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

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Date of decision: March 21, 2016

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CRL.A. 605/2000

JAGBIR SINGH

..... Appellant

Represented by: Mr.M.L.Yadav, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP for
the State with SI Tulsi Ram, PS
Najafgarh.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Jagbir Singh has been convicted for the offence of murder of Vajinder vide the impugned judgment dated August 29, 2000 and directed to undergo imprisonment for life vide order on sentence dated August 31, 2000. The learned Trial Court held that the testimony of Suraj Mal, recovery of weapons of offence coupled with the opinion of the post-mortem doctor proved beyond reasonable doubt that Jagbir Singh committed the murder of Vajinder.

2. Police machinery was set into motion on receipt of DD No.34A Ex.PW-11/G at 7.42 AM and DD No.3A Ex.PW-1/A at 8.05 AM informing that a dead body has been found in the bus on July 07, 1996. SI Varinder Singh, PW-2 reached the spot and found a blue line bus bearing No.DL 1P

2037 standing towards the left side of the road. The dead body was lying in the bus near the front gate on a seat, in a pool of blood. There were injuries on the head and the neck. SI Shyam Pal recorded the statement of Suraj Mal, the eye witness on the basis of which ruqqa Ex.PW-8/A was sent.

3. Suraj Mal, PW-8, the eye-witness stated that from July 03, 1996 he was working as helper on bus No.DL-1P-2037, which operated on route No.817 from Najafgarh to Koriya Pul. Raj Kumar Gupta S/o Shri Chotu Ram, the owner of the bus has given the said bus to Vajinder on contract basis. Vajinder was working as a conductor on the said bus and Jagbir was the driver. On July 06, 1996 after completing the last round, as usual he along with Vajinder and Jagbir ate the dinner at Laxmi Dhaba and went inside the bus. Before taking the meal they had taken the liquor. After taking the dinner bus was taken to Baba Haridas Nagar, near Anaj Mandi, Najafgarh and parked near the house of Jagbir in a plot. Thereafter, while Jagbir and Vajinder were settling the earning of bus, a quarrel took place between them. He tried to pacify both of them and told them to settle the dispute next day in the morning. Then Jagbir taunted Vajinder that earlier a helper now a contractor is teaching him how to settle the accounts, Jagbir would see him and went to his house. Thereafter, Vajinder slept inside the bus and he slept outside the bus on the pile of bricks. At about 4.00 a.m. he heard shriek noise, he awakened and saw that Jagbir was standing on the steps of front side door of the bus and inflicting injuries on the head and neck of Vajinder with the Gandasi. After giving 3/4 blows Jagbir came down and he was having blood stained Gandasi in his hand. On this, Suraj Mal asked Jagbir as to what he has done. Jagbir told Suraj to keep quiet otherwise he would also face the same. After that, Jagbir left the gandasi

near Vajinder in the bus and went to his house. Then, Suraj entered the bus and saw that Vajinder was lying there in injured condition in a pool of blood. In the meanwhile Jagbir again came in the bus with Phawra (kassi) and asked Suraj to accompany him. As he was frightened and was suffering from old injuries on his feet due to an accident, he slowly went to the house of the owner of bus. Then both of them searched for the bus and later on came to know that near the Anaj Mandi in a bus a dead body was lying. When they reached at the spot, the police was already present. The dead body of Vajinder, conductor was lying in the bus. Murder of Vajinder was committed by the driver of bus namely Jagbir.

4. Dr.L.T.Ramani, PW-3 who conducted the post-mortem found the following external injuries on the body of the deceased:

“1. One deep incised wound. 3½ inch x 1½ inch x bone deep, placed vertically behind left ear. The lower end of the injuries was trailing into a linear abrasion one inch long and then continued as an incised wound of ¾ inch size.

2. Incised wound 2½ inch x 1½ inch x bone deep placed parallel to injuries to the injuries No.1.

3. Incised wound 2 inch x ¾ inch/ muscle deep transversally placed on the left lateral aspect of neck with anterior and posterior ends trailing into linear abrasion.

4. Incised wound 3 inch x 1 inch x muscle deep of the sub-mandibular area.

5. Multiple linear superficial cuts and abrasion on the middle and lower part front of neck with extensive bruising 6 inch x 4 inch area. The cuts varied from one inch to 2½ inch in length.

6. *Four incised wound 1 inch to 2½ inch long on the left side posterior aspect of upper and middle part of neck.*

7. *Incised wound half an inch long into muscle deep on the back of right middle and ring fingers.”*

5. On internal examination PW-3 found that the scalp tissues showed haematoma on the left temporal area with two fissured fractures, involving left temporal and parietal wounds beneath injury No.1 and 2. Brain showed generalised subdural haemorrhage and contusion. Neck tissues showed blood clots in superficial and deeper layers. Thyroid cartilage and tracheal rings were fractured at two places. He opined all the injuries to be ante mortem and caused by sharp heavy weapon. Injuries on the skull and neck were sufficient in the ordinary course of nature to cause death. The death was due to coma and shock, consequent to injuries. On being shown the Gandasi and the Phawda, that is, the weapons of offence recovered, PW-3 opined that the injuries found on the back of the neck of the deceased were caused with the Gandasi and the injuries on the front of the neck were caused by Phawda.

6. In his deposition before the Court Suraj Mal, PW-8 deposed in sync with the statement recorded on the basis of which FIR was registered as under:

“On 3.7.96 I was working as Helper on bus No.DL-1P-2037. The bus was plying between Najaf Garh and Koria Pul. The aforesaid bus was with one Vajinder on contract basis. The accused present in the court today was working as driver on the bus. On 6.7.96 I along with Vajinder were sleeping at the place where the bus was parked behind Anaj Mandi near the house of accused. I was sleeping on the Chatta of bricks and Vajinder was sleeping inside the bus.

At about 4.00 a.m. accused came there and gave 'Gandasi' blows to Vajinder inside the bus but I do not know on what parts the injuries were inflicted. After inflicting injuries accused threw Gandasi and thereafter he left for his house. After some time accused again came there having a 'Phawara' (kassi) and asked me to accompany him for dumping the body of Vajinder. There was lot of blood inside the bus. When I refused to accompany him by saying what he has done? Accused gave a threat to me, he would give me the same fate which was given to Vajinder. As I was having fracture in my both legs and I was frightened so I went to the house of the owner of the bus namely Ram Kumar Baniya. I informed him about the incident, upon which he accompanied me to the place where the incident took place. I do not know if Vajinder had already expired when I left the spot to inform the owner of the bus. When I came back to the spot, police had already reached there. Thereafter we went in search of the accused towards his house including police and after some time he was pointed out by me upon which he was apprehended by the police. Thereafter we went to the police station along with the accused. On the previous night from the date of the incident, there was a quarrel between the accused and the deceased Vajinder about the settling of the accounts of the earning of the bus. I had tried to pacify both of them."

7. He also deposed about the seizure of the Gandasi and Phawda from near the spot, quilt lying in the bus, clothes of the accused as well as of the deceased along with shoes. He identified the signatures on the ruqqa and various seizure memos. In cross-examination it was sought to be elicited that he did not have any documentary evidence to show that he was working as a helper on the aforesaid bus at the relevant time. He clarified in the cross-examination that he had joined as a helper from July 03, 1996 and belonged to Haryana, Village Gangtan which was nearby the village of

Vajinder. So Vajinder got him the job. His salary was not fixed at that time. He did not know the house of the bus owner prior to the death and had met the bus owner for the first time on July 01, 1996. He had gone to the petrol pump to meet the owner as Vajinder told him that the owner used to be generally available on the said petrol pump.

8. The explanation of Jagbir Singh in his statement under Section 313 Cr.P.C. is as under:

“Q.33. Would you like to say anything else regarding this case?”

Ans. I am innocent. I have been falsely implicated in the case. The witnesses have deposed falsely. I never worked as a driver on bus No.DL-1P 2037. This bus was never parked near my house. I did not worked on this bus on 6.7.96 or prior to that with Vijender. Witness Suraj Mal is a gambler and friend of father of Bijender deceased. I used to ply my three wheeler scooter in the village and Suraj Mal, after playing cards and taking liquor near bus stop used to ask me to take him to his house in the village. On my demand of fare, he used to quarrel with me and refused to pay the fare. For this reason, I used to refuse Suraj Mal to go to his house on my scooter and he developed inimical relations with me. For this reason, he with the connivance of father of deceased and police made out a false story and has deposed falsely. I never made any disclosure statement, nor any weapon was recovered from me or at my instance. The police has fabricated false evidence and planted clothes, weapons etc. after beating me and obtaining my signatures forcibly on blank papers. I was forced to pose and allow my photographs be taken by the police as per their desire under threat of bodily violence and confining me in Jail. I did not point out any place or proceedings has been conducted falsely at the police station.”

9. Challenging the conviction learned counsel for the appellant contends that Suraj Mal is not a trustworthy witness as he used to drink liquor and play cards. There is no material to show that he was employed as a helper at the relevant time on the bus. There is no corroboration to the testimony of Suraj Mal, recovery of Gandasa and Phawda was not from near the place of incident and from open place, thus cannot be held admissible under Section 27 of the Indian Evidence Act against the appellant.

10. We have noted the statement of Suraj Mal and find neither any improvement nor variation in his deposition before the Court. He is the first informant of the case. It is common knowledge that for being employed as helper on the bus there would have been no documentary proof. The recovery of Phawda and Gandasi though from near the spot and an open plot was from in between the bushes. The place cannot be said to be an open place, accessible to all. Version of Suraj Mal is corroborated by the opinion of Dr.L.T.Ramani, PW-3 opining that the injuries on the deceased were possible by the Phawda and Gandasi recovered. Further the Gandasi and the clothes of the deceased were found to be stained with blood group 'A' which was that of the deceased. Though Jagbir Singh has taken the plea of alibi for not being present at the spot however he led no evidence to prove the same. The defence evidence was aimed at discrediting the general character of Suraj Mal and that Jagbir was operating a tempo from Regal to Sapla and was driving the bus. However, no evidence has been led to show that Jagbir was driving a tempo except oral statement. Further defence witnesses have contradicted by saying that he drove tempo and that the fight between Suraj Mal and Jagbir was because Suraj Mal did not pay fare of auto.

11. In view of the evidence on record we find no infirmity in the

impugned judgment convicting the appellant for the offence punishable under Section 302 IPC and the order on sentence. Appeal is dismissed.

12. Bail bond and surety bond of Jagbir are cancelled. He will surrender to custody.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MARCH 21, 2016
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