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

+ **CRL.A. 577/2017 & CrI.M.(Bail) No. 874/2018**

MANOJ @ MONU & ANR. Appellants
Through: Mr. Sumeet Verma with Ms.Preeti
Jakhar, Advocates
versus

STATE Respondent
Through: Mr. Hirein Sharma, APP for State

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

JUDGMENT
23.05.2018

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1. This appeal is filed by Manoj @ Monu (A-1) and Nand Lal (A-2) and is directed against the judgment dated 23rd January 2017 passed by the learned Additional Sessions Judge, North District, Rohini Courts in Sessions Case No.57970/2016 arising out of FIR No.67/2012 convicting A-1 and A-2 for the offence under Section 302 IPC. It also seeks to challenge the order on sentence dated 2nd February 2017 whereby the Appellants were sentenced to imprisonment for life with fine of Rs.2,000/- and in default of payment of fine, to undergo simple imprisonment for six months.

2. Both the accused were charged with having, in furtherance of their common intention, murdered Mukesh @ Sheru (deceased) at around 1am on the intervening night of 1st/2nd April 2012 in front of a shop at Ambedkar Park, CSA, Rohini with A-1 assaulting the deceased with a sword and A-2 with an iron rod thereby committing an offence under Section 302/34 IPC.

The two accused were also charged with causing the evidence of murder to disappear by washing the blood on the iron rod used by A-2 thereby committing an offence punishable under Section 201/34 IPC. The third charge was that both accused threatened to kill Jai Singh @ Pagla (PW-9), who was a purported eye-witness to the incident, if he disclosed the incident to anyone thereby committing an offence under Section 506/34 IPC.

Body found

3. At around 6 am on 2nd April 2012, a call was received at the police control room about a man lying dead at D-62, Wazirpur Industrial Area. Sub-Inspector (SI) Ved Prakash (PW-23), who was posted at the police post there, received the said information and reached the spot along with Constable (Ct.) Vijay Pal (PW-26) and Ct. Satender (PW-24). They found a *rehri* on which a man aged about 19 years was lying in an injured condition. He was bleeding from his head and other parts of the body. There was blood on the *rehri* and on the road as well. There were injuries on the head, neck, left cheek and right arm.

4. According to PW-23, Vivek (PW-4), the brother of the deceased was present there and informed PW-23 that the injured person was Mukesh @ Sheru. PW-23 then called the crime team to the spot and thereafter removed the injured person to the BJRM Hospital with the help of PW-24.

Medical evidence

5. The MLC of the deceased (Ex.PW-30/A) says that he was brought to the BJRM Hospital at around 8 am on 2nd April 2012. He was declared to be brought dead. The post-mortem examination of the deceased was performed

by Dr. Bhim Singh (PW-27) at around 3:30 pm on 2nd April 2012. He found the following external injuries on the body of the deceased:

“1. Incised scratch abrasion 6 cm x 0.1 cm x 0.1 cm over lateral aspect of right side of neck.

2. Incised scratch abrasion 3 cm x 0.1 cm x 0.1 cm over left side of the face.

3. Contused abrasion 6 cm x 2 cm over outer aspect of right arm.

4. Lacerated wound 5 cm x 1 cm into bone deep over right parietal region of head.”

6. The internal examination revealed that:

“Head - Effusion of blood was present in scalp layer in an area of 8 cm x 4 cm with depressed communicating fracture of right parietal occipital bone. Brain shows diffuse subdural sub arachnoid haemorrhage ventricles were full of blood.

Other organs were normal. Stomach was empty.”

7. According to PW-27, the death was due to cranio-cerebral damage consequent upon the head injury. He opined that injury Nos. 1 and 2 could have been caused by a sharp pointed object and injury Nos. 3 and 4 could have been caused by a hard blunt object. He opined that injury No.4 was sufficient to cause death in the ordinary course of nature. The time since death was about ten hours.

8. Subsequently, when PW-27 was shown an iron rod recovered purportedly at the instance of A-2, he opined that injury Nos. 3 and 4 could have been

caused by the examined weapon. Likewise, the *kirpan* purportedly recovered from A-1 was also shown to PW-27 and he opined that injury Nos. 1 and 2 could be caused by the said weapon.

Investigation, seizures and arrests

9. According to PW-23, on 3rd April 2012, he along with Head Constable Ashok (PW-33) and Constable Devender (PW-25) went to the Railway Track, CSA Colony, Wazirpur Industrial Area. When they reached the said location, PW-9 along with two persons, namely Sonu @ Vijay (PW-6) and Surya Kumar @ Suraj @ Molai (PW-7) met them. In the statement made by PW-9 to the police, he supposedly named A-1 and A-2 as the persons who attacked the deceased on the intervening night of 1st/2nd April 2012 at 1am.

10. According to PW-23, they then proceeded to search for the accused. On receipt of secret information, they apprehended A-1 behind an *akhara*. A-1 was interrogated at the police station and subsequently arrested. He is supposed to have made a disclosure statement. Pursuant thereto, on 6th April 2012, from the bushes near the Railway Track, A-1 is supposed to have got recovered a sword which he had concealed there. According to PW-23, the sword was bloodstained.

11. Inspector Ram Singh (PW-34) was the SHO of PS Ashok Vihar. After registration of the FIR, he took over the investigation. According to him, on the basis of what transpired during the interrogation of A-1, a team under ASI Rakesh Kumar (PW-17) was constituted and sent to Azamgarh, UP for apprehension of A-2. Pursuant thereto, on 3rd April 2012, PW-17 proceeded to village Shikti in Azamgarh, UP and reached there on 4th April 2012. On

5th April 2012, A-2 is supposed to have been arrested from his house and brought back to Delhi. He was presented before PW-34 on 6th April 2012.

12. According to PW-34, A-2 took them to a *jhuggi* in CSA Colony from where he got recovered an iron rod under a *tirpal* on the roof of a room on the first floor. The said iron rod, which was bloodstained, was seized and sealed. Brij Kishore (PW-8) was the witness to the said recovery.

13. On the conclusion of the investigation, the charge sheet was filed. By an order dated 9th October 2012, charges were framed against both the accused in the manner indicated hereinbefore.

Trial

14. On behalf of the prosecution, thirty-four witnesses were examined. When the incriminating circumstances were put to the accused in their statement under Section 313 Cr PC, they denied all of them. When asked, if he had anything else to say, A-1 claimed to have been falsely implicated. He stated that:

“In fact I had to take some money from Mukesh and when he refused to return the same, a quarrel took place between us on 27-03-12. Thereafter, his family members falsely implicated me in this case when Mukesh was killed by some unknown persons. In fact I never met him after 27-03-2012.”

15. As far as A-2 was concerned, he too pleaded innocence. He stated that he was at his village in Azamgarh when officials of the Delhi Police met him and informed him that there had been some theft in his room. He was brought to Delhi in that context. According to him, the police officials forcibly obtained his signatures on blank papers. He claimed that both the

deceased and the co-accused were unknown to him and that he was falsely implicated.

16. No defence witness was examined. In the impugned judgment dated 23rd January 2017, the trial Court concluded that the clear testimony of PW-9 was corroborated by the medical evidence. The recoveries of the weapons of offence used by the accused were also held to be proved by the prosecution. Consequently, the trial Court proceeded to convict the two Appellants for the offence under Section 302 IPC and sentenced them in the manner indicated hereinbefore.

Analysis and reasons

17. This Court has heard the submissions of Mr. Sumeet Verma, learned counsel appearing for the Appellants, and Mr. Hirein Sharma, learned APP for the State.

18. In the present case, it is clear that the star witness for the prosecution is PW-9. He is supposed to have been an eye witness to the entire incident. According to him, he used to work at a steel factory in Wazirpur Industrial Area as a helper. The deceased was his friend and resided near his house.

19. According to PW-9, on 1st April 2012, after he finished his work at 5 pm, he met the deceased. At that time, the deceased was playing cards. Thereafter, after roaming about for some time, both of them consumed liquor. They brought food from a nearby hotel at around 10 pm. Thereafter, both of them slept on the *rehri* lying parked in front of a shop at Chandrashekhar Azad Colony at around 11:00-11:30 pm.

20. According to PW-9, at around 1:00-1:30 am, A-1 and A-2 came there and woke him up. He claims that they were known to him previously as they resided in the same areas as he did. He then folded his hands and begged them. Both accused are supposed to have asked him to step aside. While he was standing there, A-2 attacked the deceased, who was still asleep, with an iron rod. A-1 is said to have attacked the deceased with a sword on the right side of his neck. According to PW-9 both accused threatened him that he would be killed if he disclosed to anyone what had happened. Thereafter, both the accused left with their respective weapons.

21. According to PW-9, he was afraid. He started knocking at the neighbouring houses for help. He first went to the house of Molai (PW-7) and informed him that the deceased had received injuries. However, PW-7 refused to accompany him. In between Sonu @ Vijay (PW-6) came out and PW-9 informed him that the deceased was lying injured. He requested PW-6 to accompany him but he too refused stating that his jhuggi door was lying open.

22. Strangely, PW-9 did not go to the police after the above incident. He deposed to the Court that he returned home due to fear. His statement under Section 161 Cr PC was recorded first by the police on 3rd April 2012. They also prepared a site plan of the scene based on the said statement. Thereafter, on 7th April 2012, the learned Metropolitan Magistrate recorded the statement of PW-9 under Section 164 Cr PC.

23. If one carefully peruses the statement of PW-9 under Section 164 Cr PC,

it is seen that he mentions therein that he was initially the prime suspect for the police. They picked him up on 3rd April 2012 itself.

24. Certain additional details have emerged for the first time in the cross-examination of PW-9 in Court. According to him, five of them had consumed liquor together. He gave the names of the other four persons as “Mukesh, Pradeep, Manoj and Sheru”. He clarified that “Mukesh is different and Sheru was different person. The name of the deceased was Sheru not Mukesh. Vol. He was called by the name of Sheru”. The other persons named by PW-9 have not been examined.

25. This led to the suggestion to PW-9 in his cross-examination that it was PW-9 along with the above named Pradeep, Manoj and Mukesh who had killed the deceased and in order to save themselves, had falsely accused the Appellants. According to PW-9, while they were all drinking, there was no quarrel *inter se* among them. He clarified that:

“The Manoj which I am referring is not the accused present in the court. He is other person. He is not present in the Court. It is wrong to suggest that I had quarrel with the Manoj, accused present in the court or that I have falsely implicated him due to said quarrel.”

26. It is strange that PW-9 himself did not go to the police with a complaint about his friend Sheru having been brutally murdered by the Appellants. His explanation was that first he went to the house of PW-7 who declined to help and then to the house of PW-6. While it is true that both PW-6 and PW-7 have confirmed that part of the evidence of PW-9, that by itself does not necessarily help the case of the prosecution since neither PW-6 nor PW-7

actually witnessed the occurrence. However, it is clear that PW-9 went to both PWs 6 and 7 to inform them about the deceased lying in an injured condition, but did not mention to either of them the names of the assailants.

27. PW-9 has offered a weak explanation that since he has threatened by the Appellants, he was too afraid and therefore did not disclose the names. However, this part of his testimony is not convincing. His failure to himself to go to the police with the information, if not on that very day, soon thereafter, renders the truthfulness of his deposition doubtful.

28. The medical evidence has also not supported the version of PW-9. It will be recalled that according to PW-9, A-1 had attacked the deceased on his neck with a sword. If indeed the deceased was sleeping when he was so attacked, there should have at the least been an incised cut wound on the neck. Further, if it was by a sword as claimed, the injury would have been grievous. On the contrary, the post-mortem report shows that PW-27 only found scratch marks on the right side of the neck and the left side of the face.

29. The prosecution examined Sub-Inspector Neeraj (PW-18) to show that on 27th March 2012, a quarrel had taken place between the deceased and A-1 with both of them being under the influence of liquor. He deposed that the *kalandra* had been prepared by him and both were sent to judicial custody. This is supposed to have been the backdrop constituting the motive for A-1 to attack the deceased. However, this part of the story did not fit in with what actually happened to the deceased. The post-mortem report shows that it was not A-1 who had inflicted the fatal injury. It was the bone deep

lacerated wound over the right parietal region of the head that resulted in his death. The said injury was caused by the iron rod purportedly wielded by A-2. There is no evidence to explain the motive for A-2 to attack the deceased. The connection between A-1 and A-2 has also not been established either by the prosecution or PW-9, except to say that they were all in the same area.

30. Therefore, the medical evidence does not corroborate the version of PW-9 on the above important aspect. Adding to the mystery is the fact that PW-9 was himself a suspect and over four days after his initial statement under Section 161 Cr PC recorded on 3rd April 2012, he continued to be so as spoken to by him on 7th April 2012 when his statement under Section 164 Cr PC was recorded. The further details he has given in his deposition about four other persons who were drinking liquor with him and the deceased gives rise to grave doubts about the truthfulness or reliability of his deposition.

31. It was urged by learned APP for the State that the recovery of the iron rod at the instance of A-2 from his own house in the presence of a public witness Brij Kishore (PW-8) is a strong circumstance that links A-2 with the occurrence. The Court is unable to agree with the above submission. The FSL reports (P1 to P3) show the bloodstains on the rod to be of human origin but do not indicate the blood group since there was 'no reaction'. Considering that blood had oozed from the head of the deceased, if the blood group on the rod had matched with the blood group of the deceased that could have been a strong circumstance against A-2. In the absence of such corroboration, the mere recovery of the rod at the instance of A-2

would not be sufficient to connect him with the crime. This coupled with the fact that the motive for A-2 to attack the deceased has not been proved, it would be unsafe to proceed to convict A-2 only on the basis of the single circumstance of recovery of the rod from his house.

32. The prosecution in the present case has failed to rule out the possibility of the involvement of PW-9 himself in the crime since after all he was, even by his own statement, the person who was last seen with the deceased. Additionally, at least two other witnesses, i.e. Vivek (PW-4) and Sunil Kumar (PW-5), spoke about seeing PW-9 last with the deceased.

33. For all of the above aforementioned reasons, the Court is unable to concur with the trial Court that PW-9 is a truthful and trustworthy witness whose evidence can form the basis for the conviction of both the Appellants for the offence under Section 302 IPC.

34. In the considered view of the Court, the prosecution has been unable to prove the guilt of both the Appellants for the offences with which they were charged beyond reasonable doubt. Therefore, they are entitled to the benefit of doubt.

35. The impugned judgment and order on sentence of the trial Court are hereby set aside. The Appellants are acquitted of the offences with which they were charged. They will be set at liberty forthwith unless wanted in any other case and will fulfil the requirement of Section 437-A Cr PC to the satisfaction of the trial Court at the earliest.

36. The appeal is allowed in above terms. The pending application is disposed of. The trial Court record be returned forthwith along with a certified copy of this judgment.

S.MURALIDHAR, J.

I.S.MEHTA, J.

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