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

Date of Judgment: 4th October 2018

+ **CRL. A. 725/2018 & CRL. MB 1099/2018**

PRADEEP @ VICKY @ ARJUN

..... Appellant

Through: Mr. Kanhaiya Singhal,
Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. K.S. Ahuja, APP for
State

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VINOD GOEL

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JUDGMENT

Dr. S. Muralidhar, J.:

1. This appeal is directed against the order dated 26th May 2018 passed by the learned Additional Sessions Judge, North District, Rohini Courts in SC No.24/2018 arising out of FIR No.610/2017 whereby the Appellant was convicted for the offences punishable under Sections 302 and 341 IPC. The appeals also seeks to challenge the order on sentence dated 28th May 2018 whereby, for the offence punishable under Section 302 IPC, the Appellant was sentenced to undergo imprisonment for life along with fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for one year. As for the offence punishable under Section 341 IPC, the Appellant was sentenced to simple imprisonment for one month. Noting the Appellant's economically weak background, the trial Court

referred the matter to the District Legal Services Authority (North District) to consider grant of compensation to the parents of deceased.

Charge

2. At the outset, it requires to be noticed that the first charge against the Appellant was that he along with the co-accused Pankaj @ Vipin ('A-1'), at around 4 pm on 15th July 2017, near H.No.B-26, MCD Colony, Samaypur Badli, obstructed the way of the deceased Rahul by not allowing him to proceed, thereby committing the offence of wrongful restraint punishable under Section 341/34 IPC. The second charge was that both of them, pursuant to their common intention, assaulted the deceased with a knife, thereby causing his death and committing the offence punishable under Section 302/34 IPC. In the impugned judgment, while the Appellant has been convicted for the aforementioned offences, the co-accused A-1 was acquitted of all charges.

The incident

3. The criminal justice process was set in motion when, at around 4:40 pm on 15th July 2017, a call was received in the PCR informing that a quarrel was going on near B-28, MCD Colony, Samaypur Badli. It was noted in the PCR form (Ex.PW-10/A) at 4:56 pm that "*injured ko lekar hospital ja rahe hai*". The noting at 5:38 pm was that the injured was Rahul son of Beere, aged around 23-24 years, and that he had been taken to BJRM Hospital at Jahangirpuri where he was declared brought dead. It also noted that according to the doctors, the deceased had a knife injury on his left thigh. It is further noted that it was learnt that a person named Vicky had stabbed the

deceased.

4. The *rukka* (Ex.PW-4/A) was prepared on the statement of Naresh Kumar (PW-4), the maternal grand uncle of the deceased. Therein, he stated that he was working as a sweeper in the MCD and, after finishing his duty on 15th July 2017, he was sitting outside his house at around 3:45 pm. He states that after around 10 to 15 minutes, the present Appellant came there, caught hold of the deceased by the neck and started to take him away. While doing this, he was purportedly shouting that he would kill the deceased for refusing to accompany him to commit a robbery. PW-4 then states that as he rushed to help the deceased, the Appellant dragged the deceased away and stabbed him on the left thigh with a knife which he took out from his right trouser pocket. It is further stated that the Appellant fled even as PW-4 attempted to apprehend him. He claims that the deceased, who was now bleeding profusely, went towards the house of his maternal grandmother where he dropped dead at the doorstep. Having prepared the *rukka*, Inspector Ved Prakash (PW-27) sent it to the PS for registration of the FIR at 6:30 pm.

Medical examination of the deceased

5. The medico-legal certificate ('MLC') of the deceased (Ex.PW-8/A) shows that he was brought to BJRM Hospital at around 5:10 pm by ASI Satbir Singh (not examined). The name of the constable present is shown as ASI Yogender Singh (also not examined). Dr. R.S. Mishra (PW-8), who prepared the MLC, noted that the deceased was brought dead.

6. The post mortem examination of the deceased was performed by

Dr. Mukesh Kumar (PW-22) at 11:40 am on 16th July 2017. The report (Ex.PW-22/A) reveals the following two external injuries:

- “1. An incised stab wound having fresh margins of size 4cm x 2cm was present on anterior aspect of left side of the thigh placed obliquely. Both ends were sharp was placed. On dissection, further, the wound track was entering the thigh muscles by cutting muscles, blood vessels, nerve then on posterior aspect of the left thigh heaving incised stab wound with fresh margins of size 3.5cm x 1.5cm, surrounded by dried and clotted blood. The direction of the wound was downward, medially and backward. The depth of the wound was 12cm.
2. An incised stab wound having fresh margins of size 3.5cm x 0.5cm x 0.3cm was present on the lower side of left gluteal fold on medial aspect, 74 cm above heel anterior aspect of left side of the thigh placed obliquely.”

7. The opinion as to the cause of death was given as under:

“Cause of death in this case was hemorrhagic shock consequent to injury to the left thigh produced by sharp cutting/stabbing object. All the injuries were ante-mortem in nature, fresh in duration and were sufficient to cause death in ordinary course of nature.”

Investigation and arrests

8. PW-27 deposed that on receipt of DD No.18A prepared on the basis of the information received at the PCR, he reached in front of H.No.B-24 and found bloodstained trousers, a belt, and sandals lying there. There was blood on the ground. Blood trail was found from H.No.B-23 to B-26. He learnt that the deceased had been removed to BJRM Hospital. Leaving behind certain constables, PW-27 proceeded to BJRM Hospital where ASI Yogendra handed over the MLC of the deceased.

9. Upon returning to the spot, PW-27 met PW-4 and recorded his statement (Ex.PW-4/A). He also picked up the exhibits, put them into plastic containers, and sealed them. The crime team was called and photographs of the scene were taken from different angles. The crime team report (Ex.PW-12/A) reveals that they were present at the spot between 6 to 6:40 pm. The report notes that large pools of blood were found in front of H.No.B-24 and that bloodstained trousers, belt, and sandals were found there. It also notes the blood trail extending from H.No.B-23 to B-26. The *modus operandi* is stated to be “murder with sharp/blunt weapon”.

10. The crime team report noted, under the heading ‘Advice to the IO of the case’, that the IO should “apprehend and interrogate the suspect/suspects involved in the incident”. PW-27 deposed that attempts were made to apprehend the Appellant but no clues were found. A site plan was prepared (Ex.PW-15/PX) by PW-27 and he proceeded to record the statements of other witnesses.

11. On 8th August 2017, the exhibits were deposited at the Forensic Science Laboratory (‘FSL’). On 11th August 2017, PW-4 along with the maternal grandmother of the deceased, Darshna (PW-5), came to the PS and submitted written complaints. PW-27 also recorded their supplementary statements.

12. According to PW-27, on 19th September 2017, he received DD No.24A (Ex.PW-27/F) regarding the arrest of A-1 by the crime branch in Prashant Vihar in FIR No.164/2017 under Sections 25/27 Arms Act. On 21st September 2017, he went to Rohini Courts where A-1 was produced

before the learned Metropolitan Magistrate ('MM'). He interrogated and arrested A-1 there itself and sought police custody remand which was granted. A-1 was medically examined at BSA Hospital and then led PW-27 and the police party to the scene of crime.

13. On 13th October 2017, PW-27 received DD No.31B (Ex.PW-14/A) regarding the arrest of the Appellant who had been arrested in FIR No.180/2017 registered at PS Crime Branch. On 14th October 2017, PW-27 went to the Crime Branch, Prashant Vihar and collected documents of the aforementioned criminal case involving the Appellant from the IO of FIR No.180/2017.

14. On 16th October 2017, PW-27 along with his subordinate police staff went to Rohini Courts where the Appellant was produced before the learned MM. Permission was granted to PW-27 for arrest and interrogation of the Appellant. He recorded the disclosure statement of the Appellant (Ex.PW-20/F) and also obtained police custody remand. After his medical examination at BSA Hospital, the Appellant also led the police to the scene of the crime.

15. It must be mentioned here that the Crime Branch, Prashant Vihar had, when arresting the Appellant in FIR No.180/2017, seized a knife from the scooty which he was driving. This knife, which purportedly was used in the present case by the Appellant to stab the deceased, was sent to BJRM Hospital on 27th October 2017 where a further opinion was given by PW-22 that the fatal injury could have been caused by that knife.

16. The FSL results were collected on 18th September 2017. The previous involvement of the Appellant and A-1 were collected. Thereafter, the charge-sheet was filed on 22nd November 2017.

Trial

17. Charges against A-1 and the present Appellant were framed by the trial Court on 15th January 2018. On behalf of the prosecution, 27 witnesses were examined. Relevant to the present appeal, when the incriminating circumstances were put to the Appellant, he denied them. He claimed to have been falsely implicated. He claimed that the case was concocted due to a previous enmity with the complainant.

Trial Court judgment

18. In the impugned judgment, the trial Court came to the following conclusions:

- (i) The evidence of PW-4 revealed that he did not merely witness the crime but also followed the Appellant and the co-accused when they were taking away the deceased. However, PW-4, in his initial statement to the police (Ex.PW-4/A), did not mention the involvement of A-1 and only named in his subsequent statement made on 11th August 2017.
- (ii) The testimony of PW-4 cannot be discarded merely because he is a relative of the deceased. He was natural witness and, as deposed by his wife (PW-6), was sitting in the street when the incident happened. The principle of '*falsus in uno, falsus in omnibus*' is not applicable in India and therefore, the evidence of PW-4 could not be discarded *in*

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- (iii) As far as the involvement of the Appellant was concerned, PW-4 could neither be disbelieved nor discredited. Since the evidence of PW-4 was not reliable as regards A-1, the benefit of doubt had to be given to A-1.
- (iv) The alleged dying declaration by the deceased to PW-5 was not proved and therefore, the benefit of doubt in this regard went to the accused.
- (v) The recovery of the knife was not satisfactorily proved. The FSL report also showed that no blood was found on the said knife. Moreover, it was not shown to PW-4. Accordingly, the prosecution had failed to prove and establish the recovery of the knife beyond doubt and also that the injury to the deceased was caused by that knife. The said circumstance was not established.
- (vi) The circumstance of the Appellant pointing out the place of occurrence was not believable since, by this time, the place of occurrence was already known to the police. Further, both accused were living in the same locality. Therefore, this circumstance did not link the accused persons with the offence.

19. The trial Court concluded that in view of the evidence of PW-4, the Appellant was guilty of the offences under Sections 341 and 302 IPC and convicted him accordingly while at the same time acquitting A-1 of the said offences. By a separate order on sentence, the Appellant was sentenced in the manner noticed hereinbefore.

Notable discrepancies in the site plans

20. This Court has heard the submissions of Mr. Kanhaiya Singhal, learned counsel appearing for the Appellant, and Mr. Kewal Singh Ahuja, learned APP for State.

21. This was a case purportedly based on an eye witness account. The two key witnesses for the prosecution were Naresh Kumar (PW-4) the maternal grand uncle of the deceased, and Darshna (PW-5) the maternal grandmother of the deceased. Before analysing their statements, however, it would be pertinent to examine the site plans prepared depicting the scene of the crime.

22. By the time PW-4 was examined in the trial, the scaled site plan (Ex.PW-3/A) had already been drawn up. The differences between this scaled site plan and the earlier unscaled site plan (Ex.PW-15/PX) are of particular relevance. In the scaled site plan, point 'A' (the spot where the deceased was standing) is shown in the middle of the street. This more or less corresponds to the point 'A' marked on the unscaled site plan showing the spot where the deceased was standing. Point 'B' in the scaled site plan (the spot where PW-4 was sitting) is shown in front of H.No.B-22. This too corresponds to the spot marked at point 'C' in the unscaled site plan.

23. The discrepancy arises in respect of the actual spot where the Appellant is alleged to have stabbed the deceased. This spot is denoted by point 'C' in the scaled site plan and by point 'B' in the unscaled site plan. While point 'B' in the unscaled site plan is shown to be in front of H.No.B-26, in the scaled site plan, point 'C' is shown to be in front of a shop, with no door number denoted thereon. From the photographic evidence of the crime

scene, this shop appears to be Aman Dairy but its proprietor has not been examined as a PW.

24. The location of H.No.B-26 varies a great deal depending on which site plan one is looking at. While in the unscaled site plan its location is shown to be next to the spot where the deceased was allegedly stabbed by the Appellant, in the scaled site plan, it is shown to be adjacent to H.No.B-24, in front of which points 'D' (where the deceased fell), 'E' (where the deceased's sandals were found lying), 'F' (where his trousers were found lying), and 'G' (where a pool of his blood was found) have been shown. These four spots, in the unscaled site plan, are shown to be in front of H.Nos.B-23 and B-24 which are shown adjoining each other. The spot where the deceased purportedly fell down is denoted by point 'D'. The other three spots, although described, are not denoted by any alphabet.

25. If one went by the scaled site plan, it would appear that there was no blood to be found anywhere else but points 'D', 'E', 'F', and 'G' shown to be in front of H.No.B-24. This belies the theory that the deceased was stabbed at point 'C' in front Aman Dairy and then, with his thigh bleeding, he went towards his grandmother's house and collapsed there. If that was the case, there would be spots of blood shown at point 'C' as well as a trail of blood shown from point 'C' to points 'D', 'G', 'E', and 'F'. No such trail of blood seems to be shown between these locations even though the distance between them is mentioned as 36.5m.

Law relating to interested witnesses

26. The two key witnesses in the present case are close relatives of the

deceased and are therefore interested witnesses. It is necessary at this stage to revisit the legal position regarding the testimony of an interested witness. In this regard, the Supreme Court in *Jayabalan v. Union Territory of Pondicherry (2010) 1 SCC 199* made the following observation:

“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)

27. Similarly, the Supreme Court expressed its view on the matter in *Raju v. State of Tamil Nadu AIR 2013 SC 983* in the following words:

“.....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)

28. The following observation on the appraisal of the testimony of an eye-witness was made by the Supreme Court in *Rammi @ Rameshwar v. State*

of Madhya Pradesh AIR 1999 SC 256:

“When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.”

Testimony of PW-4

29. As far as PW-4 is concerned, his initial statement to the police (Ex.PW-4/A) has already been referred to. In his cross-examination, his responses to the inconsistencies and improvements made by him in his testimony were elicited by the defence counsel. One such inconsistency pointed out by the learned defence counsel is of particular relevance. In his initial statement to the police, PW-4 had mentioned that after sustaining injuries, the deceased moved towards the house of his maternal grandmother while bleeding profusely. However, while deposing in the trial, he states that the deceased died in hospital. When asked which of these two statements was correct, PW-4 responded, “My statement that Rahul died in the hospital is correct”.

30. Furthermore, keeping in view the discrepancies in the scaled and unscaled site plans highlighted hereinabove, PW-4’s presence at the scene appears doubtful. In his cross-examination in Court, he accepted that the

incident of stabbing would not have been visible from the spot where he was initially sitting, i.e. outside H.No.B-22. He then volunteered that he was able to witness the incident of stabbing only because he followed the Appellant and A-1 as they dragged the deceased away. However, this fact of him following the two accused while they dragged the deceased away has not been mentioned by him to the police in his initial statement.

31. It also appears to this Court that, while he may not have been able to intervene when the two accused were dragging the deceased away, the witness would have, at the very least, helped the deceased after the two accused fled the scene. Indeed, he claims that he followed the deceased to the house of PW-5 and tied up the wound on his leg with a piece of cloth. He further claimed that he was helping the deceased as he lay in his grandmother's lap. The deceased is stated to have told PW-5 that "*mere ko Vipin aur Vicky ne maar diya*". However, if all of this is to be believed, it is indeed odd that no bloodstains were found on the clothes of PW-4; that PW-4 did not accompany the deceased to the hospital; and that there is no other witness who speaks of his presence at the time.

Evidence of PW-5

32. The sister of PW-4, viz. Darshna (PW-5), has deposed in the trial to the effect that his presence at the spot at the relevant time is even more doubtful. She is the person to whom the deceased is supposed to have made the aforementioned dying declaration. According to her, the deceased came to her house in an injured condition. She took him in her lap, at which time he purportedly made the dying declaration "*Vicky aur Praveen ne mujhe maar*

diya” and then became unconscious. She states that, after some time, the elder brother of the deceased came and took the deceased to the hospital. She volunteered that she had not seen her brother PW-4 sitting on a cot on that date. She was categorical in stating that “no other person accompanied Rahul at my house”.

33. When asked by the Court if she knew Praveen, the person purportedly named by the deceased in his dying declaration, PW-5 answered in the negative. She then stated as under:

“It is correct that my brother Naresh told me what I shall depose, but I told him that I will depose whatever I had seen and told to me by Rahul and nothing else. It is wrong to suggest that nothing was told to me by Rahul or that I am deposing falsely at the instance of my brother Naresh who had tutored me.”

34. This is a clear indication that PW-4 was attempting to put pressure on PW-5 to give certain answers but had failed in that endeavour. She insisted that the persons named by the deceased were Vicky and Praveen, who she states were “*chacha bhatija*” (uncle and nephew). The prosecution has been unable to establish the identity or whereabouts of Praveen. It also appears that there is no Praveen who could be said to be the nephew of the Appellant.

35. The APP nevertheless persisted with questioning PW-5 about the identities of the accused. The questions put by him to her in this regard and the answers given thereto read as under:

“Q. I put it to you if Rahul told you that “*Vicky ne chaku maara aur Vipin ne dhakka maara*” and there is no

person by the name of Praveen. What have you to say?

Ans. *Maine kya baira* (I don't know).

Q. I put it to you if Rahul told you that there is no accused by the name of Praveen and the accused is known as Vipin @ Pankaj. What have you to say?

Ans. I don't know.

Q. I put it to you that Rahul told you the name of Vicky and Pankaj @ Vipin and not Vicky and Praveen. What have you to say?

Ans. It is wrong. Rahul told me the name of Vicky and Praveen and as per my knowledge, they are *Chacha-Bhatija*."

36. The expression "*maine kya baira*" apparently translates as: "how would I know?" and not as indicated by the trial Court. She was further clear that she had not seen A-1 Pankaj @ Vipin. She did not know who Praveen was although she kept taking his name.

Identity of the assailants not established

37. It is a matter of record that no test identification parade ('TIP') was conducted whereby PWs 4 and 5 could identify either of the accused. There is considerable force in the argument advanced by the learned counsel for the Appellant that the prosecution has been unable to conclusively establish that it is this very Appellant who was seen stabbing the deceased by PW-4. With the presence of PW-4 at the spot being extremely doubtful, it would be unsafe to base the conviction of the Appellant on such evidence.

38. The trial Court, it must be recalled, first proceeded on the basis that the prosecution was projecting the case as one based on direct evidence where the star witnesses were PWs 4 and 5. However, after it became clear that PW-4 who was purportedly an eye witness, was not reliable, and PW-5 did not support him, the trial Court began examining whether the case of the prosecution could be proved by circumstantial evidence.

Circumstances not proved

39. As noted by the trial Court, the prosecution was unable to prove that the dying declaration was indeed made by the deceased to PW-5. It held that “circumstance not to be proved”. Likewise, the recovery of the knife at the instance of the Appellant was held to be not proved. Thirdly, the trial Court noted that with there being no blood detected by the FSL on the knife, the prosecution was unable to prove that this was the very weapon which was used to stab the deceased. These findings of the trial Court have not been challenged.

40. With PW-5 being not an eye witness herself, and with her not corroborating PW-4, the case of the prosecution stood considerably weakened. There is no clinching evidence to convince this Court of the guilt of the Appellant.

Appellant's purported criminal antecedents

41. Learned APP for the State has placed before this Court the criminal track record of the Appellant which shows that there are a number of cases against him from the 2013 onwards, primarily under Sections 379 and 392 IPC. These cases have been registered at various PS's, including PS Swaroop

Nagar, PS Samaypur Badli, PS Prashant Vihar, PS Bhalswa Dairy, and PS Jahangirpuri. In many of these cases, the Appellant is shown to have been either arrested or in judicial custody. Most significantly, there is not a single conviction recorded in any of these cases. In none of the cases has the Appellant been charged with an offence under Section 302/34 IPC as in the present case.

42. The mere fact that the Appellant has a large number of criminal cases registered against him would not compensate for the lack of evidence to bring home his guilt in the present case. The present case involves an extremely serious charge and the burden on the prosecution to prove the Appellant's guilt beyond all reasonable doubt is not diluted because the Appellant is shown to have a number of prosecutions pending against him.

43. It requires to be reiterated that the Appellant has not been convicted in any of these cases and no adverse inference can be drawn against him on that basis. Consequently, the purported criminal track record of the Appellant is of no help to the prosecution in discharging its burden of proving his guilt in the present case beyond all reasonable doubt.

44. The evidence of the prosecution is not sufficient to enable this Court to conclude that the guilt of the Appellant has been proved beyond all reasonable doubt for the offences punishable under Sections 302 and 341 IPC.

Conclusion

45. The impugned judgment of conviction and the order on sentence of the

trial Court are accordingly set aside. The Appellant is hereby acquitted of the offences under Sections 302 and 341 IPC. The Appellant will fulfil the requirement of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record be returned forthwith together with a certified copy of this judgment.

46. The nominal roll of the Appellant shows that the Appellant is already in judicial custody in several other cases which are pending trial. Although the Appellant stands acquitted in the present case, he cannot be released from jail straightway as he is wanted in other cases which are indicated in the nominal roll.

47. The appeal is accordingly allowed and the pending application stands disposed of.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 04, 2018

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