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

+ **CRL.A.331/2018 & CrI. MB 465/2018**

GUDDU RAJ @ MD. GULAM @ MUSTAFA Appellant
Through: Mr. Madhav Khurana & Ms. Aarushi
Singh, Advocates

versus

STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP for
State

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

JUDGMENT
04.07.2018

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Dr. S. Muralidhar, J.:

1. This is an appeal directed against the judgment dated 30th November 2017 passed by the learned Additional Sessions Judge-IV, North West District, Rohini Courts in SC No.68/2001 arising out of FIR No.379/2013 registered at PS Subhash Place convicting the Appellant for the offences punishable under Section 302/201 Indian Penal Code ('IPC') and under Section 27 Arms Act.

2. The appeal is also directed against the order on sentence dated 7th December 2017 whereby the trial Court sentenced the Appellant as under:

(i) For the offence under Section 302 IPC, he was sentenced to undergo

rigorous imprisonment for life along with fine of Rs.20,000/- and in default of payment, to undergo simple imprisonment for six months.

- (ii) For the offence under Section 201 IPC, he was sentenced to undergo rigorous imprisonment for two years along with fine of Rs.3,000/- and in default of payment, to undergo simple imprisonment for one month.
- (iii) For the offence under Section 27 Arms Act, he was sentenced to undergo rigorous imprisonment for three years along with fine of Rs.5000/- and in default of payment, to undergo simple imprisonment for two months.

3. The sentences were directed to run concurrently. Additionally, the trial Court had recommended that the wife and parents of the deceased be granted compensation in the sum of Rs.3 lakhs under the Victims Compensation Scheme.

Charge

4. The Appellant was charged with the offence punishable under Section 302 IPC for having murdered Sachin (deceased) on 30th August 2013 at around 1:00 am on the second floor of House No. 208, E-Block, J.J. Colony, Shakur Pur, Delhi by inflicting stab injuries on his chest. He was further charged with the offence punishable under Section 201 IPC for having tried to screen himself from prosecution by cleaning the blood of the victim lying on the floor with a *lungi*. He was also charged with the offence under Sections 25/27 Arms Act for having been found in possession of a knife of length 23.1 cm recovered from his room at the aforementioned location

which was used in the commission of the aforesaid offence of murder.

Eye witness testimony of PW-11

5. The prosecution has relied on the direct evidence of the sole eye witness to the incident, Priya (PW-11) who is the sister-in-law of the deceased. She and her husband along with her sister Riya and brother-in-law Sachin (the deceased) were residing at the aforementioned address as tenants in two rooms situated adjacent to each other. The Appellant too resided at that address in a room directly in front of the room of PW-11.

6. According to PW-11, at the time of the incident, she was eight months pregnant. On 30th August 2013 while she was lying in her room, at about 12:30 am, she noticed that the Appellant was peeping through the grill of the ventilator just above the door. She raised an alarm due to which her sister Riya and the deceased came to her room. When she informed them as to what had transpired, the deceased confronted the Appellant. The Appellant in turn questioned the deceased as to his entitlement to ask questions in response to which the deceased stated that since PW-11 was his sister-in-law whose husband had gone to the village, it was his duty to take care of her.

7. According to PW-11, the Appellant then slapped the deceased twice. The deceased tried to convince the Appellant and pacify him. Thereafter, the Appellant went inside his room and came back with his hand behind his back. It transpired that he was holding a knife in that hand. PW-11 stated that the Appellant first gave a knife blow on the lower portion of the chest of the deceased stating “*mai tera khel khatam kar deta hun*”.

8. According to PW-11, with the help of her sister Riya, she tried to give support to the deceased but he fell to the ground. Meanwhile, the Appellant cleaned the blood on the ground with an underwear and *lungi* and also tried to wash it away with the help of water. The Appellant then tried to flee via the staircase, but Riya chased him and tried to apprehend him. The Appellant then fell down the staircase and sustained injuries. PW-11 states that “someone dialled number 100”. The police then arrived at the spot. They took both the deceased and the Appellant to the hospital.

9. PW-11 was subjected to extensive cross-examination. She denied the suggestion that the deceased and his wife would quarrel over monetary issues. She also denied that there was any dispute between her and her sister. She denied the specific suggestion that her sister had borrowed Rs.4500/- from the Appellant for paying the rent of her room since she was in a poor monetary condition. She also denied the suggestion that at around 9:30-10:00 pm on 29th August 2013, shortly prior to the incident, the Appellant had demanded repayment of the debt owed to him by Riya and her husband or that at around 11:30-12:00 pm, the Appellant had been called outside his room “through two children of Manoj”.

10. PW-11 was categorical in her cross-examination that no one else apart from her, the deceased, her sister Riya and the Appellant was present at the time of the incident.

11. PW -11 further explained in her cross-examination as under:

“After opening my room, I came out of my room and Sachin

and Riya did not enter my room. No scuffle/quarrel had taken place and only Sachin had fallen on the ground after receiving injury and none else had fallen on the ground. No quarrel (*maar pitai*) had taken place inside the room of accused. None else except Guddu Raj had entered inside his room. It took about five minutes in the entire incident. When Riya tried to apprehend the accused at that time, Sachin was lying on the ground between the door of his room and the door of the room of accused and at that time, Sachin had already received two stab injuries, as such, I am unaware whether he was conscious or not. The accused had also tried to stab the deceased for the third time when he was lying on the floor. Vol. I had intervened to hold the accused at that moment on which the deceased had pushed me aside. Vol. I had pleaded with the accused to forgive the deceased.”

12. What happened immediately after the Appellant stabbed the deceased was explained further by PW-11 in her cross-examination. She stated:

“Landlord came upstairs when accused was trying to escape from the spot. My sister had tried to apprehend the accused but the accused fell down in the stair case. At that time, the landlord was coming up. As such, the accused was caught by my sister coming behind him and the landlord who was coming from the front side, in the staircase itself. It is correct that the plastic tap which was installed in the common area was broken down when my sister caught hold the shirt of accused and he initially struck against the tap and in this process the tap was broken down and the shirt of accused was also torn. It is correct that the water had spilled below the tap after it had broken down and the floor area around got wet. It is incorrect to suggest that the tap had already broken down and the floor was wet or that scuffle was going on between Sachin and accused or that Sachin was having a knife in his hand at that time or that due to slippery floor, they both fell down and Sachin sustained stab injury with his own knife.”

13. A perusal of the above portion of her cross-examination shows that

PW-11 specifically denied the suggestion about the deceased having a knife in his hand at the time of the incident and that due to the water on the floor both he and the Appellant fell down and the deceased somehow sustained stab injuries “with his own hand”. She added that by the time the police arrived, the landlord held the Appellant on the ground floor and the landlord also called the police.

14. Interestingly, the deposition of PW-11 also reveals that the family members of the Appellant had offered money to Rohit Pandey, the husband of PW-11, in order to have the case against the Appellant to be withdrawn and that due to this allurements, “my husband asked me to withdraw this case but I refused saying that Sachin had lost his life to save me”. PW-11 added that her husband asked her to choose between him and the case in response to which she claims to have opted to choose the case and refused to withdraw the case or change her statement. Consequently, her husband had left her and she had to return to her native place to live with her brother and gave birth to a son in a hospital there.

Testimony of an interested witness

15. The deceased being her brother-in-law, PW-11 is no doubt a related and interested witness. The law with regard to appreciation of such evidence is fairly well settled. In ***Dalip Singh v. State of Punjab 1954 SCR 145***, the Supreme Court explained:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real

culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

16. In *Darya Singh v. State of Punjab (1964) 3 SCR 397*, it was observed by the Supreme Court as under:

“There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. **But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it... [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice.** The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned

with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. **On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.**” (emphasis supplied)

17. In *Sarwan Singh v. State of Punjab* (1976) 4 SCC 369, the Supreme Court explained:

“The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth, such evidence could be relied upon even without corroboration.”

18. In *Jayabalan v. UT of Pondicherry* (2010) 1 SCC 199, the Supreme Court held as under:

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. **The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency.**” (emphasis supplied)

19. In *Waman v. State of Maharashtra* (2011) 7 SCC 295, the law was summarized thusly:

“It is clear that merely because the witnesses are related to the

complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. **In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.**” (emphasis supplied)

20. The legal position was also succinctly encapsulated in *Raju v. State of Tamil Nadu AIR 2013 SC 983*:

“.....we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. **A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.**” (emphasis supplied)

21. What emerges from the discussion above, therefore, is that the evidence of an interested or related witness should not be looked at with suspicion only due to their relationship with the deceased. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. Their evidence must be scrutinised carefully to ascertain if it has a ring of truth. It must also be examined for contradictions and if found to be reasonable and consistent, may be relied upon in arriving at a finding of

guilt qua the accused person.

PW-11's version stands corroborated

22. The Court has carefully examined the deposition of PW-11 for any material contradictions or inconsistencies. Although the wife of the deceased Riya has not been examined as a prosecution witness, the material portion of the deposition of PW-11 has been corroborated by other evidence on the record. Chuttan Lal (PW-4), the landlord, has corroborated the testimony of PW-11 by stating that on hearing the commotion at around 1:00 am on 30th August 2013, he reached the second floor where he saw the deceased lying in a bleeding condition and “accused was also lying near the staircase”.

23. Although a suggestion was put forth by the learned defence counsel that this contradicted the version of PW-11 about the Appellant having fallen down the staircase as he was being chased by Riya, the Court finds that no specific question was put to the landlord as to the exact location of the fallen Appellant near the staircase. The landlord was residing on the first floor whereas the incident took place on the second floor. With no specific question put to the landlord in this regard, it cannot be ruled out that there was a landing in between two flights of stairs on which the Appellant was found rather than at the top of the staircase.

24. The stab injuries on the body of the deceased stand confirmed by the medical evidence. The post-mortem examination of the deceased was conducted by Dr. Vijay Dhankar (PW-18). He found two stab wounds and recorded in the post-mortem report (Ex.PW18/A) as under:

- “1. Incised stab wound 2.5 cm x 0.5 cm present over the middle outer part of right side of front of chest. On approximation of the edges the wound is 2.7 cm in length. The injury is horizontally placed in the anterior axillary line 7.5 cm from the right nipple and 17 cm below the right shoulder. The margins are clean cut with the inner angle comparatively more obtuse as compared to the outer angle. There is tailing of the wound with incision in the skin upto a distance of 1.5 cm from the outer angle.
2. Incised stab wound 2.8 cm x 1 cm present over the lower outer part of right side of front of chest. On approximation of the edges the wound is 3.2 cm in length. The injury is vertically placed in the mid clavicular line 11.5 cm below the right nipple and 10 cm from the midline. The margins are clean cut with upper angle more obtuse than the lower angle. There is tailing of wound with scratch abrasion present over the skin upto a distance of 3 cm from the lower angle of the wound.”

25. The evidence of PW-11 further stands corroborated by the MLC of the Appellant who was examined by Dr. Ajay Dalal whose writing was identified by Dr. Pankaj Shah (PW-20). Dr. Ajay Dalal noticed the following injuries:

- “1. tenderness with mild swelling (L) lateral neck.
2. abrasion over lateral aspect of left forearm with tenderness and swelling middle 1/3rd left forearm,
3. abrasion over olecranon (elbow) area left upper limb,
4. periorbital swelling over left eye.
5. tenderness over dorsum of hands bilateral side.”

26. The above injuries were indeed consistent with the version of PW-11 about the Appellant falling down the stairs while he was pursued by Riya.

27. The stand taken by the Appellant in his statement under Section 313

Cr PC was along the lines of the suggestions made to PW-11 during her cross-examination, namely that Riya had borrowed money from him and failed to return it and that:

“...on the date of incident, she called me out of the room by neighbouring tenants and they all gave me beatings and during the said process, Sachin brought knife from his room and during the scuffle, I fell down on the tap which was broken, due to which water scattered there. During the said altercation, Sachin slipped and he sustained injury from the knife which was in his hand. He got up and tried to inflict me knife but he again slipped on the water and received self stab injury with the said knife. I had also received injuries due to the beatings and fall on the floor.”

28. No attempt, however, has been made by the Appellant to make good the above defence. As already noticed, any suggestions to PW-11 along these lines were categorically denied by her. There is absolutely nothing on record to show that the Appellant had loaned any sum whatsoever to Riya. PW-11 explains how the Appellant kept the knife back in his room and then tried to clean the bloodstains before trying to escape. The recovery of the knife was in fact made from the room of the Appellant. The DNA report confirms that the blood sample of the deceased was found on the knife recovered from the room of the Appellant.

29. In other words, the evidence of PW-11 has been corroborated by the other evidence on record in all the material particulars. Her testimony is, therefore, sufficient to come to the conclusion that it was the Appellant who inflicted the stab wounds on the deceased and that he died as a result of the said stab wounds. It is indeed commendable that PW-11 resisted the attempts by her husband at the instance of the family of the accused who had

bought him off to dissuade her from testifying against the accused. She has displayed remarkable courage in standing up for the truth and ensuring that the cause of justice is not defeated. This Court, therefore, concurs with the finding of the trial Court that it was safe to rely on the deposition of PW-11 to convict the Appellant.

Offence of murder established

30. It was then submitted by the learned counsel for the Appellant that the nature of injuries was such that it could not be said to be an offence of murder punishable under Section 302 IPC but one of culpable homicide punishable under Section 304-II IPC. He submitted that the offence must have been preceded by some altercation which provoked the Appellant sufficiently for him to inflict the stab wounds on the deceased.

31. The Court has carefully examined the post-mortem report which reveals that it was not one but two stab wounds in the chest area which were found on the deceased. The first stab wound is 5 cm deep on the right side of the front of the chest in the middle outer part. The second injury was of a depth of 11 cm and this is a cut through the seventh intercostals space, through the parietal flora, entered the plural cavity, cut through the diaphragm, entered the plural cavity cut through the liver and entered the lateral part, travelled through the lower parenchyma and exited the liver, cut through the diaphragm at the bare area of the liver and ultimately penetrated the posterior abdominal wall into the 8th intercostals space up to depth of 1 cm. The post-mortem report noted, “the depth of the injury was about 18 cm in a forward to backward, below upwards and lateral to medial direction. The

death was due to hemorrhagic shock consequent to multiple penetrating injuries to the body”.

32. In the manner in which it has been depicted in the post-mortem report, it is clear that after stabbing the deceased for the first time, the Appellant removed the knife and again stabbed the deceased for a second time very close to the place of the first stab wound on the chest.

33. This is, therefore, not an instance of a single cut injury being inflicted. Also, from the deposition of PW-11, it appears that after giving two slaps to the deceased, the Appellant went into his room and again emerged with a knife.

34. Therefore, this Court is unable to categorise this to be an offence committed as a result of sudden or grave provocation of the accused by the victim or an instance where the offence took place at the spur of the moment. Viewed from any angle, it is not possible for the Court to agree with the learned counsel for the Appellant that the offence is one of culpable homicide not amounting to murder.

Conclusion

35. For all of the aforementioned reasons, the Court finds no infirmity or error having being committed by the trial Court either in its judgment convicting the Appellant for the offences under Sections 302, 201 IPC and Section 27 of the Arms Act or in the consequent order of sentence..

36. The appeal and the application are accordingly dismissed, but in the

circumstances, with no orders as to costs. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 04, 2018
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