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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 94/2003**

STATE

..... Appellant
Through: Mr. Hirein Sharma, APP.

versus

SANJAY KUMAR & ORS.

..... Respondents
Through: None.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VINOD GOEL

JUDGMENT

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05.07.2018

Dr. S. Muralidhar, J.:

1. This is an appeal by the State against the impugned judgment dated 20th May 2000 passed by the learned Additional Sessions Judge, Delhi in SC No.20/2000 arising out of FIR No.59/1997 registered at PS Narela, Delhi, acquitting the respondents of the offences punishable under Sections 302/324/452/34 IPC and Section 25 Arms Act.

2. At the outset, it is required to be noticed that there were three accused sent up for trial, i.e. Sanjay Kumar (A-1), his father Sri Krishan (A-2), and his brother Pawan Kumar (A-3). During the interregnum between the pronouncement of the trial Court judgment and the filing of the present appeal by the State, Sri Krishan (A-2)

expired on 9th April 2002. The appeal against him therefore stood abated as noticed by this Court in its order dated 10th February 2003. The appeal was admitted *qua* Sanjay Kumar (A-1) and Pawan Kumar (A-3).

3. Today when the appeal was taken up for hearing, none appeared on behalf of the Respondents, i.e. A-1 and A-3. Nevertheless, this Court has heard the submissions of Mr. Hirein Sharma, learned APP for the State and has also perused the trial Court record.

Case of the prosecution

4. The case against the accused persons was that at around 6:45 pm on 8th February 1997, they went to the house of the deceased Ram Phal, where his two daughters Geeta (PW-3) and Suman (PW-4) and his wife Moorti Devi (PW-8) were also present. The case of the prosecution is that the three accused persons asked the deceased to cast his vote in their favour but the deceased did not give a proper reply. Thereupon, on the exhortation of A-2, his sons, i.e. A-1 and A-3, are said to have caught hold of the arms of the deceased. A-2 is stated to have inflicted knife blows on the chest of the deceased and when PWs 3, 4 and 8 tried to intervene, knife blows were also given to PW-8. Thereafter, all three accused are stated to have run away.

Evidence of PW-3

5. There were, therefore, at least three eye witnesses to the incident, i.e. PWs 3, 4 and 8. In her testimony, PW-3, the daughter of the

deceased, maintained that it was A-2 who inflicted the knife blows on the chest of her father while A-1 and A-3 caught hold of him by his hands. She also spoke about the knife blows given to her mother (PW-8). According to her, the *mohalla* people first took her parents to Rajiv Nursing Home where they were instructed to take them to a hospital. Consequently, they were taken to H.R. Hospital. PW-3 stated that she reached the hospital at around 8 pm and that no police officials met her or recorded her statement. She also stated that “except for inflicting knife blows, no other injury was caused to my father”.

Evidence of PW-4

6. Unfortunately for the prosecution, the two other witnesses, i.e. PW-4 (the other daughter of the deceased) and PW-8 (the wife of the deceased) did not support PW-3. As far as PW-4 is concerned, although in her examination in chief she stated that A-2 had inflicted the knife blows on the chest of her father while A-1 and A-3 caught hold of him by his hands, she faltered in her cross-examination by making the following statements:

“I cannot tell about the number of injuries sustained by my father nor the places. He was inflicted injuries from knife. I had not seen the knife but people were saying that he has been given knife blow. Clothes of my mother and sister were stained with blood. I cannot tell if clothes of accused were also stained with blood or not. I also cannot tell where blood had fallen. It is incorrect to suggest that I became frightened and went inside the

house. I was inside the house and on hearing the noise I came out and came to know that somebody inflicted knife blows on the person of my father.” When I came out my father had been taken to hospital. It is incorrect to suggest that I had not witnessed the occurrence or that I am deposing falsely.”

7. The above contradictory statement of PW-4 prompted the APP in the trial court to seek the permission of the trial court to re-examine her. In her re-examination by the APP she stated “knife blows were given by accused Krishan in my presence”. However, in her cross-examination by the counsel for the accused soon thereafter she stated as under:

“I was in the adjoining room when I heard the noise. It is correct that when I came out my father had already been taken to the hospital. I cannot tell if the entire incident took place in one minute or not. I do not know the name of the person who told me that my father has received knife injuries.”

8. The trial Court has, in light of the above inconsistent statements of PW-4, categorized her as an unreliable eye witness. This Court is of the view that the said conclusion as reached by the trial Court cannot be said to be incorrect.

PW-8 turns hostile

9. The other injured eye witness was PW-8, the wife of the deceased. She turned hostile right at the outset. In her examination in chief she stated as under:

“The incident took place about 2 years and 2/3 months ago. I was lying in my house. My daughter and my husband were also present in the house. It was evening time. It was about 6.45 pm since I was unwell. I do not know who had come. Later on, I came to know that my husband was killed. I had also sustained injuries on my leg but I do not know who caused that injury.”

10. PW-8 was declared hostile by the APP, who then proceeded to cross-examine her. She refused to support the prosecution on any aspect and resiled entirely from her previous statements to the police. Therefore, before the trial Court, of the three eye witnesses, only one, i.e. PW-3, stood by her version. However, the trial Court noticed that even PW-3, who is obviously an interested witness, was not supported in her version by the other evidence on the record.

Medical evidence

11. For the purposes of the present appeal the Court would only like to refer to the medical evidence discussed by the trial court. The post mortem report reveals that the deceased had suffered as many as eleven injuries. Of these, according to Dr. C.B. Dabas (PW-11) who conducted the post-mortem, injuries no. 1 to 6 were abrasions that could have been caused by single force/blunt force/object. It could be recalled that according to PW-3 the only injuries suffered by her father were the knife injuries and there was no other injury.

12. As regards the injuries no. 7 to 11, PW-11 was of the view that they have been caused by a sharp edged weapon. The weapon purportedly used by A-2 was produced before PW-11. He gave an opinion that only injury no. 8 could have been caused by that weapon. However, according to PW-11, injury no. 8 was not the fatal injury. It were the injuries no. 9 to 11 which were collectively sufficient in the ordinary course of nature to have caused the death of the deceased. These injuries no. 9 to 11 were not proved by the prosecution to have been caused by the weapon purportedly recovered at the instance of A-2. Therefore, the trial Court rightly concluded that in terms of the medical evidence, perhaps more than one weapon was used in the commission of the offence. This was, however, contrary to the deposition of PW-3 who only spoke of A-2 inflicting knife injury in the chest of the deceased and that too with only one knife.

13. The eye witness testimony of PW-3 not being corroborated by the medical evidence, it would have been unsafe for the trial Court to proceed to convict the accused on the basis of such evidence.

Conclusion

14. Having carefully perused the evidence on record and the impugned judgment of the trial Court, this Court is not persuaded that the trial Court has committed any legal error in giving the accused the benefit of the doubt and acquitting them of the offences with which they were charged.

15. The bail bonds and surety bonds furnished by Respondents Nos. 1 and 3 stand discharged. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 05, 2018/*dkb*

