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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 236/2002

DINESH KUMAR

..... Appellant

Through: Mr. Sumeet Verma, Advocate with
Ms. Preeti Jakhar, Advocate.

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL**

J U D G M E N T

24.07.2018

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1. This appeal is directed against the impugned judgment dated 11th October 2001 passed by the learned Additional Sessions Judge, New Delhi in Sessions Case No.245/1996 arising out of FIR No.718/1995 registered at Police Station ('PS') convicting the Appellant for the offence under Sections 302/324 of the Indian Penal Code ('IPC'). The appeal is also directed against the order on sentence dated 15th October 2001 whereby the Appellant was sentenced to undergo imprisonment for life along with a fine of Rs.10,000/- and in default of payment of fine to suffer simple imprisonment ('SI') for three years for the offence under Section 302 IPC and to 1 year rigorous imprisonment and fine of Rs.500/- and in default of payment of fine to undergo SI for one month for the offence under Section 324 IPC. The sentences were directed to run concurrently.

2. The charge against the Appellant is that in the intervening night of

19th/20th October 1995 at 3:30 a.m. at House no.150, Gali No.1, Block-B, Sangam Vihar, New Delhi, he intentionally threw acid upon Yashin (the deceased) with an intention to cause his death as a result of which he expired in the hospital on the same day, thereby committing the offence of murder punishable under Section 302 IPC. The second charge was that he voluntarily caused simple hurt to Ikrar (PW-3) by throwing acid on his body thereby committing offence punishable under Section 324 IPC.

3. The criminal justice process was triggered with DD No. 33 A recorded at PS Ambedkar Nagar by Constable Sunil Kumar (PW-6) deputed as Duty Constable at Safdarjung Hospital that in the early hours of 20th October 1995, the deceased had been brought there in an injured condition and had expired. On receipt of the above DD, SI Surender Singh (PW-14) proceeded to the spot accompanied by Head Constable ('HC') Balraj Singh (PW-7). Constable Raj Pal (PW-2) also accompanied them.

4. After leaving PW-2 at the spot, PW-14 proceeded to the Safdarjung Hospital with PW-7. At the hospital, he obtained MLC of the deceased (Ex.PW-13/A). That MLC revealed that the deceased had been brought there by his brother Najmul Hassan (PW-1). PW-14 recorded the statement of PW-1 and the *rukka* was prepared and handed over to PW-7 for registration of the FIR. PW-14 further met Ikrar (PW-3) S/o Nazmul Hassan at the AIIMS Hospital. PW-3 too was having an acid burn injury on his right hand. After returning to the spot, PW-14 prepared the site plan, called the photographer and got photographs taken of the spot from different angles. PW-14 seized a plastic jug, some burn clothes on the spot and also took

pieces of floor where the acid was lying. The articles seized were put in a cloth *pullanda*.

5. The dead body was preserved in the mortuary for two days. The post mortem was conducted of the deceased by Dr. B. Swain (PW-4) on 22nd October 1995. On external examination, he noted as under:

“On my external examination I found burn areas over both side face and scalp, front on sides of neck, upper front of both side chest, lateral surface and front of right arm, left arm and left shoulder top and back of both side chest. Scalp hair, eye brow and eye lash hairs and moustache were not burnt and singed. Line of redness was not seen. No blister were seen. The skins on face, lips and chin showed ulcerated patches which is greyish black. The skin area of both arms on shoulder region brownish in colour and show trickling sign of liquid material. The total area of body surface burnt is about 40%.

On my internal examination brain scalp and skull normal, neck structures were intact. Trachea shows congestion. Lungs were oedematous, heart liver spleen and kidneys were normal, stomach contained digested food material and stomach walls were normal. Pelvis and spine were intact.”

6. The cause of death was opined to be shock following burn injuries sustained due to some corrosive substance.

7. On 26th October 1995, the Respondent was arrested and a personal search conducted. At the end of the investigation a charge sheet was filed against the Appellant by order dated 15th July 1996, the trial Court framed the aforementioned charges to which he pleaded not guilty.

8. For the prosecution 14 witnesses were examined. In the statement under Section 313 Criminal Procedure Code (Cr P C), the Appellant denied the incriminating circumstances put to him. He claimed that it was a false case and that he was not at his residence. According to him, the brother of the deceased, i.e. the complainant in conspiracy with his wife has falsely instituted the case against him as the deceased, according to him, had relations with his sister-in-law and it was the complainant who had killed him by throwing acid. No defence evidence was led.

9. The trial Court concluded that the eye witnesses to the incident were trustworthy and believable and had corroborated each other on the material particulars and that the prosecution had proved his case against the Appellant for the aforementioned offence beyond reasonable doubt.

10 This Court has heard the submissions of Mr. Sumeet Verma, the learned counsel appearing for the Appellant. Mr. Verma took the Court through the depositions on the eye witnesses. It is not in dispute that the death was homicidal and due to 55% acid burns. The two of the critical witnesses are no doubt related to the deceased but on that count alone, their testimonies cannot be disbelieved.

11. Badrunissa (PW-5), the wife of PW-1, deposed that she knew the Appellant as she used to work with him in the factory. She further stated as under:

“During intimacy I develop illicit relations with him as my husband was much older than him. Thereafter accused started visiting my house. In the meantime, my brother in law Mohd. Yasin came to our house to stay with us. Since my brother in

law was not happy with the visits of accused to my house I asked the accused not to visit in future. On this accused had a quarrel with my brother in law. Accused also threatened my brother in law that he would throw acid upon him. I requested the accused not to do so. But the accused remained adamant but after 2/3 days accused threw acid upon my brother in law at that time I had got up to take my younger child for urination and lighted the lamp also. After 10/15 minutes of that accused threw acid on my brother in law at that time my son Ikrar was also lying/sleeping with my brother in law on the ground. He had also received acid injuries on his face. After throwing the acid upon the Yasin accused ran away and my husband followed him. Yasin my brother in law started crying with pain and I was attending him. Later on Yasin was removed to the hospital by my husband. My son was also accompanying him.”

12. In her cross-examination, PW-5 stood firm. She volunteered that the accused had threatened her that if she complained against him, he would kill or kidnap her son. Out of fear she did not disclose this to her husband, i.e., PW-1.

13. Ikrar (PW-3) was an injured eye witness, he was the son of PW-1 and PW-5. He was very clear in his deposition that:-

“About one year back, I was sleeping on the floor of the room with my Uncle Mohd. Yasin I fell some burn injuries on my face while sleeping I got up and saw that accused present in the Court today was running away from there. My father chased him. My uncle was crying due to the burn injuries. My uncle was taken to the hospital by my father in a TSR and later on he expired in the hospital.”

14. PW-3 knew the accused from before. In his cross-examination, he stated that there was a street lamp outside which provided light. As soon as he woke up, he noticed that his father (PW-1) had also woken up and then

started running after the accused. Basically, this witness fully supported the case of the prosecution.

15. PW-5 has been corroborated on all the material particulars by PW-3 and to some extent by PW-1 himself. These were the only three occupants in the room when the Appellant threw acid on and killed the deceased. These were natural witnesses. They are totally believable and reliable.

16. In the circumstances, the trial Court committed no error in holding that the prosecution had proved the guilt of the Appellant beyond reasonable doubt for the offences under Sections 302 and 324 IPC. The order on sentence of the trial Court also calls for no interference.

17. The appeal is accordingly dismissed. The trial Court record be returned forthwith along with a certified copy of this judgment. The police will renew its efforts to trace the present whereabouts of the Appellant and take him into custody forthwith to serve out the remainder of his sentence.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 24, 2018

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