

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

+ **CRL.A.400/2016 & CRL.M.(Bail) 406/2018**

%

Reserved on: April 06, 2018

Date of decision: April 24, 2018

ARUN BHATI @ ANNU

...Appellant

Through: Mr.Sumeet Verma, Advocate with
Ms.Preeti Jakhar, Advocate

versus

STATE (NCT) OF DELHI

... Respondent

Through: Mr.Kewal Singh Ahuja, APP for State

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S.MEHTA

J U D G M E N T

I.S. Mehta, J.:

1. The instant appeal is arising out of the impugned judgment dated 17.03.2016 and order on sentence dated 31.03.2016 passed by the learned Additional Sessions Judge-1, Patiala House Court New Delhi in Session Case No.93/14 arising out of FIR No.288/14 registered at Police Station Vasant Kunj, Delhi whereby the Appellant has been convicted for the offence punishable under Section 302 IPC and has been sentenced to undergo rigorous imprisonment (RI) for life with a fine of Rs.50,000/- and in

default of payment of fine, to undergo further simple imprisonment (SI) for three months.

2. The brief facts stated are that PW26 SI Babu Lal of Police Station Vasant Kunj, Delhi on receiving the DD No.13A on 12.03.2014 reached to the spot i.e. village Ghitorni, House No.39, ground floor along with Constable Mahender No. 3045/SD and PW24 Constable Sandeep and saw blood stains sprinkled on the wall and blood was lying on the floor and one black colour motorcycle No. DL 8S AX 5248 was found parked outside of the gate. The victim Ram Lakhan who received knife stab injuries was already taken in PCR van E-38 to Fortis Hospital, Vasant Kunj, Delhi. PW26 SI Babu Lal left Constable Mahender Singh No. 3045/SD at the spot and PW26 SI Babu Lal along with PW24 Constable Sandeep reached to the Fortis Hospital and learnt that the deceased Ram Lakhan was declared dead at 8 am on 12.03.2014 vide MLC No.2573/2014 i.e. PW11/A and met PW19 Head Constable Godha Singh who handed over blood stained knife which was lying near injured Ram Lakhan's body at the spot and PW26 SI Babu Lal prepared the sketch of knife Ex.PW19/A and took it into his possession vide seizure memo Ex.PW19/B and sealed the same with a seal of BL vide P-19/1 and personal search of the deceased was carried out i.e. Ex.PW24/A and same were handed over to PW27 Inspector Rajesh Kumar and crime team was called at the spot and CFSL team was also called. PW26 SI Babu Lal prepared a *rukka* as the DD No.13/A and the same is Ex.PW26/A, which was handed over to PW24 Constable Sandeep for the registration of the case.

3. After registration of the case further investigation was handed over to PW27 Inspector Rajesh Kumar who recorded the statement of eye-witness PW15 Usha Devi. Statements of PW3 Kanta Prasad, PW4 Tek Chand, PW14 Dalip Chaudhary, PW8 Constable Sandeep, PW18 Rohit were also recorded. Statement of PW15 Smt. Usha Devi under Section 164 Cr.P.C was recorded on 14.03.2014. He lifted the blood stains from wall and same were seized vide seizure memo, Ex.PW26/B and also seized blood stains with the help of cotton vide memo Ex.PW26/D and also prepared the site plan at instance of PW15 Smt. Usha Devi . The dead body of the deceased was sent along with Constable Rampal and Constable Mahinder to AIIMS Hospital and PW26 SI Babu Lal had sent request letter vide memo Ex.26/E-1 to preserve the body of the deceased Ram Lakhan. The CFSL team also lifted the blood stains from the wall and ramp. One empty wine bottle from the room of the deceased was also seized vide seizure memo Ex.PW26/F and one motor-cycle was also taken into the possession. On the secret information of informer the accused was apprehended vide arrest memo Ex.PW22/A on the same date i.e. 12.03.2014. The accused made disclosure statement i.e. Ex.PW22/C and from the possession of accused one mobile phone make Samsung DUOS GT C-6712 company was seized i.e. Ex.PW22/D and IO also seized the blood stained clothes of the accused vide memo Ex.PW22/E.

4. After completion of the investigation the charge sheet was filed before the court of competent jurisdiction.

5. Subsequently charge under Section 302 IPC was framed on 08.07.2014 and in order to prove the case the prosecution has examined 27 witnesses and

the statement of accused was recorded under Section 313 Cr.P.C on 10.09.2015.

6. After conclusion of arguments, the trial Court vide judgment dated 17.03.2016 convicted the accused under Section 302 IPC and sentenced him to undergo imprisonment for life with a fine of Rs.50,000/- and in default of payment of fine, to undergo SI for a further period of three months.

7. Aggrieved from the aforesaid judgment dated 17.03.2016 and order on sentence dated 31.03.2016 the accused has preferred the present appeal.

8. The learned counsel on behalf of the Appellant has submitted that the conviction is based on sole planted eye-witness PW15 Smt. Usha Devi who is a tutored witness of the IO. PW15 Smt. Usha Devi has deposed false statement before the Magistrate under Section 164 Cr.P.C under the impression that if she does not support the version of prosecution her husband PW14 Dalip Chaudhary would be implicated in the present case.

9. The learned counsel on behalf of the Appellant has further submitted that the DD No.13A i.e. Ex.PW23/A and *rukka* i.e Ex.PW26/A does not mention the presence of PW15 at the spot and the learned counsel further states that as per the prosecution PW15 was very much present at her house and if she was present at her house, her presence would have been shown in DD No.13A i.e. PW23/A and *rukka* i.e. Ex.PW26/A.

10. The learned counsel on behalf of the Appellant has further submitted that PW15 has deposed that her statement was recorded by the police in writing with a pen but IO PW27 has stated that the statement of PW15 Smt. Usha Devi and PW14 Mr. Dalip Chaudhary were recorded on laptop and there is material contradiction emerging on the record which could show that she was not present at the spot.

11. The learned counsel on behalf of the Appellant has further submitted that PW15 had stated that she did not remember the site plan was prepared on her instance whereas the prosecution case is that site plan Ex.27/A was made at her instance.

12. The learned counsel on behalf of the Appellant has further submitted that as per PW15 the incident was seen by 2, 4 or 10 public persons whereas no one other than PW15 has been examined by the prosecution.

13. The learned counsel on behalf of the Appellant has further submitted that PW14 Dalip Chaudhary when he came back from *Mandi* at 10:30 am he saw a crowd in front of the house of his landlord and came to know that the deceased Ram Lakhan was stabbed by someone but he does not disclose the name of the appellant.

14. The learned counsel on behalf of the Appellant has further submitted that PW18 Rohit son of the landlord Surender Singh Lohia has not deposed that PW15 was his tenant and this fact also shows that PW15 is an introduced

eye-witness and her statement is not trustworthy and does not inspire confidence and is liable to be rejected.

15. The learned counsel on behalf of the Appellant has further submitted that PW4 Tek Chand too did not depose that PW15 Usha Devi was present at the spot.

16. The learned counsel on behalf of the Appellant has further submitted that the knife Ex.PW19/A does not connect the commission of crime as no finger print was lifted from it and the chance prints lifted from the spot does not connect the commission of crime by the appellant/accused.

17. The learned counsel on behalf of the Appellant has further submitted that the clothes of the deceased were not shown to the eye-witness to ascertain that the appellant was wearing those clothes at the time of incident and no public witness was associated at the time of seizure of the pant and shirt.

18. The learned counsel on behalf of the Appellant has further submitted that so far as the CFSL report is concerned the same does not connect the Appellant to the crime and as per the IO Inspector Rajesh Kumar the Appellant was apprehended outside of his house and he did not try to run away on seeing him.

19. The learned counsel on behalf of the Appellant has further submitted that there is no sufficient evidence proved on record to bring home the guilt of the appellant and the appellant relied upon the following judgments: -

- (i) **Jitender Mahawar @ Kalu vs. State [2014 (4) JCC 2583]**
- (ii) **Prahalad vs. State [CRL.A. No. 1000/2017]**
- (iii) **State vs. Raj Kumar @ Sonu [Crl.L.P 249/2012]**
- (iv) **Yamanappa Goolappa Shirgumpi & ors. vs. State of Karnataka [AIR 1981 SC 646]**
- (v) **Narsinbhai Haribhai Prajapati etc. vs. Chhatrasinh & ors. [AIR 1977 SC 1753]**

20. The learned counsel on behalf of the Appellant has further submitted that the appeal of the appellant be allowed and the impugned judgment on sentence be set aside.

21. Per contra, the learned Additional Public Prosecutor on behalf of the respondent has submitted that the instant case is based on the sole eye-witness. The prosecution has examined PW15 Smt. Usha Devi who supported the prosecution version and her statement is natural, trustworthy and inspires confidence and her statement is corroborated with the report of CFSL and the court below rightly convicted the appellant/accused and present appeal of the appellant deserves to be dismissed.

EYE -WITNESS

22. The prosecution has examined PW15, the wife of PW14 Dalip Chaudhary, as sole eye-witness who was a tenant of Surender Singh Lohia House No.39, village Ghitorni as shown in site plan Ex.PW27/A and the deceased Ram Lakhan too was co-tenant in the aforesaid house. PW14 along

with his wife were running a vegetable shop in front of the house at Ghitorni. PW15 has deposed that after performing *pooja* at her house while she was coming out from her room to perform *pooja* at her vegetable shop she heard a noise- “ *mujhe chaku maar raha hai Arun, mujhe chaku maar raha hai Arun* ” (Arun is stabbing me, Arun is stabbing me) at about 6:45 to 7 am and she took a turn and saw accused was grappling with the deceased Ram Lakhan in front of the house of the deceased i.e. *veranda* and she has seen accused stabbing the deceased with knife and thereafter he ran away from the spot and the deceased Ram Lakhan pulled the knife from his body and there was lot of blood oozing out from his body and somebody informed the police and police arrived at the spot and took him to Hospital and thereafter the police made enquiries from her and recorded her statement. The deceased and accused were drivers by profession at a farm house and when her husband had gone to *mandi* in the morning then this incident occurred and later on when he came back from *mandi* he saw blood lying on the spot and her statement was also recorded under Section 164 Cr.P.C on 14.03.2014 and the same is Ex.PW15/A.

23. In the instant case, the criminal law came into motion on 12.03.2014 at about 7:15 am, when PW4 Tek Chand (a neighbour), saw the injured/deceased in pool of blood and heard- “*maar diya maar diya*” (stabbed me, stabbed me). He made a call from his mobile No.9311107798 to 100 No. PW16 Arti Devi received the said information at Police Control Room and transmitted the same to Police Station Vasant Kunj and filled the PCR form i.e. Ex.PW16/A. On receiving the said transmitted information at 7:20 am Head Constable Dharmender Kumar recorded DD No.13A and

PW19 Head Constable Godha Singh immediately rushed to PCR vehicle Eagle-38 and reached to the spot where he saw one person was lying in a pool of blood and one knife was lying near the body. PW19 Godha Singh lifted the knife and injured to the Fortis Hospital immediately, where he was declared dead at about 8:05 am on 12.03.2014 vide MLC No. 2573 i.e. Ex.PW11/A. Subsequently, PW26 SI Babu Lal along with Constable Mahender and Constable Sandeep also reached to the spot and when they came to know that the injured has been taken to Fortis Hospital, they kept Constable Mahender at the spot to guard the spot and reached the Fortis Hospital.

24. PW19 Head Constable Godha Singh who brought the deceased Ram Lakhan in PCR Van met with PW26 SI Babu Lal at Fortis Hospital and handed over blood stained knife which was lying near deceased Ram Lakhan at the spot. PW26 prepared the sketch and seized the knife and found no eye witness at the Fortis Hospital too and *rukka* was prepared and handed over to PW24 Constable Sandeep and the same was handed over to PW23 Head Constable Rishi Rose i.e. Ex.PW23/B and on the basis of said *rukka* FIR No.288/2014 was registered vide Ex.PW23/C on 12.03.2014 and computer copy of the same along with the original *rukka* was handed over to PW27 Inspector Rajesh Kumar at 11:30 am for further investigation and it is thereafter that PW27 Inspector Rajesh Kumar along with PW24 again visited the spot and the crime team was called and recorded the statement of PW18 Rohit who is son of the landlord Surender Singh Lohia.

25. The contention of the learned counsel on behalf of Appellant is that PW15 Usha Devi is an introduced witness and not a witness to the incident and further that she is a tutored witness does not seem to be correct on the following grounds: -

- i. Facts emerging on record is that PW15 Usha Devi is the wife of PW14 Dalip Chaudhary and she was the tenant in House No.39, village Ghitorni where deceased Ram Lakhan was co-tenant on the date of incident i.e. 12.03.2014 and this factum is proved by PW18 Rohit, son of the landlord of said house. She was living with her husband PW14 Dalip Chaudhary.
- ii. The statement of PW14 Dalip Chaudhary that while leaving for the vegetable *mandi* to purchase vegetables he had seen the accused outside the house of Surender Singh Lohia (landlord) at about 5:30 am prior to the incident.
- iii. The statement of PW15 Smt. Usha Devi to the effect that she has witnessed the incident and later somebody called the police by dialling 100 No. is corroborated with the statement of PW4 Tek Chand, who has specifically stated that on 12.03.2014 at about 7 am when he came out of his house, he saw that one driver of Seth Farm House was crying on the stair case of his rented house and was saying “*maar diya maar diya*” and blood was oozing out from his body and he immediately called from his mobile no.9311107798 to 100 No. at about 7:15 am. The said statement stands proved as accused has not cross-examined PW4 Tek Chand and the CDR of the mobile no. 9311107798 is Ex.PW10/B.

- iv. The statement of PW15 Smt. Usha Devi that she witnessed the knife blow given to the deceased Ram Lakhan by accused and said knife have been found at the spot which was picked up by PW19 Godha Singh and handed over to PW26 SI Babu Lal who seized the same and further handed over to PW27 Inspector Rajesh Kumar and same was sent to CFSL. The said knife had blood stains of deceased and the same matched with the blood stains found on the clothes of accused while stabbing and grappling with the deceased.
- v. The statement under Section 164 Cr.P.C of PW15 Smt. Usha Devi was recorded on 14.03.2014. PW15 has specifically stated that she has seen the incident while she was coming out from her rented room after performing *pooja* and heading towards her vegetable shop to perform *pooja*. She has never stated that she saw the incident from her rented room. However, she has clarified that the room of deceased is visible from the window of her rented room. PW15 in her statement also deposes that police enquired about the incident and prepared site plan. However, PW27 Inspector Rajesh Kumar clarified that he prepared site plan Ex. 27/A at the instance of eye-witness PW15 Smt. Usha Devi. No material substance emerges out of the cross-examination to contradict the version of PW15 in presence of her statement under Section 164 Cr.P.C.
- vi. The contention of the learned counsel for the Appellant that the statement of PW15 Smt. Usha Devi does not inspire confidence as she has been interrogated by police and her husband remained in custody for a period of two days and she was forced to become the witness of incident and was compelled to depose before the Magistrate as tutored

by the police and that if she does not depose as per their version then her husband would be implicated in this murder case loses its significance as no cross-examination is carried out to PW14 Dalip Chaudhary or on this material point. The appellant could not shatter PW15 during her cross-examination and nothing substantive material emerged to contradict on material point and therefore the statement of PW15 goes against the accused.

- vii. The accused in the intervening night of 12.03.2014 made a call from his mobile phone No. 9818076650 to the police at 3:50 am at metro station Ghitorni complaining that somebody had taken away his money. The said information was reduced into writing vide DD No. 9A i.e. Ex.P-4. The CDR (Call Data Record) of the same is Ex.PW9/B and copy of application is Ex.PW9/A. The CDR stands proved as there was no cross-examination of PW9 Chander Shekhar (Nodal Officer). Further DD No.9A dated 12.03.2014 was put to accused during his statement under Section 313 Cr.P.C. He has simply stated that he does not know. It is the accused who has to explain who was using his mobile at Ghitorni metro station at 3:50 am on 12.03.2014 and he has to explain from where he has come and where he was going and what he was doing at the relevant point of time.

The non-explanation on this point under Section 313 Cr.P.C and non-leading of defence on this material point brings an adverse effect on his conduct.

Furthermore, on receiving the DD No. 9A i.e. Ex.P-4 at 3:50 am on 12.03.2014, PW26 SI Babu Lal reached at Ghitorni Metro Station and saw the accused there, who told him that he (Arun Bhati-accused)

made a call and he took PW26 SI Babu Lal to the house of deceased Ram Lakhan and told him that Ram Lakhan had taken Rs.10,000/- from him which he lost in gambling and further he told him to recover the said money from Ram Lakhan. Thereafter, PW26 SI Babu Lal told him to go as police cannot take any action in such type of matters and he left from that place.

The accused, in his statement under Section 313 Cr.P.C. has not denied that he did not meet with PW26 SI Babu Lal on 12.03.2014 in pursuance to the DD No.9A i.e. Ex.P/4 which shows that the accused participated in gambling with deceased before 3:50 am on 12.03.2014 at the house of deceased Ram Lakhan i.e. House No.39, Ghitorni and lost Rs.10,000/- as alleged.

PW15 is a house-wife, who resides at her rented premises with her husband PW14 Dalip Chaudhary. She was having no concern with deceased Ram Lakhan being a lady and she has specifically stated so in her cross-examination and which is reproduced as hereunder:-

“I do not know about the duty timing of deceased Ram Lakhan as I have no concern with him being a lady and he was a man.”

As the injured was already taken to Fortis Hospital and PW26 SI Babu Lal was supposed to visit and meet the injured at Fortis Hospital from where *rukka* i.e. Ex.PW26/A was sent for the registration of case, PW15 being a married lady had no concern with deceased Ram Lakhan. Therefore, there was no occasion for PW15 to meet the deceased at his rented premises or in the Fortis Hospital. Therefore, the contention of the learned counsel for appellant that PW15 Smt.

Usha Devi was not seen by PW26 SI Babu Lal neither at the spot nor at the hospital and the allegation that she is a tutored witness are not made out. Consequently, the statement of PW15 Smt. Usha Devi is natural, consistent, trustworthy and inspires confidence.

MEDICAL EVIDENCE

26. The prosecution in order to prove that the death of the deceased was homicidal in nature has examined PW12 Dr. Adarsh Kumar and PW20 Dr. Mohan who have proved the post mortem report i.e. Ex.PW12/A. As per the post mortem report i.e. Ex.PW12/A the cause of death was due to shock and haemorrhage as a result of multiple injuries. All the injuries were ante mortem in nature and he opined that injuries no. 3, 4 and 5 mentioned in the post mortem report were sufficient to cause death individually as well as collectively in ordinary course of nature. Viscera was preserved to rule out any concomitant intoxication and time since death was one to one and half day, dated 13.03.2014, which connects with the date of incident.

CFSL REPORT

27. PW25 Dr. Amitosh Kumar, Sr. Scientific Officer (Physics), CFSL, CBI, New Delhi was examined and stated that in instant case, internal forwarding note along with four parcels were received in Physics Division from Biology Division on 05.06.2014 and was marked to him for examination. The seals on the parcel were found intact. The parcels were opened on 19.02.2015. The parcel contained wall scrapping material and blood stained cotton gauze which were marked as Ex.2, 3, 4 and 5. Wall scrapping material 2 and 3

were compared physically, microscopically and with density analysis. After comparing it was found that the scrapping material 2 and 3 were the same, their colour, physical properties and density gradient analysis. Negligible amount of soil was detected on Ex.4, hence, it could not be compared with the Ex.5. After examination, the parcel were re-sealed with his official seal and sent to the Biological Division along with the original Report i.e. Ex.PW25/A.

PW21 Dr. B.K. Mohapatra, Senior Scientific Officer, Grade-I (Biology), CFSL, CBI, New Delhi was examined and he has proved the CFSL report i.e. Ex.PW21/A. As per the report i.e. Ex.PW21/A, the jacket i.e. Ex.15a worn by the accused and lower i.e. Ex.15b worn by the accused at the time of incident were found to have the same blood as that of deceased Ram Lakhan. The DNA report is reproduced hereunder for ready reference: -

“8.3.. DNA Profile generated from the source of exhibits: 1 (knife), 2 (Scrapping), 4(Blood stained cotton), 6(Cotton wool swab), 7 (Cotton wool swab), 8 (Blood stained paper), 11 (Blood stained gauze), 12 (Blood stained gauze), 13a (Sweater), 13b (Pants), 13c(Shirt), 13d (Banian), 13e (underwear), 15a (jacket), 15b (lower), was found to be human male in origin and consistent with the DNA Profile of Ram Lakhan Rana (Source of exhibit-10: Blood stained gauze) ”

The aforesaid DNA report connects the accused in the present case.

ARREST

28. The prosecution has examined PW27 Inspector Rajesh Kumar and PW26 SI Babu Lal who have stated that the accused was apprehended on the basis of secret informer and later on he was interrogated and arrested vide Arrest memo Ex.PW22/A on the same day i.e. 12.03.2014 in Delhi.

29. The reliance of the learned counsel of the appellant on ***Jitender Mahawar @ Kalu v. State*** (supra), wherein this Court on finding a severe discrepancy in PW1's testimony, gave benefit of doubt to the appellant and the case of ***Yamanappa Goolappa v. St. of Karnataka*** (supra), wherein the Hon'ble Supreme Court acquitted the accused on finding material contradictions and discrepancies in evidence and similarly the case of ***Narsinhbai Haribhai v. Chhatrasingh*** (supra) wherein the Apex Court found the evidence of eye-witness totally unacceptable for sustaining the charge of murder are not helpful to the appellant in view of the facts and circumstances of the present case.

30. Here, we find, that PW15 Smt. Usha Devi is an eye-witness to the incident of giving knife blow on the person of deceased at about 6:45 or 7:00 am at House No.39, village Ghitorni and the said statement is corroborated with the statement of PW19 Head Constable Godha Singh who on receiving DD No. 13A reached to the spot immediately and found the injured lying at the spot as shown in the site plan i.e. Ex. PW27/A, where he found the knife i.e. Ex.PW19/A lying near the injured and the same was sealed vide memo Ex.PW19/B and later on the same was handed over to PW27 Inspector Rajesh Kumar at the Fortis Hospital who further investigated the present

case after registration of the case. The said seized knife along with the jacket and one lower worn by the accused at the time of arrest on 12.03.2014 was sent to CFSL. As per the CFSL Report i.e. Ex.PW21/A the said knife and the clothes worn by the accused had blood stains which matched with the DNA profile of deceased Ram Lakhan Rana.

31. In this regard, reliance is placed on *Alagupandian v. State of Tamil Nadu*, AIR 2012 SC 2405, wherein the Hon'ble Supreme Court has held that where statement of an eye-witness was found to be reliable, trustworthy and consistent with course of events, conviction could be based on her sole testimony- There was no bar in basing conviction of an accused on testimony of a solitary witness as long as said witness was reliable and trustworthy.

32. Further, reliance is placed on *Kamla Kant Dubey v. State of U.P.*, (2015) 11 SCC 145, wherein the Apex Court has very categorically held that, conviction can well be founded on testimony of a single witness if the court finds his version to be trustworthy and corroborated by record on material particulars.

33. As discussed above, the ocular statement of PW15 is natural, consistent, trustworthy and inspires confidence as the same is corroborated with the CFSL Report i.e. Ex.PW21/A and supported with other material prosecution witnesses. Consequently, we find no merit in the submissions of the learned counsel for the appellant.

34. Therefore, we find no infirmity with the impugned judgment dated 17.03.2016 and order on sentence dated 31.03.2016 passed by the learned Additional Session Judge and the same are affirmed.

35. Thus, the appeal is dismissed and all the pending applications (if any) are disposed of.

36. LCR file be sent back forthwith along with a copy of this judgment.

No order as to costs.

**I.S.MEHTA
(JUDGE)**

**S.MURALIDHAR
(JUDGE)**

APRIL 24, 2018

न्यायमेव जयते