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

+ **CRL.A.872/2001**

VARINDER SINGH Appellant
Through: Mr.M.L.Yadav, Advocate.

Versus

STATE OF DELHI Respondent
Through: Ms.Kusum Dhalla, APP.

And

+ **CRL.A.311/2002**

MANOJ KUMAR Appellant
Through: Mr.M.L.Yadav, Advocate.

Versus

STATE Respondent
Through: Ms.Kusum Dhalla, APP.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER
17.11.2017

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Dr. S. Muralidhar, J.:

1. These are two appeals by Manoj Kumar (Accused No.1 A-1) and Varinder Singh (A-2) against a judgment dated 30th October, 2001 passed by the learned Additional Sessions Judge, New Delhi in Sessions Case No.62/1997 convicting both the accused for the offences under Section 302/34 IPC for causing death of Mangal @ Tota @ Chuha (the deceased)

and the order on sentence dated 31st October, 2001 whereby both the accused were sentenced to undergo imprisonment for life and also pay a fine of Rs.500/- each, in default of payment of which to undergo further RI for a period of six months.

2. The case of the prosecution is that A-1 Manoj as well as the deceased Mangal were in love with the same girl, that is, Anita. When Manoj confided to Mangal that he wished to marry Anita, Mangal was unhappy and made it clear to Manoj that during his lifetime, he would not let it happen. According to the prosecution, A-1 then decided to eliminate the deceased so that A-1 could marry Anita. A-1 took the help of A-2, his friend, in this task.

3. According to the prosecution, both A-1 and A-2 went to the house of the deceased on 15th April, 1997 at around 3 p.m. They then brought the deceased to the house of A-1 at Naraina. There they had drinks. After making the deceased drunk, the two accused killed him. They left the dead body in that room itself and disappeared after locking the room from outside.

4. The case of the prosecution further is that on the morning of 16th April, 1997, at around 10 am, Joginder Singh (PW-11), who was living as a tenant on the 2nd Floor of the same house in Naraina, noticed that blood was coming out of the room of A-1. He then informed Pritam Singh (PW-2), the landlord. PW-2 in turn called the Police Station (P.S.) Naraina and this was noted as Daily Diary (DD) No.16-A.

5. Sub-Inspector (SI) Sunil Kumar (PW-22) was entrusted with the matter.

He left with Head Constable (HC) Om Pal (PW-21) and some other Constables and reached the house of A-1 at Naraina where PW-2 and PW-11 met them and took them to the first floor of the house and showed them the blood seeping from the room. When he peeped inside through the window, PW-22 noticed a dead body lying there. PW-11 then broke the lock on the door and entered the room. He saw that the dead body was of a young boy and there were stab injuries on different parts of the dead body including on the chest, throat and abdomen. Blood was seen on the floor all around the dead body. One liquor bottle was also seen lying near the body. PW-22 then recorded the statement of PW-11 and then got the FIR registered.

6. The investigation was, thereafter, taken over by Inspector Sanjiv Kumar (PW-20) who was the Investigating Officer (IO) in this case. He reached the spot and seized the blood sample, earth control, one school leaving certificate in the name of A-1, one divorce deed executed between his parents and two photographs, one of which was of A-1. The crime team and photographer were also called. The finger print expert lifted chance prints from the liquor bottle which was found lying near the dead body. The body was, thereafter, seized by the IO.

7. While the police was still at the spot Fateh Chand (PW-19), the elder brother of the deceased, arrived there. He identified the dead body to be that of his younger brother. His statement was recorded by PW-20 under Section 161 Cr PC (Ex.PW-19/DA). PW-19 stated that the deceased was living with him at his house at Main Bazaar, Shadipur, West Patel Nagar as their parents had expired. He stated that on 15th April, 1997, at around 3 p.m., the

deceased had left the house with their neighbour A-2 as well as A-1 saying that he was going to the house of A-1 in Naraina for a party.

8. PW-19 stated that the deceased along with A-1 and A-2 were seen going together by Virti, Subhash (PW-5) and Raju Dhobi. PW-5 had told PW-19 that A-2 and the deceased had asked him also to accompany them for the party but he had declined. PW-19 stated that when the deceased did not return that night and even in the morning, he began searching for him. In the course of the search, he had reached the house of A-1 at Naraina and that is how he came to know that his brother lay murdered there.

9. Dr. Alexander (PW-16), who conducted the post-mortem, noticed extensive external ante-mortem injuries on the dead body of the deceased. There were, as per his report, 14 incised wounds of which 4 were stab wounds. They were all over the body including neck, spine, chest and the abdomen. The cause of death was opined to be due to shock and haemorrhage caused by multiple injuries on the dead body. Injuries No.1 to 6 and 8 to 14 were found to have been caused by sharp edged weapon/object. Of these, injuries No.4 and 5 were opined to be sufficient to cause death in the ordinary course of nature collectively as well as individually.

10. For many days after the incident, neither of the accused could be traced. One Sub-Inspector Om Prakash (PW-6) attached to P.S. Malviya Nagar noticed A-2 sitting in a park in B-Block, Malviya Nagar on the night of 1st May, 1997. When A-2 was unable to give satisfactory answers for his presence there at that time, PW-6 made inquiries from the Police Stations of

Patel Nagar and Naraina and learnt that A-2 was wanted in the present case. A-2 was, therefore, arrested under Section 41(1) Cr PC. On the basis of information provided by A-2, A-1 was also arrested that night itself from outside Qutub Minar.

11. Pursuant to the disclosures made by A-1 after being taken into custody, information was passed on to the P.S. Naraina. On 2nd May 1997 the two accused were produced before the concerned Magistrate along with kalandara and at the IO's request, both were remanded to police custody as the accused in this case. A-1 thereafter got recovered a blood stained knife purportedly used in the commission of the offence as well as the blood stained shirt worn by him at the time of the murder. The autopsy surgeon confirmed that the knife got recovered by A-1 could have caused the stab wounds and other incisive wounds found on the dead body of the deceased.

12. The chance prints developed from the liquor bottle found in the room of A-1 matched with the specimen finger prints of A-1. The blood found on the knife recovered by A-1 was of human origin but the blood group could not be ascertained. Likewise for the shirt.

13. There were also persons to speak for the extra-judicial confessions purportedly made by both the accused. However, for the purpose of the present case, the fact that those witnesses turned hostile did not, as has correctly been noted by the trial Court, affect the case of the prosecution.

14. The trial Court set out the following 10 circumstances forming a continuous chain which according to the prosecution unerringly pointed to

the guilt of both the accused:

(i) On 15th April 1997 at about 3 p.m. the deceased had left his house with the two accused and before leaving the house the deceased had informed his elder brother PW- 19 that they were going for a party in Naraina in the house of A-1. Thereafter the deceased did not return home;

(ii) On 16th April 1997 at about 10 am the dead body of the deceased was found in the house of A-1 in Naraina;

(iii) The death of the deceased was not homicidal;

(iv) Both the accused had absconded after the incident till 1st May 1997;

(v) A-2 was arrested under suspicious circumstances on the night of 1st May 1997 from a park in Malaviya Nagar. He did not offer a credible explanation and for his presence there at night time. On the basis of information given by him to the police and at his instance A-1 was also arrested on the same night from outside Qutab Minar. A-1 too offered no explanation for his presence there;

(vi) Pursuant to the disclosure statements of A-1 a blood stained one shirt and knife were recovered. As per the autopsy surgeon, the injuries on the dead body of the deceased were possible with that knife;

(vii) After his arrest, A-2 too made a disclosure statement about the place where the blood stained shirt of A-1 had been kept and then one blood stained shirt was recovered;

(viii) Both the accused had made extra-judicial confessions before some persons that they had murdered the deceased:

(ix) The motive for the murder of the deceased was that he and accused A-1 both loved one girl; A-1 wanted to marry her which was not to the liking of the deceased and so A-1 decided to kill him;

(x) None of the accused has explained why they could have been falsely implicated them as claimed by them.

15. For the first circumstance of last seen, the prosecution relied on the evidence of PW-19, elder brother of the deceased. The Court has also perused his evidence very carefully. This Court concurs with the trial Court that this witness has remained strong and is totally reliable. He appears to be a natural witness.

16. Learned counsel for the Appellants submitted that this witness was not clear about the exact date of the commission of the offence, viz., whether it was 14th or 15th April, 1997. He only stated that it was the day of *Ashtami*.

17. As also noticed by the trial Court, this Court also finds that in the examination-in-chief, the Additional Public Prosecutor with the permission

of the Court, put forth a supplementary question to the witness (PW-19) and got it clarified that the date on which the deceased left the house with accused A-1 and A-2 may have been 14th or 15th April, 1997. This when viewed with the overall context of the fact that the witness is truthful and reliable and that nothing has been elicited to his cross-examination to doubt his credibility, actually demonstrates that this witness is a natural witness. He would not unnecessarily be making up a story for falsely implicating anyone.

18. The Court concurs with the trial Court that the circumstance of last seen has been proved against both accused without a shadow of doubt. is indeed very strong in which the prosecution has set out its case. The deceased was last seen with the two accused and thereafter, when he was seen by anyone other than the two accused, it was when he was lying dead in the room of A1.

19. The next circumstance that links the accused with the crime is the fact that they remained absconding till 1st May, 1997, when A-2 was arrested from a park in Malviya Nagar. The depositions of PW-6 (SI Om Parkash) and PW-18 (HC Surinder Pal) have been carefully scrutinized by the Court in this regard. No suggestion has been made to these two witnesses that A-2 was not arrested in the manner stated by the prosecution. A-2 also does not have any explanation where he might have been till 1st May, 1997. In his statement under Section 313 Cr PC, A-1 as regards the circumstance regarding his remaining absconding, he simply denied it with the standard reply: "I do not know." Here again, the trial Court has rightly commented on

the fact that this could hardly be a proper defence, if indeed A-2 was serious about the claim that he was not with A-1 and the deceased at the time when the crime was committed. Likewise, no credible explanation was offered by A-1 for remaining absconding till 1st May, 1997.

20. The learned counsel for the appellant kept harping on the fact that as far as A-2 was concerned, apart from two circumstances, viz., last seen and the fact that he was absconding after the crime, there was no other circumstance linking him to the crime. In this connection, he relied on the decision in ***Deepak Chadha v. State 2012 (1) JCC 540*** to urge that the mere fact that the deceased was last seen with A-2 was insufficient to bring home the guilt of A-2 for the offence under Section 302 read with 34 IPC.

21. Each case turns on its own facts. In the present case, the clear and cogent evidence of PW-19 lends complete assurance to the Court regarding the involvement of A-1 and A-2; the deceased being last seen in the company of A-1 and A-2 and then going to the house of A-1 for a party with both the accused. If A-2 was nowhere involved in the crime, there was no reason for him to go absconding till 1st May, 1997.

22. Learned counsel for A-2 sought to suggest that since A-2 was aware of his having being named in the FIR he would have been on the run to avoid the police. Having perused the FIR, it is plain that at the time it was registered, A-2 had not yet been named. In any event, how A-2 would come to know about his being searched for by the police for this offence, if he was not involved as claimed, is not clear.

23. Learned counsel for the Appellants then suggested that A-2 somehow knew that PW-19 had told the police that A-2 was last seen in the company of the deceased. That statement by itself did not, at that stage, straightaway implicate A-2. What strengthened the suspicion against him was the fact that he went absconding along with A-1 till 1st May, 1997.

24. The further circumstance which the trial Court noticed at clause (v) above is that after his arrest, A-2 gave information to the police about where A-1 might be and on that basis A-1 was arrested outside Qutub Minar in the late hours of 1st May, 1997. If A-2 had nothing to do with the crime, there was no question of his having been able to inform the police about where A-1 could be found. Therefore, this circumstance also links A-2 to the crime.

25. As far as A-1 is concerned, apart from the above circumstances, the fact that the dead body was found in the room occupied by him (along with his mother), the fact that the chance prints on the bottle were found to match his subsequent finger prints; the fact that he went absconding till 1st May, 1997; the fact that he got a blood stained knife recovered on his pointing out; and the fact that his blood stained shirt was recovered are all circumstances which complete the chain as far as A-1 is concerned.

26. No doubt some of the witnesses have not supported the case of the prosecution. But as rightly noted by the trial Court this nowhere dilutes the case of the prosecution as the other evidence proved by the prosecution unerringly points to the guilt of both the accused.

27. For all the aforementioned reasons, the Court is of the view that no grounds have been made out by the accused to impugn the judgment of the trial Court as well as the order of sentence. The appeals are accordingly dismissed. The bail bonds of both the accused are cancelled and they are directed to surrender forthwith and in any event not later than 24th November, 2017 failing which the police will take immediate steps to take them into custody.

S. MURALIDHAR, J.

I.S. MEHTA, J.

NOVEMBER 17, 2017

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