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

+ **CRL.A. 455/2002**

RAJ SINGH @ RAJU Appellant
Through: Mr. Gulshan Sharma, Advocate.

versus

THE STATE Respondent
Through: Mr.Amit Chadha, APP for State with
IO/ACP Rajinder Bhatia.

+ **CRL.A. 531/2002**

RAMESH Appellant
Through: Mr. Gulshan Sharma, Advocate.

versus

STATE Respondent
Through: Mr.Amit Chadha, APP for State with
IO/ACP Rajinder Bhatia.

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

% **ORDER**
08.03.2018

1. These two appeals are directed against a common judgment dated 26th April 2002 passed by the learned Additional Sessions Judge ('ASJ'), Delhi in Sessions Case No.26/2001 arising out of FIR No.754/1996 registered at Police Station ('PS') Mangolpuri convicting both the

Appellants for the offences under Section 328/34 IPC and Section 302/34 of the Indian Penal Code ('IPC') and the order on sentence dated 29th April 2002 whereby for the offence under Section 302/34 IPC each of them have been sentenced to rigorous imprisonment ('RI') for life with a fine of Rs.5,000/-, and in default to undergo simple imprisonment ('SI') for 6 months and for the offence under Section 328/34 IPC to undergo RI for five years with a fine of Rs.5,000/- and in default to undergo SI for 6 months each. The sentences were directed to run concurrently.

2. At the outset it requires to be mentioned that originally three accused i.e. Satpal, Raj Singh and Ramesh were arraigned as accused when the charge sheet was filed. However at the stage of framing of charges, Satpal was discharged and charges were framed against Ramesh, Accused No.1 (A-1) and Raj Singh (A-2) for the aforementioned offences by the order dated 6th May 1998 of the learned trial Court.

3. The case of the prosecution is that on 12th July 1996, both accused in furtherance of their common intention at the house of the victim at Vijay Vihar first administered some stupefying/ intoxicating substance to Rajwanti (PW-2), Rajni (PW-7), Anita (PW-13) and Kishore (the deceased) and thereby committed an offence punishable under Section 328/34 IPC. The second charge was that on the same date, between 1.30 pm and 3.30 pm both the accused in furtherance of their common intention murdered the deceased thereby committing an offence punishable under Section 302/34 IPC.

4. The story of the prosecution is that the three accused met each other at village Juan in District Sonapat, Haryana and hatched a plan to commit a

loot. A-1 is supposed to have told the other two accused that his maternal uncle Sri Bhagwan (PW-4) (the father of the deceased) who was living in Vijay Vihar, Delhi was running a successful business and they could get a big catch if they struck at his place. They decided to do so after administering *Dhatura* poison in a powdered form in tea.

5. The case of the prosecution is that as per their plan, A-1 and A-2 went to Vijay Vihar to A-1's maternal uncle's house on 9th July 1996. A-1 stayed there whereas A-2 returned after having a careful look at the house. Both of them returned to the said house at around noon on 12th July 1996 carrying the *dhatura* powder with them. They found the deceased present in the house. Meanwhile the mother of the deceased i.e. Rajwanti (PW-2), her daughter Rajni (PW-7) and a neighbour Anita (PW-13) also arrived there. A-1 is said to have prepared tea mixed the *dhatura* powder in it and offered it to all four of them. While PWs 2, 7 and 13 consumed the tea and felt giddy and thereafter became unconscious, the deceased declined as he was not in the habit of drinking tea often. The two accused are stated to have taken a wire from 'Knight Queen' mosquito repellent device and strangled the deceased with it. Further, in order to ensure that he died, they inflicted fatal injuries on his neck with a kitchen knife.

6. While the deceased was left lying in a pool of blood, A-1 and A-2 had started rummaging through the house when they heard some noise as the younger brother of the deceased, Basant Bharadwaj (PW-5) returned from school. Both the accused then stating coming downstairs to leave when PW-5 met them at the staircase and asked them where they were going. A-1

replied that he will be back soon and both A-1 and A-2 hurriedly left the place. When PW-5 entered the house he encountered the three women i.e. his mother PW-2 on the bed, his sister PW-7 on the sofa and the neighbour Anita PW-13 on the carpet in a semiconscious/unconscious state. He found his brother in a different room lying in a pool of blood. He then called the police who reached the spot.

7. Inspector Rajender Bhatia (PW-21), the Investigating Officer (IO), attached to the PS Mangolpuri as Additional SHO received the information at around 4.25 pm and along with Sub Inspector ('SI') Meena and Head Constable ('HC') Bacchu Singh reached the spot at 5 pm. They found that HC Rajbir (PW-12) was already present there. Inside the house, PW-21 found the body of the deceased lying between the wall and the bed in a room. Playing cards were found to be scattered on the bed and there was blood on the floor. In the adjoining room, PW-21 found PW-2, PW-7 and PW-13 in a drugged condition. The complainant's (PW-5) statement was recorded. In that statement itself he clearly stated that he noticed A-1, the son of his *bua* (paternal aunt) coming out of the house along with his friend (A-2) and on seeing him, when PW-5 asked him as to where he was going, A-1 replied that he would come back after sometime and saying so he hurriedly left along with his friend.

8. The IO sent the three women found in unconscious condition to a hospital in a PCR van. The crime team was also summoned to take photographs. A site plan was prepared. Among the articles picked up were a Knight Queen Machine with its wires detached, a black colour wire of this machine and

blood lying on the spot. Importantly, on inspecting the kitchen the IO found some seeds and took them into possession. He also found lemon seeds with tea coloured liquid in a steel utensil. He then transferred it to a plastic bottle and took them into possession. From the hospital he also collected the stomach wash of PW-2.

9. The post-mortem of the deceased was performed by Dr. Ashok Jaiswal (PW-1). He found two strangulation injuries on the neck and two incised wounds on the neck. His opinion as to the cause of death was asphyxia due to strangulation. Later when the knife was shown to him he confirmed that the two incised wounds on the neck were possible by that knife. When he was shown the wire he opined that the strangulation injury was possible by it.

10. The report of the Forensic Science Laboratory (FSL) at Chandigarh dated 3rd December 1996 confirmed that the Gastric Lavage collected from the stomach wash of PW-2, Dark brown coloured seeds found in the kitchen (Ex.2) and the remnants of the tea collected in a plastic bottle from the kitchen by the IO (Ex.3) all contained *Datura* Alkaloids (Atropine Hyoscine and Hyoscyamine).

11. In the trial that ensued 23 witnesses were examined by the prosecution. The defence of the two accused was one of denial of all the circumstances put to them. A-1 claimed to have been falsely implicated stating that it was due to strained relations between the families and in particular with PW-5. As far as A-2 was concerned he admitted that he had refused to take part in the Test Identification Parade ('TIP') as he had been shown to the witness

and claimed that he had never visited the place of occurrence and did not know A-1 or accompanied him to the place of occurrence.

12. In the impugned judgment the learned Trial Court has concluded that the prosecution was able to prove the guilt of the accused beyond reasonable doubt as far as the offence under Section 328/34 IPC was concerned. It was noted that three witnesses viz., PWs 2, 5 and 7 had identified both accused as being present in the house and about A-1 offering tea after the consumption of which PWs 2 and 7 fell unconscious. This coupled with the fact that PW-5 noticed both the accused leaving the house hurriedly and upon entering the house finding the three women unconscious. Further, the fact that the FSL report confirmed the presence of *Dhatura* Alkaloids in the tea was held to be sufficient to prove the guilt of both the accused for the offence under Sections 328/34 IPC.

13. As regards the offence of murder, the trial Court held that the presence of both the accused at the place of occurrence immediately prior to the murder, their having been left the place immediately thereafter in the presence of PW-5 and their subsequent arrest and disclosures leading to the recoveries was sufficient to prove their guilt for the said offence.

14. This Court has carefully examined the entire trial Court record. The key witnesses who have spoken about the presence of A-1 and A-2 in the house at the scene of crime on 12th July 1996 are PWs 2, 5 and 7. It must be mentioned here that the 4th witness Anita (PW-13), daughter of a friend of PW-2 turned hostile in Court.

15. PW-2 has clearly stated that she had left the house to visit a friend at around 12.30 pm. She returned after half an hour along with PW-13 who was the daughter of the said friend. When she entered the house she noticed the deceased in the company of A-1 and A-2. She identified both A-1 and A-2 in the Court. She noticed that A-1 was preparing tea in the kitchen. He then offered the tea to PW-2 and PW-13 and a third cup to her daughter Rajni (PW-7) who had by then returned from school. PW-2 stated that neither of the accused nor the deceased had consumed the tea “since my son Kishore was not in the habit of tea”. PW-2 finished drinking the tea served to her within five minutes and immediately “felt great sensation in the whole of my body as if needles in numbers were being pricked in my body.” She then became unconscious. PWs 7 and 13 also became unconscious.

16. At around 2.30 pm PW-5, returned from his school, and on finding PW-2 lying unconscious tried arousing her by giving her a glass of water. He informed her that as he was entering the house he noticed both A-1 and A-2 leaving the house. The deceased was found locked inside a room which was bolted from outside. He was noticed in a pool of blood with stab injuries. PW-5 then called the police.

17. The Court has perused the cross examination of PW-2 carefully and finds that there were no material contradictions in what she deposed in the Court *qua* what she first stated before the police. PW-2 has, therefore, fully supported the prosecution. She has correctly identified both A-1 and A-2. It must be mentioned here that A-1 is a relative and therefore holding of the TIP for him would have been pointless. As far as A-2 is concerned, he

declined to participate in TIP and therefore underwent the risk of being identified in the Court. In her cross examination PW-2 stated that it was correct that she saw A-2 for the first time in the Court “after the day of the incident.”.

18. The other witness in this regard was Rajni (PW-7) who more or less corroborated PW-2 in all the material particulars i.e. being offered tea by A-1 at the time when A-2 was also present and then feeling giddy and becoming unconscious and about PW-5 returning from school at around 3.30 pm. PW-7 too has not been shaken in her cross examination on these essential particulars.

19. Then we have PW-5 who is very categorical about noticing A-1 and A-2 leaving hurriedly after coming down the stairs as he entered the house and then hurriedly leaving the house. PW-5 has stuck by the earliest version given by him to the police. Again in his cross examination nothing much has been elicited. On the contrary PW-5 stated that he had seen A-2 even earlier whom he had met in the house of his *bua* i.e. the mother of A-1. He too stated that he noticed A-2 for the first time after the incident in the Court when he was produced.

20. The above three witnesses are sufficient to prove the presence of both accused at the house immediately prior to the death of the deceased. Their conduct that their hurriedly leaving the house after committing the murder has also been proved beyond reasonable doubt by PW-5. There is no challenge by the accused to the FSL report that has confirmed the presence

of the *Dhatura* poison in the tea that was offered by A-1, in the presence of A-2 to PWs 2, 7 and 13. Consequently the Court concurs with the trial Court both as regards the conviction of both the Appellants under Section 328/34 IPC and Section 302/34 IPC.

21. Learned counsel for the Appellants earnestly pleaded that the Appellants had not come to the house with an intention to kill the deceased but to commit robbery and therefore the offence should be viewed as culpable homicide not amounting to murder punishable under Section 304 IPC.

22. The Court is unable to agree with the above submission. The offence that has been proved by the prosecution *vis a vis* A-1 and A-2 does not fall under any of the exceptions under Section 300 IPC. Even otherwise, given that apart from two strangulation injuries there were two incised wounds and that too in the neck region making it impossible for the offence to be viewed as culpable homicide not amounting to murder. There is no manner of doubt that both accused shared the common intention to kill the deceased.

23. No interference is called for with the impugned judgment of the trial Court convicting the two appellants with the aforementioned offences or with the consequent order on sentence. The appeals are accordingly dismissed.

24. The bail bonds and surety bonds furnished by the Appellants are hereby cancelled. They are directed to surrender on or before 20th March 2018 failing which the SHO concerned will take immediate steps to have them

taken into custody to serve out the remaining sentence. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 08, 2018

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