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

+ **CRL.A.963/2002**

PARVESH & ORS. Appellants

Through: Mr. M.L.Yadav, Advocate.

versus

STATE Respondent

Through: Mr.Kewal Singh Ahuja, APP with
Insp.Rohitash Kumar, D-1/387.

**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 21st November 2002 passed by the learned Additional Sessions Judge, Karkardooma Courts, Shahdara, Delhi in Sessions Case No.79/2002 arising out of FIR No.10/1998 registered at PS Shahdara convicting the Appellants for the offence punishable under Section 302 read with Section 34 Indian Penal Code ('IPC'). The appeal is also directed against the order on sentence dated 22nd November 2002 whereby each of the Appellants were sentenced to life imprisonment with fine of Rs.5,000/- each and in default of payment of fine, to undergo rigorous imprisonment for two years.

2. The criminal justice system was set in motion by information being

received at PS Shahdara noted as DD No.7A that the dead body of a young person with several stab injuries is lying in a open plot of land behind Loni Road in Shahdara. The said DD No.7A was dated 5th January 1998 and was marked to SI Rohtash Kumar (PW-13). Accompanied by Constable Ram Phal (PW-14) and Constable Preet Singh (PW-11), PW-13 went to the spot and found a dead body of a young boy aged about 20-22 years wearing a sky blue shirt, white banyan, black pant, cream coloured underwear and sports shoes. There were a number of stab wounds on the neck, chest and abdomen of the dead body and it was lying in a pool of blood and the clothes of the deceased were also cut at several places.

3. A search of the dead body revealed two white coloured slips, in the back pocket of his pant, having certain lines written. There was a newspaper cutting and there was a one DTC ticket of Rs.2/-.

4. Attempts of getting the dead body identified by anyone from the public proved unsuccessful. In the meanwhile, the *rukka* was drawn up and sent to the PS for registration of the FIR. A crime team was also called there. The site plan (Ex.PW-13/C) was prepared. From the spot, a jacket of brown colour lying in the water was taken into possession. The shoes, *kara* and ring of the deceased were also seized. Blood lying there with the dead body was picked up. The Additional SHO who had noted the telephone numbers on the slips recovered from the dead body managed to contact one Jai Prakash who identified the dead body to be that of Mukesh (the deceased).

5. PW-13 then went in search of the relatives of the deceased. He met Suresh Chand (PW-14), son of Kallu Singh, and took him to the mortuary

and he identified the deceased as his younger brother. The statement of Suresh was recorded. Thereafter, PW-13 got the dead body identified by Genda Lal (PW-6) another brother of the deceased.

6. The post mortem examination of the deceased was conducted by Dr. A.K. Tyagi (PW-3). There were as many as twenty-six external injuries, of which twenty-four were incised stab wounds. This included one on the right side of the chest which was cavity deep and incised wounds all over the front of the abdomen. The opinion given by PW-3 was that death was due to shock as a result of haemorrhage caused by the multiple injuries. The injuries were held individually and collectively to be sufficient to cause death in the ordinary course of nature. Later, when the weapon of offence was shown to PW-3, he confirmed that the injuries could have been caused with that weapon.

7. According to PW-13, on 7th January 1998, along with SI Ajay Kumar (PW-7) and Constable Ram Phal (PW-14), he proceeded in search of the accused persons as the names had appeared in the statements of the brothers of the deceased, i.e. Genda Lal (PW-6), Suresh (PW-4) and Mahesh (PW-5), as the persons last seen in the company of the deceased. The police went to Gali No.7 where there was a factory. Pravesh (A-1) was found on the first floor. His interrogation led to a disclosure and thereafter they found Jitender (A-2) in the corner of Gali No.15, Ashok Nagar. A purse containing some visiting cards, slips and documents was seized from him and sealed. The clothes of A-2 were also likewise sealed.

8. It is stated that on 16th January 1998, Devender (A-3) surrendered to the

Court of Additional Chief Metropolitan Magistrate ('ACMM'). The knife used in the commission of the offence was got recovered at the instance of A-3 from his factory. This was sealed as well.

9. On 24th February 1998, the exhibits, i.e. the knife as well as the clothes of the deceased and the accused were sent to the Forensic Science Laboratory ('FSL'). The FSL report confirmed the presence of human blood with the blood group of 'AB' on the knife, the clothes of Jitender (A-2), the clothes of Pravesh (A-1) as well as the clothes of the deceased.

10. At the end of the investigation, the charge sheet was filed and by an order dated 17th June 1998, charges were framed against all the three Appellants under Section 302 read with Section 34 IPC. Fifteen witnesses were examined for the prosecution. In their respective statements under Section 313 Cr PC, each of the Appellants denied the incriminating circumstances and claimed to have been falsely implicated. However, no defence evidence was led.

11. In the impugned judgment dated 21st November 2002, the learned trial Court came to the following conclusions:-

- (i) The last seen evidence put forth by the PWs- 4, 5 and 6 proved that the Appellants were seen with the deceased shortly prior to his death. The depositions of PWs- 4 and 5, while somewhat differing from each other, were not contradictory. No explanation is offered by the Appellants as to where they were if not at the spot and no evidence had been led in this regard. The last seen evidence, therefore, could

not be shaken.

- (ii) The death was homicidal. The multiple stab and incised wounds were caused, according to the medical evidence, by the weapon recovered at the instance of the accused.
- (iii) The injuries of A-3 could not be explained by his working in the factory. He has not offered any other satisfactory explanation as to where he had got those injuries.
- (iv) The non-association of public witnesses to the recoveries was not fatal to the case of the prosecution. There was no justification for discarding the evidence of the police witnesses to the recoveries, particularly since the FSL report has confirmed that the blood stains on the knife matched the blood group of the deceased.
- (v) The doctor's testimony that the wounds on the dead body could have been caused by the weapon recovered provides an important link in the chain of circumstances.
- (vi) Although the disclosure statements did not disclose the accused persons' claim that they could get their clothes recovered, there are seizure memos for the recovery of the clothes which are shown to be blood stained. This is another piece of corroborative evidence.
- (vii) The FSL report was an important piece of corroborative evidence.
- (viii) Lastly, the motive for the commission of the crime was explained by PWs 4 and 5, the brothers of the deceased. It was suggested that the deceased and A-3 were inimical due to the mutual interest of each of the in the same girl. Although this was been supported by PW-9, the father of the girl with whom A-3 is said to have had a relationship, the evidence of PWs 4 and 5 was sufficient to establish the motive for

commission of the crime.

12. For the aforementioned reasons, the trial Court found the Appellants guilty of the offence punishable under Section 302 read with Section 34 IPC and by the order dated 22nd November 2002, proceeded to sentence them in the manner indicated.

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

14. This being a case of circumstantial evidence, the trial Court has elaborately discussed the circumstances that constitute a complete chain and point unerringly to the guilt of the Appellants. The learned counsel for the Appellants took the Court through the evidence of PWs- 4 and 5 which are cogent and consistent about their having seen the deceased last in the company of the three Appellants. This part of their testimony has not been able to be shaken in the cross-examination. There may have been marginal discrepancies or inconsistencies but not material enough to doubt the credibility of these two witnesses.

15. The next circumstance was the recoveries of the weapon of offence and the clothes of the deceased at the instance of the accused. These were proved by the prosecution. The criticism that no public witnesses were associated with the recoveries has been rightly rejected by the trial Court. The recoveries do not appear to be planted in the present case as alleged by the Appellants.

16. The medical evidence established that the death was homicidal. The doctor conducting the post mortem opined that the injuries on the body of the deceased could be caused by the recovered weapon. The FSL report confirmed that the blood stains on the knife were of human origin and were of the 'AB' group which was the blood group of the deceased. Likewise, the set of clothes recovered from A-1 and A-2 revealed the presence of the same blood of human origin and of 'AB' group. This clinched the prosecution case as far as A-1 and A-2 were concerned. Even in respect of A-3, there is sufficient evidence to link his involvement in the commission of the offence, particularly since the recovery of the weapon of offence was made at his instance.

17. With each link in the chain of circumstance having been proved beyond reasonable doubt and with the complete chain of circumstance so proved pointing unerringly to the guilt of the three Appellants and no one else, the Court is unable to find any legal infirmity in the impugned judgment of the trial Court or the order on sentence.

18. The appeal is accordingly dismissed. The bail bonds and surety bonds furnished by the Appellants stand cancelled.

19. The Appellants shall surrender forthwith and in any event not later than 31st May 2018. If they fail to surrender by 31st May 2018, the SHO concerned will take immediate steps to arrest them and send them to jail for serving out the remainder of the sentence.

20. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

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