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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.780 /2002

Reserved on: 3rd May, 2018

Decision on: 16th May, 2018

RAJBIR

.....Appellant

Through: Mr. S.P. Kaushal, Mr. Amit Wahi, Mr. Sachin Kumar and Mr. Ravinder Mahender Advocates.

versus

STATE NCT OF DELHI

....Respondent

Through: Mr. Hirein Sharma, APP for State.

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

J U D G M E N T

Dr. S. Muralidhar, J.:

1.This appeal is directed against the impugned judgment dated 10th September, 2002 passed by the learned Additional Sessions Judge ('ASJ') arising out of FIR No.566/1998 registered at Police Station ('PS') Malviya Nagar, convicting the Appellant for the offence under Section 302 of the Indian Penal Code ('IPC') and the order on sentence dated 11th September, 2002 sentencing him to imprisonment for life with a fine of Rs.5,000/-; and in default of payment of fine to undergo simple imprisonment ('SI') for three months.

2. The charge against the Appellant (Accused No.1: 'A-1') was that he along

with co-accused Vijay Singh (A-2) in furtherance of their common intention committed the murder of Jai Singh ('deceased') on 4th July 1998 at around 12.30 am at the roof of house No.F-82, Lado Sarai.

3. It must be mentioned at the outset that the co-accused (A-2) was convicted by the same impugned judgment of the trial Court for the offence under Section 308 IPC and sentenced to undergo rigorous imprisonment ('RI') for four years with a fine of Rs.1,000/-; and in default of payment to undergo SI for one month. The Court is presently concerned only with the appeal of A-1 Rajbir.

Background

4. The criminal justice process got activated in the present case on receipt of information at Police Post ('PP') Saket in the early hours of 4th July, 1998 at 1.25 am from Duty Constable (Ct.) Bani Singh (PW-30) who was posted at the All India Institute of Medical Sciences ('AIIMS'). The information, noted as DD No.25 and conveyed on the telephone, was that one Jai Singh, son of Kehar Singh, was admitted at AIIMS by his brother Dharmender (PW-8). The doctor declared him as brought dead. The said DD entry was handed over to Sub Inspector Satish Kumar (PW-25), who then proceeded to AIIMS accompanied by Ct. Sanjeev Kumar (PW-13).

5. PW-25 then collected the MLC of the deceased (Ex.PW21/1) signed by Dr. Rakesh Bhasin (PW-21). PW-25 handed over the MLC to the investigating officer ('IO') Inspector Azad Singh (PW-26) who had, in the meantime, reached AIIMS. According to PW-25, no eye witness met him at

the hospital.

6. Thereafter PW-25 went to Lado Sarai where Banne Singh (PW-11), the brother of the deceased, met him. PW-11 stated that the deceased had been injured by the Appellant and A-2 on the roof of the house No.F-82 which belonged to Ramesh (PW-12), cousin brother of the deceased, and brother of the Appellant and A-2. PW-25 then went along with PW-11 to the house of PW-12.

7. On the roof of the aforementioned house they found blood stains spread all over and also found one blood stained dagger. The blade of the dagger was slightly bent. One blood stained *chappal* (slipper) was also found there. PW-26 recorded the statement of PW-12, prepared the *rukka* and then sent it to the P.S. for registration of the FIR. The crime team was also called to the spot. The dagger was wrapped in a piece of cloth and seized. Likewise the slipper was also seized. Earth control was also lifted from the spot.

8. Blood was also found on the street in front of House No.F-195 Lado Sarai which was the house of Smt. Champa (PW-5). The blood stained earth was lifted from there and then sealed. Earth control was also lifted from the spot as well.

Post mortem

9. Post mortem of the deceased was performed by Dr. Lal Rozama (PW-15). He noted as under:

"1. Incised stab wound 4 cm x cavity depth placed on left side chest, 5.5 cm from left nipple, 5 cm from midline and 9 cm. from cervical. Going inside thoracic cavity and piercing the left ventricle from front up to the cavity,

2. Stab incised wound 2 cm. x sub cutaneous depth on left chest, 8.5 cm below injury No. 1 and 3 cm from midline.

3. Incised stabbed wound 1 cm x sub cutaneous level on right abdomen, 12 cm. from midline and 21 cm from right nipple.

4. Stabbed incised wound, 3 cm on front of abdomen, 2 cm below umbilicus x 1.5 cm depth.

5. Incised stab wound 3 cm x 3 cm depth oriented directed upwards on left side chest 28 cm from midline and 18 cm from armpit.

6. Linear abrasion 0.1 cm x 9 cm long on medial lower left arm.

7. Lacerated contused wound on left parietal skull. Dimension 3 cm gaping with hematoma scalp.

8. Thoracic cavity contained blood fluid."

10. PW-15 opined that the cause of death was shock as a result of stab injuries to the heart. Injury No.1, according to him, could cause the death individually and the rest of the injuries could do so collectively. Subsequently when the knife was shown to him, PW-15 opined that the injuries mentioned (except injury No.6 and 7) could be caused by that weapon. The cross-examination of this witness was minimal and nothing could be elicited that could help the accused.

Arrests and recoveries

11. PW-26 and PW-25 returned to the village Lado Sarai on 4th July 1998 and again met PW-12, who told them that A-1 and A-2 had just gone out. They then took PW-12 along with them and searched for A-1 and A-2. Both A-1 and A-2 were found standing at the bus stand in front of the T.B. Hospital. They were pointed out by PW-12. According to PW-25, on seeing the police party A-1 and A-2 started running towards the liquor vend. They were chased and apprehended.

12. Both A-1 and A-2 were interrogated. A-2 informed the police that a *danda* was kept in his house and he could get the same recovered. His disclosure statement was recorded. Thereafter A-2 took the police party to his house No.F-82 Lado Sarai and produced the *danda* from the outer room of the house.

13. A-1 was, at the time of his arrest, found wearing bloodstained pyjamas. He was made to change out of that and the blood stained pyjama was seized and sealed. Likewise the clothes of A-2 were also seized.

14. On conclusion of the investigation, the charge sheet was filed and by order dated 11th January 1999 the trial Court framed charges against both accused in the manner indicated hereinbefore. On behalf of the prosecution 30 witnesses were examined.

Defence of the Appellant

15. Since the present appeal concerns only A-1, the Court will refer only to his statement under Section 313 Cr PC. When the incriminating

circumstances were put to him, he denied them. In response to the evidence that on 3rd July 1998, at around 10 to 11 pm, the deceased had come to the house of PW-12 and sat with him on the terrace, A-1 did not dispute it. He stated "However I was already present in the house when Jai Singh came there." He however denied that Prem Prakash (PW-1) was with the deceased at the house of PW-12 and that while the two were talking on the terrace, A-1 and A-2 had gone upstairs. A-1 denied that A-2 was present at that time and claimed that A-2 was not there at all. As regards the blood stained pyjama, he claimed that he himself was injured and that is how the pyjama was blood stained. He did not dispute that his blood group was B+. He did not deny that the papers of Suit No.2337/1998 concerned the documents pertaining to the property. When asked why the PWs have deposed against him, A-1 claimed that he was working well in an embassy which was a good service, they were jealous of him and, therefore, they deposed falsely against him.

16. When asked whether he had anything else to say, A-1 stated as under:

"On the night of 3/7/98 I was sitting with my brother Ramesh in the room. Jai Singh came there and started talking. As children were also present there, Jai Singh proposed that should sit outside. We, therefore, sat on the terrace. We were discussing programme of going next day on the inauguration of shop of Kartar Singh who was related to us. Ramesh was asked by Jai Singh to take bath and accordingly he went to take bath. The gate of his house was however opened. Three persons came through the gate. They told Jai Singh that neither property nor money had been given to them. My sister-in-law i.e. wife of Ramesh came there and shrieked on seeing these outsiders. She went inside to call Ramesh. One of them took out a long knife and pushed Jai Singh as a result his head struck against the wall. He started giving knife blows to Jai Singh. When I went to save Jai

Singh, he also gave a knife blow on me. That gave a chance to Jai Singh to escape from there. Jai Singh went downstairs. They also followed him. They banged door while leaving and bolted the door. In the meantime, Ramesh came to me and asked me what had happened I asked him to take care of Jai Singh as he was being chased by three persons. Ramesh could not go out of the house as the door had been bolted from the outside. Ramesh then called Vijay who is residing in the same house. Thereafter, I, Ramesh and Vijay Chandrup went to AIIMS. Jai Singh had already been taken to hospital. I was treated in the hospital. I was arrested by the police from the hospital Vijay was also arrested from the hospital. We were taken to police post and were implicated falsely in this case.”

Impugned judgment of the trial Court

17. In the impugned judgment, the trial Court came to the following conclusions:

- i. The Appellant had admitted his presence at the roof of the house of PW-12 on the night of 3rd July, 1998. The deposition of PW-1 also makes it clear that A-2 was also present there.
- ii. The deceased had come downstairs in an injured condition and this was spoken to by PW-6, the wife of PW-12. It showed that the deceased was last seen with the Appellant, Ashok and PW-12 before he came out of the house of PW-12 in an injured condition.
- iii. In the above circumstances, it was for the Appellant to explain as to what circumstances led to the injuries that were sustained by the deceased. Section 106 of the Indian Evidence Act, 1872 (‘IEA’) would stand attracted, in terms of which the Court could draw an inference regarding the existence

of certain other facts unless the accused by virtue of his special knowledge offers an explanation that might persuade the Court to draw a different inference. Reliance was placed on the decision of the Supreme Court in *State of West Bengal v Mir Mohammad (2000) 2 AD (Crl.) SC 945*.

iv. The version of the Appellant, and PWs 6 and 12, that some three strangers had come through the gate of the house of PW-12 and given knife blows to the deceased, and that when the Appellant tried to save the deceased, they gave knife blows to him as well, was not believable.

v. The plea that PW-12 had gone at 12.30 am for taking a bath seems highly improbable given the hour and the fact that he was already in bed according to PW-6. According to PW-1, when he was coming downstairs on being asked to by the Appellant to leave, he met A-2 going up who purportedly had a *danda* in his hands. PW-1 heard the sounds of a quarrel once he came down from the terrace. There was no reason for PW-1 to falsely depose against A-1 and A-2.

vi. The version of the Appellant that there were three unknown assailants who were saying that they had neither been given money nor property also seemed improbable since there was no evidence to show that the deceased had any kind of dispute with any other person on account of property or money.

vii. The deceased made a dying declaration at the place where he was found lying injured as well as in the car in which he was taken to the hospital. Five

of the witnesses i.e. Ram Singh (PW-2), Devender (PW-3), Sushil (PW-7) and Banne Singh (PW-11); and Chandroop (PW-9) had stated that the deceased had told them that the Appellant gave him the knife blows whereas A-2 gave him a *danda* blow. This shows that the deceased was alive and conscious at the place where he was lying as well as on the way to the hospital.

viii. The time given in the post-mortem report that the death occurred around 12 hours prior to the time of examination was only an approximation. There was no cross-examination of PW-15, the doctor who performed the post-mortem whether the deceased would have remained conscious for sometime after sustaining the injuries or had died at the spot. In any event, the deceased did come downstairs from the house of PW-12 even after sustaining the injuries. Clearly, therefore, he did not die at the spot.

ix. The deposition of PW-11 could not be disbelieved only because of the failure of the IO to record at the first instance that the deceased had made the dying declaration to PW-11. The fact that PWs 6 and 12 did not support the prosecution would not be a valid ground for rejecting the depositions of the other PWs. The evidence clearly showed that Ram Singh (PW-2), Devender (PW-3), Sushil (PW7), Banne Singh (PW11) and Dharmender (PW-8) were present at the place where the deceased was lying in an injured condition and did take Jai Singh (deceased) to the hospital. Merely because they were all related to the deceased did not make them 'interested witnesses'. There is a difference between a 'related witness' and 'interested witness' and the two are not equal.

x. The failure to lift the bloodstains from the car in which the deceased was taken to the hospital; or seize the bloodstained clothes of those who accompanied him were certainly lapses on the part of the IO, but this would not *per se* discredit the testimonies of the PWs.

xi. The fact that PW-2 first rushed to the place where the deceased was lying injured and did not immediately first inform the police was again not abnormal and, therefore, did not discredit the prosecution case. The Appellant had only one wound measuring 2.5x1x4 cms on his right thigh. The injury was, therefore, minor. Due to the failure of the prosecution to explain this minor injury, no adverse inference could be drawn against it. Reference was made to the decision in ***Rajender Singh v State of Bihar AIR 2000 SC 1779***.

xii. The contradictions in the statements of the PWs were not material and did not create a dent on the prosecution case. The death was homicidal as proved by the medical evidence. It was caused by the dagger found at the roof of the house of PW-12. The fatal blow was caused by the Appellant. In the circumstances, his guilt for the offence punishable under Section 302 IPC stood proved beyond reasonable doubt.

Analysis and reasons

18. This Court has heard the submissions of Mr S.P. Kaushal, learned counsel appearing for the Appellant and Mr Hirein Sharma, learned APP appearing for the State.

19. The medical evidence in the present case clearly proves that the death was homicidal. The post-mortem report prepared by PW-15 showed that there were as many as five incised stab wounds – three of which were on the chest area and two in the abdomen. When the knife which was found on the roof of the house was shown to PW-15 at a later stage, he confirmed that the fatal injuries could have been caused by that weapon.

20. The crucial question is, therefore, whether the prosecution was able to prove that it was the Appellant alone who gave the above fatal blows to the deceased. It must be recalled that the version of the Appellant is that although he was present on the roof of the house of PW-12 at the time of the incident, three persons had come through the gate and told the deceased that “neither property nor money had been given to them”. PW-6 on seeing these men shrieked and went to call PW-12 who had gone to take a bath. One of the three intruders then took out the knife and pushed the deceased as a result of which the deceased’s head struck the wall. The Appellant tried to save the deceased and also received a knife blow, leading to the abovementioned minor injury. This allowed the deceased a chance to escape and he went downstairs. The three intruders then followed him and while leaving, they bolted the door from outside, so as to ensure that they wouldn’t be followed. PW-12 who emerged from the bathroom asked the Appellant what had happened. When the Appellant asked PW-12 to go down and help the deceased who had been stabbed, PW-12 could not leave the house as the door of the house was bolted from the outside. He then called A-2 who lived in the same house and thereafter the Appellant, PW-12 and A-2 went to AIIMS.

21. The above version has not been attempted to be substantiated by the Appellant by leading evidence. There is no other witness who talked of the three outsiders mentioned by the Appellant. PWs 6 and 12 did not support the prosecution. Both of them resiled from their earlier statements. In his cross-examination, PW-12 claimed that he had been threatened by the police that he would be implicated unless he signed the papers “as desired by them and without reading”. However, he admitted that A-1 and A-2 were his real brothers and that he did not give any complaint to any superior officers about his signatures being taken under threat since he was afraid of the police officers. The circumstances under which PW-6 and 12 resiled from their earlier statements make them wholly untrustworthy and, therefore, their evidence is completely kept aside.

22. The other witnesses who turned hostile were PWs 4, 5 and 8. PW-4 was the son of PW-5 near whose house the deceased was found in an injured condition. Dharmender (PW-8) who was present when the deceased was removed to the hospital also turned hostile. However, it is not as if all the witnesses of the prosecution failed to support the case against the accused. The evidence of PWs 1, 2, 3, 7, 9 and 11 are of some importance and will be discussed next.

Evidence of PW-1

23. The evidence of PW-1 is assailed by Mr. Kaushal on the ground that it was unnatural for him to have gone home to bed, after hearing about the quarrel, and sleeping till 3.30 am when he was called by the police. It is submitted that PW-1 was not a natural but an introduced witness and his

evidence ought to be discarded. Reliance is placed on the decision in ***Shivasharanappa v. State of Karnataka (2013) 5 SCC 705***.

24. The evidence of PW-1 shows that he was talking to the deceased on the roof of the house in question when the Appellant came there and asked him to leave. As he went downstairs he saw A-2 come up with a *danda* in his hand. It was only then that he heard the quarrel. In his statement under Section 161 Cr PC PW-1 stated that when he came on to the road he heard the Appellant abusing the deceased and PW-12 reasoning with the Appellant by saying “*Raju baat sun*” and “*Raju rehne de.*” PW-1 therefore establishes that both A-1 and A-2 were present on the roof of the house of PW-12 on the date of incident. There is not much in the cross-examination of PW-1 to bring out that he was not present there. PW-1 may not have anticipated at that time that the quarrel or exchange of words would go out of hand. His returning home without interfering at that stage, therefore, cannot be termed unnatural.

25. In any event, merely because a witness does not react in a particular way, will not make his presence unnatural. That would depend on the facts of every case. In ***Rana Pratap v. State of Haryana (1983) 3 SCC 327***, while affirming the High Court’s reversal of the acquittal of the accused by the trial Court, the Supreme Court explained:

“6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his

own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

26. In *Shivasharanappa v. State of Karnataka* (*supra*), the Supreme Court referred to the above decision and held:

“22. Thus, the behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behaviour is acceptably natural allowing the variations. If the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance.”

27. The reaction of PW-1 in going away home to sleep at 1.30 am cannot by any stretch of imagination be termed so unnatural or improbable so as to discard his evidence in *toto* or to conclude that he is a planted witness.

Dying declaration

28. As far as Ram Singh (PW-2) is concerned, he was sleeping in his house when he heard PW-5, accompanied by her son Surender (PW-4) calling Banne Singh (PW-11). PW-5 informed PW-11 that the deceased had sustained a knife injury and was lying near her house. PW-2 took his vehicle

and went to the place where the injured was lying. PW-11, PW-9, PW-7, PW-3 and a neighbour Dharmender (PW8) placed the deceased in the car. PW-2 heard the deceased saying that the Appellant had stabbed him with a knife and A-2 had beaten him with a *danda*.

29. In his cross-examination PW-2 admitted that he had a dispute with A-2 regarding land. The plot had been sold in 1997 and A-2 was demanding his share in it. Apart from this suggestion there is nothing to discredit the evidence of PW-2 as regards his hearing the dying declaration of the deceased, along with that of PW-7 who also claimed to have heard the deceased utter the same thing about A-1 and A-2 having attacked him.

30. Devender Kumar (PW-3) brother of Sushil Kumar (PW-7) and son of Banne Singh (PW-11) corroborated the version of PW-2 in the material particulars. He too stated that while he, PW-7 and PW-2 were taking the deceased in the car to the hospital, the deceased told them that he had been attacked by the Appellant with a knife and by A-2 with a *danda*. PW-7 more or less corroborated what PW-3 said. Their cross-examination did not yield much for the accused.

31. Chand Roop (PW-9) too said he heard the sound of PW-5 knocking at the door of PW-11 and saying that the deceased was lying at the *choupal* near her house in an injured condition. When PW-9 went to the deceased and asked him what had happened, he answered that A-2 had given him *danda* blow and the Appellant a knife blow. PW-9 specifically stated that he and his brother Banne Singh (PW-11) were present at that time. There is

nothing in the cross-examination of this witness to discredit him.

32. Then we have the evidence of Banne Singh (PW-11), who maintained the same version as PWs 2,3, 7 and 9 about PWs 5 and 4 coming to his house and telling him that the deceased was lying in an injured condition near the house of PW-5. PW-11 too was present when deceased was being taken in a car to the hospital. He too stated that when the deceased was asked what happened, he told them that he was attacked by the Appellant with the knife and A-2 with a *danda*.

33. Mr. Kaushal contended that if indeed the deceased had disclosed to PW-11 who the assailants were, then it was unnatural of PW-11 to have travelled in the car of PW-12 to the hospital when both accused were also present in that car. The Court does not agree with this submission. PW-11 was obviously anxious about the deceased and wanted to reach the hospital at the earliest. He could not go in the car driven by Ram Singh, in which the deceased was taken to the hospital, since there was not enough space for everyone. PW-12 was related to PW-11 and it is not as if they were hostile to each other. In the circumstances, PW-11 going along with PW-12 in the latter's car, which may have also had the two accused, cannot be termed as unnatural.

34. Mr. Kaushal then submitted that the alleged dying declarations were not put to the Appellant in his statement under Section 313 Cr PC. As far as this submission is concerned, the Court finds that question No. 5 in the statement under Section 313 Cr PC put to the Appellant was a general question that

“on 3/7/98 when deceased Jai Singh was being taken to hospital, he was saying that you had injured him with dagger and your co-accused had injured him with *danda*. What have you to say?” Again question 6 was about the dying declaration made to PW-7 and question 7 was about the dying declaration made to PW-9. Therefore the evidence in the form of the dying declaration made to at least two PWs in particular and that it was made even otherwise generally was indeed put to the Appellant, which he denied as not being aware of since he was not there. This contention is accordingly rejected.

35. It was then contended that the dying declarations made by the deceased to PWs 2,3,7, 9 and 11 were untrustworthy as each of them has put forth a different version. It is submitted that PW 7 stated that the deceased told him that he had been given knife blows “by Rajbir and Vijay” whereas PW9 stated “Vijay gave him *danda* blow and Rajbir knife blow”. On the other hand PW 8 stated: “I did not listen Jai Singh saying anything to anyone or anyone saying to Jai Singh.” He further deposed that “I cannot say when I reached Jai Singh was already dead. It is correct that he was not speaking at that time”.

36. It is further submitted that the absence of medical certificate, different versions by different witnesses, time since death in the autopsy report, non-availability of the blood soaked clothes of the witnesses and non-examination of the car used for travelling are circumstances which shake the credibility of the so called dying declarations. Reliance is placed on the decision in ***Roop Ram v. State of Madhya Pradesh (2011) 14 SCC 577***.

37. The Court is unable to agree with the above submissions. In the first place, there is hardly any inconsistency worth mentioning between the versions of PWs 2, 3, 7 and 9 on the core aspect of the dying declaration i.e. identifying the two assailants and attributing the respective weapons. The question is whether the aforementioned PWs have spoken consistently about the deceased making the dying declarations. The answer has to be in the affirmative.

38. In *Paras Yadav v. State of Bihar (1999) 2 SCC 126*, the Supreme Court was dealing with a case where the dying declaration had been made orally before eye witnesses as well as the police sub-inspector who did not bother to record it in writing or get it recorded by a doctor. The Supreme Court held that the dying declaration could be relied upon. It observed:

“It is true that there is negligence on the part of Investigating Officer. On occasions, such negligence or omission may give rise to reasonable doubt which would obviously go in favour of the accused. But in the present case, the evidence of prosecution witnesses clearly establishes beyond reasonable doubt that the deceased was conscious and he was removed to the hospital by bus. All the witnesses deposed that the deceased was in a fit state of health to make the statements on the date of incident. He expired only after more than 24 hours. No justifiable reason is pointed out to disbelieve the evidence of number of witnesses who rushed to the scene of offence at Ghogha Chowk. Their evidence does not suffer from any infirmity which would render the dying declarations as doubtful or unworthy of the evidence. In such a situation, the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence.”

39. Again in *Pothakumari Srinivasulu v. State of A.P. (2002) 6 SCC 399*, the Supreme Court explained that when

“three eye-witnesses have positively stated that the deceased was speaking when they had met her soon after the incident...We cannot in the face of this positive evidence just assume that the injured must have become unconscious and speechless because of the injuries and discard on such assumption the dying declaration deposed to by independent witnesses corroborated by the promptly lodged FIR.”

40. The fact that the deceased was able to walk downstairs and up to the *chaupal* near the house of PW-12 shows that he was still alive even after receiving five stab injuries. Further, PWs 2, 3, 7, 9 and 11 have spoken about the deceased telling them who had stabbed him. That evidence cannot be simply brushed aside. Notwithstanding the fact that PWs 4, 5, 6, 8, 12 and the child witness Manpreet (PW-22) may have turned hostile, this will not help to discredit the evidence of the other PWs who heard the dying declaration of the deceased. The dying declaration in the present case is indeed an important piece of evidence that can be relied upon by the prosecution to bring home the guilt of the Appellant.

Inconsistencies of PWs not material

41. Mr. Kaushal then pointed to the inconsistencies in the version of the PWs who have not turned hostile, which according to him rendered them unreliable. In particular he submitted that the time that PW-5 reached the house of PW-11 is spoken to differently by PW-9, PW-11 and PW-3. PW-7 has not given any time. Further, according to him, the presence of PW-4 with PW-5 at that time is spoken to inconsistently by the aforementioned

PWs. On leaving for the spot, according to PW-2, PW-3, PW-7, PW-8, PW-9 and PW-11 had left earlier whereas according to PW-3, the other two witnesses i.e. PW-2 and PW-7 left home together. Similarly, the place where the deceased was alleged to be lying has also been differently stated by the witnesses. PW-7 has made a contradictory statement in comparison to all the other witnesses. Further, the manner in which the vehicle was brought to the spot where the deceased was alleged to be lying has also been differently stated. PW-2 has stated that he reached the spot with vehicle after he received the information at home. However, PW-3 has said that PW-2 went home and brought the vehicle. PW-2 has also added in his statement that the deceased was '*behoshi ki halat mein tha karha raha tha.*' PW-4, PW-5 and PW-8 stated that there were no deliberations. However, the other PWs were silent about it. Mr. Kaushal placed reliance on the decision in ***Rohtash v. State of Haryana (2012) 6 SCC 589.***

42. The above so-called inconsistencies and contradictions are not material enough to discard the testimonies of PWs 2, 3, 7 and 9. The decision in ***Rohtash v. State of Haryana (supra)*** turned on its own facts and does not help the Appellant. There it was noted that “there were major improvements/embellishments” whereas here there are none. In ***State of U.P. v. M.K. Anthony AIR 1985 SC 48***, the Supreme Court explained:

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the

general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer.”

43. This Court concurs with the view expressed by the trial Court that while the PWs that have supported the prosecution were related to the deceased, they were not for that reason ‘interested’ witnesses. In *State of Rajasthan v. Kalki AIR 1981 SC 1390* while disagreeing with the High Court that the testimony of the wife of the deceased had to be discarded since she was ‘highly interested witness’, the Supreme Court explained:

“True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'.”

44. In the present case, the defence has not been able to prove any previous enmity *qua* the Appellant and the PWs that have supported the prosecution. Why they would falsely implicate the Appellant is not understood.

45. The trial Court also has rightly observed that the failure of the IO to remove bloodstains from the car in which the injured was taken to the hospital; the failure to lift chance prints at the spot, the staircase or the dagger; the failure to seize the bloodstained clothes of those who accompanied the deceased to the hospital; the manner of showing the arrests of the accused and so on does not raise any doubts regarding the reliability and truthfulness of PWs 2, 3, 7, 9 and 11. The same could be said of the other alleged lapses on the part of the prosecution including its failure to explain the presence of a third blood group AB which was found by the forensic expert. The cut injury on the Appellant's thigh was indeed not a serious one and in fact supported the version of PW-1 of there being a quarrel between the Appellant and the co-accused on the one hand and the deceased on the other soon before the killing.

46. Mr. Kaushal sought to rely on the evidence of PWs 4, 5 and 8 to urge that their versions should be accepted. These witnesses have, in fact, turned hostile. They have resiled from their earlier versions given to the police. The Court therefore does not consider them to be reliable witnesses at all.

Delay in registering FIR explained

47. Mr. Kaushal submitted that the delay in registering the FIR was unexplained. The Court finds that in the instant case none of the parties gave

any information to the police soon after the crime was committed. The police got the information only from the hospital and not from any of the relatives about the incident. It is only after reaching the hospital and collecting the MLC that the IO could proceed with the investigation. He did not find anyone at the hospital to speak to. Only after leaving the hospital, reaching the house where the incident occurred and recording the statement of PW-12, the *rukka* was drawn up. It, therefore, took some time. The registration of the FIR three and half hours after the information was received by the police has, therefore, been satisfactorily explained and cannot be said to have prejudiced the accused.

48. The trial Court was right in invoking Section 106 of the IEA since the Appellant admittedly was present with the deceased last on the roof of the house where the crime took place. There must have been a scuffle following the quarrel resulting in the Appellant receiving a knife blow in his thigh which, however, is not very serious as it transpired subsequently. As rightly pointed out by the trial Court, it is not that each and every injury has to be explained by the prosecution.

Conclusion

49. To summarise the conclusions, the evidence of PWs 2,3, 7,9 and 11 are cogent and consistent and can be held to be trustworthy. Their evidence does have 'a ring of truth'. The dying declaration of the deceased further provides a valuable link in the chain of circumstances. The fatal injuries on the body of the deceased were on account of the dagger blows given by the Appellant. The medical evidence conclusively proves that the death was homicidal.

With each link in the chain of circumstances having been satisfactorily proved, the only conclusion that can be drawn is that it is the Appellant who murdered the deceased.

50. No grounds exist for interfering with the impugned judgment of the trial Court.

51. The personal bond and the surety bond furnished by the Appellant are cancelled. He shall surrender forthwith and in any event not later than 28th May 2018. In other words, if the Appellant fails to surrender on or before 28th May 2018, the SHO concerned will take immediate steps to have him arrested and sent to prison to serve out the remaining period of the sentence.

52. The appeal is accordingly dismissed. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 16, 2018

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