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

+ **CRL.A. 35/2003**

STATE

..... Appellant

Through: Mr. Kewal Singh Ahuja, APP.

versus

HARBHAJAN SINGH & ORS.

..... Respondents

Through: None.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT
01.08.2018

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Dr. S. Muralidhar, J.:

1. This appeal has been preferred by the State against the judgment dated 19th February 2000 passed by the learned Additional Sessions Judge, Delhi in SC No.82/1996 arising out of FIR No.313/1996 registered at PS Sultanpuri whereby the four co-accused were acquitted of the offence under Section 302/34 IPC. A-3 and A-4 had been impleaded as Respondent Nos.3 and 4 in the present appeal. However, the Court has been informed that they have since expired and thus, the present appeal concerns only the acquittals of Harbhajan Singh (A-1) and Gurbachan Singh (A-2), father and son respectively.

2. The charge against the four co-accused persons was that they, in furtherance of their common intention, committed the murder of Gurpal Singh (the deceased) on 22nd March 1996 at around 6 pm by throwing him

from the roof of his house to the roof of the adjacent house belonging to one Badal (not examined). A-1 was a neighbour of the deceased. A-2 is his son, A-3 was his brother-in-law, and A-4 was his brother.

3. According to the prosecution, the deceased was sitting on the roof of his house after returning home from work on 22nd March 2000. The wife of the deceased, Suraj Kaur (PW-2), was cooking food in the kitchen while his daughter, Gurmeet Kaur (PW-5), was serving food to her father. Malik Singh (not examined), the son of the deceased, was also sitting in the kitchen. In the meanwhile, A-1 accompanied by A-2, A-3, and A-4 came onto the roof of their house and started abusing the deceased. A-1 said that they will teach the deceased a lesson as the deceased had kept their tenant as his tenant. A-2 and A-4 are stated to have exhorted that the deceased should be killed. Thereafter, all four accused started beating the deceased with their fists and also kicked him. A-2 is stated to have exhorted that the deceased be thrown from the roof. Thereafter, A-1 and A-4 caught hold of the legs of the deceased whereas A-2 and A-3 caught hold of one hand each and threw him on the roof of the neighbouring house belonging to one Badal. It is stated that A-1 also gave *danda* blows to the deceased. The deceased then fell unconscious.

4. According to the prosecution, both PWs- 2 and 5 raised an alarm and all the accused ran away. PW-5 is stated to have telephoned the police and then the deceased was removed to the DDU Hospital by the police. He was admitted there at 7:55 pm. He succumbed to his injuries thereafter at around 8:45 pm.

5. According to the prosecution, even prior to the aforementioned incident, A-1 had previously quarrelled with the deceased regarding the deceased having kept the tenant of A-1 as his own tenant.

6. The entire case of the prosecution rests on the eye witness testimonies of the wife (PW-2) and daughter (PW-5) of the deceased. It must also be mentioned here that there were three defence witnesses examined. Jai Singh (DW-1) purported to know A-3 as they were from the same village. Rajinder Singh (DW-2) stated that A-4 was his tenant. As far as Balbir Singh (DW-3) is concerned, he stated that he was in the neighbourhood and had noticed the deceased pelting bricks from the roof of his house and that he had lost balance and fell on the roof of the adjoining house. He also spoke about the deceased being under the influence of alcohol.

7. In their statements under Section 313 Cr PC, both A-1 and A-2 maintained that the entire case was a fabricated one. The specific case of A-1 and A-2 was that the complainant, i.e. PW-2, had been nursing a feeling of revenge against them and their family since 1995 when the deceased had been arrested pursuant to A-1 getting FIR No.1078/1995 registered at PS Sultanpuri. The case of A-1 was that the deceased had an accident by falling from the terrace and in order to settle scores with A-1 and A-2, a false case was made out against them. It was pointed out that the two eye witnesses were closely related to the deceased. Both the Respondents denied making any disclosure statement and also denied that any recoveries were made from them.

8. In the impugned judgment dated 19th February 2000, the trial Court has extensively discussed the eye witness testimonies of PWs- 2 and 5 and rested its discussion by noting the legal position that an eye witness testimony does not become doubtful only because the witness is closely related to the deceased. The legal requirement is that the trial Court should be cautious in accepting such testimony without other corroborating circumstances.

9. As noted by the trial Court in the present case, the death was opined to be homicidal with the deceased having suffered blunt force injuries. However, barring the eye witness testimonies of PWs- 2 and 5, there was no other circumstance to actually connect the accused with the crime except that some bloodstained clothes of the deceased were stated to have been recovered at the instance of A-1, which in any event, when sent to the FSL, did not confirm that those bloodstained clothes matched with the blood group of the deceased.

10. Certain important facts before the trial Court were that the MLC from DDU Hospital mentions that the deceased was brought by HC Manohar Lal (PW-12) at around 7:55 pm, almost two hours after he had been allegedly thrown from the terrace of his house. As noted by the trial Court, it is indeed strange that PW-2 did not accompany the deceased to the hospital. In fact, in her cross-examination, she did not even dispute this fact. Had she accompanied PW-12, she would certainly have disclosed the names of the assailants even at the stage of recording of the MLC.

11. Both PWs- 2 and 5 admitted that the deceased kept lying on the roof for

more than half an hour after he was thrown there and he was there in an unconscious state till the time the PCR van arrived and removed him to the hospital. PW-5 was herself an adult. At the time of her examination in the year 1998, she was about 30 years old which meant that at the time of the incident, she was about 28 years old. Even the son of the deceased, i.e. Malik Singh, was about 15 years at the time of the incident. It is indeed strange that if there were three adults in the house, apart from the deceased, none of them made the efforts of calling any relative and seeking even the help of the neighbours to remove the deceased to a hospital, particularly considering that he was still alive at that point in time. There is absolutely no satisfactory explanation offered by the prosecution for this strange behaviour of close relatives.

12. Although the learned APP urged before this Court that the eye witnesses should not be judged for their inability to offer assistance to the deceased since it is possible that they were scared, the case of the prosecution is that the accused persons ran away when PWs- 2 and 5 raised an alarm. With none of the accused being around, it is hard to believe that the two adults and the teenager in the house were still too scared to even lift the deceased to the hospital. Also, importantly, the police did not find any witness present at the hospital when they reached there. For the first time, PW-2 emerged to make a statement to the police only after 11 pm.

13. In other words, as correctly noted by the trial Court, these circumstances make it doubtful that either PWs- 2 or 5 were actually present at the time of the incident. With the help of the learned APP, the Court has gone through

the testimonies of both these witnesses and it can only be said that they do not inspire this Court's confidence. The Court is not assured from the circumstances and the evidence emerging on record that either of these witnesses is speaking the entire truth and can, therefore, be relied upon. Why Malik Singh himself was not examined is not clear. Further, the considerable period of time between when the deceased was brought to the hospital at around 8 pm and when these witnesses have spoken to the police at 11:45 pm has not been satisfactorily explained. Furthermore, no photographs of the scene of the crime are available which would enable the Court to appreciate whether it was indeed possible for four people to jump across from one terrace to another and thereafter throw the body of an adult man onto an adjacent terrace. This would have required a three-dimensional scaled site plan, even if there were no photographs. However, even the scaled site plan does not help in determining whether this was physically possible.

14. As has already been noticed, the recovery of bloodstained clothes of the deceased at the instance of A-1 did not yield anything incriminating qua him as when those clothes were sent to the FSL for examination, the results did not conclusively support the case of the prosecution.

15. The Court is not persuaded that any legal error has been committed by the trial Court in disbelieving the two eye witnesses and thereby granting the accused the benefit of doubt.

16. For all of the aforementioned reasons, no grounds have been made out for interference with the impugned judgment of the trial Court. The appeal is

accordingly dismissed, but in the circumstances, with no orders as to costs. The bail and surety bonds furnished by Respondent Nos. 1 and 2 stand discharged.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 01, 2018
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