

\$~1

\*

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

+

**CRL.A. 58/2003**

**DHARMENDER**

..... Appellant

Through: Mr. Sulaiman Mohd. Khan,  
Advocate (Amicus Curiae)

versus

**THE STATE (GOVT. OF NCT OF DELHI)**

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP.

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

**JUDGMENT**

**31.07.2018**

**Dr. S. Muralidhar, J.:**

1. This is an appeal directed against the judgment dated 16<sup>th</sup> January 2003 passed by the Court of the learned Additional Sessions Judge, Karkardooma Courts, Delhi in SC No.101/2002 arising out of FIR No.74/2000 registered at PS Mandawali convicting the Appellant for the offence under Sections 302 and 394 IPC both read with Section 34 IPC. Also challenged is the order on sentence dated 17<sup>th</sup> January 2003 whereby, for the offence under Section 302/34 IPC, the Appellant was sentenced to undergo life imprisonment along with a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three years and for the offence under Section 394/34 IPC, to undergo rigorous imprisonment for 10

years along with a fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for two years.

2. At the outset, it requires to be noticed that there were three accused who were sent up for trial, viz., Dharmender (A-1), Ajay (A-2), and Naveen (A-3). By the impugned judgment, A-2 has been acquitted of the offences he was charged with. A-1 and A-3 were both convicted in the manner as stated above. It appears that A-3 had filed CrI.A.214/2003 but died during the pendency of the appeal and hence it stood abated.

3. The charge framed against the three accused was that between 12.20 and 4 am on 4<sup>th</sup> March 2000, near DDA Tikona Park, behind Batla Apartments, Mandawali they along with one Rajesh (not arrested), in furtherance of their common intention, committed the offence of robbery while using deadly weapons punishable under Section 394 IPC by robbing Balwant Singh (deceased) of his purse as well as his motorcycle. They were also charged with committing murder of Balwant Singh punishable under Section 302 IPC by inflicting knife blows on his person.

4. The entire case was based on circumstantial evidence. PW-2 was the father of the deceased who stated that he had spoken to his son at 8.30 pm on 3<sup>rd</sup> March 2000 on the telephone. The deceased informed PW-2 that he would be coming home late but asked that his meal be prepared. Thereafter, PW-2 again spoke to the deceased at 12.20 am at which time the deceased informed him that he would be reaching home in 5-10 minutes. Thereafter,

PW-2 went to bed and when he awoke at 8 am the next morning he found that his son had still not returned. He called Sonali Chowdhary (PW-5) who was his son's employer and enquired about his son. She told PW-2 that she had spoken with his son at around 11.45 pm the previous night and had asked him to go home after taking the keys with himself.

5. According to PW-2, between 9.30 and 10 am, two police officials of PS Mandawali came to his house and showed him a photo of his son which was stated to be recovered from the pocket of a person found dead at Tikona Park in Mandawali. PW-2 then accompanied the police officials to Tikona Park and identified the dead body of his son (deceased). The statement of PW-2 was then recorded by the police.

6. It appears that on 7<sup>th</sup> March 2000, Sub-Inspector (SI) Sanjay Gupta (PW-6) received information that A-1, who resided near Tikona Park, had gone missing. It is then stated that they reached the National Victor Public School and A-1 was seen coming from the side of Hassanpur Road. He was supposedly known to Constable Rajesh (PW-11) who identified him. A-1 was then overpowered and apprehended.

7. The entire case of the prosecution is built on the disclosure of A-1 who purportedly confessed to the commission of the crime and led the police officials to the arrest of the other co-accused, viz., A-2 and A-3, who in turn made disclosures which led the police to recover the weapons used in the commission of the offence, i.e. knife and *chhura* (dagger).

8. As far as A-1 was concerned, he made a disclosure about the motorcycle of the deceased having been taken by him and Rajesh and having been parked at DDA flats. The motorcycle was recovered from the said place but found in an unlocked condition. The recovery was witnessed by PW-2.

9. The trial Court has, in the impugned judgment, rightly concluded that the portion of the disclosure statement of A-1 as regards his giving the knife with which the deceased was stabbed to A-3 was inadmissible as it was hit by Section 27 IEA. Nevertheless, the trial Court proceeded to convict both the present appellant and A-3 for the offences under Sections 302 and 394 IPC both read with Section 34 IPC while at the same time giving the benefit of doubt to A-2.

10. Although the death of the deceased was homicidal, there is absolutely no evidence to show that that the present Appellant was in any manner involved in the stabbing of the deceased or sharing any common intention for him to be killed.

11. What emerges from the reading of the evidence of the prosecution is only that the Appellant offered to get the motorcycle recovered. Since recovery was witnessed by PW-2 whose evidence in that regard remains unshaken, the Court is of the view that, at the highest, the Appellant would be convicted for the offence under Section 392 IPC and not under Section 394/34 IPC.

12. Consequently, the impugned judgment of the trial Court convicting the Appellant for the offence under Section 302/34 IPC and the sentence corresponding to the said offence is hereby set aside. The Appellant is also acquitted of the offence under Section 394/34 IPC and is instead convicted for the offence under Section 392/34 IPC. The sentence awarded for the conviction under Section 394/34 IPC is set aside. As for the conviction under Section 392/34 IPC, the Appellant is sentenced to the period of imprisonment already undergone.

13. The appeal is disposed of accordingly. The bail and surety bonds furnished by the Appellant stand discharged. He shall fulfill the requirements under Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record be returned forthwith together with certified copies of this judgment.

**S. MURALIDHAR, J.**

**VINOD GOEL, J.**

**JULY 31, 2018**