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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.APPEAL No.587/2012 & CrI.M. (Bail) No.1385/2016**

Date of Decision : 7th November, 2016

ANIL KUMAR Appellant
Through: Mr. S.B. Dandapani,
Advocate (DHCLSC)

versus

STATE NCT OF DELHI Respondent
Through: Mr. Varun Goswami,
Additional Public Prosecutor
for the State with Sub-
Inspector Sumer Chand.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present appeal has been filed by the appellant against the judgment dated 29th September, 2011 and the order on sentence dated 30th September, 2011 passed by learned Additional Sessions Judge 02 (Central), Tis Hazari Courts, Delhi in Session Case No.15/2010 whereby the appellant was convicted in a case arising out of FIR No.155/2008 registered under Sections 302/325 of the Indian Penal Code (IPC) at Police Station Nabi Karim and by the order on sentence dated 30th September, 2011, was sentenced to undergo rigorous imprisonment for life with fine of Rs.50,000/- for the commission of offence punishable under Section 302 of the Indian Penal Code (IPC) and in default, to undergo additional imprisonment for a period of one year. The appellant was also sentenced to undergo rigorous imprisonment for five years for

commission of offence punishable under Section 325 of the IPC and fine of Rs.10,000/- and in default of payment of fine, to undergo additional simple imprisonment for three months. Both the sentences were ordered to run concurrently.

2. A thumbnail sketch of the facts of the case is that the complainant/PW 6 Fateh Khan in the complaint to the police had submitted that on 10th November, 2008 at about 4.00 a.m. while he was sleeping on the roof of his jhuggi, he heard a noise of quarrel and beating with *danda* which woke him up. He got down from the roof of the jhuggi and saw that a person named Anil, resident of a nearby jhuggi, was beating Ravi@Pancha with *danda*. The accused Anil while beating, dragged Ravi inside the Railway fencing. The complainant further stated that Smt.Mooli Devi PW 5, the mother of Ravi, tried to save and rescue him but the accused Anil was adamant and kept on beating him saying that as Ravi had taken his money, he would not let him remain live. As a result of continuous beating by *danda*, Ravi sustained multiple injuries on his body leading to his death. Thereafter, the accused Anil went to his jhuggi kept the *danda* inside the jhuggi and came back on the spot. He dragged Ravi out of the Railway fencing and left the spot by saying that he would come back after ten to fifteen days when the matter would be pacified. The complainant, thereafter, found a key ring containing two keys belonging to the accused and the police opened jhuggi of the accused Anil with the help of the said key and recovered a blood stained *danda*. The blood stained *danda* and the key ring were seized vide seizure memo Exh.PW 2/D.

3. It is the case of the prosecution that on the 10th November, 2008, Inspt.H.S. Chauhan, PW 19 was posted at PS Nabi Karim, Delhi and on the same day at about 6.40 a.m., DD Entry

11/AExh.PW 19/A was recorded to the effect that SI Ram Narain had intimated via telephone that near the Railway fencing, TT House, Nabi Karim, the body of a person was lying, which information was passed on to the SHO Nabi Karim. The crime team was also separately intimated. The information was entered into the *roznamcha*.

4. Upon receipt of this information, PW 19 Inspt H.S. Chauhan reached the spot where SI Ram Narain and Cont.Shyam Singh were present and crime team had also reached. The rukka Exh.2/B was prepared by SI Ram Narain, PW 2 and the same was sent to police station for registration of FIR. The investigation was taken over by PW 19 whereupon blood stained earth was lifted by him in a plastic jar and seized vide Seizure memo Exh.PW 6/A. The blood stained pant and shirt of the deceased was also sealed and seized vide memo Exh.PW 6/C. A blood stained stone; pieces of paper and poly pack lying near the body were also sealed and seized vide seizure memo Exh.PW 6/B. Earth control was also lifted and sealed and seized vide seizure memo Exh.PW 6/D. The case property was deposited in the *malkhana*.

5. During investigation, the following articles were sent by the investigating officer to the Forensic Science Laboratory:-

Sl.No.	Description of Articles	Description of parcel & Exhibits
1.	One sealed cloth parcel sealed with the seal of "RNT" containing exhibit '1'.	Parcel '1'
1.	One danda with rexine	Exhibit '1'
2.	One sealed cloth parcel sealed with the seal of "HS" containing exhibit '2' kept in a plastic container	Parcel '2'

3.	Earth described as 'Blood stained earth'	Exhibit '2'
4.	One sealed cloth parcel sealed with the seal of 'HS' containing exhibits '3a' & '3b', kept in a plastic container.	Parcel '3'
5.	Small stone piece.	Exhibit '3a'
6.	Pieces of polythene having brown stains.	Exhibit '3b'
7.	One sealed cloth parcel sealed with the seal of "HS" containing exhibits '4' kept in a plastic container.	Parcel '4'
8.	Earth described as 'Earth control'.	Exhibit '4'
8.	One sealed cloth parcel sealed with the seal of "HS" containing exhibits '5a', '5b' & '5c'.	Parcel '5'
	One shirt having brown stains.	Exhibit '5a'
9.	One shirt having brown stains.	Exhibit '5b'
10.	One pants having brown stains.	Exhibit '5c'
12.	One sealed paper envelope sealed with the seal of "FMT LPMC" containing exhibit '6'.	Parcel '6'
13.	Brown gauze cloth piece described as 'Blood in gauze'.	Parcel '6'

6. The result of analysis done by the FSL was that blood was detected on exhibits '1', '2', '3a', '3b', '5a', '5b', '5c' & '6' mentioned in the table above.

7. The investigating officer also prepared a rough site plan of the place of incidence which was proved on record as Exh.PW 19/B.

8. On 12th November, 2008, the post-mortem of the dead body was conducted by PW 13 Dr.Devinder Kumar Atal who described

the injuries 1 to 4 & 6 as abrasions while injury 5 was described as multiple bruises. All the injuries were stated to be ante mortem in nature and fresh in duration. As per this witness, there was no fracture of skull bone seen on internal examination. PW 13 opined the cause of death “due to head injury by a blunt force impact”. On 7th April, 2010, the doctor gave subsequent opinion regarding the weapon of offence and mentioned in his report that the injury could be possible with any *danda* (rod like structure), however, depending upon its dimensions.

9. PW 19 Inspt.H.S. Chauhan also recorded the statement of PW 5 Mooli Devi.

10. On the 23rd January, 2009, the accused Anil Kumar was apprehended on the basis of the secret information from near the Parcel Gate, New Delhi Railway Station. He was interrogated and arrested vide arrest memo Exh.PW 3/A and his personal search (*jama talashi*) was conducted vide memo Exh.PW 3/B. He also made a disclosure statement Exh.PW 3/C and on his pointing out the spot was identified, which fact has been proved on record as Exh. PW 3/D.

11. The police filed a charge-sheet under Section 173 of the Cr.P.C. The Magistrate took cognizance and committed the case for trial to the court of sessions in accordance with law. Vide an order on charge dated 18th May, 2010, the learned ASJ charged the appellant with commission of offences under Sections 325 & 302 of IPC to which he pleaded not guilty and claimed trial.

12. The prosecution examined twenty witnesses in support of its case. The incriminating circumstances against the accused Anil Kumar were put to him and his statement under Section 313 of the Cr.P.C. was recorded.

13. After considering all material evidence on record, the learned Trial Judge vide the impugned judgment dated 29th September, 2011, held the appellant guilty and sentenced him to incarceration as afore-noticed.

14. In support of his case, learned counsel for the appellant has submitted that from the record, it is clear that the motive behind the accused beating the deceased till he was dead, was not proved. He further submitted that there does not seem to be any premeditation on the part of the accused for the incident and that the recovery of weapon of offence i.e. *danda* cannot be considered as a dangerous weapon as there was no fracture of bones or the skull indicating that the blows were not serious. Learned counsel for the appellant further contended that the MLC of the accused shows injuries were old and death could have been caused due to the reason of poor health or the old injuries.

15. Learned counsel for the appellant has contended that the accused had no intention to kill the deceased as the assault with the *danda* was carried out in a fit of anger due to the reason that the deceased owed money to the accused, as a consequence of which, the accused was provoked and he lost his self control. It was also contended that there was no material witness present at the time when the quarrel started and as such they were not aware of the provocation given to the accused. Therefore, the intention of the appellant to kill the deceased has not been established. It is also stated to be clear from the report of PW 13 doctor Devinder Kumar Atal that there were no fracture of bones or serious injuries on the skull and that the injuries were found to be old. Therefore, the possibility of the death of the accused due to poor health cannot be ruled out.

16. Learned counsel for the appellant has further submitted that it is also clear from the record that none of the material witnesses were present at the time when quarrel started. Therefore, it is not clear as to whether provocation was given to the accused by the deceased himself as a result of which the accused started beating him.

17. According to learned counsel, there are also reasons to disbelieve the testimony of complainant/PW 6 Fateh Khan, the material eye witness, to the effect that he might be inimical to the accused. It is also difficult to accept that in the winter season, he was sleeping on the roof of his jhuggi.

18. It is stated that the accused has already undergone six years and seven months of sentence and earned remission of one year and seven months.

19. In support of his contentions, learned counsel for the appellant relies on the pronouncement of the Supreme Court in ***State of A.P. Vs. Rayavarappu Punnayya AIR 1977 SC 45; Virsa Singh Vs. The State of Punjab AIR 1958 SC 465; Krishna Tiwary & Anr. Vs. State of Bihar AIR 2001 SC 2410 & Prakash Chand Vs. State of H.P. 2004 (11) SCC 381.***

20. So far as the weapon of offence i.e. *danda* is concerned, learned counsel for the appellant relies on the judgment of this court passed in CrI.A. No.1239/2010 on 29th July, 2013 titled ***Kamal Kishre Singh@Pandit Vs. State***; CrI.A. No.74/2011 on 3rd November, 2011 titled ***Sunil Dutta & Ors. Vs. State*** & CrI.A. No.132/2011 on 8th January, 2015 titled ***Bhagwan Sahai Vs. State.***

21. We have heard learned counsel for the parties at length and perused the available record including the judicial pronouncements cited by learned counsel for the appellant.

22. We have gone in depth through the testimonies of all the witnesses one by one. The backbone of the case is the testimony of material witnesses i.e. PWs 5, 6, 7 & 13. In the statement of Mooli Devi PW-5, she had deposed that in the winter season at about 9.00 p.m. while she was sleeping in her jhuggi, she heard noise, came outside and found her son dead. Though she was declared hostile by the prosecution but during her cross-examination by the learned APP for the State, she admitted that accused was resident of a nearby jhuggi. She also admitted that accused took her son near Railway fencing and beat him with *danda*. She also admitted that when she tried to intervene, she received injuries on her right arm. Her MLC Exh.PW 15/B has been proved on record which records swelling over right hand and painful swelling over left elbow which corroborates the factum of her statement the fact the mother was trying to intervene to save her son.

23. The testimony of PW 5 is corroborated by the statement of PW 7 Rattan wherein he has stated that the mother of Ravi and one Fateh Khan were trying to save Ravi. This witness also admitted that Fateh Khan (PW 6) & Rattan (PW 7) helped PW 5 to save her son. She further admitted that the accused did not desist and continued beating her son as a result of which her son fell in the fencing. She further admitted that the accused went to a jhuggi along with *danda*. After some time, accused returned, took out the body of her son and dragged it away from the fencing. PW 5 further admitted that the accused ran away from the spot by saying that he would return after some time when the matter would be pacified.

24. PW 6 Fateh Khan in his statement deposed that on 10th

November, 2008 at 4.00 a.m. when he was sleeping on the roof of his jhuggi, he heard noise of quarrel with *danda*. On getting down from the roof, he found that the accused Anil Kumar was beating the deceased with *danda* and dragged him towards fencing. He, along with the mother of the deceased (PW 5), and one Rattan (PW 7), tried to save the deceased Ravi@Pancha. The accused, thereafter, went to his jhuggi for keeping *danda* and after some time, returned and dragged the body of the deceased out of railway fencing and took the same to the *chabutra*. This witness further deposed that the accused, thereafter, went away by saying that he would return after ten to fifteen days when the matter would be pacified.

25. PW 6 further deposed that a key ring containing two keys belonging to the accused were recovered from the spot which he produced to the police. The police opened jhuggi of the accused with the help of said key and a blood stained *danda* was recovered from the jhuggi. *Danda* and key ring were seized vide memo Exh.PW 2/D. The witness has identified the weapon of offence i.e. *danda* as Exh.PW P-1 and key ring as Exh.P 2. He also deposed that the shirt Exh.P 5 and the pant Exh.P 6 of the deceased were seized by the police vide memo Exh.PW 6/C.

26. PW 7 Rattan in his statement deposed that on 10th November, 2008 at 4.00 p.m., when he was sleeping in his jhuggi, he heard noise of phat phat. On coming out of his jhuggi, he saw that the accused was beating Ravi@Pancha with *danda* and that the mother of the deceased (PW 5) and one Fateh Khan (PW 6) were trying to save him. He further deposed that he also tried to save Ravi but the accused did not listen to anybody. The witness further stated that the accused told that Ravi had taken money from him

and that he would kill him. The deceased, thereafter, ran towards *chabutra* to save himself but the accused chased him and kept on beating him at *chabutra*.

27. PW 13 Dr. Devinder Kumar Atal, who conducted the post-mortem of the deceased, deposed that according to his opinion, the cause of *death was head injury as a result of blunt force impact*. He also stated that the injury could be possible with any *danda (rod like structure)*, *however depending upon its dimensions*.

28. So far as the contention of learned counsel for the appellant to the effect that the time of occurrence of incident deposed by PW 5, mother of the deceased, was different from the one given by the other eye witnesses i.e. PW 6 & PW 7, the Hon'ble Supreme Court in **(1988) Supp. SCC 241, Appabhai Vs. State of Gujarat** ruled that the court while appreciating the evidence must not attach undue importance to minor discrepancies. It was further held that the discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance.

29. So far as the contention of the appellant to the effect that the weapon of offence i.e. *danda* cannot be considered as a dangerous weapon, is concerned, it is to be seen as to which part(s) of the body of the victim was selected for causing injuries as well as the severity of the blow or blows. In the present case, the deceased was hit by *danda* on his head which is a vital part of the body and that the doctor also gave subsequent opinion regarding the weapon of offence and mentioned in his report that the injury could be possible with any *danda (rod like structure)*, however, depending upon its dimensions. Therefore, the contention of the accused to the effect that the weapon of offence i.e. *danda* is not a dangerous

weapon, does not bear consequence.

30. So far as the contention of the appellant to the effect that the cause of death of the deceased may be attributed to the old injuries as has been pointed out by Dr.Vinod Kumar, who conducted the MLC, we may note that only three of the injuries mentioned in the MLC were found to be old as mentioned in serial nos.1, 4 & 8 i.e. old abrasion on left side of forehead; old incise black mark on right arm & old incise mark on sole of right leg respectively. However, it is clear that the injuries noted by this doctor that the same were external in nature. The same cannot be taken into account for the reason that Dr.Devinder Kumar Atal, PW 13 who conducted the post-mortem, opined the cause of death to be “due to head injury by a blunt force impact”.

31. The Hon’ble Apex Court in the case of ***Sewaka@Ramsewak Vs. State of MP & Anr. AIR 2002 SC 50*** has upheld the conviction of the appellant on the sole testimony of eye witness who happened to be the wife of the deceased. It was held as under:-

“6. The learned counsel for the appellant has submitted that in the month of July the villagers do not sleep in open and therefore it is doubtful if Gangashri (PW1) was sleeping in the courtyard. He also submitted that Gangashri could not have been awake when the occurrence took place and therefore she could not have identified the accused persons. He also submitted that if she had heard the voice of Rakesh exhorting Sewaka to kill the enemy' then she should have immediately awoken her husband and her having not done so makes her conduct unnatural. All these submissions have been noted only to be rejected. The fact that Kitab Singh was murdered while sleeping on a cot in the courtyard cannot be doubted as there is overwhelming evidence available in that regard. If Kitab Singh was

sleeping in the courtyard there is nothing unnatural about Gangashri also sleeping on a cot in the courtyard. Rising from the sleep at about or after mid night for easing oneself during summer when people consume enough water is allow very natural. The voice she heard was here is enemy, shoot him.' Rakesh had not named the deceased in his exhortation. By the time Gangashri could understand what the exhortation meant and what was going to happen, the appellant had fired form the *katta*. The witness sprang up from her cot and grappled with the assailants. The conduct of the witness is most natural and the criticism leveled on the conduct of the witness is unwarranted. In our opinion the High Court was fully justified in holding Gangashri a natural witness and a witness of truth and we too, on our own independent evaluation of her testimony find ourselves, agreement with the opinion of the High Court.”

32. This Hon’ble Supreme Court in ***Bachittar Singh and Anr. Vs. State of Punjab [2002] SUPP 2 SCR 621***, on human behavior, held as under:-

"Human behavior vary from man to man. Different people behave and react differently in different situations. Human behavior depends upon the facts and circumstances of each given case. How a man would behave in a particular situation, can never be predicted. In the given circumstances, the behavior of Joginder Singh - PW-3 sleeping on the roof of the house of Sukhwant Singh; after seeing the accused armed with weapons and hearing of firing, jumping from the roof and running towards his village Mastewala to inform his father and family members instead of loitering around in the village Dholewala and informing somebody risking his life, is quite natural. One should not forget that the incident had happened at 1.00 A.M. and that

at that odd time, nobody would be readily available to be informed without loss of time. In the process, the life of the witness would be at great risk."

33. In the ***State of U.P. Vs. Kishan Chand & Ors., (2004) 7 SCC 629*** held as under:-

"9. The submission of the counsel for the accused that the testimony of PWs cannot be acted upon, as they are the interested witnesses is to be noted only to be rejected. By now, it is well-settled principle of law that animosity is a double-edged sword. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence. In the given facts of the present case they are but natural witnesses. We have no reason to disbelieve their testimony. Similarly, being the relatives, it would be their endeavour to see that the real culprits are punished and normally they would not implicate wrong persons to the crime, so as to allow the real culprits to escape unpunished."

34. In ***Om Prakash Vs. State of Haryana 2014 (7) SCJ 725***, it was held by Hon'ble Supreme Court as under:-

"13. In his examination-in-chief he has clearly stated that some of the injuries could have been caused by the relevant organ of the body/struck by a blunt countering by the wheel of a tractor. The submission of the learned Counsel for the Appellants is that there is no clear cut opinion by the two doctors and, in fact, there is an irreconcilable contradiction which would show that no injury was caused by running over of a tractor falsifying the case of the prosecution. The said submission leaves us unimpressed inasmuch as we really do not find that there is any contradiction of that nature which would cause a

concavity in the version of the prosecution. As we find, the ocular testimony has been corroborated by the medical evidence to a major extent in that regard and hence, it would be inappropriate to discard the prosecution case. That apart, the mental condition of the witnesses can be well appreciated and, in any case, they were not expected to state with exactitude how the injuries were caused by the tractor. From the evidence of Dr. Jindal, PW-4, it is evincible that the injuries sustained by the deceased on his legs and arms could have been caused by the tractor wheels. Similar is the opinion of Dr. Partap Singh, PW-1 and in the cross-examination he has explained why crush injuries were not there. It is also worthy to mention that nothing has been elicited in the cross-examination of the eye witnesses on that score. In fact, no suggestion has also been given. It has come out in the evidence that all the accused persons had carried lathis and most of the injuries were caused due to lathi blows and some by the tractor. Thus, the ocular testimony gets corroboration from the medical evidence, and, therefore, the stance that the prosecution witnesses have made an effort to exaggerate their version ascribing a serious role to Om Prakash, in our considered opinion, is mercurial and deserves to be repelled and we do so.”

35. The mother of the deceased PW 5 has duly corroborated the case of the prosecution that she had seen the occurrence of giving beatings by the accused to her deceased son on the day of incident. She has specifically stated that on the day of incident when she came outside her jhuggi, she saw that the accused was beating her son with a *danda*. Other eye witnesses of the incident are PW 6 Fateh Khan and PW 7 Rattan who also narrated the incident almost in the same language. They have also stated that they had seen the accused giving beatings to the deceased with a *danda*. The

testimony of eye witnesses PWs 5, 6 & 7 remained unimpeached and unchallenged though they were cross-examined at length. The post-mortem report Exh.PW 13/A duly corroborated the testimony of eye witnesses that the deceased died due to head injury as a result of blunt force impact. The doctor PW 13 who conducted the post-mortem on the dead body of the deceased duly corroborated the case of the prosecution by saying that he had examined the weapon of offence i.e. *danda* and gave his subsequent opinion Exh.PW 13/B to the effect that the injury on the person of deceased could be possible with any *danda*. So far as the intention or motive of the accused in assaulting the deceased is concerned, it is clear from the statement of PW 7 that the accused told the deceased that he had taken money from him and that he would not spare him that day and that he would kill him.

36. Keeping in view the ratios laid down by the Supreme Court and the testimonies of material witnesses PWs 5, 6 7 & 13 as well as the other witnesses, it is apparent that their testimonies are natural and there is no reason to disbelieve them. We find that the ocular testimonies of the above eye witnesses are duly corroborated by the medical evidence. All the eye witnesses have deposed in unequivocal language that they had seen the accused assaulting the deceased with a *danda* and as per the opinion of doctor who conducted post-mortem on the dead body of the deceased, the injuries on the head of the deceased caused by blunt object were sufficient to cause his death. The medical evidence duly corroborates the testimony of eye witnesses. In our opinion, the testimony of PWs 5, 6 & 7 inspires confidence being natural and trustworthy.

37. From no stretch of imagination it can be said that the

testimonies of PWs 5, 6, 7 & 13 are not trustworthy and believable nor any subject matter creates any doubt about the testimonies during the cross-examination. The testimonies of material witnesses are duly corroborated by other witnesses and material placed on record by the prosecution.

38. It is, thus, evident from the chain of circumstances; statement of the material eye witnesses i.e. PW 5, 6 & 7; medical evidence of the doctor PW 13 including post-mortem report PW 13/A; recovery of weapon of offence as well as the disclosure statement made by the accused, the intention of the accused was to cause death of the deceased as the accused was continuously beating the deceased with *danda* despite the intervention of PW 5, 6 & 7 who were trying to save him.

39. We, therefore, do not find any force in the arguments advanced by learned counsel for the appellant.

40. In view of the above, we are of the considered opinion that the appellant deserves to be convicted. From a careful reading, we do not find any infirmity, illegality or impropriety in the judgment dated 29th September, 2011 passed by the learned Additional Sessions Judge, holding the appellant guilty and convicting him under Section 302/325 IPC as well as the order on sentence dated 30th September, 2011.

Consequently, the present appeal is dismissed.

Crl.M. (Bail) No.1385/2016

41. In view of the appeal having been dismissed, this application

does not survive for adjudication and is dismissed as such.

(P.S.TEJI)
JUDGE

(GITA MITTAL)
JUDGE

NOVEMBER 07, 2016
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