used to treat Preeti (PW7) like his sister. Appellant Dashrath professed liking for Preeti (PW7) and had expressed desire to marry Preeti (PW7), which was disliked and disapproved by Sanjay @ Pau. On 19.02.2011, at about 06:30 PM, the appellant had quarrelled with them and Sanju @ Paua. Preeti had complained to Sanju @ Paua that the appellant Dashrath had teased and molested her. The matter was somehow settled but before leaving, the appellant Dashrath had threatened them that he would kill Heera (PW1), Naushad @ Sudama (PW9) and the deceased Sanju @ Paua. After the appellant Dashrath had left, Heera (PW1), Preeti (PW7) and Naushad @ Sudama (PW9) and the deceased Sanju @ Paua went to sleep in a park near the Supreme Court. At about 12:00 midnight-01:00 A.M., the three

witnesses noticed that Sanju @ Paua was missing though his shoes were lying there under a blanket being used as a pillow. Perplexed, the three witnesses had searched for Sanju @ Paua at the known places where he (Sanjay@Paua) would sleep but they were not successful. They went to the Tilak Bridge Station and went to had slept on the pavement near the said station. At about 06.00 A.M., when they got up, Sanju @ Paua was still missing. Subsequently, someone informed them that their friend Sanju @ Paua had been murdered and was lying under the Metro Bridge at Sikandra Road near ITO.

5. The unscaled site plan (Ex.PW21/C) would indicate that the dead body of deceased Sanju @ Paua was found underneath the Metro Bridge at a short distance from the park next to the Supreme Court, where the deceased and the three witnesses had slept. It is quite clear and apparent to us that the three witnesses had not noticed or seen the dead body of the deceased Sanju @ Paua at the location mentioned in Ex.PW21/C when they had searched at midnight or 01:00 AM. Possibly, the occurrence leading to the death of Sanjay @ Paua had occurred subsequently. The fact that blood was still oozing from the injury suffered, is mentioned and recorded in the MLC (Ex.PW10/A). This would reflect that the injury had been inflicted sometime after 1 A.M. on 20th February, 2011.

6. Testimony of Sajan (PW8) and Furkhan Khan (PW19) is challenged on the ground that they are planted witnesses. It is highlighted that their statements under Section 161 Cr.P.C. were purportedly recorded on 22.02.2011, nearly two days after the dead body was recovered. PW8 and PW19 have deposed as regarding the

quarrel between the deceased Sanju @ Paua and the appellant Dashrath in the evening on 19th February, 2011. We are inclined to discard the deposition of PW8 and PW19 but would observe that Heera (PW1), Preeti (PW7) and Naushad @ Sudama (PW9) have affirmatively deposed about the same quarrel. We would accept the testimony of Heera (PW1), Preeti (PW7) and Naushad @ Sudama (PW9) that there was a quarrel between them, the deceased and the appellant Dashrath. The deceased Sanju @ Paua used to treat Preeti (PW7) as his sister and had objected and warned the appellant Dashrath who had expressed his desire to marry Preeti (PW7). Possibly, Dashrath had even molested Preeti (PW7). This evidence at best would indicate that there was some grudge or motive which can be attributed to the appellant Dashrath.

7. Other than this evidence, the only another incriminating material is the blood-stained pant which the appellant Dashrath, it is claimed, was wearing at the time when he was arrested. As per the FSL report marked Ex.PW12/A to Ex.PW12/D, human blood of group 'B' was found on the said pant and said blood group matched with the blood group on the gauze cloth piece, shirt and pant which were worn by the deceased. Presence of blood-stains on the clothes is a rather weak and shaky evidence. As per the prosecution version, the appellant was arrested on 20.02.2011, at about 6.30 P.M. from a park near Barakhamba Metro Station which is near to the Mandi House Metro Station. Apparently, the appellant Dashrath had not absconded or run away from the spot to a different location. Prosecution and the witnesses (PW1, PW7, PW21) claim that the appellant was wearing a blood-stained pant and was found in possession of a spare pant which he was carrying on his shoulder. The pant with blood-stains, it is claimed,

was seized. We find it peculiar that the appellant Dashrath had continued and did not feel apprehensive while continuing to wear a pant with tell-tale blood-stains, even when he had a spare and safe pant with him. He, as per the prosecution version, apparently did not even care to wash the stains. Photographs marked Ex.PW1/9 to Ex.PW1/15 do show a puddle of blood at the place of occurrence. Blood could have been lifted from the said spot or blood-stains on the clothes were possible if anyone had been to the spot.

8. Learned counsel for the appellant has drawn our attention to the cross-examination of Heera (PW1) on 8th December, 2011 to the effect they had not informed the police about the quarrel on 19th February, 2011 as such type of quarrels were usual. Be that as it may, the quarrel on 19th February, 2011 only indicates and shows presence of motive. The projected recovery of blood-stain pants from the appellant would be a weak corroborating evidence.

9. In the present case, there is no eye witness who has deposed having seen the appellant Dashrath committing the offence or the deceased Sanju @ Paua being hit on the head as recorded above. The stone in question is a heavy one. It does not look probable that the offence was committed by lifting and throwing the heavy stone causing the injury on the head of the deceased Sanju @ Paua. We are of the view that probably the deceased Sanju @ Paua was sleeping and was hit at that time or Sanju @ Paua had either fallen or on being thrown, had hit the said stone to suffer the fatal injury. Sanju @ Paua was a vagabond and used to sleep on a footpath near the Tilak Bridge Railway Station. It is Sanju @ Paua who had got up at night and without even

wearing the shoes and had left company of Heera (PW1), Preeti (PW7) and Naushad @ Sudama (PW9) who were then sleeping. The three witnesses have not deposed that they had seen Sanju @ Paua getting up and leaving or that the appellant Dashrath had come to the spot and taken Sanju @ Paua with him. The three witnesses had searched for Sanju @ Paua at 12 midnight-01:00 A.M. and had not seen the dead body of Sanju @ Paua lying underneath the Metro Bridge, which is adjacent and next to the park where Sanju @ Paua and the three witnesses had slept that night. Keeping in view the factual background that the deceased was a vagabond and would roam around the area and that the place where the offence was committed was open and accessible to others, we cannot rule out possibility that the offence could have been committed by a third person for some reason or cause.

10. Motive, if proved, is a corroborative evidence and by itself alone is not sufficient to prove the guilt of the accused. Recovery of the alleged pant with the blood group 'B' in the given facts of the present case is an extremely weak evidence. These evidences taken together are not conclusive to draw a finding that the charge is fully established and that in all probability, the crime in question was perpetrated by the said person charged. The said conclusion is affirmative and beyond reasonable doubt, when the facts established are consistent only with the hypothesis that the accused is guilty of the offence charged, which is to say the facts should not be explainable on any other hypothesis except that the accused is guilty. They should exclude every possible hypothesis except the one proved. The circumstances proved should be of conclusive nature and tendency. [See *Sharad Birdichand Sarda v. State of Maharashtra* (1984) 4 SCC 116]

11. Two pieces of evidence, i.e. motive and recovery of blood-stained pant, by themselves, would be too scanty and incomplete to infer and establish that the appellant was indeed the perpetrator. The possibility of another person having committed the offence for some other reason or ground cannot be ruled out with a fair degree of certainty. To us, to convict the appellant on the basis of motive, recovery of blood-stained pant and FSL report Ex.PW12/D, in the given factual background, would amount to conviction on mere suspicion and supposition. The offence has not been proved beyond reasonable doubt and the certainty required and mandated by law is missing.

12. Keeping in view the aforesaid discussion, we allow the present appeal and set aside the conviction of the appellant for having committed murder of Sanju @ Paua in the intervening night of 19th and 20th February, 2011. Appellant will be released forthwith unless he is required to be detained in any other case in accordance with law. A copy of this judgment will be sent to the prison authorities.

SANJIV KHANNA
(JUDGE)

R.K. GAUBA
(JUDGE)

NOVEMBER 02, 2015/ss