

\$~R-109

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

+ **CRL.A. 940/2015**

RAMU PANDEY

..... Appellant

Through: Mr. Aditya Vikram, Advocate
(DHCLSC) with Mr. Avinash,
Advocate.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP with Insp.
Brijesh Misra, PS Keshav Puram.

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

ORDER

20.03.2018

%

1. This appeal is directed against the judgment dated 25th May 2015 passed by the learned Additional Sessions Judge-03 (Central) ('ASJ') in Sessions Case No.75/2013 arising out of FIR No.160/2013 registered at Police Station ('PS') Karol Bagh convicting the Appellant for the offence under Section 302 IPC and the order on sentence dated 29th May 2015 whereby he was sentenced to rigorous imprisonment ('RI') for life and to pay a fine of Rs.5,000/- and, in default of payment of fine, to undergo simple imprisonment for six months. The Appellant had been charged with murdering, at some time between midnight and 6:00 am on 4th July 2013, Jitender Tiwari @ Vijay (the deceased) at the Arya Samaj Road near HDFC Bank, Karol Bagh, Delhi by assaulting him on his head with a heavy stone.

2. The process of law was set in motion when information was received at

PS Karol Bagh at 7:05 am on 4th July 2013 (DD No.9A) that a man was lying on the pavement outside the HDFC Bank, Karol Bagh. In fact prior thereto DD No.7A had been recorded at 6:30 am to the same effect with the message having come from the Police Control Room. A *rukka* was prepared and sent for registration of FIR at around 10:20 am. However, till then, there was no indication of anyone having witnessed the occurrence.

3. The investigation of the case was entrusted to Inspector Brijesh Mishra (PW-22). He states that he reached the spot, called the crime team and prepared a rough site plan (Ex.PW-22/B). This rough site plan shows *inter alia* the position where the dead body was found lying and the piece of the stone which was used to crush the head. This is just outside the ATM booth of the HDFC pavement. The accused appears to have taken the RCC stone from the footpath and used it to crush the head of the deceased.

4. PW-22 sent the dead body to the mortuary. He lifted the blood which was found lying there through gauze. He also collected the bloodstained soil, earth control and the heavy blood stained piece of stone. He also converted the bloodstained mattress in which the deceased was lying in to a sealed parcel. He learnt that the name of the deceased was Jitender Tiwari.

5. The post mortem of the deceased was performed by Dr. Anju Rani (PW-20). There was gross deformity of head in the form of side to side compression and a large depression on the left side of forehead. Reddish brown dried stains were present over the face, left ear and outer back of right upper limb. There was extravasation of blood in the sub-aponeurotic layers of the scalp.

6. As far as the skull was concerned, there was a linear fracture measuring 9 cm in length involving the parietal bone of skull vault along the sagittal plane, 1.2 cm to the left of midline. Two linear fractures were originating from the anterior end of the above mentioned fracture. One fracture ran towards the right frontal bone of skull vault, crossing the midline from the left; extended into the anterior cranial fossa involving the cribriform plate in the midline. The other fracture was curvilinear going backwards involving the left frontal, parietal and temporal bone measuring 13.2 cm in length.

7. As far as the brain was concerned, it was noticed that “thin layered subdural haemorrhage and subarachnoid haemorrhage was present over all the lobes of both cerebral hemispheres and over the cerebellum. Contusion of the left basi-frontal, convexity and base of left temporal was present. Brainstem haemorrhage was present. On cut section, "multiple petechial haemorrhages were present in the matter of cerebrum and cerebellum haemorrhage was also present in the thalamic region of left cerebral hemisphere. CSF was haemorrhagic.”

8. On 4th July 2013, the statement of Vishnu Ram (PW-1) was recorded. He hailed from village Deniaya Ganj, Mauja Dard Nagar, PS Dehat Kotwali, Distt. Gonda in Uttar Pradesh. He was selling spectacles, handkerchiefs, and toys in the area of Azmal Khan Road. The deceased was his relative. PW-1 used to sleep on the pavement near the bank. Amar Nath (PW-13), Jata Shankar (PW-12), the deceased, the accused, and Pankaj (PW-10), all of whom used to work in that area, also used to sleep on the pavement. All of

them knew each other well.

9. PW-1 stated that around ten days prior to the incident, a quarrel had taken place between the accused and the deceased while they were drinking liquor and the deceased had sustained injuries on his right hand. The accused had been annoyed with the deceased and, therefore, the deceased had not come there for some days. On 3rd July 2013, at around 10.30 pm, when PW-1 returned to the pavement, he noticed that the accused was present there and was having a conversation with PW-11 who was working as a security guard at the ATM of HDFC Bank in front of which all of them used to sleep. PW-1 then went to sleep on his rickshaw. At around 12.30 to 1 am, he heard the noise of “*dham*”. When he woke up, he noticed that the accused had placed a heavy stone on the head of the deceased and was himself sitting on the stone. PW-1 then raised an alarm. In the meanwhile, PW-10 also came there and he also raised an alarm. Thereafter, the accused ran away. Since PW-1 did not have a mobile, he went to inform the relatives of the deceased. He later went to the PS and got his statement recorded.

10. The statement by way of examination-in-chief of PW-1 was recorded on 17th December 2013. His cross-examination took place thereafter on 7th October 2014. It was an extensive cross-examination but absolutely nothing useful emerged therefrom which could help the case of the accused. He reiterated all that he had said as far as the actual incident is concerned. He was further cross-examined on 24th November 2014. This time he clarified that his statement had been recorded in the PS at 10:30 am onwards on 4th July 2013 itself.

11. The other important witness for the prosecution was the security guard, Shiv Kumar (PW-11). He stated that on 24th June 2013, a quarrel had taken place between the accused and the deceased in which the deceased had sustained knife injuries. He stated that on 3rd July 2013, at around 10:00 pm, he joined his duties at the ATM. After sometime, the deceased had come there and slept on the footpath outside the ATM booth. Some other persons, i.e. PWs-10, 11 and 12, also used to sleep on the footpath. When, at 6:00 am, he came out of the ATM, he found that the deceased was lying with blood also found next to him. He tried to wake up the deceased but he was dead. He then made call on the 100 number. Again, his cross-examination did not yield much for the accused. The other pavement dwellers were all examined and confirmed that the deceased was sleeping that night and that, around 11:00 pm, the accused also came there and also slept there. Some of them woke up after the accused had already fled.

12. Therefore, this was a case based on the direct evidence of PW-1 himself. The learned counsel for the accused tried to persuade this Court regarding the delay of one entire day for the FIR being sent to the learned MM which according to him gave sufficient time to the police to manipulate the case. Secondly, he submitted that none of the other witnesses who slept on the pavement spoke about the presence of PW-1. Further, although PW-1 speaks of the presence of PW-10, the latter does not say the same about PW-1. This, therefore, makes the evidence of PW-1 extremely doubtful. Thirdly, it is submitted that although the bloodstained stone was sent to the FSL for examination, no FSL report was received.

13. The learned APP for the State countered the above submission by pointing out that PW-1 was a natural witness who has been firm and consistent and has withstood extensive cross-examination. He pointed out that PW-1's deposition had been corroborated on important aspects such as the presence of the accused at the site along with the deceased by PWs-11, 12 and 13. He also drew attention to the evidence of PW-21 who spoke about the accused coming to him in a perplexed condition at around 4:00 am on 4th July 2013 and borrowing Rs.150/-. He further pointed out that in his statement under Section 313 Cr PC, the accused took the plea that he was at Shahdara during the relevant time but led no evidence to substantiate it. In fact, the accused was found absconding and himself surrendered in the Court on 11th July 2013.

14. The Court has considered the above submissions. As regards no FSL report being received *qua* the bloodstained stone, the Court would only like to observe that this evidence might have become important if it was a case of circumstantial evidence. Where the prosecution case is based on direct evidence of an eye-witness, who is found to be truthful and reliable, the above factors and factors such as a delay in registering the FIR might not have much significance.

15. To begin with, in this case, the death is homicidal. There were extensive fractures on the skull of the deceased. The said injuries were explained by the use of a heavy stone to crush the skull. To that extent, the medical evidence completely corroborates the ocular testimony.

16. Turning to the evidence of PW-1, the Court finds it to be natural, consistent and truthful. Being from the same village as the deceased and the accused, PW-1 knew everyone sleeping on the pavement. He himself, on the critical night, slept on the rickshaw. Those who sleep on the pavement may go to sleep at different times. It is entirely possible that they may have covered their faces and, therefore, had no occasion to notice who else may be asleep on the pavement or nearby it. This, therefore, also explains why PWs-10, 11 and 12 might not have mentioned the presence of PW-1. However, what is common to their depositions is that all of them acknowledged that both the deceased and the accused used to ordinarily sleep on the same pavement. Two of them even noticed the accused person at around 11:00 pm talking to PW-11. All of them are unanimous that the next morning, they did not find the accused. This is an important factor which weighs against the accused.

17. The Court has carefully perused the evidence of PW-1 and the extensive cross-examination to which he was subjected. He has not yielded one bit and has been firm and consistent. There is absolutely no confrontation of this witness with his previous statement to the police which only indicates that he stood by whatever he had told the police about the incident. When it comes to the question of eye-witnesses, it is not the number of eye-witnesses that matters but the quality of the evidence. Even one eye-witness who is clear, cogent, and consistent is sufficient to prove the guilt of the accused.

18. That is what has happened in the present case. The evidence of PW-1

being truthful and reliable is, in the considered view of the Court, sufficient to convict the Appellant for the offence punishable under Section 302 IPC.

19. PW-1 has also explained the previous quarrel between the accused and the deceased around ten days prior to the incident. this was also spoken to by some of the other witnesses. The evidence of PW-21 proves the conduct of the accused soon after the incident.

20. In the considered view of the Court, the prosecution has been able to establish the guilt of the Appellant for the offences with which he has been charged beyond reasonable doubt.

21. There is, therefore, no merit in this appeal. It is dismissed. The trial Court record be returned forthwith with a certified copy of this order.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 20, 2018

'anb'