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

+ **CRL.A. 582/2017**

PAWAN @ DABBAL

..... Appellant

Through: Mr. S.B. Dandapani, Adv

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Hirein Sharma, APP for the
State.

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

JUDGMENT

18.07.2018

Dr. S. Muralidhar, J.:

1. This is an appeal filed by the convicted accused against the judgment dated 20th May 2016 passed by the Court of the learned ASJ (FTC), E-Court, Shahdara District in SC No.38/2012 arising out of FIR No.77/2012 registered at PS Kalyanpuri whereby the Appellant was convicted for the offence punishable under Section 302 IPC. The appeal also challenges the order on sentence dated 30th May 2016 whereby the Appellant was sentenced to undergo imprisonment for life and fine of Rs.25,000/- and in default of payment of fine, to undergo simple imprisonment for a further three months.

2. The charge against the Appellant was that on 23rd March 2012, at around 4 pm, near Lata Nursing Home in Khichripur, he had murdered the deceased Ajay by stabbing him and had thereby committed the offence punishable under Section 302 IPC.

Information about the crime

3. The criminal justice process was initiated when DD No.17A was recorded at PS Kalyanpuri pursuant to a PCR call at around 4 pm about a boy having been stabbed near the Mother Dairy at Kalyanpuri. The PCR Form (Mark PW-5/A) reveals that a call was received at 4.12 pm on 23rd March 2012 from one Rohit having mobile number ending 8583 giving the information that “*Ek ladka injured hai, shayad chaku laga hai*”. The PCR Form also notes that when the police reached there at around 4.24 pm, the public informed them that the injured Ajay had already been taken to the LBS Hospital. At about 4.57 pm, the entry recorded shows that at the LBS Hospital, the police met Sanjay Sagar (PW-10), the elder brother of the deceased, who told the police that around 15-20 minutes earlier, at the rear side of their house, Ajay was lying unconscious in an injured condition having been stabbed.

Medical evidence

4. The MLC of the deceased (Ex.PW6/A) shows that the deceased was brought in an injured condition to LBS Hospital by PW-10 at around 4.15 pm. The MLC records numerous incised wounds on different parts of the body of the deceased. It appears that the deceased was referred to

surgery. There is no indication in the MLC about the fitness of the deceased to make a statement.

5. What transpired at the surgery is not clear. However, the post-mortem report of the deceased (Ex.PW-1/A) indicates that the time of death of the deceased was 6.30 pm on 23rd March 2012. The post-mortem examination was performed by Dr. B.N. Acharya (PW-1). In his deposition, he has identified the numerous stab and incised wounds that he had found on the body of the victim. According to him, injury no.6 being a stab wound on the abdomen, along with the other multiple wounds, was sufficient to cause death in ordinary course of nature.

6. It appears that on 23rd March 2012, at around 5.35 pm, the *rukka* drawn up was sent to the PS for registration of the FIR. In his statement to the police (Ex.PW-10/A), PW-10 named the Appellant by mentioning that he saw the Appellant run away when he went to find out what had happened to the victim.

CDRs not collected

7. Interestingly, even in this statement, PW-10 mentions that the Appellant gave a call to his mobile phone from a mobile number ending 0561 stating that “*maine tere bhai ka seen kar diya hai*”. Unfortunately, the IO has not collected the CDR of this mobile number ending 0561 which could have provided a valuable lead in the case. Also, despite the IO, ACP Rajesh Sharma (PW-19), admitting in his cross-examination that he had collected

the CDR of the mobile phone of PW-10, that CDR was not exhibited by the prosecution.

8. The other curious development in the case is a call purportedly received at the PCR at around 12 noon on the following day, i.e. 24th March 2012. The PCR form (Ex.PW-18/A) does not indicate the name of the caller who is noted to have been a male. The mobile number making the call is shown to be one ending 8483. The information recorded reads that “*kal mene Khichripur me Ajay ko chaku mara tha jiski death ho gai he, me sarender karna chahta hu, police bheje*”. The said PCR on the right hand column shows that the police went soon thereafter to the Kalyanpuri Bus Terminal but could not locate any person who had made the above said call.

9. The prosecution has sought to project that this call was in fact made by the Appellant himself. However, the CDR of the above mobile number was not collected and therefore, there could be no confirmation as to whether in fact it was the appellant who made the above call.

10. What emerges from the above discussion is that according to the prosecution, the Appellant is stated to have made two extra judicial confessions. The first was purportedly made on 23rd March 2012, soon after the incident, by making a call to the mobile number of PW-10. The second was purportedly the aforementioned call made to the PCR at around 12 noon on 24th March 2012. Neither of these leads was picked up by the IO for

reasons best known to him. There was no attempt made to connect, in particular, the second call made to the PCR to the Appellant.

Arrest and recovery

11. The prosecution appears to have relied excessively on PW-10 to prove the entire case. Apart from claiming to have actually seen the Appellant run away from the spot, PW-10 also appears to be a crucial witness for the arrest of the Appellant.

12. According to PW-10, at around 7.30 to 8 pm on 24th March 2012, he got information from his friends that the Appellant was present at the *jhuggis* at Block No.7, Khichripur. It was mentioned at this stage that the Appellant is a resident of Block No.10 where the incident had occurred. The Appellant was purportedly arrested at nearby Block No.7. That the Appellant would remain in the same area even 24 hours after the incident appears to be inexplicable. When PW-10 was cross-examined about these friends who gave him information about the presence of the Appellant in Block No.7, he stated that his friend Surender gave him that information. However, he also stated, “Surender did not accompany me to the police station. I did not tell the name of Surender to the Police”. This is not very convincing. The IO too does not appear to have made any efforts to look for this Surender.

13. Then the further circumstance that the prosecution relies upon is the fact that upon his arrest, the Appellant made disclosure and led the police to Kondli Bridge *ganda nala* which was “a busy road with traffic passing

there". The Appellant is supposed to have taken the police party along PW-10 to some bushes from where he got recovered his own bloodstained T shirt in which was carefully wrapped the blood stained knife which he purportedly used to commit the murder of the deceased. It is extraordinary that the Appellant would carefully preserve his own blood stained T shirt and use it to wrap the bloodstained knife and further keep them both in the bushes near a busy bridge.

Serological report

14. Mr. Dandapani, learned counsel for the Appellant, raised valid doubts regarding the recovery of the incriminating articles, viz., the bloodstained T shirt and the bloodstained knife. What makes this part of the evidence even more doubtful is the fact that when the bloodstained T shirt and bloodstained knife were sent to the FSL for examination, the report (Ex.PW-19/B) showed that as far as the knife (Ex.3) was concerned, it contained human blood but there was no reaction. Ex.2 was the T shirt purportedly worn by the Appellant which was also shown to have blood of human origin but showed 'no reaction'. It was only the trousers and shirt of the deceased (Ex.4a and Ex.4b) as well as the pant and shirt of PW-10 (Ex.6a and Ex.6b) that revealed the presence of human blood of 'B' group which happened to be the blood group of the victim. Therefore, the serological report did not connect the appellant to the crime.

Forensic report

15. Although, the FSL report states that the “report from the DNA unit will be furnished separately”, the learned APP informs the Court on instructions from the IO who is present in Court that the said report was not made available to the prosecution.

16. Added to this is the fact that the report (Ex.PW-20/A) given by Dr. Vinay Kumar Singh (PW-20) gives rise to more questions. This report was a report of the examination of the clothes of the Appellant, namely the bloodstained shirt (Ex.2), the bloodstained trousers and shirt of the deceased (Ex.4a and 4b), and the bloodstained pant and shirt of the complainant (Ex.6a and Ex.6b). This report shows that there was a square cutting mark on the right forearm area of the Appellant’s shirt. No attempt has been made by the prosecution to explain this cutting mark on the shirt of the Appellant. More curious is the presence of a cutting mark in two places on the front of the red T shirt worn by the complainant. This too has not been explained by the prosecution. This, therefore, adds to the mystery about the identity of the assailant.

Analysis of evidence of PW-10

17. It was repeatedly urged by the learned APP that the statement of PW-10 clearly mentions the presence of the Appellant at the scene of the offence and that he was seen running away when PW-10 reached there. It is further submitted that the mere non-mentioning of this fact to the police when they

reached the hospital cannot discredit the above version of PW-10 since soon thereafter, while giving a statement to the police, he has in fact mentioned this fact.

18. It is important to note that PW-10 does not claim to be an eye-witness to the actual incident of stabbing of the victim by the Appellant. According to him, he only noticed the appellant run away from the scene. In his cross examination, he volunteered the following details:

“The spot of the incident is not visible from my house and I saw the incident on reaching near the spot. There were 10 – 20 persons gathered at the spot. Some of them were from our Mohalla but there were also outsiders present there. No one tried to intervene after I reached at the spot. I saw my brother Ajay lying for the first time from the distance of about 10 – 12 ft. Accused Pawan Dabbal was near my brother when I saw him.”

19. It is significant that he admits that he “did not try to apprehend the accused” and that no one else tried to do so either. Furthermore, no one from the crowd present at the spot accompanied him to the hospital and no one helped shift his brother to the *rickshaw* and then to the RTR. In his further cross-examination, while he denied that his deceased brother was a bad character, he admitted that his “brother was facing a criminal case”. He denied the suggestion that the victim was “having gang rivalry with criminals”. At this stage, it is important to note that the learned APP has informed this Court on instructions of the IO present in the Court that the

Appellant has a previous criminal record of facing trial in three cases of theft.

20. What emerges from the above evidence of PW-10 is that he is at best a witness to the fact that the Appellant was found running away from the spot when he reached the victim. PW-10, in fact, did not see the Appellant actually stab the victim. The fact that there is no other independent witness who came forward to speak about this incident is extremely significant. The incident happened in broad daylight at around 4 pm and it appears incredible that the police was not able to even find one independent witness from the public who could speak about this crime.

21. This made it all the more necessary for the police to investigate the aspect of the purported extra judicial confession made by the Appellant on two occasions. However, as already noticed, for reasons best known to him, the IO made no attempt to uncover the truth of the calls purportedly made by the Appellant to PW-10 and then to the PCR. This is indeed a very serious lapse which has considerably weakened the case of the prosecution.

22. Merely because PW-10 happens to be the brother of the victim and, therefore, an interested witness, would not per se discredit him. However, as explained by the Supreme Court in several decisions such evidence would have to be very carefully scrutinized and has to be examined particularly for contradictions and inconsistencies. The rule of caution also requires the Court to look for corroboration of such testimony from other evidence.

23. In *Dalip Singh v. State of Punjab 1954 SCR 145*, the Supreme Court explained:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

24. In *Waman v. State of Maharashtra (2011) 7 SCC 295*, the law was summarized thus:

“It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

25. When examined in light of the legal position as explained above, the Court is not able to be assured that the testimony of PW-10 is by itself

sufficient to bring home the guilt of the Appellant for the crime with which he has been charged. As already noticed earlier, the serological report was unable to confirm that the bloodstains on the clothes of the Appellant matched that of the deceased. Even the knife purportedly recovered at the instance of the Appellant could not be shown to have the bloodstains matching the blood group of the deceased. In other words, the forensic evidence was unable to connect the accused with the crime.

26. Added to this are the unexplained cutting marks on the clothes of both the Appellant and PW-10. No attempt was made by the prosecution to explain this. It is evident that PW-10 was not an eye-witness and there is no corroboration of his version of events from any of the other credible independent evidence on the record.

Conclusion

27. In a case of circumstantial evidence, it is essential for the prosecution to prove each link in the chain of circumstances beyond reasonable doubt. However, the exercise does not end with that. The chain of circumstances should unerringly point only to the guilt of the accused and no one else. It is here that, in the present case, the prosecution fails. The circumstances ought to be proved by the prosecution do not unmistakably point only to the guilt of the Appellant.

28. The Court is therefore, unable to concur with the trial Court's conclusion regarding the guilt of the Appellant. He is entitled to the benefit of doubt.

Consequently, the Court acquits the Appellant for the offence under Section 302 IPC.

29. The impugned judgment dated 20th May 2016 and the order on sentence dated 30th May 2016 are hereby set aside. The appeal is allowed. The Appellant shall be released forthwith unless wanted in some other case. He will fulfill the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record be returned together with the certified copies of the judgment.

30. The Court records its appreciation of the excellent presentation of the case by Mr. Dandapani, learned counsel for the Appellant who appears on behalf of the Delhi High Court Legal Services Committee.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 18, 2018

dkb/sandeep