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

+ **CRL.A.427/2017**

RAJESH KUMAR MISHRA Appellant
Through: Mr.Amit Kumar, Advocate with
Mr.D.D.Tripathi, Advocate.

versus

STATE GOVT OF NCT OF DELHI Respondent
Through: Mr.Kewal Singh Ahuja, APP

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER
06.03.2018

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1. This appeal is directed against judgment dated 11th January, 2017 passed by the learned Additional Sessions Judge – 01 (‘ASJ’), South West District, Dwarka Courts in Sessions Case No.21/2013 arising out of FIR No.196/2012 registered at Police Station (‘P.S.’) Kapashera convicting the Appellant for the offences punishable under Section 302/201 IPC and the order on sentence dated 30th January, 2017 whereby for the offences under Section 302 IPC, he was sentenced to undergo rigorous imprisonment (‘R.I.’) for life with a fine of Rs.10,000/- and for the offence punishable under Section 201 IPC was sentenced to undergo R.I. for two years with a fine of Rs.2,000/-, and in default of payment of fine amounts to undergo one year and two months simple imprisonment (‘S.I’) respectively. Both the

sentences were directed to run concurrently.

2. The Appellant was working as a guard at D-26, Pushpanjali Farms, Bijwasan, New Delhi. He had been employed there as a guard 20-25 days prior to the incident that took place at around 1am on 22nd November, 2012. The other guard employed in the said place was the deceased Chander Mani Pandey who was also known as C.M. Pandey. The third employee in the said place was Daya Ram (PW-1), who worked as a gardener.

3. According to PW-1, on 21st November 2012 in the noon hours, the deceased asked him to cut wood for burning to keep him warm since it was winter season. PW-1 declined stating that he would not be able to cut the wood as he was unable to climb the tree. The deceased was then said to have called another gardener, Rakesh @ Birender (PW-6) from the adjoining farmhouse and got a branch of the tree cut down. The Appellant is stated to have objected to this and asked the deceased with whose permission the branch had been cut. The Appellant then is stated to have called up the Supervisor Vijay (not examined) who in turn sent two drivers, namely Ravinder Yadav (PW-4) and Jyoti Prakash (PW-5) to inquire into the matter.

4. PW-4 and PW-5 reached the farm house at about 3 pm. Finding that the branch of the tree had already been cut, they counselled the deceased and the Appellant that they should not fight amongst themselves over the cutting of the branch. After PWs 4 and 5 left, the deceased is stated to have told the Appellant that the deceased had called up the Field Officer, Radhey Shyam Yadav (PW-2) and that the Appellant's services had been terminated and he could leave with his luggage. Upon this a verbal duel took place between the

Appellant and the deceased and this continued till the evening hours.

5. According to PW-1, he then went to his servant's quarters, cooked food, ate dinner and went to sleep. He got up to answer the call of nature between 12 and 1 am. When he came out from quarters, he heard the noise of '*dham dham*' from the side of the guard room. When he went to check the source of the noise, he found the deceased and the Appellant engaged in a scuffle. According to PW-1, the Appellant asked him to leave otherwise the Appellant would beat him up as well. PW-1 being a weak person went back to his quarters, bolted the door from the inside and out of fear kept awake the whole night.

6. In the morning, PW-1 met the Appellant outside his room who told him that he was going to open the main gate. After sometime, he returned and asked PW-1 to accompany him till the main gate to see what had happened there. When PW-1 went along with the Appellant to the main gate, he found the blood soaked body of the deceased lying near the main gate. PW-1 then got frightened and asked the Appellant to call someone. The Appellant then called the supervisor, Radhey Shyam Yadav (PW-2) and asked PW-1 to tell PW-2 about the incident. After some time, PW-2 reached the spot. He then called the police at 100 number. The police reached the spot, took some photographs. Blood was also found in the guard room.

7. It has come in the evidence of Vikas Pannu (PW-23) who was working as Sub Inspector at P.S. Kapasahera that he was given DD No.11/A and along with Constable Surender (PW-14), he went to the spot. He found a dead body lying inside the main gate with face down towards the earth. At the

spot, he met PW-1, the Appellant and PW-2. In the meanwhile, Inspector Om Prakash, Additional SHO of PS Kapashera also reached there. At around 9:50 a.m., the crime team arrived and inspected the spot. The statement of PW-1 was recorded. On that basis a *rukka* was prepared and sent to the P.S. for registration of the FIR.

8. The Investigating Officer ('IO') then lifted the exhibits in the presence of PW-23 and prepared a rough site plan (Ex.PW-23/A). The Appellant was arrested after interrogation. He gave a disclosure statement and in the presence of the crime team, got recovered two broken pieces of *danda* and a stone, which he had used in the commission of the crime, from the bushes. The Appellant also got recovered his 'pant shirt, jersey, black shoes and belt having bloodstains worn by him at the time of incident'. These were then deposited in the *malkhana* of the P.S. The FIR was registered at around 1.10 pm.

9. The post mortem examination of the deceased was conducted on 23rd November 2012 at 1.15 pm. It confirmed that the death was homicidal. The following external injuries were noticed:

- “1. Lacerated wound of size 23cm x 3cm x bone deep present over the head on posterior aspect extending from right temporal region up to left temporal region with irregular, ragged margins.
2. Lacerated wound of size 6cm x 3cm x bone deep at mid forehead.
3. Lacerated wound of size 3cm x 1cm x bone deep at forehead.
4. Lacerated wound of size 6cm x 2cm x bone deep left eye

5. Deformity presents on the right both lower forearm and wrists with fracture of both bones on lower both side.

6. Abrasion of size 6cmx 2cm lateral aspect of left thigh.

7. Pressure bruise of size 7cm x 5cm present on right side of face with multiple fracture of right zygomatic bone on the fracture right mandible, fractured of left ramous of mandible with fractured of right maxilla with disfigured and distorted face on right side.

All above injuries had collection of clotted and liquid blood in and around the injuries.”

10. On internal examination of the head, the following injuries were noticed:

“A- Scalp /Skull /Brain, Meninges & Vessels: Sub scalp contusion present on the frontal bilateral temporo-parietal and occipital region with depressed communitied fracture of right temporal right parietal and occipital bone. Extradural haemorrhage present over right temporal area. Massive Subdural and subarachnoid haemorrhage present all over the brain.

B- Base of skull: fractured of middle cranial fossa on both side.”

11. The opinion as to the cause of death was the cranio-cerebral injuries which were sufficient in the ordinary course of nature to cause death. Time since death was given as approximately 36 hours prior to the examination.

12. On the completion of the investigation, a charge sheet was filed. By an order dated 10th April 2013, the trial Court framed charges against the Appellant in the manner indicated hereinbefore for the offences under

Section 302 and 201 IPC.

13. 23 witnesses were examined by the prosecution. In his statement under Section 313 Cr PC, while denying the circumstances, the Appellant claimed to be innocent. He sought to explain that the deceased was a gambler and he used to bring professional girls to the farm house and, therefore, would open the main gate. According to him, on the date of incident, the deceased was on night duty. He claimed that some locals had given beatings to the deceased on a number of occasions as he was having illicit relations with ladies who would come to the farm house for the purpose of cutting grass. He claimed not to know who had killed the deceased. He pointed out that he had fractured his left elbow in 1988 and since then he was unable to lift heavy articles and was also unable to speak properly.

14. Apart from the above, the Appellant examined himself as DW-1. In his deposition by way of examination-in-chief, he elaborated that he had got his left elbow fractured in 1988 in an accident involving a motorcycle which he was riding. He also claimed to have developed some mental problem and “also loss of memory”. He claimed to have been sleeping on the day of incident from around 8 to 9 pm up until 7 am the following morning and that when he woke up, he found the dead body near the gate and had apprised the said fact to PW-1 immediately. Both of them had then informed PW-2.

15. In his cross-examination, the Appellant admitted to having quarrelled with the deceased in the noon time regarding the cutting of the tree and also that PWs-4 and 5 had come there and counselled them in that regard. He

made two contradictory statements as under:

“It is wrong to suggest that gate was opened when I went there.
It is further wrong to suggest that I had not opened the gate.”

16. The learned counsel appearing for the Appellant submitted that the above statement was perhaps not correctly recorded. According to him, the stand of the Appellant was that the gate had already been opened by someone else and then the possibility of the deceased having been killed by someone else could not be ruled out. However, no clarification in that regard was sought from the Appellant while he was still deposing.

17. The trial Court has, in the impugned judgment, found that the testimony of PW-1 was reliable and truthful and that nothing more emerged from his cross-examination that would benefit the Appellant. It was further found that apart from the motive for the crime, PW-1 had also been corroborated in his testimony by the medical evidence which showed that the death was homicidal. Further the recovery of the broken pieces of the *danda* and the stone, both of which were blood stained and more importantly, the uniform worn by the Appellant containing the blood stains which matched the blood group of the deceased completed the chain of circumstances which were proved beyond reasonable doubt and unerringly pointed to the guilt of the accused.

18. This Court has heard the learned counsel for the parties. The learned counsel for the Appellant submitted that PW-1 was not a trustworthy witness since his conduct was unnatural. Despite finding a scuffle going on between the Appellant and the deceased, PW-1 did not immediately call the

Supervisor. Therefore, his version of what transpired between 12 midnight and 1am on 22nd November, 2012 ought not to be believed.

19. The Court is unable to agree that the conduct of PW-1 was unnatural. It has come in the evidence that PW-1 was not even prepared to climb the tree to cut the branch and perceived himself as weak person. In the circumstances, it is not surprising that when he saw a scuffle going on between the deceased and the Appellant and the Appellant threatened to beat up PW-1 as well, PW-1 retreated into his room and remained there throughout the night frightened of the consequences.

20. It was then pointed out by the learned counsel for the Appellant that PW-1 himself was a suspect and was kept in the P.S. According to him, since the police was unable to solve the crime, they decided to falsely implicate the Appellant by making PW-1 as the main witness and this itself explains the delay in the registration of FIR.

21. No doubt, the FIR was registered at 1.10 pm whereas the police had reached the spot at 9.20 am itself. Nevertheless a perusal of the testimony of PW-23 reveals that steps were taken by the police immediately after reaching the spot to inquire, record the statements of the witnesses and then also pursue the disclosure given by the Appellant that he could get recovered the weapons of the offence. In these circumstances, the registration of FIR about four hours after the police arrived at the scene of crime cannot be said to be so delayed as to have prejudiced the course of investigation. With there being only three persons in the farm house, the police had to be absolutely

sure of the culprit before proceeding to register the FIR.

22. This Court concurs with the trial Court that the eye witness testimony of PW-1 stands corroborated by the medical and forensic evidence. As already noticed, the death was homicidal and as a result of the cranio-cerebral injuries which included fracture of the skull. This meant that the assailant was particularly severe on the deceased having attacked him with a *danda* like weapon. The injuries leave no manner of doubt that the assailant intended to kill the deceased. The motive in the present case being the quarrel that took place during the day between the Appellant and the deceased stands proved even from the deposition of the Appellant himself.

23. The evidence of PWs-4 and 5 completely supported the case of the prosecution about the quarrel that took place during the day between the Appellant and the deceased. PW-2 confirmed the call made by the Appellant to him following his quarrel with the deceased. PW-2, also corroborated the version of PW-1 on the material aspects of what transpired during the day at 21st November, 2012.

24. The Court has perused the rough site plan as well as the scaled site plan which indicates the place where the scuffle took place, the dead body of the deceased was found, the place of recovery of the blood stained stone and pieces of the *danda* as well as the room in the servant's quarter where the blood stained belt and uniform of the Appellant was found pursuant to the disclosure made by him. The site plans, therefore, also corroborate the testimony of PW-1 and the I.O.

25. The circumstances put forth by the prosecution form a complete chain and each of the circumstances has been proved beyond reasonable doubt. The proved circumstances unerringly point to the guilt only of the accused and no one else, for the offences punishable both under Sections 302 and 201 IPC.

26. In that view of the matter, the Court finds no reason to interfere with the impugned judgment and order on sentence of the trial Court. The appeal is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 06, 2018
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