

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

**RESERVED ON : 25th NOVEMBER, 2017
DECIDED ON : 8th DECEMBER, 2017**

+ CRL.A. 300/2014

MANOJ @ PINTOO

..... Appellant

Through : Ms.Saahila Lamba, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Through : Ms.Aashaa Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

HON'BLE MR. JUSTICE C.HARI SHANKAR

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 27.09.2013 of learned Addl. Sessions Judge in Sessions Case No. 7/2012 arising out of FIR No. 309/2011 PS Farsh Bazar by which the appellant – Manoj @ Pintoo was convicted for committing offences punishable under Sections 302/307/379 IPC. By an order dated 30.09.2013, the appellant was sentenced to undergo imprisonment for life with fine ₹10,000/- under Section 302 IPC; RI for seven years with fine ₹5000/- under Section 307 IPC and RI for three years under Section 379 IPC. All the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 14.10.2011 at around 09.30 p.m. at House No.500/28, Daksh Road, Vishwas Nagar, Shahdara, Delhi, the appellant and his associate Praveen (Since Proclaimed Offender) in furtherance of their common intention inflicted injuries to Gauri Shankar and committed his murder. In the process, the injuries were also inflicted by them to Jugla Devi in an attempt to commit her murder. The assailants also committed theft of various valuable articles. Information regarding the incident was conveyed to the police by duty Head Const. Bhagwat Singh and DD No. 45A (Ex.PW-10/C) came to be recorded at PS Farsh Bazar at 10.57 p.m. The investigation was assigned to SI Sunil Kumar. After recording complainant Jugla Devi's statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report. Crime spot was visited and necessary proceedings were conducted there; various articles lying at the spot were seized. The body was sent for postmortem examination. The appellant was arrested and certain recoveries were effected from his possession. Statements of the witnesses conversant with the facts were recorded. Efforts were made to apprehend appellant's associate Praveen Kumar, however, he could not be traced and finally was declared Proclaimed Offender. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of the aforesaid offences. To prove its case, the prosecution examined nineteen witnesses in all and relied on various documents. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial

resulted in conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. We have heard the learned counsel for the parties and have examined the file. Homicidal death of the deceased Gauri Shankar is not at issue. He was declared 'brought dead' at the hospital. Post-mortem examination report (Ex.PW-4/A) reveals that the victim had sustained eighteen injuries of various dimensions on the body. Cause of death was opined as cranio cerebral damage consequent upon blunt force impact on the head and face regions which were sufficient to cause of death in the ordinary course of nature. All the injuries were ante-mortem, fresh in duration and were caused by blunt force impact. Apparently, it was a case of culpable homicide.

4. Crucial testimony to infer the appellant's guilt is that of PW-1 (Jugla Devi); she herself sustained grievous injuries on her body at the appellant's hands. Her statement (Ex.PW-1/A) recorded by the police soon after the occurrence became the basis of registration of the FIR (Ex.PW-10/A). In the complaint, Jugla Devi – victim's mother and appellant's grandmother gave graphic account as to how and in what manner, the appellant and his associate Praveen had inflicted injuries to her and her son Gauri Shankar repeatedly resulting in Gauri Shankar's death. The occurrence took place on 14.10.2011 at around 09.30 p.m. Rukka (Ex.PW-18/A) for lodging FIR was sent at around 02.30 a.m. on the night intervening 14/15.10.2011. The appellant was named in the FIR and specific role was assigned to him in the crime. Since the FIR was lodged without any delay, there was least possibility of the complainant to have concocted a false story.

5. In her deposition before the Court as PW-1, she fully supported the prosecution and proved the version given to the police at first instance without any variation qua the appellant. She deposed that Gauri Shankar and Hazari Lal were her two sons; Hazari Lal was elder to deceased Gauri Shankar. She disclosed that on 14.10.2011 the appellant, Hazari Lal's son, came at her house at 03.00 – 04.00 p.m. and enquired about his 'chacha'. When she told him that his 'chacha' Gauri Shankar was in the room at the first floor, he went there. After hearing some noise of her son Gauri Shankar, she went upstairs and found that the appellant had sprinkled chilly powder in Gauri Shankar's eyes and was beating him with an iron 'mursali'. On seeing this, she ran downstairs but was chased by the appellant. He caught hold of her, dragged her by her hair and gave blows on her head with 'mursali' as a result of which she became unconscious. She further disclosed that Gauri Shankar died and it was the appellant who had committed his murder. Her statement (Ex.PW-1/A) was recorded. She urged that the appellant be given severe punishment as he had killed Gauri Shankar without any reason. In the cross-examination by learned APP she admitted that the appellant had visited the house at 09.30 p.m. The appellant had also uttered "Aaj Tere Bete Ka Kaam Tamam Kar Diya Hai Or Ab Tera Kaam Tamam Karta Huin". She further admitted that Hazari Prasad and his wife often used to quarrel with her. In the cross-examination by defence, she fairly admitted that by the time she reached the first floor room, the appellant had already poured chilly powder. Gauri Shankar could not see her due to chilly powder in his eyes. When she saw Gauri Shankar on the floor, the

appellant was beating him with an iron 'mursali'. She further elaborated that in her presence, the appellant had hit Gauri Shankar's forehead once. She, however, volunteered to add that he might have hit him more number of times before her reaching the room.

6. On perusal of the statement of this material witness, it reveals that she has implicated the appellant alone for committing Gauri Shankar's murder and causing injuries to her. Despite searching cross-examination, nothing material could be extracted to disbelieve her version qua the appellant. She had no ulterior motive to falsely implicate her own grandson for the murder of her son. It was a difficult situation for the witness whereby she was to get justice for the murder of her son and at the same time was to involve her grandson. She was not expected to implicate her close relative and to spare the real offender. She must be interested that the real culprit of her son's murder be brought to book. The appellant did not deny his presence at the spot at the relevant time. No one else was present at the place of occurrence except the appellant, the victim and the complainant. The appellant had come prepared with a specific motive in mind. He first put chilly powder in Gauri Shankar's eyes and then inflicted injuries with a blunt object on his body repeatedly causing his instant death. When PW-1 (Jugla Devi) aged 60 years, her grand-mother, intervened to save her son, she was prevented to do so by the appellant; she was also given grievous injuries on the body and she became unconscious. No sound reasons exist to disbelieve the testimony of this witness who herself was injured in the incident. Apparent motive of the appellant to take the extreme step was to deprive the victim of the valuable

articles. Certain golden ornaments and cash were recovered from his possession at the time of his arrest.

7. PW-3 (Gayatri Devi) - victim's sister in her Court statement deposed that on getting information about the occurrence she came to Delhi on 15.10.2011. She was informed by her mother that the appellant had caused injuries to her and Gauri Shankar. PW-5 (Promila) disclosed that on 14.10.2011 at about 10.00 p.m. when she was going to Daksh Road, she heard the noise and a crowd was present there. She found Jugla Devi with her son; she was taken to Hedgewar Hospital and admitted there.

8. Prosecution's case was that the injuries were caused to Gauri Shankar and Jugla Devi by the appellant in furtherance of common intention with co-accused Praveen. Praveen was also named in the complaint (Ex.PW-1/A) by the complainant. However, for the reasons known to the complainant, in her Court statement, she opted to completely exonerate him despite he being a Proclaimed Offender. No role whatsoever was assigned to Praveen in the crime. In the cross-examination by learned APP, she denied if Praveen had accompanied the appellant at the time of crime or had participated in it. This circumstance, however, is of no benefit to the appellant and does not dilute the crime committed by him. Her testimony to connect the appellant with the crime cannot be treated as effaced or washed off the record altogether merely because she did not opt to implicate the appellant's associate Praveen. It is settled position that the testimony of a hostile witness can be accepted to the extent the version is found to be dependable on a careful scrutiny thereof. Certain improvements

have been made by the witness in her deposition before the Court for which she was duly confronted. Again, the improvements are not vital or significant to give benefit of doubt to the appellant. It is the duty of the Court to disengage the truth from the falsehood and to sift the grain from the chaff rather than take the easy course of rejecting the entire prosecution case because of certain improvements or embellishments. In view of the clinching and credible evidence against appellant, the testimony of the complainant cannot be discredited or faulted. Victim's statement has been corroborated by medical evidence too. PW-6 (Dr.Reetesh Ranjan) medically examined the aged lady Jugla Devi on 14.10.2011 vide MLC (Ex.PW-6/A) and found injuries six in number on her various body parts. The injuries were opined to be grievous in nature by PW-15 (Dr.Banwari Lal).

9. In 313 Cr.P.C. statement, the appellant did not give plausible explanation to the incriminating circumstances proved against him. He merely pleaded false implication when he had gone to the police station to enquire about his uncle's death. He, however, did not explain as to why he was falsely implicated and why the real offender was spared. Nothing has emerged as to when the appellant had gone to make enquiries about the victim's death at the police station. He did not disclose as to where he was at the relevant time. Recovery of the certain stolen articles from his possession also connects him with the crime.

10. The findings of the learned Trial Court based upon fair and true appraisal of the evidence need no intervention.

11. The appeal is unmerited and is dismissed.

12. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

S.P.GARG
(JUDGE)

C.HARI SHANKAR
(JUDGE)

DECEMBER 08, 2017 / tr

