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

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+ **CRL.A. 402/2016**

DEEPAK PANDEY ..... Appellant

Through: Mr. D.D. Tripathi, Advocate.

versus

STATE ..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for  
State

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE VINOD GOEL**

**JUDGMENT**

**03.07.2018**

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

1. The challenge in this appeal by the sole accused is to the judgment dated 17<sup>th</sup> November, 2015 passed by the learned Additional Sessions Judge-03, Tis Hazari Courts, Delhi in Sessions Case No.74/2013 arising out of FIR No.122/2013 registered at Police Station ('PS') Kotwali convicting the Appellant for the offence under Section 302 IPC and the order on sentence dated 30<sup>th</sup> November 2015 whereby he was sentenced to rigorous imprisonment for life with a fine of

Rs.5,000/-, and in default of payment of fine to further undergo simple imprisonment for six months.

2. The charge against the Appellant was that on the intervening night of 12/13<sup>th</sup> July, 2013, at around 12 midnight at the pavement of Bankhandi Mandir, Opposite ODRS, he stabbed Saleem @Sahid (deceased) with a knife on the neck thereby committing an offence punishable under Section 302 IPC.

3. This is a case based on direct evidence where there have been two eye-witnesses to the occurrence. Sumit Prasad (PW-1) was running a kiosk of *beedis* and cigarettes on the pavement near Bankhandi Mandir for four years prior to the incident. PW-1 used to sleep on the pavement itself. The deceased also slept on the same pavement. He was known to PW-1 for about 3-4 years prior to the incident. PW-1 also knew that one Sonia (PW-2) resided with the deceased on the pavement. While the deceased had told PW-1 that he had married PW-2, PW-1 was aware that PW-2 was earlier living with the Appellant on the same pavement. According to PW-1, the Appellant and the deceased used to quarrel frequently on the issue of PW-2. According to PW-1, the Appellant did not want PW-2 to live with the deceased. PW-1 had himself heard the Appellant threatening the deceased that if he did not leave PW-2, there would be consequences that would not be good.

4. PW-1 stated that on the intervening night of 12/13<sup>th</sup> July, 2013 while the deceased and PW-2 were sleeping on the pavement and he was sitting on his *thia* smoking a *beedi*, at around 12 midnight he noticed the Appellant come from the side of Bankhandi Mandir, catch hold of the deceased by his hair and assault the deceased on his neck, who got up in pain. Hearing this commotion, PW-2 got up all of a sudden and screamed and tried to support to the deceased. According to PW-1, the Appellant ran away towards Dangal Maidan with the knife in his possession. PW-1 tried to chase him but to no avail. When he returned to the spot, PW-1 found the deceased lying in an injured condition, bleeding from his neck. PW-1 then called the police which came thereafter and took the deceased to the hospital.

5. According to PW-1, the Investigating Officer (IO) Mukesh Tyagi (PW-25) and Sub-Inspector (SI) Sanjay Kaushik (PW-13) returned after some time in order to inspect the scene of crime along with the crime team. The earth control, blood and a pair of the deceased's slippers were lifted from the spot. Thereafter, on the same day, PW-1 accompanied PW-25 and PW-13 to search for the Appellant. At Kachha Baag, somebody informed the IO that the Appellant was hiding in a room of Bench and Bar Club, opposite the Old Delhi Railway Station. They noticed the Appellant hiding on the roof of Bench and Bar Club. He was brought down by Ct. Rajbir (PW-12) and identified by PW-1 as the person who had stabbed the deceased.

6. After his arrest, the Appellant gave a disclosure statement and offered to get the weapon of offence recovered. He claimed to have thrown it by the side of the wall of Dangal Maidan car parking. Thereafter, the Appellant is stated to have taken the police party there and recovered the knife from near the wall. The knife was found blood stained.

7. PW-1 was subjected to extensive cross-examination. He maintained that his kiosk opened at 08:00 AM and closed at 01:00 AM. In his cross-examination, however, he was not clear how many statements of his were recorded by the police. He claimed to have signed 10-11 papers and stated that he could not go through the contents of those papers, but that he signed them only on the direction of the police. He, however, volunteered that there was low visibility in the area of Bankhandi Mandir and it was difficult to see properly. He claimed that in his presence, the deceased and the Appellant never quarreled.

8. Much emphasis was laid by learned counsel for the Appellant on the so called admission by PW-1 that “I smoke beedi and also consume bhang in the night”. However, PW-1 was categorical in denying the suggestion that he was under the influence on the night of the incident or that he had deposed falsely at the instance of the police. It was then submitted that there were, according to PW-1, several others on the pavement and despite their names being disclosed, their

possible role in the assault of the deceased was not properly investigated by the police.

9. In the present case, the Court finds that the prosecution relies essentially on the eye-witness testimonies of PW-1 and PW-2. As is shown hereafter, these two witnesses have corroborated each other in material evidence and their evidence is also corroborated by the medical evidence.

10. In the considered view of the Court, PW-1 appears to be a natural witness since he was running a kiosk on the pavement 10 metres away from the spot and he too would sleep on the pavement just as the deceased and PW-2. His presence is spoken of even by PW-2. The answers given by PW-1 in his cross-examination to the effect that “it was dark in the night, I could not see properly” does not in any manner dilute his categorical statement that he actually saw the Appellant stab the deceased on the neck. As already noticed, the post-mortem report prepared by Dr. S. Arun Kumar (PW-9) fully corroborates the version of PW-1 as far as the actual incident is concerned. PW-9 found in his examination of the deceased the following stab injuries:

“1. Incised stab wound with clean cut margins wedge shape measuring 4.4 cm x 0.2 cm x 10 cm. present obliquely on left side of neck. Upper medial angle is acute 4 cm from midline and 2 cm below ramus of mandible. Lower lateral angle is burnt. The wound was

directed backward, upward and medially. Tract of the wound goes cutting the skin, sub-cutaneous tissues, muscle of neck, left carotid sheath, left internal carotid artery and jugular vein and pharyngeal wall on left side. Extravasation of blood present throughout the tract.

2. Incised stab wound with clean cut margins wedge shape measuring 1 cm x 0.2 cm x 2 cm present horizontally on left side back of neck, 2 cm from mid line and 6 cm below occiput. Medial angle is blunt and lateral angle is acute. The wound was directed forward and laterally cutting skin sub-cutaneous tissues and muscle of neck. Extravasation of blood present.

3. Superficial incised wound with clean cut margin measuring 4 cm x 0.2 cm x 0.5 cm. present obliquely on posteriolateral aspect of left arm. Upper lateral angle is 4 cm. below acromium and 19 cm from midline.”

11. In his opinion the cause of death was hemorrhagic shock as a result of the ante-mortem injury to the neck and associated large blood vessels produced by a sharp edged weapon. It was opined that injury No.1 was sufficient to cause death in the ordinary course of nature. Thereafter, on 25<sup>th</sup> July 2013, PW-9 was shown the weapon of offence and confirmed that the fatal injury could have been caused by it.

12. The Court is unable to subscribe to the submission on behalf of the Appellant that PW-1 was not a reliable witness and could not have seen the occurrence since he was under the influence of *bhang*. The

Court finds that the specific suggestion put to this witness in this regard has been denied by him as under:

“It is wrong to suggest that I was under the influence of the Bhang as I consumed it and that is why I am not aware anything or that I have deposed falsely at the dictates of local police.”

13. His statement to the effect “I woke up only after I heard the noise and I could not see properly as to who was assaulting whom” does not contradict his previous statement. He, in fact, after making the above statement volunteered “when I reached the spot, the assailant had left the spot and I started following him”. This was consistent with his statement in his examination-in-chief “accused Deepak went away towards Dangal Maidan with knife very fast. I chased him for sufficient time but to no avail”. PW-1 was therefore clear about who the assailant was, particularly since he went to chase him up to a distance.

14. The Court also notes that there is no confrontation whatsoever of PW-1 with his previous statement to the police. Therefore, irrespective of whether his statement was recorded once or thrice or whether he signed those statements or not, the fact remains that the defence was unable to demonstrate that this was an unreliable witness who kept making improvements to what he had told the police earlier. Any suggestion given to him about the credibility of his testimony has been

firmly denied by him. He seems to be a natural witness and he has spoken cogently and consistently.

15. PW-1 also stands fully corroborated by PW-2. She correctly notes that PW-1 was one of the persons having a shop on the pavement. His kiosk was at a distance of around 10 metres. She also was very clear that it was the Appellant who stabbed the deceased in the neck with the knife.

16. The attention of the Court was drawn to the following answer of PW-2 to show that she could not actually see the Appellant commit the crime “In my presence, police did not conduct any proceedings in my presence. I could see accused from behind.” However, the Court notes that this witness immediately volunteered “I have seen his face also. I could see the face of the accused when he was at a distance of 8-10 metres”.

17. In fact, it is PW-2 who has categorically explained the motive of the offence. She stated “accused did not want me to live with Saleem as he wanted to marry with me and he used to stay with me earlier”. PW-2 was also subjected to extensive cross-examination but nothing came of it as far as the Appellant is concerned.

18. Learned counsel for the Appellant referred to the deposition of Gopal (PW-5) to suggest that PW-2 approached him at around 12.30

am on the night of the incident to inform him that a quarrel was going on with the deceased. It was sought to be suggested that PW-2 has been silent on the aspect of approaching PW-5 to inform him about the quarrel.

19. The Court does not find the statement of PW-5 to be contrary to what the other witnesses have said as regards the incident itself. PW-5 himself was not an eye-witness. He only heard of the incident from PW-2. His deposition in no way dilutes the credibility of the eye-witness testimonies of PW-1 and PW-2 who have corroborated each other and whose versions stand corroborated entirely by the medical evidence.

20. Learned counsel for the Appellant submitted that the circumstances under which the weapon of the offence was recovered at the instance of the Appellant was extremely doubtful and this has not been taken note of by the Trial Court. The Court finds no merit in this submission for the simple reason that this case is essentially one based on direct evidence of two reliable eye witnesses. Their depositions have been discussed in detail herein above. PW-1 and PW-2 were natural witnesses present at the pavement and in whose presence the Appellant stabbed the deceased on the neck.

21. It was submitted that both PWs 1 and 2 have named at least 4-5 other persons who were present at the pavement and yet none of them

were examined. It is not the number of witnesses which matters but the quality of evidence which is relevant for being considered by the Court when assessing whether the accused can be held to be guilty of the offence with which he is charged. In the present case, both PWs 1 and 2 lend assurance to the Court that they are speaking the truth and that no mistake has been made with regard to the identity of the accused. He was known to them and, therefore, there was no difficulty to either of them in identifying him to be the assailant.

22. Having carefully examined the entire evidence including the depositions of the eye-witnesses and the impugned judgment of the Trial Court, the Court is not persuaded that any error has been committed by the Trial Court in returning the finding of guilt of the Appellant for the offence punishable under Section 302 IPC. The Court is also unable to find any error in the consequent order on sentence.

23. The appeal is accordingly dismissed.

**S. MURALIDHAR, J.**

**VINOD GOEL, J.**

**JULY 03, 2018/dkb**