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

+ **CRL.A. 500/2002**

KARAN SINGH Appellant
Through: Mr. Ashutosh Bhardwaj, Advocate.

versus

N.C.T. OF DELHI Respondent
Through Mr. Hirein Sharma, APP for State

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

ORDER
13.04.2018

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Introduction

1. This appeal is directed against the impugned judgment dated 26th April 2002 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.55/2000 arising out of FIR No.405/1995 registered at Police Station ('PS') Seelampur convicting the Appellant, Karan Singh, for the offence under Section 302/34 Indian Penal Code ('IPC'). This appeal is also directed against the order on sentence dated 29th April 2002 whereby the Appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs.15,000/- and in default of payment of time, to undergo rigorous imprisonment for one year.

2. The Appellant, Karan Singh (A-1), was sent up for trial along with Charan Singh @ Channa (A-2) and Rajbir @ Chhanga (A-3), all of them

having been charged with entering into a criminal conspiracy on or before 27th June 1995 to commit the murder of Chander Pal ('the deceased'). Furthermore, the three accused were charged with committing the murder of the deceased in pursuance of the criminal conspiracy at about 4:30 pm on 27th June 1995 in Shiv Mandir Wali Gali near AVN Public School, Maujpur, Delhi. By the impugned judgment, A-1 and A-3 were convicted for the offence punishable under Section 302/34 IPC while A-2 stood acquitted of the same. A-1 was also charged with the offence under Section 27 Arms Act of which he was acquitted.

3. Both A-1 and A-3 have filed separate appeals. The appeal filed by A-3 being CrI.A.484/2002 was dismissed by this Court on 11th January 2018 after noticing that A-3 had, after obtaining a suspension of his sentence from this Court during the pendency of the appeal, failed to appear when the appeal was listed. The non-bailable warrant ('NBW') issued against him on 23rd May 2014 remained unexecuted. Accordingly, the Court directed that as and when the NBW would be executed, the appeal of A-3 would be relisted and heard.

The incident

4. PW-2 was a driver of a three-wheeler scooter ('TSR'). He used to drive the TSR bearing registration No. DL-1R-B-1784, owned by the deceased, on a day to day basis and earned a daily wage. The deceased worked as a driver of a mini-bus bearing registration DL-1MC-0099 while A-2 was the conductor of this bus.

5. It emerges from the deposition of PW-2 that A-2 owed the deceased a

debt of Rs.700-800. It also emerges that two days prior to the date of incident, the deceased and A-2 had quarrelled with regard to this debt during which the deceased had slapped and punched A-2. In response, A-2 had threatened the deceased with revenge. He employed A-3 who was known to be a local ruffian. All these details were disclosed by the deceased to PW-2 on the morning of 27th June 1995, i.e. the date of the incident.

6. At around 4:30 pm on 27th June 1995, the deceased asked PW-2 to accompany him as he was going to make payment of an instalment on his scooter. Both of them then went to the house of one Kishan situated in Shiv Mandir Gali, Maujpur in the TSR driven by PW-2. The three of them came back from the house of Kishan to the spot where the TSR was parked and as they were boarding the same, A-1 and A-3 appeared out of the blue brandishing knives and attacked the deceased. A-3 is said to have exclaimed that he would teach the deceased a lesson for having fought with A-2. Both the accused, i.e. A-1 and A-3, stabbed the deceased who was taken to GTB Hospital by PW-2 and Kishan where he succumbed to his injuries on 28th June 1995.

Recording of witness statements and inspection of crime scene

7. Sub Inspector ('SI') B.B. Chand (PW-20) was posted at PP Jafrabad of PS Seelampur on the date of the incident when, at about 4:35 pm, he received a wireless message that one boy had been stabbed near Shiv Mandir Gali. He reached the spot along with Ct. Rajinder (PW-1) and noticed a huge quantity of blood. He learnt that the injured had been shifted to GTB Hospital in a TSR. He went to the said hospital and obtained the MLC of the injured

Chander Pal there. The injured was declared unfit for statement. On the MLC, it was noticed that the injuries were by a sharp edged weapon.

8. At the hospital, PW-20 met PW-2 and the latter's statement (Ex.PW-2/A) was recorded and the *rukka* was prepared on the basis of the same which was sent through PW-1 for registration of the FIR. He met two more witnesses at the hospital, i.e. Prem Vats (PW-6) and Bishan Singh (PW-7), and their statements were also recorded.

9. After returning to the spot, PW-20 is stated to have prepared the rough site plan (Ex.PW-20/B) at the instance of PWs- 6 and 7. He lifted blood stained earth and control sample earth and sealed them. PW-20 then started searching for the accused but they could not be traced. On 28th June 1995, he received DD No. 38 (Ex.PW-13/A) that the injured had expired. The offence was then converted into that punishable under Section 302 IPC.

Post-mortem examination

10. The post-mortem examination of the deceased was performed by Dr. A.K. Tyagi (PW-15) on 28th June 1994. He noticed as many as 23 incised stab wounds on the body upon various parts including the chest, abdomen, and arms. The death was opined to be due to shock as a result of haemorrhage. Injuries 15, 16, 19, 22, 23 were opined to be sufficient to cause death in the ordinary course of nature independently.

Surrender of the accused and recovery of weapon of offence

11. The file was handed over to SI Krishan Kumar (PW-17) on 19th January 1996 for further investigation. On 7th February 1996, the

present Appellant (A-1) surrendered in the Court of the learned Metropolitan Magistrate ('MM'), Karkardooma Courts. With the permission of the Court, PW-17 interrogated A-1 in the Court and recorded his disclosure statement. A test identification parade ('TIP') for the Appellant was scheduled on 15th February 1996. However, the Appellant refused to participate in the TIP. Mr. A.K. Mendiratta (PW-21), the learned MM, who had arranged the TIP has deposed that A-1 refused to participate on the ground that his photograph had been taken by the police from his house.

12. According to PW-17, pursuant to disclosure statement (Ex.PW-17/A) to him, A-1 led the police to his house at Brahmpuri and produced one button-activated knife purportedly used in the commission of offence. This was then seized and deposited in the *malkhana*.

13. PW-17 further stated that on 30th March 1996, when A-1 was being produced in the court of the learned MM, A-1 was shown to PW-6, PW-7 and Kishan Singh. Each of them identified the Appellant to be the same assailant who had stabbed the deceased on 27th June 1995. On 20th April 1996, PW-17 got the scaled site plan (Ex.PW-12/A) prepared by SI Mukesh Kumar (PW-12).

14. On 18th September 1996, A-3 surrendered and with the permission of the Court, he was formally arrested. Pursuant to his disclosure statement, the police went to the house of his sister, Vimlesh, but no weapon could be recovered from there. The supplementary *challan* was prepared against A-3 and filed on 17th October 1996.

15. The charge sheet was filed and by an order dated 29th April 1997 charges were framed against the accused in the manner aforementioned.

16. The entire prosecution case hinges on three witnesses, i.e. Vinesh Kumar (PW-2), Prem Vats (PW-6), and Bishan Singh (PW-7). All three witnesses were believed by the learned trial Court which came to be conclusion that the case against the Appellant stood proved beyond reasonable doubt for which he was convicted for all charges except those under Section 120B IPC and Section 27 Arms Act.

Unreliable eye-witnesses

17. The Court has with the assistance of learned counsel for the parties carefully examined the aforementioned eye-witnesses' testimonies. As far as PW-2 is concerned, in his cross-examination, he made the following statements which completely discredited him as an eye-witness:

“I had not stated in my statement Ex.PW-2/A the name of Karan as the assailants. I had also not stated the hulia of the accused Karan in my statement. I had not stated the name of Karan and hulia in statement Ex.PW-2/A as Karan was not present there and he was not the assailant. On 30th March 1996 police had brought me to Karkardooma Courts and had told me that I had to identify accused Charan. The police had not brought me for the identification of any other accused except Charan. It is correct that I had not identified any other person in Karkardooma Courts complex except Charan on 30th March 1996. Police had shown me the photograph of Karan about 3 days prior to 30th March 1996 before they brought me in the Court.

20. It is correct that police had told me that I had to identify the person who is shown in photograph. It is correct that despite that I had not identified Karan in Karkardooma Courts, and I

only identified Charan accused.

CQ: In your examination-in-chief dated 16th December 1997 you have stated that on 30th March 1996 you identified accused Karan in the Court to be the same person who had stabbed Chander Pal and today you have denied having identified accused Karan in the court on 30th March 1996. Explain which of your statement is true and which is false?

Ans: The statement which I have given today is truthful. On that day also I told that I identified accused Charan on 30th March 1996 in the Court and not accused Karan.”

18. This portion of PW-2’s testimony undermines to one of the key pieces of evidence which has been relied upon by the prosecution. If indeed the photograph of Karan was shown to PW-2 in the PS, then the identification by him of the Appellant in the courtroom loses all meaning.

19. Turning to Bishan Singh (PW-7), in his cross-examination he conceded as under:

“I cannot tell if anyone from the said street was all present at the spot or witnessed the occurrence. The spot was visible from the place where I heard the noise Bachao-Bachao. There was no public or traffic in between the place where I heard the noise and the spot. When I saw for the first time towards the spot, Chander Pal was lying on the road and he was already bleeding. The incident lasted hardly two seconds. I cannot tell the colour of the clothes or what clothes were worn by deceased Chander Pal at that time as they had already smeared with blood when I reached at the spot. Myself, Vinesh or Prem Vasts did not lift Chander Pal in order to place him in the TSR.”

20. If PW-7 was indeed not an eye witness to the incident, his deposition also cannot be helpful to the prosecution in implicating the Appellant.

21. Faced with the above difficulty, the learned APP for the State placed considerable reliance on the deposition of PW-6. He was apparently living in Ambedkar Basti. According to him, he was on the the terrace of his house when he heard the noise of quarrel taking place and the shout of '*bachao bachao*'. He then states that when he came down and went to the street he purportedly saw A-1 and A-3 stabbing the deceased. He claimed to have chased A-1 and A-3 as they were running after stabbing the deceased but failed to apprehend him.

22. In order to appreciate the exact location of the house of PW-6, i.e. House No.215, Ambedkar Basti, the Court has studied the rough and the scaled site plans. It must be recalled that the rough site plan was purportedly prepared by PW-20 at the instance of PWs- 6 and 7. However, it does not indicate where PWs- 2 and 7 were standing in relation the exact spot where the crime took place. In the scaled site plan, only the spot from where PW-2 witnessed the incident is indicated. The positions of PWs- 6 and 7 as they witnessed the incident are not shown. Interestingly, neither site plan shows House No.215, i.e. the house of PW-6. In light of this, this Court is not convinced that PW-6 comes across as a natural witness to the occurrence. He, in fact, admits that the spot could not be seen from the terrace of his house. It is important for the IO to have indicated where exactly PW-6 was standing when he purportedly saw the incident. This lapse on the part of the IO is serious and raises grave doubts about the truthfulness of the version of PW-6.

23. In his cross-examination, PW-6 goes to great lengths to explain that Shiv

Mandir Wali Gali and Ambedkar Basti are two different streets. He states, “On seeing the site plan, I cannot specify the spot where the occurrence took place as I do not understand the site plan”. He further states, “Since I do not understand the site plan, I cannot tell my location, i.e. from where I witnessed the occurrence by seeing the same”.

24. Therefore, it is highly doubtful that PW-6 was at all present and witnessed the occurrence. Without the evidence of these three eye-witnesses holding up to scrutiny, all that is established in the prosecution case is that the death of the deceased was homicidal and that the fatal injuries were caused by a sharp-edged weapon. The arrest and recoveries of the weapon of offence by themselves are not enough to fix guilt on the Appellant without any substantive evidence connecting him to the crime.

25. Consequently, the Court is unable to concur with the trial Court’s finding that the prosecution has been able to prove the guilt of the Appellant beyond reasonable doubt. The Court is of the view that the benefit of doubt ought to be given to the accused in the facts and circumstances of the case.

26. The impugned judgment dated 26th April 2002 and the order on sentence dated 29th April 2002 as far as the Appellant herein, i.e. Karan Singh (A-1), is concerned, are hereby set aside. The appeal is allowed. The surety bond and the bail bond furnished by the Appellant shall stand discharged. He will fulfil the requirement of Section 437A CrPC to the satisfaction of the trial Court at the earliest. A certified copy of this judgment along with the trial Court record be returned forthwith.

27. It is clarified that this judgment does not deal with the question of guilt of the co-accused, Rajbir (A-3), whose appeal has been dismissed in the circumstances explained by this Court hereinbefore.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 13, 2018

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