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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL. A. 275/2014

Reserved on: January 16, 2018

Date of decision: February 19, 2018

ROSHAN KUMAR alias MUNNA Appellant

Through: Mr. Kartickay Mathur, Advocate.

versus

STATE

..... Respondent

Through: Ms Kusum Dhalla, APP for State

Inspector Sahib Singh, P.S. Sarai Rohilla.

CORAM: JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

JUDGMENT

19.02.2018

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 13th January, 2014 passed by the learned Special Judge (NDPS)-02, Central District, Tis Hazari Courts in Sessions Case No.43/2011 arising out of FIR No.101/2011 registered at Police Station ('PS') Sarai Rohilla convicting the Appellant for the offence under Section 302 of the Indian Penal Code ('IPC') and the order on sentence dated 22nd January, 2014 whereby the Appellant was sentenced to imprisonment for life.

2. The prosecution case began with information which was received by a handler of Police Control Room ('PCR') at 6.11 am on 30th March, 2011 that "56B ke park mein, Shastri Nagar, Sarai Rohilla ek admi ki dead body

padi hai”. The noting on the same PCR form (Ex.PW23/A) on the right side is that “as per voter-ID, the dead body was of Punjab Singh son of Baldev Singh, age 40/45 years, resident of A-2, Wazirpur JJ Colony”. It was noted that the body was slim built with a long face, wearing a check-shirt and *badami* pants and *chappals* (slippers) near his body. There were two cut injuries – one on the neck and the other on the stomach and the intestine had come out. This was noted at 6.35 am.

3. ASI Shri Bhagwan (PW-10) was posted at PS Sarai Rohilla and DD No.8A (Ex.PW4/A) was marked to him, subsequent to which he went to the spot along with constable Sanjay (PW-14). They noticed a male dead body lying near the khajoor tree in the bushes at 56 Bigha Park, near ganda nala, Shastri Nagar. There was a grey colour check shirt and brown colour pants on the body. There were sharp cut injuries on the neck and abdomen of the Appellant and his intestines were hanging out. The head of the body was towards the south-east and the feet were towards the north side. One brown-black colour plastic *chappal* was lying near the dead body. Another *chappal* was lying at a distance of 7/8 feet from the head of the deceased. The voter-I-card recovered from the purse of the deceased showed his name as Punjab Singh, son of Baldev Singh. Some cash and other documents were also found in the purse.

4. The crime team and dog squad also reached the spot and photographs were taken of the scene of occurrence. According to PW-10, one Ram Bahadur (PW-9) identified the dead body and stated that he had seen Punjab Singh, the deceased, with one Munna Singh (the accused) on the previous

night. PW-10 then prepared the *rukka* (Ex.PW10/A) and handed it over to Head Constable ('HC') Pushpender (PW-11) who took it to the PS for lodging of the FIR.

5. Inspector Jai Bhagwan (PW-27), who took over the investigation, reached the spot. Bloodstained articles were recovered from the spot and so were the *chappals*, the earth control was lifted and the purse was recovered. Blood was also lifted from the neck of the deceased with the help of a cotton gauze. All were put into parcels and were sealed and the dead body was thereafter sent to the mortuary. PW-27 also stated that the dead body was identified by PW-9 as Punjab Singh.

6. PW-27 thereafter went into the area where the residence of the deceased was situated. There one Vikas (PW-23) met them and his statement was recorded. He suspected the Appellant as there was an extra-marital affair between the wife of the deceased Suman (PW-18) and the Appellant. Thereafter PW-27 started searching for the Appellant, who was then apprehended near the Sulabh Sochalaya on the pointing out of PW-9. The Appellant was thereafter interrogated and arrested and he is stated to have made a voluntary disclosure statement. The Appellant is supposed to have led the police party to the 56 Bigha Park and from about 18/20 yards away from the spot, he got recovered a knife from the dried bushes. Thereafter, he led the police party to his residence at J-II/-14, JJ Colony, Wazirpur, Second Floor and got recovered a mobile phone of make Nokia which belonged to Punjab Singh (the deceased). That was converted into a sealed pulanda. He is also supposed to have got recovered the clothes that he was wearing at the

time of the incident i.e. a yellow colour t-shirt, black colour pants, both on which there were bloodstains.

7. The post-mortem of the deceased was conducted by Dr. K. Goyal (PW-24) who noticed the following injuries:

“1. Cut throat injury about 8.5 cm long placed transversely over front of neck equally placed over both sides of mid line neck having tailing end of the wound. Blood clots were seen inside the wound. Wound was at the upper line of neck.

2. Incised penetrating wound 4 x 2 cm transversely placed just below and adjacent to right lower coastal margin and about 2.25 cm right to mid line abdomen. Angles were more or less acute.

On internal examination, the soft tissues of neck underneath cut throat injury were cleanly cut. The right sides major vessels were cleanly and completely severed with clots in neck layers.

On exploration, injury no. 2 cut the under lying soft tissues and peritoneum entered into cavity. There were about one cm long two cuts over lops of small intestine with bruising around. About 300-400 ml of blood and clots were present in peritoneal cavity.”

8. The opinion as to the cause of death was shock and haemorrhage consequent upon injuries to the neck vessels associated with intestinal injuries. The cut throat injury was opined to be sufficient to cause death in ordinary course of nature. The post-mortem was conducted on 31st March 2011 and the time of death was stated to be about 37-38 hours prior thereto.

9. On completion of the investigation, the charge was framed by an order dated 11th August 2011 and charge sheet was filed against the Appellant for having committed the offence punishable under Section 302 IPC in relation to the murder of Punjab Sigh s/o Balbir Singh.

10. The case is based on circumstantial evidence. The key witness as regards the circumstance of 'last seen' is Ram Bahadur (PW-9). He stated that he has been working in the factory of S.P. Sharma at New F-2, Shastri Nagar for the last three-four years. The factory was for manufacturing socks. The deceased, Punjab Singh, had also been working there from even earlier than PW-9. On 29th March 2011 at about 9 pm after closing the factory PW-9 and the deceased were returning. When they were near the Subzi Mandi at some distance from the factory, they met the Appellant. The deceased then went with him towards Subzi Mandi while PW-9 went on his way and returned home. According to PW-9 the deceased had told him at that time about the name of the Appellant and stated that he would go back home along with him. On the following day, i.e., 30th March 2011 PW-9 claims to have come to know that "someone has been murdered and his dead body is lying in the park." He went to the park and found that the dead person was the deceased. He then disclosed to the police officials present there that the deceased had left with the Appellant on the previous night.

11. On the same evening while PW-9 along with the police was going to the house of the deceased, the Appellant was found near toilets of Wazirpur JJ Colony. The Appellant was pointed out to the police by PW-9, upon which he was apprehended and interrogated and supposed to have admitted to having committed the crime. He is also supposed to have witnessed the recovery of the knife at the place of occurrence. According to him, the knife was lying in "a *naali* and some leafs were also lying there."

12. In his cross-examination, he stated that he came to know at about 6.30/7

am about the dead body being discovered in the park but could not name the specific person through whom he came to know since this fact was known to all in the locality. According to him, when he reached in the park, 100 to 200 persons had gathered there. Many police officials were also present there. PW-9 stated that his statement was recorded in the park itself only once. The Appellant was apprehended at about 4 pm. The Appellant did not try to run away when he was pointed out to the police by PW-9 . He reiterated that knife was recovered “from an open place lying in a *naali* covered with leafs. There were blood stains on the knife.”

13. Therefore, as far as ‘last seen’ evidence is concerned, there is nothing that emerged in the cross-examination of PW-9 to doubt that he was speaking the truth. The circumstance of ‘last seen’ therefore, should be taken to have been proved.

14. The next circumstance dealt with by the trial Court is the motive for the murder. It is stated that the Appellant was having an affair with the wife of the deceased and it was proved from the deposition of wife herself, i.e., Suman (PW-18), her mother Mana Singh (PW-19) and Vikash (PW-23), nephew of the deceased. PW-18 stated that she and the deceased had two daughters from their wedlock and PW-23 was also residing with them in a rented accommodation of JJ Colony, Wazirpur. The Appellant was also living in the same building as a tenant along with his parents and brother. According to her, the Appellant started teasing and harassing her and when this fact came to the knowledge of the deceased (her husband), they shifted to another building. However, the Appellant also shifted to the same

building as a tenant. According to PW-18, the Appellant pressurized her to marry him by stating that he is in love with her. There was also a quarrel between the Appellant and the deceased. The deceased also abused her as he suspected her relations with the Appellant. PW-18 stated that her sister, Sudha once came to visit them and the deceased sent her (PW-18) with her sister to Allahabad. The Appellant had come to drop her at the Old Delhi Railway Station. PW-18 then disclosed that "I was also in love with the accused Munna but my husband was against it." She further stated that after 10-20 days of reaching Allahabad, the Appellant also came there and requested her to marry him but she was not in favour of it "due to society, kids and my husband." The Appellant also met her mother (PW-19) but PW-19 abused the Appellant and asked him to go back. PW-18 then disclosed that during her stay at Allahabad for about 10-15 days, she and the Appellant used to meet each other. The Appellant asked her to accompany him to Delhi but she went to her parents' house at District Pratapgarh. There she was informed about the death of the deceased. In her cross-examination, she stated that she had no physical relations with the Appellant but it is correct that she had not lodged any complaint with the police against him. She also admitted that it is correct that the Appellant stayed with her at Allahabad and she did not raise any objection to the same.

15. PW-19 also confirms that in January 2011 whilst PW-18 was at Allahabad the Appellant also came there and stayed for 10-15 days. The Appellant used to follow PW-18 and "was always after her." She also confirms that the Appellant had asked PW-18 to marry him.

16. PW-23 has testified to the quarrels between the deceased and PW-18 over her affair with the Appellant since the deceased object to their meeting each other. He confirms that PW-18 used to regularly visit the room of the Appellant. He also identified the mobile phone of the deceased which was recovered from the room of the Appellant. Nothing matched in the cross-examination of this witness either.

17. In his statement under Section 313 CrPC, when the above circumstances were put to the Appellant, he simply denied them as being incorrect. He claimed that nothing was recovered at his instance and that he was lifted from his work place, i.e., the factory situated in Shastri Nagar and falsely implicated.

18. As regards motive for the commission of offence, at least three witnesses speaking uniformly about the affair of the Appellant with the wife of the deceased and the Appellant should have come with some credible explanation for the overwhelming evidence against him. The fact that he lived in the same building as the deceased and PW-18, and that he had even moved into the same building as them after they shifted accommodation could not be denied by him. Then it has come in the prosecution evidence that he has been living with his brother and his own mother whom he could have examined in order to disprove the abovementioned circumstances rather than go with bare denial. It is difficult to simply discard the overwhelming evidence of three witnesses particularly that of PW-18 since she not only admits to her love for the Appellant, but also the circumstances under which she declined to marry him viz., in view of the society, children

and her own husband. The conclusion drawn by the trial Court on the question of motive about the murder cannot be said to be perverse. It is possible that the Appellant was driven to commit the crime as he knew the husband (the deceased) was the only one standing in the way of his affair with PW-18.

19. Learned counsel for the Appellant tries to assail the evidence regarding recoveries, i.e., recovery of knife from the spot which was 50-60 yards away from the spot where the dead body lay. No doubt it was a public place but in his cross-examination Suresh Kumar (PW-5) who was an independent witness specifically stated that the knife was recovered at a distance of 40-50 metres away from the spot where the dead body was lying, and that it was dug out from the soil. This was obviously only within the knowledge of the Appellant and it was not feasible for anyone else to have known where it was since it was buried at a random spot. The Court, therefore, concurs with the trial Court that knife cannot be said to have been planted on the Appellant. The bill for purchase of knife was recovered at the instance of the Appellant. Suresh Chand (PW-26) was working in the Big Bazar, Inderlok confirms that the bill had been issued on 27th March 2011 for a sum of Rs. 140. The only question put to him was that the name of the purchaser had not been mentioned on the said bill which he answered in the affirmative. However, this by itself does not disapprove the bill. Further, the prosecution has got Dr. Goyal (PW-24) to confirm that injuries on the dead body could have been caused by such knife.

20. Added to this fact, the report of the FSL confirms the presence of human

blood of 'A' group on the weapon of offence which is also the blood group of the deceased. 'A' group blood was also found on the T Shirt and pants (Ex. 6A and 6B) of the accused. The FSL evidence fully corroborated the recoveries on the blood stained clothes of the Appellant, with the blood group of those blood stains matching the blood group of the deceased connecting him to the crime. Therefore, the circumstance of recoveries of the knife and blood stained clothes should be held to have been proved beyond doubt by the prosecution. The Court is not dwelling on the recovery of the mobile phone of the deceased from the room of the Appellant at his own instance as the above recoveries are by themselves sufficient to link the Appellant with the crime.

21. The Court is, therefore, satisfied that all the circumstances put forth by the prosecution form a continuous chain and each link in the chain has been proved by the prosecution beyond reasonable doubt. The circumstances are conclusive in nature and exclude every other possibility except the guilt of the Appellant.

22. The Court is unable to find that any error has been committed by the trial Court in convicting the Appellant for the offence under Section 302 IPC. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

I. S. MEHTA, J.

FEBRUARY 19, 2018/Rm