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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 971/2017

DINESH @ DHOLU

..... Appellant

Through: Mr. Amit Saini, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Hiren Sharm, APP for State with
Insp. Raj Kumar, SHO, PS Welcome.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

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20.03.2018

1. This is an appeal directed against the judgement dated 7th June 2017 passed by the learned Additional Sessions Judge-04, Patiala House Courts, New Delhi in Sessions Case No.9160/2016 arising out of FIR No.361/2014 registered at Police Station ('PS') Inder Puri convicting the Appellant for the offence punishable under Section 302 IPC and the order on sentence dated 9th June 2017 whereby he was sentenced to imprisonment for life with a fine of Rs.300/- and, in default of payment of fine, to undergo rigorous imprisonment for seven months.

2. The Appellant was charged with murdering Harish (deceased) by hitting him on his head with an axe at around 10:30 pm on the night of 5th November 2014 near Sunny Store, C-563, J.J. Colony, Inder Puri.

3. The case of the prosecution was based on two eye-witnesses. One was Pankaj @ Pinky (PW-18) who happened to be the brother of the deceased and the other was Gajender (PW-3), an independent witness.

4. PW-3 was working in a furniture showroom at Kirti Nagar. After dinner on 5th November 2014 he went to the Sabji Mandi, C-Block, Inder Puri for a walk. While returning home at around 10:30 pm he noticed near Sunny Store that the Appellant, who had a defect in one eye and was a resident of the locality, hit the deceased (also a resident of the locality) on his head from behind with an axe while the deceased was walking. As a result of the attack with an axe, the deceased fell on the road and the Appellant ran away from the spot along with the axe towards C-Block.

5. On seeing the incident, PW-3 immediately rushed towards the deceased. He immediately took out his sky-blue coloured t-shirt and tied the head of the injured with it. Meanwhile, PW-18 also came there. Initially, he started running in the direction in which the Appellant ran. However, PW-3 called PW-18 back and asked him to first take care of Harish (deceased). PW-18 then brought his motorcycle. PW-3 then sat on the pillion together with the deceased and they rushed to the hospital. They first took him to the Behal Hospital, Naraina Vihar which took them nearly 20 minutes to reach. From there they took him to the Metro Hospital at Pandu Nagar but by this time he was brought dead.

6. PW-3 was subjected to extensive cross-examination by counsel for the Appellant. His answers in the cross examination read as under:

“The incident took place at a distance of 20-25 steps of the

place where I saw it. I saw accused giving a blow on the back of the head of deceased with an axe. Accused was holding axe with both of his hands. After hitting the deceased, the accused ran towards the Gali beside Vohra Store. It was light at the spot coming from the bulbs installed outside the shops of the area. The Gali beside Vohra store was dark and there was no light in the gali. I cannot say whether the deceased Harish was conscious or not and we immediately rushed to the Hospital. Pankaj ran towards the direction where accused fled for about 80-90 feet when I called him back. Pankaj was visible to me when I called him back. Pankaj drove the motorcycle while I sat on the extreme back and deceased was made to sit in between us. It took about 20-25 minutes to us in reaching the hospital. On over way to the hospital, I noticed that there was no heart beats of Harish, however, he was bleeding from his head. I kept my hand on the head of deceased from where he was bleeding. The t-shirt tied on the head of deceased fell down at the spot itself. The blood from the t-shirt was touching my face when I sat on the motorcycle and when I moved my hand to prevent it, it fell down on the ground. No treatment was given to the deceased at Behal Hospital and instead Doctors advised us to take the deceased to Metro Hospital. I cannot tell the name of the doctor. The doctor of Behal Hospital only touched the body of deceased on his chest and did not examine him with any stethoscope. We shifted the deceased in Metro Hospital on the motorcycle itself. It is wrong to suggest that no such incident was witnessed by me. It is further wrong to suggest that accused did not hit deceased on his head with axe in my presence. It is further wrong to suggest that I am deposing falsely at the instance of Pankaj and IO.”

7. It is settled law that it is not the number of eye-witnesses that matter but the quality of the evidence that matters. The above single independent eye-witness speaks clearly about the manner of commission of the crime. Furthermore, his deposition has been corroborated by Pankaj @ Pinky (PW-18), on the material particulars of the Appellant attacking the deceased on

the back of his head with an axe by coming from behind him.

8. Learned counsel for the Appellant submitted that the ocular evidence of PW-3 is contradicted by the medical evidence. According to him, the post-mortem report shows that it was not a single injury on the head but three distinct injuries apart from an abrasion injury. It was submitted that according to the doctor who performed the post-mortem, Dr. Ashish Kumar (PW-13), the death could have been caused due to either one of these injuries or by all three collectively.

9. The Court has examined the post-mortem report. It does show that on the scalp there were three deep wounds. Injury No.3 was a cut so deep that the brain matter was seen leaking from the wound. The cranio-cerebral damage was extensive. PW-13 has confirmed that the axe that was subsequently recovered was shown to him and he confirmed that injury Nos.1, 2, 3 and 4 could be produced by the said axe. In fact, in his cross-examination, he has confirmed that injury Nos. 2, 3 and 4 could be caused by the axe. He particularly states “the dimensions of injuries no. 2, 3 and 4 very well corresponds with the weapon of offence i.e. axe in the present case.”

10. Therefore, the Court is unable to accept the submission of learned counsel for the Appellant that the medical evidence does not corroborate the ocular evidence. While it is true that PW-3 speaks to witnessing the Appellant giving an axe blow to the deceased on his head, the post-mortem report reveals that there was more than one injury on the head. This does not mean that PW-3 has been contradicted. In fact, it corroborates his testimony

definitely as regards to one of the head injuries. It is possible that he did not, from the distance at which he has witnessing the incident, notice that perhaps more than one blow was inflicted upon the deceased.

11. Turning now to the evidence of PW-18, he too has spoken clearly about the incident. He states that at 10:30 pm, the deceased, who happened to be his younger brother, was purchasing milk from Sunny Store. PW-18 himself was standing across the road opposite Sunny Store. The moment the deceased turned and was crossing the road after purchasing milk, the Appellant came there with an axe in his hand and attacked the deceased with an axe from the rear. He states that the Appellant “gave an axe blow on the head of my brother from the back side”. PW-18 also mentions that even while the deceased was lying on the ground, PW-3 had come there. PW-18 also confirms having brought his motorcycle and with the help of PW-3 and one or two other persons took the deceased to the hospital.

12. PW-18 was subjected to extensive cross examination but nothing useful for the Appellant emerged therefrom.

13. In his statement under Section 313 Cr PC, the Appellant adverted to an earlier incident of 2009 involving him and PW-18 in which the Appellant had named PW-18 as an accused and how, therefore, he had enmity with PW-18. His further defence was that since his left eye was totally damaged in the said incident he was unable to see things properly even during day time. He claimed that he always remained at home at night.

14. With the two eye-witnesses speaking so clearly and cogently to the

presence of the Appellant and with his pleading alibi without giving a valid explanation as to who might have caused the killing, the Court finds it impossible to disbelieve PWs 3 and 18.

15. A last-ditch attempt was made by the learned counsel for the Appellant by suggesting that it was PW-3 himself who probably attacked the deceased. The Court finds that there is no such suggestion given to PW-3. This argument has also therefore to fail. The evidence of PWs 3 and 18 are by themselves sufficient to bring home the guilt of the accused. The Court therefore affirms the conviction and the consequent sentence awarded by the learned trial Court to the Appellant for the offence punishable under Section 302 IPC.

16. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 20, 2018

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