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

+ **CRL.A. 644/2003**

SATBIR SINGH

..... Appellant

Through: None.

Versus

STATE

..... Respondent

Through: Mr. K.S. Ahuja, APP for State

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

ORDER
13.09.2018

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Dr. S. Muralidhar, J.:

1. Although none is present for the Appellant, the Court has, with the help of the learned APP, examined the entire evidence of the present case and since the Appellant is being granted the benefit of doubt, the Court proceeds to pronounce its judgment in the absence of the Appellant.

2. The charge against the Appellant is that he along with his wife Laxmi (A-2) and his sister Neera (A-3) committed the murder of their step father Ghanshyam (the deceased) at 10:30 pm on 18th May 2001 in Jhuggi No.439, CD Park, Jahangirpuri, Delhi, thereby committing an offence punishable under Section 302/34 IPC.

3. By the impugned judgment dated 28th July 2003, while acquitting A-2 and A-3, the trial Court in SC No.69/2001 arising out of FIR No.343/2001 registered at PS Jahangirpuri convicted the present Appellant for the offence punishable under Section 302 IPC. The Appellant was acquitted for the

offence punishable under Section 201 IPC due to lack of evidence. On 30th July 2003, the trial Court sentenced the Appellant to imprisonment for life and a fine of Rs.2,000/- and in default of payment of fine, to further rigorous imprisonment for six months for the offence under Section 302 IPC.

4. It must be mentioned at the outset that by an order dated 8th April 2005, this Court, while suspending the sentence of the present Appellant, noticed that by that date, he had already undergone approximately four years of incarceration.

5. The Appellant is the son of late Ayodhya Prasad and Saroj (PW-2). Five children were born to the late Ayodhya Prasad and PW-2, viz. Neera (A3), Lajjawati, Parvez, Gopal, and the present Appellant Satbir (A-1). The Appellant along with A-2 used to reside in Jhuggi No.474, CD Park, Jahangirpuri, Delhi.

6. After the death of the late Ayodhya Prasad, PW-2 married Ghanshyam and out of that wedlock, Vipin Kumar (PW-1) was born. PWs 1 and 2 along with the deceased Ghanshyam used to reside in Jhuggi No.439, CD Park, Jahangirpuri, Delhi. It appears that on the date of incident, some quarrel ensued between the deceased and PW-2. According to the prosecution, Neera (A-3) and Laxmi (A-2), i.e. the wife of A-1, came to the aid of PW-2. This supposedly upset the deceased and he scolded them as well. PW-2 left the house and went to reside with her other son Gopal (not examined).

7. In the evening, when A-1 returned to his house, both A-2 and A-3 narrated the above incident to him which purportedly caused him to become

angry and lose his cool. He then purportedly decided to eliminate the deceased. According to the prosecution, A-2 and A-3 were in agreement with his plan and all three went to Jhuggi No.439, where the deceased resided with PW-1.

8. The entire case was projected as a case of direct evidence with the star witness being PW-1. According to the prosecution, after the three accused entered the *jhuggi*, the door was bolted from inside and in the presence of PW-1, A-2 caught hold of the hands of the deceased while A-3 caught hold of his legs and A-1 took his neck under his armpit and gave dagger blows on his chest, waist, back, and other parts of the body. The further case of the prosecution is that PW-1 then raised an alarm for help which then brought Karan Singh (PW-3) and others to Jhuggi No.439. When they knocked on the door, A-1 purportedly opened it and upon entering the *jhuggi*, they found the deceased's lifeless body.

9. While it was confirmed in the post mortem report that the death was homicidal, the police proceeded on the basis that the three accused had committed the murder in the manner described above. The clothes of A-2 and A-3 were seized.

10. Charges were framed against the three accused by the trial Court by the order dated 6th September 2001. A separate charge was framed against A-1 under Section 201 IPC namely that he had washed blood from his clothes to eliminate traces of blood of the deceased. Incidentally, in the impugned judgment, the trial Court has acquitted A-1 of this offence punishable under Section 201 IPC.

11. At the trial, the two key witnesses of the prosecution turned hostile. PW-1 failed to support the prosecution by stating, “I do not know about any quarrel with the accused persons of my father. I have nothing to say against the accused persons”. When he was thereafter declared hostile and cross-examined by the APP, he completely resiled from his previous statement to the police (Ex.PW1/A) on the basis of which the *rukka* had been drawn and the FIR registered. The only aspect where he agreed with the prosecution was about his taking his father in the PCR van to Babu Jagjivan Ram Hospital where he was declared brought dead. He did not support the recovery of the knife at the instance of A-1 by stating, “Police had obtained my signatures on blank papers”. PW-2 also failed to support the prosecution by stating that “there were no quarrel with me and my husband and other sons and daughters”. She agreed that at the time of incident she was with her elder son Gopal.

12. PW-3 stated that on hearing the alarm raised by PW-1, he went into the *jhuggi* of the deceased and found it bolted from inside. He then stated, “I knocked the door of the *jhuggi*. Rambir and others were also present with me. The door was pushed by us by which some body opened the bolt and open the door. Inside we found the accused persons. Ghanshyam was lying dead and I and Rambir went for making telephone call to police at ‘100’”.

13. The trial court has, in the impugned judgment, after noticing that both PWs 1 and 2 have not supported the prosecution, relied heavily on the deposition of Karan Singh (PW-3). However, this witness reached outside the *jhuggi* only upon hearing the alarm raised by PW-1 and was not an eye-witness to what happened inside the *jhuggi*.

14. Ram Vir Singh (PW-8) only talks of Karan Singh and others coming to his *jhuggi* to tell him about what had happened with the deceased and therefore, he too was not an eye witness to the occurrence. Likewise, Ruquia Begum (PW-7) was aware of the murder of the deceased but stated “she had not seen the accused persons running from there”.

15. The trial Court converted what was essentially a case of direct evidence into a case of circumstantial evidence by relying on just two circumstances, viz., that a dagger was seized at the instance of A-1 which, in the opinion of the doctor who conducted post mortem examination, was a possible weapon of the offence given the injuries on the dead body.

16. The only independent witness to the recovery of the dagger was Vipin Kumar (PW-1) who turned completely hostile. Therefore, this recovery was in fact not proved by the prosecution in accordance with law. According to the trial Court, this one circumstance of recovery of the knife at the instance of A-1 made the chain of circumstances complete and it was therefore, A-1 who gave the deceased the fatal blows with the dagger.

17. This Court, however, is unable to find the accused guilty on the basis of this single circumstance. Strangely, on the same evidence, the trial Court found that although A-2 and A-3 were also present inside the *jhuggi* when PW-3 knocked the door, their mere presence would not be sufficient to hold them guilty of murder and that “no complete chain of evidence has been established against these two ladies to conclude that they were privy to accused Satbir in commission of the crime of murder”.

18. The trial Court has, on the same evidence, come to the opposite conclusion since circumstances of the three accused being found inside the *jhuggi* was common to all three accused. It was not open to the trial Court to convert the case of direct evidence to one of circumstantial evidence. Further, the solitary circumstance of recovery of the dagger, being the weapon of the offence, at the instance of present Appellant was insufficient to connect him with the crime, particularly since the recovery itself was not proved in accordance with law.

19. Consequently, the Court gives the Appellant the benefit of doubt and acquits him for the offence under Section 302/34 IPC. The appeal is allowed. The impugned order of conviction and order on sentence are hereby set aside. He will fulfill the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record be returned together with the certified copy of this judgment.

20. The SHO concerned is directed to contact the Appellant to inform him about the judgment forthwith.

S. MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 13, 2018

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