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

RESERVED ON : 16th DECEMBER, 2017
DECIDED ON : 19th DECEMBER, 2017

+ **CRL.A.1686/2014**

ASHOK KUMAR Appellant

Through : Mr.Azhar Qayam with Mr.Narender Kr.,
Advocates.

versus

STATE Respondent

Through : Aashaa Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

HON'BLE MR. JUSTICE C.HARI SHANKAR

S.P GARG, J.

1. Aggrieved by a judgment dated 28.07.2014 of learned Additional Sessions Judge in Sessions Case no.54/2012 arising out of FIR No.115/2012 registered at Police Station Nand Nagri whereby the appellant Ashok Kumar was held guilty for committing offence punishable under Section 302 IPC, the present appeal has been preferred by him. By an order dated 30.07.2014, the appellant was sentenced to undergo imprisonment for life with fine ₹1,000/-.

2. Briefly stated the prosecution case as set up in the charge-sheet was that on 29.03.2012 at about 9.00 p.m. in front of House No. E-60/359, Jhuggi, Sunder Nagri, Delhi, the appellant murdered Abdul Hafiz by inflicting injuries on his body with a knife. The information of the incident was conveyed to the police by PW-15 (Rajesh); he made a call from his mobile No.9717846819 at 100 informing that an individual was lying in injured condition in the gali. Daily Diary (DD) No.39-A came to be recorded at Police Station Nand Nagri at 9.06 p.m. The investigation was assigned to SI Rajender Singh who along with Const.Aamir went to the spot. He came to know that the victim, the accused and the victim's wife had already been taken to hospital by PCR. After recording statement of victim's wife Mehar Jahan (Ex.PW-2/A), the investigating officer lodged First Information Report. Post-mortem examination on the body was conducted. The appellant was arrested and necessary proceedings were conducted at the spot. Exhibits collected during investigation were sent for examination before Forensic Science Laboratory. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of offence punishable under Section 302 IPC. By an order dated 01.08.2012, the appellant was charged for the commission of offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial. To bring home the appellant's guilt the prosecution examined 18 witnesses in all and relied on several documents. In 313 Cr.P.C. statement, the appellant denied his complicity in the crime and pleaded false implication without producing any evidence in defence. The trial

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

3. We have heard the learned counsel for the parties and have examined the file. Homicidal death of the victim is not at issue. Soon after the incident, the victim was taken by PW-3 (HC Raj Kumar) of PCR to GTB hospital. As per his testimony on getting PCR call at about 9.10 p.m., 'ek admi ko chaku mar diya hai' on 29.03.2012, he went to the spot i.e. E-60/359 jhuggi, Sunder Nagri, Delhi. He saw a person lying unconscious and having stab injuries on his body there. He admitted the victim at GTB hospital where he was declared 'brought dead' on arrival. PW-10 (Dr.P.K.Phukan) proved the victim's MLC (Ex.PW-10/A) where the victim was declared as 'brought dead'. Post-mortem examination on the body was conducted by Dr.Meghali Kelkar whose post-mortem examination report (Ex.PW-12/A) has been proved by his colleague Dr.Shalney Razdan (PW-12). The victim had sustained several incised stab wounds on different parts of the body. The cause of death was opined as haemorrhagic shock as a result of ante mortem injuries to chest and abdomen produced by a sharp edged weapon. Injuries No.2, 4 and 5 were sufficient to cause death independently as well as collectively in the ordinary course of nature. The examining doctor was also of the opinion that injury No.1, 2, 3, 4 and 5 were possible by a knife produced before her for seeking her subsequent opinion (Ex.PW-12/B) on 24.04.2012. Apparently, it was a case of culpable homicide where the victim was stabbed repeatedly by a knife and he suffered fatal injuries.

4. To infer the appellant's guilt, testimony of PW-2 (Mehtar Jahan) is crucial and material. The FIR was lodged on her statement (Ex.PW-2/A) in which she gave graphic account as to how and in what manner, her husband was inflicted injuries by the appellant. Specific and definite role was assigned to the appellant for commission of the crime. The occurrence took place on 29.03.2012 at about 9.00 p.m. and rukka (Ex.PW-16/B) was sent promptly for lodging the FIR at 10.45 p.m. without any delay. There was least possibility of the victim to have concocted a false story to implicate the accused in such a short interval.

5. In her court statement as PW-2 Mehtar Jahan, victim's wife, aged around 60 years gave a detailed account as to how after his release from the jail, the accused had visited them to provide meals. Since the appellant's mother had gone and he used to live alone, she used to treat the appellant as her own 'son'; he was provided food for 10/15 days. One day, her husband told the appellant that he was quite young and must arrange his own food. It annoyed the appellant. On the day of occurrence at about 3.00 p.m., he again visited the victim's house in a drunken condition and asked for food. The witness told him that she had not prepared the food. The appellant again came at 8.00 p.m. to demand the food. Again, it was informed that the food was not ready. It led the appellant to extend a threat to see her husband. At about 9.00 p.m. when PW-2 came out of her house in the gali and met her husband, she narrated the incident to him. Finding an opportunity, the appellant came out of the jhuggi and started quarrelling with them. He went inside the jhuggi, brought a knife and gave knife blows to her husband. On her raising alarm, many public persons from the locality gathered

and the appellant was over-powered while attempting to flee. Someone made a call at 100; PCR reached and took all of them to hospital and her statement (Ex.PW-2/A) was recorded. She identified the crime weapon Ex.P-3.

6. In the cross-examination, she was confronted on several facts which did not find mention in her statement Ex.PW-2/A. She was fair enough to admit that at the time of his visit to the house, the appellant had not manhandled her. She denied that her husband had gone to the appellant's house at about 7.30 p.m. to ask for liquor and at the appellant's refusal to meet his demand, the victim hit him with a rod on his back and thereafter a quarrel took place with him which was pacified by the neighbours. She further denied that the victim had sustained injuries at the hands of someone else due to a quarrel in drunken condition or that on hearing the commotion, the appellant came out on the street to intervene and shifted the injured/victim to the hospital.

7. On scanning the entire testimony of PW-2, it can be inferred without any uncertainty that it was the appellant who had stabbed the deceased repeatedly on various body parts in her presence. The victim's wife, an aged lady, is not expected to spare the real offender and to implicate her neighbor falsely for the horrible death of her husband without any fault of his. The victim's wife treated the appellant akin to her son and she used to provide him food in the absence of his mother as he lived alone. Apparently PW-2 never nurtured any ill-will or animosity against the appellant to make a false statement against him. Material facts deposed by her remain

unchallenged in the cross-examination. No extraneous motive was assigned to the witness for making a false statement. The accused did not pinpoint any individual with whom the victim had quarreled in a drunken condition as a result of which he suffered injuries, as alleged.

8. PW-6 (Rajwati Rathore), a neighbour, has fully supported PW-2's statement without any variation. On 29.03.2012 at 9.00 p.m., when she reached in front of the appellant's house after taking 'jeera' from a Kiryana shop, she saw the appellant and the deceased Abdul Hafiz quarrelling. When she intervened, the appellant brought a 'churi' type weapon from his jhuggi and inflicted 'churi' blows on the person of Abdul Hafiz. She also deposed that Mehar Jahan, victim's wife was present there and she attempted to rescue her husband from the accused, but in vain. After receiving blows, Abdul Hafiz fell down. On raising alarm by them, the appellant was overpowered by the public. Someone made a call at 100; the police arrived at the spot and took all of them to GTB hospital. This independent witness had no axe to grind to falsely implicate the appellant with whom she had no prior ill-will or animosity. Her presence at the spot has not been denied. She being a neighbour, it was quite natural for her to arrive at the spot on hearing the noise.

9. PW-4 (Santosh) is another witness who had seen the occurrence. He deposed that on 29.03.2012 at about 9.00 p.m. when he came back to his jhuggi, he saw the victim knocking at the door of the appellant. The appellant came out of the jhuggi and gave knife blows on the chest and abdomen of the deceased as a result of which the deceased, whom they called 'baba', fell down. The appellant tried to run away but was

overpowered. PCR reached the spot on getting call at 100 and took the injured and the accused to the hospital. In the cross-examination by learned Additional Public Prosecutor, he admitted that when he came back from his work, he saw the appellant and the accused quarrelling. The appellant was abusing the deceased and his wife was trying to intervene in the matter. In the cross-examination, nothing material could be elicited to disbelieve the testimony of this independent public witness.

10. The ocular account of the incident has been corroborated by medical evidence also and there is no inconsistency between the two. Recovery of the crime weapon i.e. knife Ex.P-3 further connects the accused with the crime. The prosecution was also able to establish the appellant's motive to commit the horrible crime as it was the deceased who had objected to food being repeatedly provided to the appellant by his wife. The only fault of the victim was that he had reminded the appellant, being a young man, to earn his livelihood and not to depend upon them to provide food in their old age.

11. In 313 Cr.P.C. statement, the appellant did not furnish any plausible defence. He merely stated that when he was sleeping in his house at around 8.30 p.m., he was lifted by the police at around 9.00 p.m. and was falsely implicated in this case. He, however, did not explain as to what were the reasons for his false implication. PW-2 (Mehtar Jahan) categorically deposed about his apprehension at the spot. Not only that, he was taken by the PCR van and was medically examined by Dr.Abhinav at GTB hospital. PW-17 (Dr.Devender Kumar) has proved the MLC (Ex.PW-17/A) whereby there were two

old abrasions on his left side of chest. It falsified the appellant's plea that he was not present at the spot or was lifted from his house.

12. The evidence produced by the prosecution i.e. direct, circumstantial and medical is sufficient to establish the guilt of the appellant beyond reasonable doubt. The crime committed by the appellant was intentional and motivated. Annoyed for not being given food, he brought the sharp edged weapon i.e. knife from his jhuggi and inflicted repeated blows of various dimensions on vital organs of the aged victim; he suffered fatal injuries and could not survive despite being taken to GTB hospital. It reflects as to with what force the victim was attacked by the appellant, with the sole intention to commit his murder.

13. The impugned judgment has discussed all the relevant aspects; it is based upon fair appreciation of evidence and deserves no interference. The appeal being unmerited is dismissed.

14. Trial Court record along with the copy of this order be sent back forthwith.

**S.P.GARG
(JUDGE)**

**C.HARI SHANKAR
(JUDGE)**

DECEMBER 19, 2017/sa