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

+ **CRL.A. 235/2002**

JAIVEER SINGH @ JAGIRA Appellant
Through: Mr. Harsh Prabhakar, DHCLSC with
Mr. Anirudh Tanwar, Advocate.

versus

STATE OF N.C.T. OF DELHI Respondent
Through: Ms. Radhika Kolluru, APP for State

+ **CRL.A. 261/2002**

ASHOK KUMAR @ MANORANJAN MEHTO Appellant
Through: Mr. Harsh Prabhakar, DHCLSC with
Mr. Anirudh Tanwar, Advocate.

versus

STATE Respondent
Through: Ms. Radhika Kolluru, APP for State

+ **CRL.A. 270/2002**

BAL VIKAS @BALMIKI Appellant
Through: Mr. Harsh Prabhakar, DHCLSC with
Mr. Anirudh Tanwar, Advocate.

versus

STATE Respondent
Through: Ms. Radhika Kolluru, APP for State

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA

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ORDER
15.02.2018

Dr. S. Muralidhar, J.:

1. These appeals are directed against judgment dated 26th November, 2001 passed by the Learned Additional Sessions Judge, Delhi, in Sessions Case No.24/99 arising out of the FIR No. 128/99 registered at Police Station ('PS') Pratap Nagar convicting Jaiveer Singh @ Jagira (A-1), Ashok Kumar @ Manoranjan Mehto (A-2) and Bal Vikas (A-4) for the offences under Section 302/34 IPC and Section 201/34 IPC. The appeal is also directed against the order on sentence dated 27th November, 2001 whereby for the offence under Section 302 read with 34 IPC A-1, A-2 and A-4 were sentenced to imprisonment for life with a fine of Rs.500/- and in default of payment of fine to undergo simple imprisonment (SI) for 3 months and for the offence under Section 201 read with 34 IPC they were sentenced to undergo rigorous imprisonment (RI) for 2 years with a fine of Rs.250/- and in default to undergo SI for 2 months.

2. At the outset it requires to be noted that charges were originally framed against four accused i.e. the aforementioned three accused as well as Irfan (A-3). By the impugned judgment, the trial Court has acquitted A-3.

Case of the prosecution

3. The prosecution case begins with DD No. 17 recorded at PS Pratap Nagar which noted that Constable (Ct.) Avtar Singh (PW-6) while on patrolling duty on 11th August, 1999 on a motorcycle along with Head Constable (HC) Som Nath (not examined) reached Block No. 6, Quarter No. 596, Kishan

Ganj, Railway Colony, Old Rohtak Road at around 4.45 pm and noticed that a dead body was lying in a manhole. HC Som Nath then alighted from the bike and waited there to preserve the spot while PW-6 proceeded to the PS to give the information.

4. On the basis of the said information, Sub-Inspector (SI) Ishwar Singh (PW-14) accompanied by HC Prem Singh (PW-4) and Ct. Dharamvir (not examined) proceeded to the spot. The *tehrir* recorded below the DD No. 17 by PW-14 noted that the manhole had been blocked with a heavy stone. The dead body inside it was visible through a grill on the pavement. The *tehrir* also noted that the dead body was taken out and a photographer was called to the spot. Significantly, the *tehrir* did not make any reference to any person coming forward to identify the dead body. It referred to the visible injuries on the dead body. The *Rukka* was thereafter sent to the PS at 6.50 pm on 11th August, 1999. The FIR came to be registered at the PS at around 7.30 pm on the same date.

5. According to the prosecution on that very day i.e. 11th August, 1999, after the FIR was registered, the investigation was taken over by Inspector Ishwar Singh (PW-19) who claims that on the same date Ram Pal (PW-1) and Ram Niwas (PW-2), both of whom were running tea stalls, came to the PS and volunteered that they had, on the morning of 10th August, 1999 at around 6.30 am seen the deceased Vikram @ Gujarati being beaten by three persons whom they named as Jaiveer Singh @ Jagira (A-1), Ashok Kumar @ Manoranjan Mehto (A-2) and Bal Vikas (A-4). At that stage they did not name Irfan (A-3). Both PWs. 1 and 2 are stated to have identified the dead

body after it was taken out from the gutter/manhole and even before it was sent for post-mortem. It must be mentioned at this stage that Bal Vikas (A-4) was arrested subsequent to the arrest of A-1 to A-3 and charged separately with the same offence more than 6 months after the other three (A-1 to A-3) accused were charged.

Post mortem

6. The post-mortem of the deceased was performed at around 12 noon on 14th August 1999, three days after the recovery of the body. Dr. K.L. Sharma (PW-12) who performed the post-mortem noted the following external injuries in the post mortem report (Ex. PW 12/A):

1. “incised wound left side lip 4x .5 cm transverse
2. Bruise 2 x .5 cm over left side face
3. Cut-wound 1x .5 cm over left nostril
4. Deformity nasal, bridge with under line fracture of the bone.
5. Bruise with swelling over back of the left side ear 4 x 4 cms
6. Lacerated wound 2 x .1 cm over right parietal base of the skull
7. Partial skin cut 10 cm long over right side neck
8. Extensive bruising 10 x 7 cms over upper outer part of right arm.
9. Incised wound 4 x .5 cm over right side palm of the hand below the index finger (defence wound)
10. Extensive bruise over back of the chest.”

7. On internal examination, PW-12 made the following observations:

“There was haemorrhage underneath the back of the scalp of head and depressed communicated fracture of right side pari- occipital bone 10 x 4 cms. Membrane of the brain was ruptured below the fracture line. Brain was semi-liquefied. The neck and its structure were intact. Chest showed fissure fracture of posterior part of 5th and 6th ribs, right side and near vertebral collar. Chest cavity contained half litre of blood and clots. The lungs were contused. Abdominal viscera showed early decomposition and stomach contained semi-liquid semi digested food. Urinal bladder and rectum were empty.

Opinion: Cause of death was head injury and haemothorax consequent to multiple injuries inflicted by other party. Injury No.1, 3, 7 & 9 were caused by sharp cutting straight weapon like knife. All other injuries were caused by kicks and hard cylindrical weapon like lathi. All injuries were ante mortem in nature and head and chest injuries were collectively sufficient to cause death in ordinary course of nature.”

8. PW-12 opined that the head and chest injuries collectively were sufficient to cause death in the ordinary course of nature. It was noted that injuries 1, 3, 7 and 9 were caused by ‘sharp cutting straight weapon like a knife’.

Investigation

9. The statements of both PWs 1 and 2 under Section 161 Cr PC were purportedly recorded by PW-19 on 11th August, 1999 itself. Both statements were identically worded. Both PW-1 and PW-2 purportedly claimed to have seen the beating of the deceased by A-1, A-2 and A-4. Both the statements speak of A-1 beating the deceased with a rubber pipe and A-2 beating him with a *danda* (wooden stick) and A-4 slapping him while taking him towards Mehta Chowk.

10. On the very same date i.e. 11th August, 1999, a rough site plan (Ex. PW 19/A) was drawn up purportedly by PW-19 which indicates two spots. Mark ‘A’ shows the manhole from which the dead body was extracted, towards the Kishan Ganj Railway Colony side. Mark ‘B’ shows a tree near the manhole. Significantly, the location of the tea stalls run by PW-1 and PW-2 which they claimed to be within 15 to 20 yards or 10 meters of the manhole

was not shown either in the rough site plan or even the scaled site plan (Ex. PW15/A) prepared on 30th October 1999 on the instructions of PW-14, long after the statements of PW-1 and PW-2 were recorded by PW-19. The scaled site plan showed only three locations. 'A' was the spot where the manhole was located, 'B' where blood was found and 'C' the location of a tree. Therefore, even the scaled site plan did not show where the tea stalls of PW-1 or PW-2 were located and from where exactly PWs 1 and 2 saw the deceased being beaten by A-1, A-2 and A-4. The Court considers this to be a serious lapse in investigation which has a bearing on the credibility of the testimonies of PW-1 and PW-2.

11. With the assistance of PW-1 the police managed to arrest A-1 on 14th August, 1999 from the R.K.P Transport Garage No.4 Sanjay Truck Market. He is supposed to have made a disclosure statement to the effect that he could get recovered the plastic pipe with which the deceased was beaten by him. It appears that on 15th August 1999, while in police custody, A-1 got the plastic pipe recovered from a tea stall run by Janak Raj (PW-11). It must be noted that while PW-1 was witness to the arrest of A-1, he was not shown as a witness to the recoveries at the instance of A-1. Even PW-11 from whose shop the plastic pipe was recovered at the instance A-1 has not signed the seizure memo of the plastic pipe as a witness.

12. A-1 also purportedly took the police to the following three spots:

- (i) Where the manhole was located.
- (ii) Where purportedly the accused persons were beating the deceased.
- (iii) The spot where the deceased was lying unconscious next to a urinal

on one side and a heap of *Kadi patta* (curry leaves) on the other. It must be mentioned at this stage that according to PW-1 and PW-2 when the deceased was beaten by A-1, A-2 and A- they purportedly heard the accused accuse the deceased of having stolen their curry leaves and cash. The case of the prosecution is that the deceased as well as the accused used to sell curry leaves in the area.

13. The arrest of A2 and A3 took place on 17th August, 1999. On 18th August, 1999 pursuant to a disclosure statement made by A-2 the bamboo *danda* of 3 feet length supposedly wielded by him while attacking the deceased was recovered from the same heap of curry leaves lying at 2/12 Railway Quarters to which A-1 had take the police on 16th August 1999. The *danda* and the curry leaves were taken into possession. A-2 also volunteered to get the knife which he had hidden in the earth in front of the gutter at 2/6 Railway Quarters recovered. He then proceeded to do so after lifting some of the earth in front of the gutter itself. This was then taken into possession and sealed in a *pulanda*.

14. A-2 offered to get his blood stained pant and T-Shirt recovered from his village in Begusarai in Bihar. It is stated that PW-14 was deputed for this purpose. The pant and shirt that were recovered from Bihar were also deposited in the *malkhana* in a sealed *pulanda*. A- 3 purportedly also pointed out the *gutter* and the place where they had washed off the blood.

Trial

15. As already noticed A-4 who was initially declared as a proclaimed

offender was subsequently arrested on 11th July, 2000 by which time (on 9th February, 2000) charges for the aforementioned offences had already been framed against A-1, A-2 and A-3. Similar charges were thereafter separately framed against A-4 on 13th August, 2000.

16. On behalf of the prosecution 19 witnesses were examined. In their respective statements under Section 313 Cr PC the accused denied their involvement as well as the circumstances against them. They claimed to have been falsely implicated after having been subjected to beatings by the police. They claimed that the arrest was false and that the articles seized had all been planted on them.

17. On behalf of A-1, Ramesh (DW-1) and Jagbir Panja (DW-2) were examined. DW-1 was the elder brother of A- 1. He stated that A-1 did not sell curry leaves in Delhi and that A-1 had been arrested from his village in Rohtak. DW-2 was also a resident of the same village as A-1. He too stated that the police had taken A-1 away on 11th August, 1999 from the village.

Impugned judgment of the trial Court

18. In the impugned judgment dated 26th November, 2001 the Trial Court came to the following conclusions:

(i) The deceased was last seen with the accused persons. The evidence of PW-1 and PW-2 was believed and taken to prove not only the above circumstance but also fact of the deceased was beaten by A-1, A-2 and A-4 with rubber pipe, *danda* and bare hands respectively. The trial Court also held that their evidence proved that the accused took the deceased towards Mehta Chowk.

(ii) As far as A-3 was concerned since no eye witness had assigned any role to him having taken any part in assaulting the deceased, he could not be said to have shared any common intention with the remaining accused. A-3 was therefore entitled to the benefit of doubt.

(iii) One day after the beating, the body of the deceased was found dumped to the *gutter* close to Mehta Chowk. From this it could safely be concluded that it was only A-1, A- 2 and A-4 who had murdered him as he was in their custody when he was being taken towards Mehta Chowk. It was only within their knowledge as to what had happened to the deceased.

(iv) The recovery of the weapons of the offence at the instance of A-1 and A-2 stood proved. The medical evidence proved that the death was homicidal. By throwing the body in the manhole the three accused had sought to destroy the evidence of the offence and screen themselves.

19. The trial Court accordingly held that with the above circumstances having been proved beyond reasonable doubt, it could be safely concluded that it was only A-1, A- 2 and A-4 who had committed the offence of murder of the deceased and no one else. By a separate order on sentence the accused were sentenced in a manner already indicated.

20. This Court has heard the submissions of Mr. Harsh Prabhakar, learned counsel appearing for the Appellants and of Ms. Radhika Kolluru, learned APP appearing for the State.

Circumstance of last seen

21. The first circumstance sought to be proved by the prosecution was that

the deceased was last seen in the company of the Appellants (A-1, A-2 and A-4) and for this purpose the prosecution relied on the evidence of PW-1 and PW-2.

22. As already noticed both the PWs-1 and 2 have given virtually identical statements to the police under Section 161 Cr PC. They had attributed to A-1 the act of beating the deceased with the rubber pipe and to A-2 the act of beating the deceased with a *danda*. According to them A-4 also joined in the beating by slapping the deceased.

23. Both PWs 1 and 2 claim to be running tea stalls within 15 to 20 yards of the manhole and close to where the beating of the deceased by the accused took place. And yet, as already noticed, in the scaled site plan that was prepared more than two months after the date of the incident at the instance of PW-14, there is no indication whatsoever as to where these tea stalls are located. The exact spot from where the two eye witnesses witnessed the three accused beating the deceased is also not indicated. This is, as has already been noted, a serious lapse in the investigation.

24. The depositions of PWs 1 and 2 in Court raised more questions than they answered. PW-1 states that he saw the accused persons coming from the side of the station along with the deceased and they were quarrelling with him. PW-1 states as under:

“I saw accused persons coming from the station side along with the deceased and they were quarreling with him. Station was about 100 m away from the place where the accused were first seen by me, coming. I saw Ashok giving danda blow on the deceased on his back, neck and stomach. I did not pay much attention to note down as to on what particular places, danda blow were given by Ashok. I cannot say

on what part of body of deceased first danda blow was given by the accd. Ashok. I did not see accd, Jaibir beating deceased by rubber pipe. I saw Jaibir standing with rubber pipe in his hand while accd. Ashok was giving beatings with the danda to the deceased.”

25. Strangely, although in his examination in chief PW-1 stated states that he saw A-1 beating the deceased with a rubber pipe, in his cross examination he stated “I did not see the accused Jaiveer beating the deceased by a rubber pipe.” Clearly, therefore, PW-1 contradicted himself as regards the role attributed by him to A-1. Then he made a very significant improvement in his deposition in Court. He stated “I separated accused persons and deceased thereafter they ran towards the Mehta Chowk.” This was not stated by him in his earlier statement to the police. If indeed PW-1 had separated the deceased from the accused, it was unlikely that the accused and the deceased went together towards Mehta Chowk thereafter. This is particularly relevant because according to PW-1, whilst they were beating him the accused were accusing the deceased of having stolen their curry leaves and cash. It is highly unlikely, therefore, that the deceased went with the accused particularly since PW-1 does not state that they forcibly took him away from that spot towards Mehta Chowk.

26. What is even stranger is that the medical evidence shows that there were lacerated and other wounds and bruises on the body of the deceased and injuries on the head and chest that were severe enough to be sufficient cause of death in the ordinary course of nature. If PW-1 was able to separate the accused from the deceased and they then walked away, clearly the deceased was not so severely beaten at that stage. Those fatal injuries obviously were

inflicted subsequently. This also makes it highly improbable that PW-1 is speaking the truth when he says that he saw the accused beat the deceased with the rubber pipe and *danda* and yet he was able to separate them and they just walked away.

27. In his cross-examination PW-1 stated “I open my tea stall about 6/06.30 pm”. “I sleep in my tea stall”. Yet he states that on 10th August 1999, when he saw the three accused i.e. A-1, A-2 and A-4 beating the deceased it was 6.30 am in the morning. As already noticed, the *tehrir* prepared by PW-14 makes no mention of any eye witness coming forward to either identify the dead body of the deceased or inform the police at that stage as to what had transpired. The discovery of the dead body by the police and the time when the *tehrir* was sent was between 5 and 6.40 pm on 11th August, 1999. If PW-1 had a tea stall as claimed by him and it was located only 15 to 20 yards away from the manhole, it is unlikely that he would not have come forward then and there to make a statement to the police that is even before the *rukka* was sent to the PS for registration of the FIR.

28. The evidence of PW-2 is equally unconvincing. He deposes identically as PW-1 on facts and makes an identical improvement about having separated the deceased and the accused after seeing the accused beat the deceased. Strangely he too contradicts himself on the same identical facts as PW-1. He too in an identical fashion in his examination in chief says that he noticed A- 1 beating the deceased with the rubber pipe but in his cross-examination he says “I did not see accused Jaiveer beating with a rubber pipe”. In his examination in chief he talks of A-2 giving *danda* blows but in

his cross-examination he states “I did not see accused giving danda blows to the deceased”. “I only saw mark of injuries on the back of the deceased.” It is not plausible to trust such a witness who cannot even on the same day maintain his version and is able to contradict himself in the cross-examination.

29. Again the location of tea stall of PW-2 is not indicated in the scaled site plan prepared more than 2 months after the incident. Interestingly although both PWs 1 and 2 claim to have witnessed the incident of beating at the same time i.e. 6.30 am on the morning of 10th August and from more or less the same distance, neither mentions the presence of the other. This despite both stating that they tried to intervene and in fact separated the accused from the deceased.

30. On a careful evaluation of the depositions of PW-1 and PW-2 the Court is not satisfied that they are either natural witnesses present in the vicinity of the scene of occurrence or that they are speaking truthfully of what they saw, if at all they saw it. Neither PW-1 nor PW-2 can be stated to be reliable witnesses to prove the circumstance of accused being last seen with the deceased. Consequently the Court is unable to concur with the trial Court that the circumstance of last seen has been proved beyond reasonable doubt by the prosecution.

Recovery evidence

31. If the circumstance of last seen is taken out of the reckoning, then the prosecution has to fall back on the circumstances arrests and recoveries at the instance of the accused. In *Mani v State of Tamil Nadu (2009) 17 SCC*

273 the Supreme Court observed that a conviction could not be based on recovery of common objects like blood stains weapon of offence and blood stain clothes. Similar observations were made in *Narsinghbhai Haribhai v. Chhatrasinh* AIR 1977 SCC 1753.

32. In the present case, the arrest and recoveries made at the instance of the accused do not at all inspire confidence. Despite the police being present at the manhole from which the dead body was recovered in the evening hours of 11th August, 1999 itself and having inspected the place, they supposedly did not notice the blood stained knife lying in the heap of dirt just in front of the manhole. How the police could have missed such an obvious location for the knife is not explained. It must be remembered that the knife was recovered at the instance of A-2 only on 18th August, 1999 i.e. more than seven days after the police had already inspected that spot. This renders the recovery pointless. Even the recovery of the *danda* from the heap of the curry leaves in an open place next to a urinal, which had already been inspected on 15th August, 1999 when A-1 took the police there, is again totally unbelievable and meaningless. Recovery of these kinds of objects from open places which the police have already visited prior to the recovery cannot inspire confidence at all. In similar circumstances in *Mani v. State of Tamil Nadu* (*supra*), the Supreme Court observed that such recoveries were a farce and could never be accepted.

33. The recovery of the plastic (and not rubber) pipe from the tea shop of PW-11 at the instance of A-1 is again unbelievable. For some reason, PW-11 was not a witness to corresponding seizure memo. The strangest of course is

the recovery of the blood stained clothes. The prosecution wants the Court to believe that A-2 sent his blood stained clothes all the way to Bihar for preservation and for the police to recover it from there on 21st August, 1999 more than eleven days after the occurrence.

34. In any event, the report of the Forensic Sciences Laboratory (Ex.PW18/A) as regards those clothes was of no help to the prosecution. No blood could be detected on the clothes. The clothes were also not identified by PWs 1 and 2 as having been worn by the accused.

35. Consequently, the evidence concerning the recoveries of the weapons of offence or the clothes worn by the accused cannot be said to have been proved at all by the prosecution.

Evidence of arrest also not proved

36. Three of the four accused were purportedly in and around in the same area when they were arrested. A-1 has sought to prove through DWs 1 and 2 that he was in fact arrested from his village. A-3 has been acquitted by the Trial Court. In any event the mere fact of the arrest of the accused being proved can hardly be sufficient to unerringly prove the guilt of the accused and no one else.

Case against the accused not proved

37. The only circumstance that can be said to be proved is that the death of the deceased was homicidal. There is no credible evidence, circumstantial or otherwise to link any of the three Appellants with the crime. In what manner the accused could have murdered the deceased and later kept his body in the

manhole on the main Old Rohtak Road, which is a busy thoroughfare, has not been even attempted to be explained by the prosecution. There are too many gaping holes in the prosecution evidence which have not been satisfactorily explained.

38. The circumstances put forth by the prosecution have not been proved beyond the reasonable doubt much less has every link in the chain of the circumstances been proved. In the circumstances the Court is of the view that the benefit of doubt ought to be given to the three Appellants. Consequently, the impugned judgement of the trial Court and the impugned order on sentence are hereby set aside. The three Appellants are acquitted of the offence under Section 302 read with Section 34 IPC.

39. The bail bonds and the surety bonds furnished by the Appellants stand discharged. The Appellants will satisfy the requirement of Section 437 A Cr PC to the satisfaction of the trial Court at the earliest.

40. The appeals are allowed. The trial Court record be returned forthwith together with a certified copy of this judgment. The Court places on record the excellent assistance provided by Mr. Harsh Prabhakar, learned counsel on the panel of the Delhi High Court Legal Services Committee, who appeared for the Appellants.

S. MURALIDHAR, J.

I.S. MEHTA, J.

FEBRUARY 15, 2018/nd