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

+ **CRL.A.130/2003**

SHASHI BHUSHAN @ BITTOO Appellant
Through: Mr. M. L. Yadav, Advocate.

versus

THE STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP

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

JUDGMENT
17.05.2018

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1. This appeal is directed against the judgment dated 27th September, 2002 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.24/2001 arising out of FIR No.490/1992 registered at PS Hari Nagar convicting Shashi Bhushan @ Bittoo (Appellant/Accused No.1-‘A-1’) along with two other co-accused Jagmohan @ Jaggan (‘A-2’) and Vikram @ Johanskar (‘A-3’) for the offences punishable under Section 302 read with Section 120B of the Indian Penal Code (‘IPC’) and Section 397 read with Section 120B IPC.

2. The appeal is also directed against the order on sentence dated 28th September, 2002 whereby for the offence under Section 302 read with Section 120B IPC, the Appellant was sentenced to undergo imprisonment for life with fine of Rs.1,000/- and in default to undergo rigorous

imprisonment (RI) for life; for the offence punishable under Section 397 read with Section 120B IPC to undergo RI for 7 years. The sentences were directed to run concurrently.

3. The Appellant along with the co-accused was charged with conspiring to commit robbery at the house of Amarjit Singh Sabharwal (PW-28) at Flat No.JB-17-A, LIG Flats, Hari Nagar and to commit murder of his wife Smt. Daljit Kaur (the deceased) thereby committing an offence punishable under Section 120B IPC. The second and third charges were that on 7th September 2002 between 11:45 a.m. to 1:30 p.m. pursuant to the above conspiracy armed with daggers, they committed murder of the deceased and committed robbery of a camera of Panasonic make, four gold bangles, two gold rings, one gold chain, a pair of gold *baalies* and cash of Rs.25,000/- from the house of the deceased thereby committing offence punishable under Section 302 read with Section 120B IPC and Section 397 read with Section 120B IPC.

4. PW-28 was a resident of the aforementioned house and was also running a shop at Rajouri Garden, Delhi. The Appellant was an employee in the said shop. On 7th September 1992, PW-28 left his house for the shop at around 11am. At that time, the deceased and their domestic help, Sharda (PW-27) were present. Their children had gone to school at that time. At around 11:45 am when PW-28 was present in the shop, his land line in the shop was not working. A telephone call was received for him at the neighbouring shop. He sent Trilochan Singh (PW-7), who was working in the shop, to receive the call as there were customers in the shop. PW-7 came back and

informed him that PW-28 was being called back to his house since a person for fixing the wallpaper had come. At around 1:30 p.m., two boys, Sumit and Rajat, from the neighbourhood came to the shop of PW-28 and informed him that there was some problem in his house. When PW-28 reached his house, he found his wife lying on bed injured and not responding. Her hands and mouth had been tied with *chunni* and tie. One shirt pocket piece was also found in her hand. PW-28 found that the aforementioned jewellery worn by the deceased; household articles were lying scattered, the cash of Rs.25,000/-, a camera, some other jewellery articles etc. were found missing. The deceased was taken to the DDU Hospital where she was declared brought dead.

5. A call was made to the police control room at 1:28 p.m. and then information was given to the concerned PS at Hari Nagar. On receipt of DD No.11A, SI Dharampal Singh (PW-32) accompanied by Head Constable Vijay Singh (PW-30) and Constables Brij Pal, Vijay Singh and Satbir Singh went to the spot. PW-32 asked the accompanying policemen to guard the spot and proceeded to the DDU Hospital. There he collected the MLC of the deceased. The SHO, Inspector V.P.S. Rana (PW-34) also reached the hospital. PW-32 handed over the MLC to PW-34. PW-32 returned to the spot, recorded the statement of PW-28, prepared the *rukka* and sent it to the PS for registration of the FIR.

6. PW-28 produced the shirt pocket piece which had been recovered by him from the fist of the deceased. This was seized and sealed. The crime team and dog squad also visited the spot. Two blood stained pillows, a *chunni* and

the tie, the blood stained bed sheet, one blood stained *dari*, one dagger cover of brass, two *barfi* pieces from kitchen were seized, kept in separate parcels and sealed. The clothes handed over at the hospital were also seized.

7. On 11th September 1992 while in search of the accused persons, when at around 10:30 p.m. the police team led by PW-34 reached the DTC Bus stand, Pankha Road, Kulwant Singh (PW-3) a public witness pointed towards the Appellant (A-1) standing there. He was immediately apprehended. He was carrying one Rexene bag containing a plastic *panni*, a pant piece, a shirt piece, a towel, a *kurta pajama* cloth piece. They were seized and sealed. Besides these articles a Panasonic camera with its cover and a pant and a shirt were also recovered from the bag. The personal search of the Appellant was undertaken. A purse was recovered which contained Rs.20/- and some other papers. They were also seized. On 12th September 1992, the Appellant was interrogated by PW-24 in the presence of PW-32. The Appellant is supposed to have disclosed that as part of the proceeds of crime, he received Rs.1,000/-, the camera and four gold bangles. He disclosed that he had kept the gold bangles with some relatives, but they could not be recovered.

8. On 23rd September 1992, secret information was received with regard to the presence of A-2 and A-3 at the Hari Nagar Bus Stand. Along with the informer, the police proceeded to the spot and arrested A-2 and A-3 at around 8 pm. A-2 produced a *kripan* type dagger from the right side *dub* of his pant. From A-3 also another dagger was recovered. According to A-3, he had lost the Rs.25,000/- in gambling. Both A-2 and A-3 offered to get the other stolen articles recovered. However, those details need not be discussed

since the appeals of A-2 and A-3 have been dismissed today by a separate order. Suffice to note that both A-2 and A-3 did get many of the jewellery articles robbed by them recovered on their pointing out from various places of their respective relatives.

9. At the conclusion of the investigation a charge sheet was filed and by an order dated 7th November 1996 charges were framed against the Appellant and the co-accused in the manner indicated hereinbefore. Additional charges under the Arms Act were framed against A-2 and A-3.

10. On behalf of the prosecution, 37 witnesses were examined. In their respective statements under Section 313 Cr PC, each of the accused denied the incriminating circumstances put to them. As far as the Appellant was concerned, he simply denied all the circumstances. He claimed never to have worked with PW-28. According to him, the clothes and camera were planted on him and nothing was recovered from him. He denied having made any disclosure. When asked whether he had anything else to say, he claimed that he had not committed any crime; nothing had been recovered from him; he was arrested from his house on 14th September 1992.

11. By the impugned judgment dated 27th September 2002 the trial Court came to the following conclusions:

- (i) The prosecution had been able to prove that the Appellant was an employee of PW-28 and, therefore, was well aware of his financial position and about the other valuables kept in his house.
- (ii) A-2 and A-3 were friends and they came into contact with Appellant.

They all planned to commit robbery at the house of PW-28 on 7th September 1992.

(iii) A-2 purchased Serepex tablets from Chhabra Medical Store and also purchased sweets from Mukesh Sweet House. He mixed the Serpex tablet in the sweets. A-1 and A-2 went inside the house of PW-28 on 7th September 1992 and A-1 offered the sweet on the pretext that he had been engaged while A-3 stayed in the park waiting for a signal from the co-accused. All of them subsequently tied up the deceased, looted the ornaments worn by her as well as the other ornaments in the house, apart from cash of Rs.25,000/-. They murdered her with their knives and left the place in a TSR.

(iv) The deceased was last seen in the company of the accused first by Sharda (PW-27), the domestic help and thereafter by Harvinder Pal Singh (PW-1), a friend of PW-28.

(v) The shirt recovered from the house of A-2 was blood stained and had no pocket. This matched the pocket piece that was recovered from the fist of the deceased.

(vi) Human blood of 'AB' group, which was the blood group of the deceased, was found not only on the pillow covers, *chunni*, the tie, bed sheets and the clothes of the deceased but was also detected on the clothes of the three accused.

(vii) The blood stains on the daggers recovered from A-2 and A-3 also matched the blood group of the deceased. The cover of the dagger recovered from the place of incident tallied with the dagger recovered from A-3.

(viii) PW-28 had stated that the Appellant had not been attending the shop for 2-3 days. This also showed that he was in the company of A-2 and A-3 and was looking for a proper opportunity to loot the house. The recovery of the stolen camera at the instance of the Appellant also connected him to the crime.

(ix) The camera and the articles recovered from the accused were identified by the daughter of the deceased. The camera was also identified by PW-28 and Kulwant Singh (PW-3).

12. With all the links in the chain of circumstance having been conclusively proved and pointing unerringly to the guilt of the accused persons, the trial Court concluded that the Appellant along with the co-accused were guilty of the offences under Section 302 read with Section 120B IPC and Section 397 read with Section 120B IPC. The trial Court proceeded to sentence each of the accused in the manner indicated hereinbefore.

13. This Court has heard the submissions of Mr. M. L. Yadav, the learned counsel for the Appellant and Mr. Kewal Singh Ahuja, the learned APP for the State.

14. This is a case based on circumstantial evidence. The first circumstance

which the trial Court has discussed is that of the deceased being last seen in the company of the accused shortly prior to her death. In support of this circumstance, reliance has been placed on the evidence of Harvinder Pal Singh (PW-1), a friend of PW-28 and Sharda (PW-27), the domestic help working in the house of the deceased.

15. In terms of sequence, reference may be made first to the evidence of PW-27. It must be noted at the outset that although the incident took place on 7th September 1992, she was examined in Court in the trial for the first time on 4th August 1999, nearly seven years after the incident. She deposed that she had reached the house of PW-28 at 10:30 am for work and worked there till about 11:30 am. As she was leaving two persons came into the house and the deceased served tea to both those persons. PW-27 also took the tea. The two persons had brought a *barfi dabba* with them. The deceased gave a *barfi* piece to PW-27 as well but she declined. After taking tea, PW-27 left the house for another work in the same locality at some distance.

16. PW-27 returned at 12:45 p.m. as she normally did. This time she found the door of the house open and the electricity was on. When she called out to the deceased, she got no response. PW-27 went inside and found the deceased lying on the bed and not responding. She then came out and went into the neighbourhood and disclosed what she had seen to one Sushma Bhatia (PW-14).

17. This part of the evidence of PW-27 is corroborated by PW-14 who stated that at around 1 pm PW-27 came to her house and told her that the deceased

was lying on the bed and was not speaking. PW-14 then asked her son Sumit Bhatia (PW-2) to go to the shop of PW-28 and inform him. Again this part of the testimony is corroborated by PW-2 who stated that when his mother asked him, he along with Rajan Seth (PW-13) went and informed PW-28 that there was some problem in the house. Rajan Seth (PW-13) has corroborated the above evidence. All of the above witnesses have fully withstood cross-examination.

18. PW-27 stated during her cross-examination that while she was present, she did not see the deceased telephoning and no call was received. She also did not see any neighbour of the deceased come to make any telephone call from the place. These questions were asked because of PW-1 deposing that he went to the house of PW-28 at around 11:45 a.m. for making a telephone call. When PW-1 went there, he found A-1 along with another person, that is, A-2. PW-1 was able to identify A-1 and A-2 in Court. Likewise, PW-27 also correctly identified A-1 and A-2. She in fact identified A-2 in the TIP. Since she was resiling from her previous statement to the extent of disclosing to the police that she knew A-1 from before, learned APP was permitted to cross-examine her. Now she confirmed that A-1 used to work at the shop of PW-28 and used to visit the house also. She further confirmed that she had seen A-2 for the first time on the date of the occurrence whereas she had seen A-1 earlier.

19. It was sought to be suggested by Mr. Yadav, learned counsel for the Appellant that PW-27 was not speaking the truth because she did not mention the presence of PW-1 who came there at 11:45 am to purportedly

make a telephone call. The Court does not find any such contradiction in the testimonies of PWs-1 and 27. PW-27 states that she left the house at 11:30 am, whereas PW-1 states that he reached there at 11:45 a.m., therefore, there was no occasion for them to meet. PW-1 went there to make a telephone call. He also identified A-2 in the TIP. The cross-examination of A-1 did not bring out anything that would even remotely assist the Appellant. He knew A-1 from before since he was in the employment of PW-28 at his shop which PW-1 would also visit.

20. Mr. Yadav was unable to persuade this Court to hold that the trial Court erred in concluding that the first circumstance, viz., that the deceased was last seen in the company of A-1 and A-2 stood satisfactorily proved by the prosecution. The evidence on record supports such conclusion. As rightly pointed out by the trial Court, the above last seen evidence is further corroborated by the testimony of PW-28 himself. His version was that the phone in the shop was out of order. PW-28 had a friendly relationship with the neighbouring shop run by PW-36. On the date of occurrence, a telephone call was received from the house of PW-28 at the shop of PW-36. PW-36 then called Gyani who was working in the shop of PW-28 asking to attend the call. After 5 minutes, Gyani returned to make a call and then informed PW-36 that the deceased had expired. Another witness to that fact was Trilochan (PW-7) who confirmed that at around 11:45 a.m. on 7th September 1992 a telephone call had been received from the house of PW-28. PW-7 himself has corroborated the above evidence. As far as the last seen circumstance is concerned, the presence of A-1 and A-2 in the house of the deceased soon prior to her death has been conclusively proved by the

prosecution.

21. Soon after the incident also the accused were seen in the company of each other. Balvinder Singh (PW-4) saw A-1 in the company of A-2 and A-3 as he was emerging from the DDU Hospital side towards Mayapuri. This witness explained why he went to the DDU Hospital. He was categorical that the three accused were standing at the bus stand which was on the same side from where he was proceeding.

22. The next circumstance was the recoveries of the stolen articles and weapons from the accused. The recovery of the camera belonging to the deceased and PW-28 at the instance of the Appellant stood adequately proved by the prosecution. This again linked the Appellant to the crime.

23. It was next submitted by Mr. Yadav that at the highest the Appellant could have been convicted for the offence of robbery. He could not be said to have shared a common intention with the other accused to kill the deceased.

24. While it is true that there is no specific overt act attributed to the Appellant in the robbery and murder of the deceased, the presence of A-1 at the scene of crime stands conclusively established by the prosecution. The medical and the forensic evidence also linked the Appellant to the crime. This has been dealt with earlier. Therefore, the circumstance of arrest and recoveries should also be held to have been proved by the prosecution.

25. The conduct of the TIP in the jail was proved by the learned MM (PW-19) who conducted it. At the TIP PWs 1, 4 and 27 identified A-2. PW-4 also identified A-3. Despite extensive cross-examination nothing emerged in order to disbelieve her testimony. The recovery of the looted articles from the possession of the accused is an added factor corroborating the version of the PWs.

26. For all of the aforementioned reasons, the Court concurs with the trial Court that the evidence on record proves each link in the chain of circumstances. It points unerringly the guilt of the Appellant.

27. No ground has been made out for interference with the impugned judgment of the trial Court and the order on sentence. The appeal is accordingly dismissed. The bail bonds and surety bonds furnished by the Appellant are cancelled. The Appellant is directed to surrender forthwith and any event not later than 31st May 2018. The trial Court record be returned forthwith along with a certified copy of this judgment.

S.MURALIDHAR, J.

I.S.MEHTA, J.

MAY 17, 2018

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