

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

R-13

+

CRL.A. 48/2002

STATE

..... Petitioner

Through: Ms.Kusum Dhalla, APP for State

versus

BEER SINGH ADHIKARI alias BEERU

..... Respondent

Through: Ms.Radhika Kolluru, APP for State.
SI Manish Rana, PS-Timarpur.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

%

30.11.2017

1. This is an appeal filed by the State against judgment dated 28th April, 2001 passed by the learned Additional Sessions Judge, New Delhi acquitting the Respondent accused of the offence under Section 302 IPC. The case arose out of FIR No. 294/1997, registered at Police Station-Chanakya Puri.

2. The case of the prosecution was that on the intervening night of 23rd-24th September, 1997 at about 01:55 a.m. the deceased Varinder Singh @ Cheeku s/o Vijay Singh, aged 22 years, r/o C-250 Ashoka Hotel Staff Quarters was brought to All India Institute of Medical Science (AIIMS) by his brother Narinder Singh Negi (PW-6) in an injured condition. Dr. Meena (PW-12) examined him with alleged stab injuries suffered in the abdomen

and on examination declared him as brought dead. Upon receiving the aforementioned information, Inspector Ramesh Chander (PW-18) reached AIIMS and took over the investigation. He recorded the statement of PW-6. According to PW-6, the deceased had on many occasions had verbal altercations with Respondent Beer Singh @ Beeru who was living in Staff Quarter C-147 and there was one such altercation on the evening of 23rd September, 1997 at around 06:00 p.m. According to PW-6, the respondent had threatened the deceased that he would not leave him (the deceased) and PW-6 had brought them to an understanding. PW-6 further alleged that on the intervening night of 23rd/24th September, 1997 at about 12:30 a.m. another verbal altercation took place between the deceased and the Respondent on the roof of their building but he had silenced them after which the Respondent had gone down stairs. PW-6 thereafter went to sleep at a distance of about 30-35 yards. After 15 minutes he heard the shriek of the deceased stating that the Respondent had killed him. He started running towards the deceased. He saw that the Respondent had assailed the deceased with a *khukri* (curved knife) and on seeing PW-6, the Respondent ran away from the other side with the *khukri*. Whilst the deceased was drenched with blood and was not able to speak, PW-6 stated that another person Vinod had also woken up on hearing the cries. PW-6 stated that he then hurriedly went to his house and called his elder brother Dinesh and then the three of them brought deceased to the hospital in a taxi.

3. The further case of the prosecution is that the Respondent went to Police Station-Chanakya Puri at about 04:10 a.m. on 24th September, 1997 with the blood stained *khukri* and surrendered before the Duty Officer ASI Parkash

Chand (PW-16) confessing that he had murdered the deceased on the roof of the staff quarters of Ashoka Hotel.

4. The Trial Court found that PW-6 is not to be a reliable eyewitness as he had made numerable improvements while testifying in the Court over his initial statement to the Police.

5. Vinod Kumar (PW-2), who was also examined as another eye witness to the murder did not support the case of the prosecution. According to him, he was sleeping on the roof of the staff quarters on the night of the incident and had woken up on hearing the cries of the deceased. He stated that it was dark at that time and when he enquired from Varinder Singh as to what had happened, he got no response.. According to PW-2, PW-6 was also sleeping on the roof at that time and he then went to PW-6 to tell him that his brother was lying in an unconscious condition. Thereafter, PW-6 went to the spot where the deceased was lying and deceased did not respond to PW-6 either. Since there were contradictions in the testimonies of PW-2 and PW-6, the Trial Court scrutinised the deposition of PW-6 carefully. The scaled site plan shows that the deceased had been sleeping at a distance of 127 ft. from where the PW 6 was sleeping. It was dark on the terrace as spoken of by PW-2. There was no provision of light on the terrace. In the circumstances, the Trial Court held that it would not have been possible for PW-6 to recognize the assailant as well as a *khukri* from a distance of about 130 ft. in total darkness. Although, it was sought to be urged by the prosecution that there was some light coming from the hotel building, the evidence of PW-2

and SI Mahinder Singh (PW-17) was consistent with the fact that it was dark at the place of the incident and there was no provision of light.

6. Another reason for doubting the version of PW-6 was that he did not name the accused as the assailant in his initial disclosure to the duty constable at AIIMS (Parveen Kumar/PW-9) when he first brought the deceased there with knife injuries. The relevant DD entry No.26-A did not mention the name of the accused. He did not even mention the name of the accused to PW-17 who reached the hospital first upon the information given.

7. The fact is corroborated by the IO/PW-18's claims in his cross-examination that before his arrival at AIIMS PW-17 had already made some enquiries from PW-6 but his formal statement was recorded by PW-17 upon his (PW-18's) dictation and the respondent had not been named as the assailant by PW-6 to the police in the first instance. Further, as far as the verbal altercation on the roof on the date of the incident goes, PW-6 changed his version by shifting the place where the altercation took place as being his quarters and the time from 12:30 am to 11:00 pm.

8. There is also contradiction between the evidence of PW-3, another brother of the deceased and PW-6. PW-3 remains silent on there being any altercation between the accused and the deceased on the night as is claimed by PW-6. In fact PW-3 has not even claimed that PW-6 was present in the house at the time of the visit of the accused. Another factor was that according to PW-3, one Ajay s/o Smt. Burfi was also with the deceased and the accused at around 11:00 pm when they were sitting and talking inside

quarter No C-250, and had also accompanied both of them to the roof of the building. It is a glaring lapse that Ajay was not even examined by the prosecution. PW-3 also in the first instance had stated that PW-6 had told him that “someone” had stabbed the deceased but thereafter PW-6 had realised that the word ‘someone’ would belie the prosecution case and had later told PW-3 that the accused had stabbed the deceased which shows PW-3 to be an unreliable witness.

9. Another factor that the Trial Court had noted was that in his examination PW-6 stated that when they were taking the deceased to the hospital he had knocked at the door of his neighbour Shyam Singh and had taken Rs. 500 from him. Trial Court noted that Sham Singh would have asked PW-6 why he was borrowing Rs. 500/- and that PW-6 would have disclosed the name of the accused. For some reason Shyam Singh was not examined by the prosecution. The delay in forwarding the FIR that was recorded at 4:30 am on 24.09.1997 to the Magistrate at 8:30 am was also commented upon by the Trial Court.

10. The contention of the accused that DD No. 30 A which was recorded at 4.30 pm only concerning the registration of the FIR did not name of the accused which meant that even by 4:30 pm, even the name of the accused was not given to the police.

11. As regards the surrender of the accused in the police station, the witnesses were all police officials. According to their version, the information provided by the accused was recorded by ASI Irshad and signed by the accused. However, the signed information given by the accused was

not produced and there was no explanation for its non-production. There was no explanation why when such a disclosure was purportedly made at 4:10 am, no FIR was registered immediately thereafter. There were discrepancies in the three witnesses which were vital and as regards the alleged surrender by the accused at the Police Station

12. PW-16 and PW-5 stated that the accused appeared at 04:10 am where PW-11 stated that he surrendered at 11:45 am. The blood stained clothes were supposed to have been worn by the accused and the blood stained kukri did not have much relevance when the version of PW-6 was otherwise held to be unreliable.

13. Having heard the learned counsel for the State and having examined the record, the Court is unable to be persuaded that the view taken by the Trial Court is perverse or erroneous. No ground for interference is made out in the judgment passed by the Trial Court.

14. The appeal is accordingly dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

NOVEMBER 30, 2017
dc/sr