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

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Date of Judgment: 8th May, 2017

+ **CRL. A. No.1075/2016**

RAVINDER

..... Appellant

Through Mr. Ravinder Narayan, Advocate

Versus

STATE OF NCT OF DELHI

..... Respondent

Through Mr. Rajat Katyal, APP for the State

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE VINOD GOEL**

G.S.SISTANI, J. (ORAL)

1. This is an appeal under Section 374 of the Code of Criminal Procedure filed against the judgment dated 30.09.2016 and order on sentence dated 07.10.2016 passed by the learned Trial Court in Sessions Case No.98/2015, FIR No.169/2012, Police Station R.K. Puram, by which the appellant has been held guilty for the offence punishable under Section 302 IPC. The appellant stands acquitted of the charges under Sections 25/27 of the Arms Act. The appellant has been sentenced to undergo rigorous imprisonment for life and to pay a sum of Rs.2,000/- as fine, and in default of which to undergo one month simple imprisonment.

2. On 17.08.2012, the peace of the house was shattered when Mohini (since deceased), wife of Rakesh, (*bhabhi* of appellant Ravinder) was stabbed by the appellant. SI Pankaj Thakran along with Constable Mahender on receiving DD no.26A dated 17.08.2012 reached the spot. He found blood on the floor of the kitchen, one ladies *hawai chappal* and traces of the blood in the lobby. He found two eye witnesses Aanchal (PW-4) and Anjali (PW-16) being sisters of the appellant. Their statements were recorded in which Aanchal alleged that her younger brother, aged 23 years, a graduate and unemployed, who was in the habit of *nasha* (drugs) and due to which the family members of the deceased remained annoyed with him. The appellant also felt that the deceased used to instigate the family members against him and she had done some *jaadu tona* over the family members. Therefore, he always had a revengeful attitude towards her. On the fateful day, appellant was in his room, his elder brother Rakesh (husband of the deceased) was in office, younger brother Naveen was in the gym and at around 5:30 p.m., her mother went to bring milk and she along with her younger sister, *bhabhi Mohini* and her two children were at home along with the appellant. Her *bhabhi* was working in kitchen, when appellant went inside. They heard cries of the deceased and when she went to the kitchen, she saw appellant inflicting injuries with knife to the deceased. On seeing her, he went away from the place. Blood was oozing out from her stomach and a knife was stuck in her left hand. Thereafter, she called her brother Naveen who came immediately and with the help of a neighbour, took the deceased to the Hospital. Based on her statement, an FIR was registered.

3. The appellant pleaded not guilty upon charges being framed. The prosecution examined 19 witnesses in all, while the defence examined two witnesses. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure. A defence was taken that the stab injuries were inflicted by an outsider. In Court, both the eye witnesses PW-4 and PW-16, being sisters of the appellant turned hostile.
4. Mr. Narayan, learned counsel for the appellant submits that the judgment of the Trial Court is based on surmises and conjectures and being against the facts and law is liable to be set aside. It is contended that the appellant has been wrongly convicted despite the fact that the prosecution has not been able to prove its case. Counsel contends that all the public witnesses, including the eye witnesses, have turned hostile and have not supported the case of the prosecution. It is testified in Court by the eye witnesses that the appellant was watching television with them and on hearing shrieks; they ran towards the kitchen and found that the deceased was in a pool of blood and thereafter, the appellant had ran after the person who had stabbed her. Mr. Narayan contends that there is no evidence on record to show that the appellant is a drug addict. Learned counsel submits that the weapon of offence was found in the hand of the deceased, however, no finger prints were lifted from the said weapon. Additionally, the allegation of instigation and the appellant having a grudge against the deceased have not been proved on record. Mr. Narayan contends that the Trial Court has convicted the appellant only on the basis of

inferences and without any evidence. The counsel further submits that while the testimony of the defence witnesses is to be given equal weightage as compared to the prosecution witnesses, the Trial Court has failed to consider the testimonies of the defence witnesses in this case. The counsel submits that the motive has not been proved in the present case. The counsel further submits that the blood detected on the shirt of the appellant does not connect the appellant to the crime. Relying on the FSL report, counsel submits that the shirt was seized and sent for examination although human blood has been detected, but there has been no reaction to the blood grouping. Thus, the appellant cannot be connected to the crime. Counsel also submits that the seizure memo cannot be relied upon as the appellant was arrested from the house and not from the bus stop at 1:00 A.M. at night.

5. The counsel submits that the site plan is not reliable as the site plan has been prepared at the instance of PW-4 Aanchal. The unskilled site plan does not depict the main gate to the house. He further submits that it would be very unsafe to convict the appellant when two eye witnesses have not supported the case of the prosecution and had categorically stated that they cannot identify the person, who had committed the crime as the entire case of the prosecution would fall within the domain of conjectures and surmises.
6. Per contra, Mr. Katyal, learned APP for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. No doubt, both the eye witnesses PW-4 and PW-16 have not supported the case of the prosecution but the circumstantial evidence

is of such a nature which convincingly proves the guilt of the appellant herein. It is contended that although PW-4 Anchal, on the basis of her statement the FIR was registered, has not supported the case of the prosecution but she has clearly testified that the appellant as well as her younger sister PW-16 were present at the time of incident and on the place of incident. She has testified that the statement was written by the police official but she has not denied her signature on the statement. Mr. Katyal submits that this fact gains immense importance for the reason that it is on the basis of this statement that the *Rukka* was prepared and the FIR was registered. He submits that PW-4 and PW-16 were at a distance of not more than 10 feet from the place of incident. The kitchen has only one door and thus in case a third person entered the house or the kitchen, he would have been noticed by PW-4 and PW-16 and the time taken by them to reach the précised place of incident cannot be more than few seconds, which was at a distance of 8-10 feet and PW-4 has categorically testified that it took her 1-2 seconds to reach the spot after she heard the shrieks. Thus, this is a circumstance which conclusively points towards the guilt of the appellant. Counsel further submits that nine stab injuries were inflicted on the deceased and in case the deceased would have cried out after the first injury was inflicted on her and thereafter the remaining eight stab wounds inflicted on her, which were in the presence of PW-4 and PW-16, who have turned hostile to save their own brother. He submits that another incriminating factor which goes against the appellant is the fact that after the incident, he was not found available at the place of the incident. He submits that the

submission of counsel for the appellant that the appellant was arrested from the house itself cannot be believed as after the incident the appellant had fled from the place of the incident and he could only be arrested at 01.00 AM on the same night. He submits that the argument addressed by the counsel for the appellant that the appellant had chased the unknown man who stabbed his sister-in-law and vanished is also not believable as in case he was present after the incident, he would have accompanied his sister-in-law to the hospital after his chase was unsuccessful. In the present case, the phone call was made by PW-4 to her brother Naveen (PW-12), who had gone to the gym, came back and the deceased was removed to the hospital in a three wheeler. Counsel submits that in case the appellant had removed the deceased to the hospital his clothes would have been completely drenched in blood keeping in view the nine fatal injuries on the body of the deceased. Mr. Katyal also relies on the PCR call, which was received from HC Vikram Singh (PW-3) vide DD. No 26A to show that even in the PCR call the police was informed “*Devar Ne Bhabhi Ko Chaku Se Maar Diya*”. This call was made within minutes of the incident and there was no reason for the caller to implicate the appellant herein. Reliance is also placed on Section 6 of the Indian Evidence Act. Learned counsel for the State further submits that the motive stands duly proved by the testimonies of PW-14 and PW-15, being mother and brother of the deceased. Reliance is also placed on the testimony of PW-15.

7. We have heard the learned counsel for the parties, considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the Trial Court. Before deciding the appeal in hand, it would be relevant to discuss the observation of the learned Trial Court. Relevant para 41 and 42 read as under:

“41. PW-4 Aanchal in her examination in chief stated that after hearing the shrieks of the deceased, she alongwith her sister went to kitchen where accused Ravinder was holding his bhabhi, and thereafter he ran out to see who had run out. This witness on Court question categorically stated that the distance between where they were watching television and kitchen is 10 feet and it would take 1 or 2 seconds to reach kitchen, and at that time accused Ravinder was also present with them and watching television and she categorically testified that she had not seen anybody going out of house after causing stab injuries. It is incomprehensible that a person sitting 10 feet away would not be able to see the assailant on hearing the cries from such a small distance when nine stab injuries were inflicted particularly when accused Ravinder in his statement under Section 313 Cr. P. C. stated on hearing cries, he alongwith her sisters went towards kitchen and saw one person going out. However, if PW-4 unable to see the assailant then how as per her statement accused Ravinder could see him. Though PW-4 and PW-16 resiled from their statement regarding the inflicting stab injuries by their brother Ravinder, however, the manner in which they narrated to be at all credible.

42. It is also unnatural that an outsider will come and cause such a number of stab wounds without any motive and it almost impossible that nine stab wounds could be inflicted without being in their notice when they are present 10 feet away in adjoining room.”

8. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of material witnesses. The present case is based on the eyewitness account of the two witnesses, namely PW4 Aanchal and PW16 Anjali (who are sisters of the appellant). Both the witnesses have turned hostile in their testimony in Court. It is true that in the cases where the accused appears to be the relative of the eyewitnesses, with the passage of time they turn hostile and do not support the case of prosecution.

Law relating to related and interested witnesses who turned hostile

9. It is a well settled law that such portion of the evidence of a hostile witness can be relied upon which is trustworthy and not as if the entire evidence of such a witness is to be negated completely. In ***Radha Mohan Singh @ Lal Saheb & Ors. Vs. State of U.P.***, reported at ***AIR 2006 (SC) 951***, it was held as under:

"It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.

(See Bhagwan Singh V. State of Haryana, AIR 1976 SC 202; Rabinder Kumar Dey V. State of Orissa, AIR 1977 SC 170; Syed Akbar V. State of Karnataka, AIR 1979 SC 1848 and Khuji @ Surendra Tiwari V. State of Madhya Pradesh, AIR 1991 SC 1853)."

10. In the case of ***Jodhraj Singh V. State of Rajasthan***, reported at ***JT 2007 (7) SC 118***, the Hon'ble Supreme Court has held that the Courts are entitled to rely upon part of the testimony of a witness, who has been permitted to be cross-examined by the prosecution. Relevant portion of the same reads as under:

"11. The High Court took up all the appeals together for hearing. The only distinctive fact in the case involving the appellant was PWs 8 and 9 turned hostile, but the same, in our opinion, would not materially alter the prosecution case, as a conviction can even be based on the testimony of a single witness. The courts furthermore are entitled to rely upon a part of the testimony of a witness who has been permitted to be cross-examined by the prosecution.

12. In *State of U.P. Vs. Ramesh Prasad Misra and Another*, this Court opined:

"7. The question is whether the first respondent was present at the time of death or was away in the village of DW1, his brother-in-law. It is rather most unfortunate that these witnesses, one of whom was an advocate, having given the statements about the fact within their special knowledge, under Section 161 recorded during investigation, have resiled from correctness of the versions in the statements. They have not given any reason as to why the investigating officer could record statements contrary to what they had disclosed. It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

[See also *Gurpreet Singh V. State of Haryana and Gagan Kanola & Anr. Vs. State of Punjab*]

13. Moreover, while recording a judgment of conviction, the court may consider a part of the deposition of a witness who had been permitted to be cross-examined by prosecution having regard to the fact situation obtaining in the said case. How the evidence adduced before it shall be appreciated by the Court would depend on the facts and circumstances of each case.

14. It is trite that only because a witness, for one reason or the other, has, to some extent, resiled from his earlier statement by itself may not be sufficient to discard the prosecution case in its entirety. The courts even in such a situation are not powerless. Keeping in view the materials on record, it is permissible for a court of law to rely upon a part of the testimony of the witness who has been declared hostile."

(Emphasis Supplied)

11. This brings us to the moot question whether the Trial Court after considering all the material evidence on record rightly convicted the appellant under Section 302 of IPC?
12. The present appeal is to be decided on the basis of the subsequent events after the incident which set the criminal machinery into motion.

Events after the incident

13. From the police record it transpired that at about 06.05 pm on 17.08.2012, DD No.26A was recorded at Police Station R. K. Puram wherein it has been mentioned that *devar* had inflicted knife injuries to his *bhabhi*. Thereafter, another DD was recorded at around 07.15 PM as to the death of the deceased who was declared brought dead at Safdarjung Hospital. Statement of Aanchal (PW4) was recorded and

based on her statement an FIR (Ex.PW2/C) under Section 302 of IPC was registered.

14. PW3 HC Vikram Singh deposed in his examination-in-chief that on 17.08.2012 at around 06.00 PM when he was patrolling near Rock Garden, Sector-7, R. K. Puram, a boy came and requested him for an autorikshaw as his brother had given stab injuries through knife to his *bhabhi*. Thereafter, he stopped the auto in which the boy went towards his house and he followed him to his house where two boys took the lady in the auto to the hospital and then he gave the information in this regard through his mobile in the Police Station. The information led to the registration of DD No.26A which was recorded at around 06.05 PM wherein it has been categorically mentioned that devar had caused stab injuries to his *bhabhi*.
15. PW15 Jagdeep Singh (brother of the deceased) deposed that the deceased used to tell him that the appellant was a drug addict and unemployed and he remained irritated with her and used to have grudge against her. PW15 further deposed that on 16.08.2012, the deceased had visited her house and on the next day i.e. 17.08.2012, Anjali (PW16) telephonically informed him the appellant had caused stab injuries to the deceased. Thereafter, he reached the matrimonial home of the deceased along with his mother. The testimony of PW14 Suresh Kumari (mother of the deceased) remained consistent on all material particulars except that she was informed about the incident by the Police Officials.

Medical Evidence

16. In this regard, it is necessary to refer the injuries caused to the deceased. PW8 Dr. Avijit Sharma deposed that on 17.08.2012, at around 06.44 PM, he examined the deceased vide MLC No. C/144181 which was proved by him as Ex.PW8/A. PW8 deposed that the deceased was brought to the Hospital with alleged history of physical assault. After local examination, he found multiple stab injuries over her chest and abdomen and there was a knife present in the left arm of the deceased. The deceased was declared brought dead and was sent for post mortem examination.
17. PW17 Dr. Asit Kumar Sikary, Sr. Resident, FMT, AIIMS Hospital deposed that on 19.08.2012 he performed post-mortem examination on the body of the deceased, his detailed report is Ex.PW17/D and found nine penetrating and perforating stab wounds over the body of the deceased. After post-mortem examination, PW17 Dr. Asit Kumar Sikary opined the cause of death as shock due to haemorrhage consequent to the injuries caused by sharp edged pointed weapon. PW17 further opined that the injury No. 3, 5, 6 and 7 led to the death in ordinary course of nature individually and collectively along with other mentioned injuries. Time since death was 1 ½ to 2 days prior to the post-mortem examination. As to the weapon of offence, PW17 after examination of the knife opined that the knife could have been used for inflicting all the wounds present over the body of the deceased.

18. The medical evidence shows that the deceased had died on account of stab wounds which had been inflicted on the chest (injury No. 3), on abdomen (injury No. 5) and on left forearm (injury No. 6 & 7).
19. The criminal law machinery was set into motion on the basis of the statement recorded by PW4 Aanchal and PW16 Anjali that her brother had stabbed her *bhabhi*. In Court evidence PW4 and PW16 did not support the case of the prosecution in order to save their brother. Faced with such a situation Trial Court has decided the case on the basis of the circumstantial evidence. The circumstances which point towards the guilt of the appellant can be summarised as under:
- i) The fact that on the fateful day of 17.08.2012, both the eyewitnesses along with the appellant were watching T.V. in a room which was about 10 feet away from the place of occurrence i.e. kitchen where the deceased was cooking food.
 - ii) They all heard shrieks of the deceased and it took about 1-2 seconds in reaching the spot of incident. They found deceased in a pool of blood.
 - iii) They did not notice anybody entering the house when they were watching T.V., nor they saw anybody going out of the house after hearing the shrieks.

Even if PW4 and PW16 have turned hostile, yet the aforesaid 3 circumstances which emerge upon analysing the evidence create a strong circumstance which point towards the guilt of the appellant.

20. Additionally:

- i) PW3 HC Vikram Singh passed on the information of stabbing to the Police Station R. K. Puram which resulted in registration of DD No. 26A wherein it has been categorically mentioned that devar had caused stab injuries to his bhabhi.
- ii) FIR in the present case has been recorded on the basis of the statement made by PW4 Aanchal under Section 161 of the Code of Criminal Procedure to PW10 SI Pankaj Thakran who reached the spot immediately after receiving DD No.26A.
- iii) In her statement, PW10 had categorically stated that her brother Ravinder (the appellant herein) gave knife blows to her bhabhi and her bhabhi was taken to the hospital by her brother Naveen (PW12).
- iv) PW4 Aanchal in her cross-examination stated that she had not seen anybody going out of the house after she heard the shrieks of the deceased. This statement along with the other material evidence available on record falsifies the involvement of an outsider in causing fatal injuries to the deceased.
- v) As emerged from the subsequent events of 17.08.2012, the case of the prosecution as elaborated upon by PW18 Insp. Jitender Kumar (in-charge Crime Team), PW10 SI Pankaj Thakran, PW7 Constable Mahender and PW1 HC Kapil (Photographer of the Crime Team) is that the information was received at Police Station R. K. Puram vide DD No.26A, which was given by

PW3 HC Vikram who was patrolling in that area. Immediately thereafter, PW10 SI Pankaj Thakran along with PW7 Const. Mahender reached the spot and recorded the statement of PW4 which is Ex.PW4/A. The sequence and timings of the incident clearly establishes the guilt of the appellant.

- vi) It is the case of prosecution that the deceased was cooking food in the kitchen and the distance between the kitchen and the room where all the three were watching T.V. was about 10 feet which would not have taken more than 1-2 seconds in reaching the spot of incident.
- vii) The appellant left the place of occurrence and was arrested from the bus stand of Sector-7, R. K. Puram which was duly established from the testimony of PW3 HC Vikram Singh, PW7 Const. Mahender Singh, PW10 SI Pankaj Thakran and PW19 Insp. K. P. Rana. Even if, we assume that the appellant was arrested from his house as contended by the counsel for the appellant. The seizure of blood stained shirt worn by the appellant at the time of his arrest falsifies the stand of the defence and there is no answer to the question as to why the appellant did not change his shirt after the incident.
- viii) Lastly, the testimony of PW14 Suresh Kumari (mother of the deceased) and PW15 Jagdeep Singh (brother of the deceased) consistently deposed that the appellant was a drug addict and therefore his family used to remain annoyed with him. The appellant had a grudge upon the deceased for the reason that she

used to instigate his family members and had conducted some *jaadu tona* over him. This fact also finds corroborated from the statement of PW4 Aanchal whereupon the FIR, Ex.PW4/A was recorded. The testimony of the witnesses and the statement of PW4 amply establish the motive for causing stab injuries to the deceased.

21. We find no infirmity in the judgment and order on sentence passed by the trial Court which would require interference by this Court. Accordingly, we uphold the conviction and sentence awarded by the Trial Court.
22. The appellant shall surrender before the Trial Court within two weeks from today. Copy of this order be sent to the Trial Court immediately.
23. Trial Court record be sent back.

G. S. SISTANI, J.

VINOD GOEL, J.

MAY 08, 2017

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