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

+ **CRL.A. 422/2017**

RAJENDER SINGH @ RAJU MENTAL Appellant

Through: Mr. Harsh Prabhakar, Advocate
(DHCLSC) with Mr. Anirudh
Tanwar, Advocate

versus

THE STATE (NCT OF DELHI) Respondent

Through: Mr. Hirein Sharma, APP for State
Inspector Anant Kiran, PS-Sabji
Mandi

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

02.04.2018

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Dr. S. Muralidhar, J. :

1. This is an appeal against the judgment dated 10th November 2016 passed by the learned Special Judge-2, NDPS Act (Central District), Tis Hazari Courts, Delhi in Sessions Case No.47/2013 arising from FIR No.40/2013, registered at Police Station ('PS') Subzi Mandi, convicting the Appellant for the offence under Section 302 IPC and order on sentence of the same date whereby he was sentenced to imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment ('SI') for one month.

Case of the prosecution

2. The case of the prosecution is that the Appellant was plying a rickshaw in

the vicinity of the scene of crime, i.e. the St. Stephen's Hospital. It is the case of the prosecution that he and the deceased, Satish Mishra @ Ravinder, had a quarrel at around 6:30 pm on 12th March 2013 arising out of the Appellant suspecting Ravinder of having picked his pocket and removed a purse containing Rs.300-400. According to the prosecution, at 10:30 pm on the same day, i.e. 12th March 2013, the Appellant assaulted the deceased with a wooden *danda* which he took from Anjali (PW-2) who used to cook meals on the footpath. According to the prosecution the accused repeatedly assaulted the deceased on his head thereby causing his death. The Appellant then dropped the *danda* near a garbage bin across the road and ran away. This entire incident was witnessed by both Anjali (PW-2) and Mohd. Rafiq (PW-4).

3. The further case of the prosecution was that while no leads were available regarding even the identity of the deceased, it was only at around 1 pm on the following day, i.e. 13th March 2013, that PW-4 emerged and spoke to the police about the incident disclosing the identity of both the deceased as well as the accused. On the basis of the statement of PW-4, a *rukka* (Ex.PW-4/A) was drawn up and an FIR was registered at around 2:15 pm on 13th March 2013.

Initial statement of PW-4

4. At this stage, it is necessary to refer to the statement made by PW-4 in the first instance to the police. In it he states that he was selling eggs on the footpath outside the St. Stephen's Hospital and that he was aware of the accused and the deceased being friends. According to him, at around 6:30pm

on 12th March 2013, the Appellant disclosed to PW-4 that the deceased had slit his trouser pocket and taken away the money and that he would not spare the deceased. According to PW-4, he did not pay heed to the above statement and was preoccupied in running his stall. At around 7:30 pm, the deceased spread his blanket and started sleeping on the pavement. At around 10:00-10:30 pm, the Appellant arrived there and repeatedly struck the deceased on his head with a wooden *danda*. The attack was so sudden that the deceased was unable to move and started bleeding from his wounds. Upon witnessing this incident, PW-4 got scared and ran away from there. In his statement to the police, PW-4 said that on the following day, when he came back to the spot, he learnt that the deceased had died and that the body had been removed to the mortuary.

Post mortem

5. The post-mortem of the deceased was performed by Dr. S. Lal (PW-10) on 14th March 2013 and he noticed the following external injuries:

- (1) Lacerated wound 6 x 0.4 cm x bone deep on right side of scalp over pinna and occipital area, horizontally placed, 5.5 cm below the occipital protuberance level and front end of wound over pinna placed 4 cm above the ear lobule. The margin of the wounds were reddish and contused and abraded.
- (2) Lacerated wound 3 x 0.4 cm x bone deep place just posterior to injury no. 1 and horizontally placed.
- (3) Reddish bruise of size 8 x 4 cm over right side postauricular area over mastoid process.
- (4) Lacerated wound 2.5 x 1cm x bone deep over left side forehead with

reddish contused abrasion on lower end. The wound was placed 3 cm above the outer end of left eyebrow and 6cm from midline. The wound is associated with black eye of left eye.

6. On internal examination of the body of the deceased, PW-10 noticed extravasation of blood on the left fronto temporal area and right tempo occipital area. There was a depressed fracture of size 7 x 4cm over the posterior aspect of the temporal bone and occipital bone on right side with radiating linear fracture. Meninges was intact, extradural haemorrhage was seen under the depressed fracture, subdural haemorrhage seen on half of brain with sub arachnoid haemorrhage with contusion. Middle cranial fossae was fractured.

7. The opinion as to the cause of death was cranio-cerebral damage consequent upon blunt force impact on the head which was sufficient in ordinary course of nature to cause death.

Arrest of the accused and recovery of danda

8. According to the prosecution, on the information being received from a secret informer, the police led by the Investigating Officer (IO) Inspector Tanvir Ashraf (PW-18) arrested the Appellant at around 5:30 pm outside the Old Delhi Railway Station in the presence of PW-4. The arrest memo (Ex.PW-17/B) of the Appellant gives the aforementioned place of arrest and bears the signature of PW-4 and Constable Sanjeev Negi (PW-11).

9. This was followed by a disclosure by the Appellant which, according to the prosecution, led to the recovery of the bloodstained wooden *danda* near

the garbage bin across the footpath outside St. Stephen's Hospital. The site plan for the said recovery (Ex.PW-18/C) showed that the place from where PW-2 witnessed the incident was across the road from where the wooden *danda* was recovered.

10. At this stage, it should be noticed that while the arrest memo shows that PW-4 was a witness thereto, as far as the memo drawn up for recovery of wooden *danda* (Ex.PW-2/A) is concerned, it is shown as having been witnessed by PW-2 who surfaced for the first time at this stage, i.e. at around 7:00 pm on 13th March 2013.

11. At the end of the investigation, a charge sheet was filed and a charge was framed against the Appellant by the trial Court on 14th August 2013 for the offence under Section 302 IPC.

12. The case of the prosecution hinged essentially on the two eye witnesses, i.e. Anjali (PW-2) and Mohd. Rafiq (PW-4), both of whom claimed to have actually seen the deceased being beaten on his head repeatedly by the accused with a wooden *danda* at around 10:30 pm on 12th March 2013.

Impugned judgment of the trial Court

13. The trial Court has, in the impugned judgment, come to the conclusion that both PWs 2 and 4 were reliable witnesses. The trial Court first discussed the motive for the occurrence. The Court noted that a quarrel did take place between the accused and the deceased at around 6:30 pm on 12th March 2013 due to the Appellant suspecting the deceased of having picked his pocket and taken away money.

14. Incidentally, in his statement under Section 313 Cr PC, the Appellant also did not deny that such a quarrel took place. Question No.1 to the Appellant was regarding the said quarrel and his reply thereto was as under:

“I know PW-4 Mohd. Rafiq as he used to be present on rehdiya used to be run by his sons, near the gate of St. Stephen’s Hospital. I knew Ravinder (since deceased). He used to live on the pavement by the side of St. Stephen Hospital. He used to work as rickshaw puller. I was not drunk. Ravinder picked my pocket and removed a purse containing Rs.300-400/-. That is why, I had a quarrel with him at that time, near St. Stephen hospital in that evening. Ravinder left the spot extending threat to kill me. He did not return me my purse and the currency notes.”

15. The trial Court then discussed the arrest of the Appellant and again placed reliance on the depositions of PW-17 and PW-4. Strangely, the trial Court noticed that in his cross examination, PW-4 stated that the Appellant had been apprehended by the police in his presence “at Lal Kuan, at about 1:00 pm” and yet, did not dwell on this material contradiction regarding the place and time of arrest of the Appellant.

16. As regards the recovery of the weapon of offence the trial Court referred to the deposition of PW-2 and noticed that she too had raised doubts by stating in her cross examination that “Police have recovered the said wooden log which was used by the accused in the commission of the offence and thrown before the apprehension of the accused. Police had left the said wooden log in my presence.” And yet the trial Court was of the view that the ambiguity in the above statement of PW-2 did not lead to the conclusion that the wooden *danda* had already been recovered i.e. even prior to the arrest of

the Appellant.

17. The trial Court referred to the fact that the Doctor who performed his post-mortem i.e. PW-10 gave an opinion that the wooden *danda* could have caused the head injuries noticed in the post-mortem report and to the fact that the report of the Forensic Science Laboratory ('FSL') (Ex.P-2) to which the blood stained wooden *danda* was sent confirmed that the blood stains were of B group which was the blood group of the deceased. For all of the aforementioned reasons the trial Court proceeded to convict the Appellant for the offence under Section 302 IPC and sentenced him in the manner indicated hereinbefore.

18. This Court has heard the submissions of Mr. Harsh Prabhakar, learned counsel appearing for the Appellant and Mr. Hirein Sharma, learned APP appearing for the State.

Law relating to eye witness testimonies

19. Before proceeding to discuss the ocular evidence of PWs 2 and 4, the legal position in that regard may be recapitulated in brief. The settled legal position is that the Court must attempt, while appreciating the evidence of a witness, separate the truth from falsehood and not reject an eye witness testimony entirely only because there are some embellishments. In ***Ugar Ahir v. State of Bihar AIR 1965 SC 277***, the Supreme Court explained the legal position as under:

"The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice.

Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

20. Further as explained in *State v. Saravanan AIR 2009 SC 152*, the Court can overlook "minor discrepancies on trivial matters" which do not affect "the core of the prosecution case". In *State of U.P. v. Krishna Master AIR 2010 SC 3071* the Supreme Court emphasised that that "it is the duty of the Court to separate falsehood from the truth, in sifting the evidence".

21. At the same time, the eye witness testimony must be credible and reliable. It should not be contradicted by other eye witnesses or by the medical and forensic evidence, if any. The Court should also take into account the possible pressure that may be brought upon prosecution witnesses arising out of the vulnerable position vis-a-vis the police.

Evidence of PW-4

22. The Court would first like to discuss the evidence of PW-4 who claims to have been an eye witness to the offence. While in his examination in chief PW-4 maintained that he had actually witnessed the accused beat the deceased with the wooden *danda*, he made certain significant improvements. For e.g., in his deposition in Court he stated that he also witnessed the quarrel that took place between the accused and the deceased at 6.30 pm whereas in his statement to the police on the basis of which the *rukka* was

drawn up, he did not say so. He stated that the Appellant had confided to him about such quarrel having taken place. He also deposed in Court that the accused had brought the wooden *danda* “from the shop of Anjali, *roti wali*” whereas he made no such statement in the first instance to the police.

23. In his cross-examination, PW-4 began by admitting that he had been *challaned* by the authorities for “putting up my *thela* in front of St. Stephen’s Hospital during the days of the incident”. This was indicative of the vulnerable position of this witness. PW-4 also admitted that the deceased was a pick pocket.

24. In his cross-examination, PW-4 stated that the Appellant “was apprehended by the Police in my presence at Lal Quan at about 1 pm in the afternoon”. This was a major contradiction since PW-4 is shown to have signed the arrest memo (Ex.PW-17/B) of the Appellant which showed the time of his arrest as 5.45 pm outside the Old Delhi Railway Station.

25. PW-4 further stated that “Police reached at the spot immediately after the incident on receipt of phone. I was at the spot at that time”. PW-4 was referring to the fact that one Vikas Chaudhary (PW-8) a passer-by had made a call to the police at 10:47 pm on 12th March 2013 from his mobile phone about a dead body lying near the Sulabh Shouchalaya opposite St. Stephen Hospital. If indeed PW-4 was aware of his call and was present at the spot when the police reached it pursuant to this call, the entire story of the prosecution gets falsified as does his own version about his having run away out of fear after seeing the Appellant assault the deceased. The trial Court

has omitted to even notice this major contradiction.

26. A third important contradiction is the further statement made by PW-4 in his cross-examination that “*danda* was recovered in my presence. *Danda* was recovered prior to the arrest of accused Rajinder.” As already noticed the recovery memo of the *danda* does not indicate the presence of PW-4. However, what is even more problematic is the statement that the *danda* was recovered prior to the accused being arrested. This again completely falsifies the story of the prosecution that the *danda* was recovered pursuant to a disclosure made by the Appellant offering to get the *danda* recovered after his arrest at 5:45pm on 13th March 2013. If the police was already aware of the blood stained *danda* lying near the garbage bin, the entire story of arrest of the Appellant leading to the recovery of the *danda* gets falsified.

27. The evidence of PW-4 therefore does not inspire confidence. It does not lend assurance to the Court that PW-4 is speaking the complete truth and that he was in fact an eye witness to the offence.

Evidence of PW-2

28. The unreliability of the deposition of PW-4 becomes even more apparent when his deposition is placed alongside the deposition of the other eye witness, Anjali (PW-2).

29. In the first instance, it must be mentioned that except while deposing before the Court to the limited aspect of the Appellant taking the wooden log from her, PW-4 does not mention the presence of PW-2 at or near the scene of crime at all. On the other hand, according to PW-2, she simply left the

spot and went to her residence after witnessing the Appellant beat the deceased with the wooden log which he took from her. She claimed to be preparing food on a *chulha* with the help of wooden logs on the pavement at around 10:00 pm on 12th March 2013.

30. In her examination in chief, PW-2 states that when she opened her *thiya* the next day for preparing *roti* and *subzi*, the police officials reached there and she informed them about the incident upon being asked by them. Notably, she states, “Thereafter, I was taken to the police station and produced before SHO in the evening”. This contradicts the version of PW-17 who simply states that “Srimati Anjali, witness in this case, was found present there near the *Kooda Khadda*” at the time that the Appellant offered to get the wooden *danda* recovered and that she “joined the investigation”.

31. In her cross-examination, PW-2 volunteered, “After committing the incident when he was running away, I and Rafiq chased the accused for a little distance i.e. about 10-20 steps”. The above voluntary statement of PW-2 raises serious questions as to the conduct of both PW-2 and PW-4. In the first instance, PW-4 does not talk about himself and PW-2 chasing the Appellant. Secondly, if indeed they chased the Appellant, it is surprising that they were not available to speak about the incident when the police reached the spot. It also raises serious questions whether PW-4 was already available at the spot when the police reached there and had not actually run away out of fear as was claimed by him. This is a major contradiction in the depositions of PW-2 and PW-4 which make both of them unreliable witnesses.

32. Furthermore, the question arises if PW-2 was also using the same pavement for selling cooked food, why she was not available when the police reached there soon after the incident or even the next morning. She only emerged at around 7:00 pm the next evening. Lastly, and most importantly, PW-2 in her deposition stated, "Police have recovered the said wooden log which is used by the accused in the commission of the offence and thrown before the apprehension of the accused". If indeed the police was already aware about the bloodstained wooden log even before the apprehension of the Appellant, it raises serious doubts regarding the arrest of the Appellant leading to the recovery of the wooden log as claimed by the prosecution.

33. In this context, the answer given by the Appellant in his statement under Section 313 Cr PC in response to the evidence of PW-2 that he did not go to the place where PW-2 was cooking meals at 10:00 pm and that on account of a traffic jam he had to stay outside the Old Delhi Railway Station with his rickshaw appears probable. Speaking about his arrest, in response to Question No. 13, the Appellant stated that one Ravi who was working as a rickshaw puller met him at around 7 am on 13th March 2013 and informed him that the police was looking for him. According to the Appellant, he asked Ravi to produce him before the police and accordingly, Ravi along with the police reached Farashkhana at around 2:00 pm on 13th March 2013 and the Appellant was subsequently arrested. He denied making any disclosure statement to the police.

34. On a collective reading of the depositions of PW-2 and PW-4, the Court

finds that there are major contradictions in their versions as regards both the arrest of the Appellant as well as the recovery of the bloodstained *danda* at his instance from opposite St. Stephen's Hospital.

35. While it is true that the FSL report confirms the blood group of the stains on the wooden *danda* to be that of the deceased, the prosecution was unable to link the Appellant with the wooden *danda*. Both PWs 2 and 4 have spoken about the wooden *danda* being already available with the police even before the arrest of the Appellant. This major loophole in the prosecution case has not been sought to be explained by the prosecution by subjecting either PWs 2 and 4 to any further examination in chief or seeking their clarification on both aspects viz., the arrest of the Appellant and recovery of the wooden *danda*.

36. In the considered view of the Court PW-2 is also not a reliable witness and does not inspire confidence that she actually witnessed the occurrence.

Gaps in the prosecution story

37. If both these eye witnesses are kept out of the recovery, then there are major gaps in the story of the prosecution. While the Appellant himself has not disputed the fact that he had a quarrel with the deceased, his version is that it is the deceased who left the spot threatening to kill the accused and not the other way around. When seen in the context of the fact that the deceased had a criminal background, which incidentally is confirmed by his own brother Sushil Kumar Mishra (PW-7), and the Appellant had none, there was an extra burden on the prosecution to show that it is the Appellant who extended such threat to the deceased and followed it up with the

commission of a crime. That extra burden has not been discharged by the prosecution in the present case.

38. In view of the aforementioned glaring gaps in the investigation the Court is not convinced that the prosecution has proved the guilt of the Appellant beyond all reasonable doubt. Granting him the benefit of doubt, the Court acquits the Appellant of the offence under Section 302 IPC.

Conclusion

39. Consequently, the impugned judgment dated 10th November 2016 and the order on sentence of the same date are hereby set aside. The Appellant shall be released forthwith unless wanted in some other case.

40. The Appellant will comply with the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

41. The appeal is allowed in the above terms. The trial Court record be returned forthwith together with a certified copy of this judgment. A certified copy of the judgment be sent forthwith to the Jail Superintendent for further consequential action.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 02, 2018

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