

\$~5

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

+ **CRL.A. 558/2018 & CRL. MB 784/2018**

SALAUDDIN @ NUROO Appellant
Through: Ms.Saahila Lamba, Advocate.

versus

STATE Respondent
Through: Mr.Hirein Sharma, APP for
State with SI Jasmer Singh, PS
Jahangir Puri, Delhi.

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

JUDGMENT
27.07.2018

%

Dr.S. Muralidhar, J.:

1. This is an appeal by Salauddin, (Accused No.2: A-2 in the original proceedings) against the judgment dated 8th March, 2018 passed by learned Additional Sessions Judge/Pilot Court, North District, Rohini Courts, Delhi, in Sessions Case No.59429/2016 arising out of FIR No.407/2016 registered at Police Station (PS) Jahangirpuri, Delhi convicting him for the offence under Section 302/34 IPC for committing the murder of Ashok on 21st July, 2016 at around 10:45 am near Kushal Cinema, G-H Block, Jahangirpuri, Delhi.

2. The appeal is also against the order on sentence dated 12th March, 2018 whereby the Appellant herein was sentenced to imprisonment for life with a fine of Rs.5,000/-, and in default of payment of fine to undergo simple imprisonment (SI) for one year.

3. At the outset it requires to be noticed that the Appellant was sent up for trial along with his nephew Sartaj (A-1) for the above offence and by the same impugned judgment, A-1 was convicted and sentenced in a like manner. Yesterday, this Court dismissed the appeal of Sartaj (A-1) by a detailed judgment in Criminal Appeal No.570 of 2018.

4. As far as the present Appellant is concerned, the relevant evidence with regard to him is the same as the evidence as regards A-1. There were several eye witnesses to the incident, including Chanchal Devi (PW-4), Sajan (PW-5) and Manoj (PW-11), all of whom turned hostile. However, two eye witnesses to the incident who were not declared hostile and were relied upon by the prosecution to establish the guilt of A-1 are Harbhajan Singh (PW-12) and his son, Manjit (PW-13). In the judgment passed yesterday, the Court has discussed their evidence as under:

“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.”

5. The above two eye witnesses, PWs 12 and 13, have spoken clearly and cogently and stood firm in their cross-examination. They have not been able to be shaken by the defence. Their evidence is therefore reliable, truthful and sufficient to bring home the guilt of the Appellant. From the FSL report it is clear that the DNA isolated from the lower of the present Appellant matched the DNA of the deceased. Consequently, the guilt of the present Appellant for the offence of the murder of Ashok has been proved beyond reasonable doubt.

6. The appeal is dismissed. The applications are also dismissed.

7. The trial Court record be returned together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 27, 2018

"shailendra/sandeep"

