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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.570/2018 & CRL. MB 825/2018

SARTAJ

.....Appellant

Through: Mr. K. Parameshwar, Advocate.

versus

STATE

....Respondent

Through: Mr Kewal Singh Ahuja, APP for the
State

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

J U D G M E N T

26.07.2018

Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 8th March, 2018 passed by the learned Additional Sessions Judge, North-East District, Rohini Courts, Delhi in Sessions Case No.59429/16 arising out of FIR No.407/2016 registered at Police Station ('PS') Jahangir Puri convicting the Appellant of the offence under Section 302/34 of the Indian Penal Code ('IPC') and the order on sentence dated 12th March, 2018 whereby he was sentenced to rigorous imprisonment ('RI') for life with a fine of Rs.5,000/-; and in default of payment of fine to undergo simple imprisonment ('SI') for one year.

2. At the outset, it requires to be noticed that along with the present Appellant, his maternal uncle Salauddin was also sent up for trial and convicted for the same offence. Salauddin has filed a separate appeal being

Crl. Appeal No.558/2018, which is pending in this Court.

3. The charge against both the accused i.e. the present Appellant (Accused No.1 – ‘A-1’) and his maternal uncle Salauddin @ Nooru (‘A-2’) was that on 21st July, 2016, at about 10.45 am on the dividing road of GH-Block near Kushal Cinema, near *Charso* Wali Gali, G-Block, on the main road Jahangirpuri, both of them in furtherance of their common intention murdered Ashok (‘the deceased’).

4. There were several eye witnesses to the occurrence. These included Chanchal Devi (PW-4), Sajan (PW-5) and Manoj (PW-11), all of whom turned hostile. The two eye witnesses who supported the prosecution were Harbhajan Singh (PW-12) and his son Manjit Singh (PW-13).

5. As far as PW-12 is concerned, he stated that he was running a *dhaba* in the name of Harbhajan Singh in front of Kushal Cinema. The deceased had been working in his *dhaba* since childhood. His parents had expired. The deceased after he had grown up started running a battery rickshaw. The deceased had constructed his house in G-Block, Jahangirpuri. After construction of the house, he had removed the water motor and handed it to A-1 for keeping it in safe custody. Despite demanding the return of his water motor a number of times, A-1 had not obliged. The deceased and A-1 had quarrelled over this issue on a number of occasions.

6. PW-12 stated that on 21st July, 2016, a quarrel over the same issue took place between the deceased and A-1. He mentioned that A-1 had also worked in his *dhaba* earlier. That day, A-1 picked up a *sua* (ice breaker) in

order to stab the deceased. However, PW-12 intervened and separated them both. No injury was caused to the deceased by A-1 in that incident with the *sua*. However, A-1 left the place whilst uttering threats to the deceased. Within 5/10 minutes, A-1 returned with his maternal uncle (A-2) at the same road on the divider on which the deceased was sitting. This time, both A-1 and A-2 were carrying knives. A-1 gave a knife blow on the right side of the chest of the deceased while A-2 gave a knife blow on his back. A-1 again gave another knife blow on the right side of the chest of the deceased while A-2 gave another knife blow on the back. The deceased then fell down on the ground and was bleeding.

7. Seeing both A-1 and A-2 carrying knives, PW-12 and other public persons had retreated some steps from the place that they were standing. PW-12 along with his son, with the help of other public persons, took the deceased in a battery rickshaw to the BJRM Hospital.

8. According to PW-12, the stabbing of the deceased took place at around 10.45 am. When the deceased was brought to the BJRM Hospital, he was declared 'brought dead'. The police officials who reached there recorded the statement of PW-12.

9. There are two things that emerged in the cross-examination of PW-12. One is that there was a CCTV camera installed in his *dhaba*, but there was no CCTV footage of the incident since it was not covering the spot where the stabbing actually took place. The second aspect that emerged was that the clothes of PW-12 were smeared with blood while he transported the deceased to the BJRM Hospital in an e-rickshaw. However, his bloodstained

clothes were not seized by the police. According to PW-12, although he informed the police of the same and offered the officials his bloodstained clothes, they did not collect them and told PW-12 that they were not required.

10. As regards the latter aspect, nothing much turns on it which could help the accused, since the MLC of the deceased (Ex.PW-2/A) clearly shows that it was PW-12 who brought him to the BJRM Hospital at around 11.23 am. As regards the CCTV footage, if indeed the said CCTV camera in the *dhaba* of PW-12 did not cover the area where the stabbing took place, it could not be said that any evidence that was relevant for establishing the guilt of the accused was withheld.

11. On all material particulars, PW-12 has been fully corroborated by PW-13, his son. He too stated that at around 10.45 am when the deceased demanded the return of his water motor, a quarrel ensued between A-1 and the deceased but PWs 12 and 13 and some public persons intervened and separated them. A-1 picked up a *sua* in order to cause injury to Ashok but he was prevented from doing so. A-1 left the place murmuring some words. After about 10/15 minutes, A-1 came back with his maternal uncle, A-2. The deceased was sitting on the divider of the road. Both A-1 and A-2 were carrying knives. While the deceased tried to run away, A-1 and A-2 gave knife blows on the chest and back of the deceased and then ran away. He has also spoken about the deceased being carried to BJRM Hospital by himself and PW-12. The cross-examination of PW-13 also did not yield much for the accused.

12. The resultant position is that although some of the PWs like PWs 4, 5 and 11 turned hostile, PWs 12 and 13 have stood firm and proved to be totally reliable.

13. Added to the eye witness testimony is the fact that the FSL report confirmed that the bloodstains on the knife recovered from A-1 matched the blood group of the deceased. As rightly observed by the trial Court, there is nothing on record to demonstrate that PWs 12 and 13 had any animosity against A-1 and A-2. On the other hand, PW-12 stated that he had even been threatened by the relatives and friends of A-1 and A-2 not to depose against them. He had also been beaten up by the relatives of A-1 A-2 and had reported the matter to the police. Thereafter, he was given security cover.

14. The knife which was recovered by A-1 was shown to the doctor who conducted the post-mortem i.e. Dr N.K. Gunjan (PW-1). He confirmed that the fatal injuries on the deceased could have been caused by the said weapon.

15. Interestingly, an application was made by the IO of the case regarding opinion on the nature of injuries over the abdomen of the present Appellant. There were 11 external injuries at places. PW-1 opined that these injuries on A-1 were “likely to be self-inflicted”. As far as the deceased is concerned, he had eight external injuries as well as internal injuries. The post-mortem report (Ex. PW-1/A) showed that among the external injuries, there were four incised stab wounds – two on the left side of the chest and two on the lower back and right side of the back. The injuries numbered 6, 7 and 8 were held to be sufficient to cause death in the ordinary course of nature.

Therefore, the ocular evidence was fully corroborated by the medical evidence.

16. This Court, therefore, finds no error having been committed by the trial Court in concluding that it is the Appellant, who along with A-2, committed the murder of the deceased. At least one of the fatal blows was inflicted by the present Appellant. It was a premeditated murder, since after the first altercation, A-1 returned with A-2 carrying knives after about 10/15 minutes and then attacked the deceased.

17. Consequently, the Court finds no grounds to interfere with the impugned judgment and the consequent order on sentence of the trial Court. The appeal as well as the application are dismissed, but in the circumstances, with no orders as to costs. The trial Court record be returned along with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL J.

JULY 26, 2018
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