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

+ **CRL.A. 895/2017**

Reserved on: December 18, 2017

Pronounced on: January 05, 2018

BHUPENDER @ JOKHAR

..... Appellant

Through: Mr. Pradeep Kumar Arya with Mr. Ankit Lohan and Mr. Raj Karan Sharma, Advocates.

Versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms. Radhika Kolluru, APP.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

J U D G M E N T

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Dr. S. Muralidhar, J.:

1. This appeal by the Appellant, Bhupender @ Jokhar, is directed against the impugned judgment dated 22nd August 2017 passed by the learned Additional Sessions Judge ('ASJ') in Sessions Case No. 15 of 2017 arising out of FIR No. 629 of 2016 registered at Police Station (PS) Mukherjee Nagar convicting him for the offence under Sections 302 read with Section 34 of Indian Penal Code (IPC) and the order of sentence dated 29th August 2017 whereby the Appellant was sentenced to rigorous imprisonment (RI) for life with fine of Rs. 10,000 and in default of payment of fine, to undergo simple imprisonment (SI) for a period of one year.

2. The Appellant has been convicted for the murder of Amit (deceased) by

firing.

Case of the prosecution

3. The prosecution case begins with a call to the police control room (PCR) at 20:56:12 hours on 26th July 2016 by one Mahesh Sharma, a resident of Munshi Ram Colony, New Delhi informing that near Shiv Mandir under the area of PS Mukherjee Nagar '*firing hui hai aur ek aadmi ko goli lagi hai*'. The PCR form (Ex.PW-16/A) reveals that when the police reached the spot they found that there was a pool of blood and there were two cartridges. One Bholu, son of Bhim Sen, informed that the injured has already been taken to New Life Hospital. It appears that the police team went to New Life Hospital they were told by one Dr. Harish that the injured has been taken to Hindu Rao Hospital. The police then reached the Trauma Centre of the said hospital where they were told that the deceased had been brought dead and the doctor had declared as such. When the police returned to the spot they found two empty cartridge and three live cartridges. Meanwhile, the crime team had also reached there.

Evidence of PW-14

4. There were two eye-witnesses to the incident. The first was Anil Kumar (PW-14), brother-in-law of the deceased who was running a grocery shop at House No. 138, Munshi Ram Colony, Mukherjee Nagar, Delhi. His wife belonged to village Dubbaldhan Majra, PS Beri, District Jhajjar, Haryana. She had three brothers viz., Sandeep, Satyawar and Amit (the deceased). PW-14 disclosed that there was a previous dispute between Satyawar and his cousin brother Chand. Chand was murdered and of the three persons who were convicted, one was Satyawar. As a result, the relation between in-laws

of PW-14 and family of Chand was strained (*ranjish chal rahi thi*). According to PW-14, Kallu @ Surajmal, elder brother of Chand and his sons, Umesh and Sameer, had threatened the family of the in-laws of PW-14 that they would be killed. As a result, Amit had begun residing with PW-14 and his wife in Delhi about two and half years prior to the incident.

5. PW-14 further disclosed that his son Piyush was interested in wrestling. On 17th June 2016, the deceased had taken Piyush to Kolhapur, Maharashtra where there was good scope for a wrestler. PW-14 disclosed that Amit had called him from Kolhapur stating that Umesh, Sameer and their friends had reached there to kill him. PW-14 then immediately called Amit and Piyush back to Delhi. They returned on 9th July 2016. Amit continued residing with PW-14.

6. On 26th July 2016 at about 8.30/8.45 pm PW-14 was standing outside his grocery shop when he noticed Amit coming from the Indira Vikas Colony side towards his shop. At that moment he heard the sound of firing at a distance of 15-20 feet from his shop.

7. At this stage it is necessary to note that in his first statement made to the police under Section 161 of the Code of Criminal Procedure 1973 (Cr PC), PW-14 stated that when Amit reached the corner of the street, two or three boys came there and two of them started firing on Amit. PW-14 rushed to save Amit and the boys escaped from there. At that stage PW-14 did not name the persons who opened fire on Amit. PW-14 further stated that with the help of certain neighbours they took Amit to New Life Hospital in his own car. There the doctor advised them to take him to the Trauma Centre.

When they reached the Trauma Centre the doctor there declared him as having been brought dead. In his first statement, PW-14 clearly stated that it was his suspicion that Umesh and Sameer, sons of Kallu were behind the murder. He also described the two boys who opened fire on Amit as being 22-28 years and around 5'6 inches in height.

8. The present Appellant, Bhupender @ Jokhar was arrested in an Arms Act case by the police of PS Beri, District Jhajjar, Haryana on 12th September 2016 in FIR No. 298 of 2016. Inspector Lalit of PS Beri passed on this information to the Investigating Officer (IO) of the present case, Bhanu Prakash (PW-23). Inspector Lalit also stated that the Appellant made a disclosure of his involvement in the present case, i.e., FIR No. 629 of 2016 at PS Mukherjee Nagar.

9. On 16th September 2016 the Appellant was produced in the Court of the learned Metropolitan Magistrate (MM) having the jurisdiction over PS Mukherjee Nagar. He was then arrested and interrogated. The Appellant is alleged to have made a disclosure statement (PW-17/C). The police fixed the Test Identification Parade (TIP) of the Appellant for 21st September 2016. The Appellant refused to participate in the TIP. PW-23 then moved an application for police custody remand of the Appellant which was allowed. In the police lock up, PW-14 identified the Appellant as the assailant. His identification statement was Ex.PW-14/A.

Evidence of PW-15

10. The other eye witness to the occurrence was Anita (PW-15), the sister-in-law of the deceased. Anita was also a resident of village Dubbaldhan. Her

husband, Satyawar was arrested and convicted for the murder of Chand and was lodged in Jhajjar Jail. She confirmed that as a result of the above incident, the elder brother of Surajmal @ Kallu and other family members including Sameer and Umesh were inimical to them and threatened to take revenge.

11. PW-15 stated that about one and half months prior to the occurrence she had noticed Sameer roaming near the house of PW-14, her *nandoi*. She too confirmed that Amit went to Kolhapur on or about 17th June 2016 for wrestling and returned to Delhi on 9th July 2016. She stated that on 26th July 2016 on or about 8 pm she had gone with Amit to the Indira Vikas Colony Market for purchasing household articles/vegetables. While returning home at about 8.45 pm, the deceased was walking ahead of her. When they reached the iron gate of Munshi Ram Colony, she was only 10/12 steps behind him. As soon as the deceased entered the gate, the two accused, the Appellant herein and co-accused Umesh, standing there armed with the weapons fired on the deceased. She correctly identified the Appellant. While the two armed accused fired on the deceased – one other Somvir @ Chally and one more person came to the spot where the deceased was lying in an injured condition. They gave him kick blows to check whether he was alive or dead. Thereafter, the armed accused (including the Appellant herein) ran towards Indira Vikas Colony while the Somvir and the other person ran towards Mandir wali gali. PW-15 noticed PW14 standing in front of his shop. He along with few neighbours rushed to the place where the deceased was lying. PW-15 lost consciousness at that point in time.

12. PW15 stated that she regained consciousness in the early hours of the following day in her house. At around 6.30 am on 27th July, 2010 she received a phone call from Sumit, a cousin of the deceased, who informed her that the Appellant herein and along with Umesh and Somvir and one other person had reached their village Dubbaldhan. He further disclosed to her that they had caused a gunshot injury to Sudhir, her brother-in-law, between 5 and 5.30 am on 27th July, 2016. The police then recorded the statement of PW15 at her house on 27th July, 2016.

13. PW15 also confirmed that on 22nd September, 2016, she along with PW14 had gone to PS Mukherjee Nagar and identified the Appellant as the person who had caused gunshot injury to the deceased. She also gave a statement to that effect to the police.

14. In her cross-examination, PW-15 confirmed that she and her family members had lodged 3/4 complaints to the police at village Dubbaldhan in the face of threats from the family members of Chand. The copies of those complaints were marked as Ex. PW15/D1 to D3. Importantly in her cross-examination, PW-15 volunteered that she had seen the Appellant “many a times in my native village and on one occasion accused Bhupinder had abused me while I was going to drop my children at their school.”

15. No doubt both the eye-witnesses i.e. PW14 and PW15 are related to the deceased, one being his brother-in-law and the other his sister-in-law. However, if on a careful scrutiny their evidence inspires confidence, it can certainly form the basis of a conviction. The caution that the Court has to exercise while examining the evidence of an interested witness is to look for

inconsistencies and improvements, if any, that might affect the credibility of such witness. A greater degree of caution has to be exercised than the Court would while examining a non-interested witness.

Eye Witnesses are trustworthy and consistent

16. Mr. Pradeep Kumar Arya, learned counsel for the Appellant, submitted that as far as PW14 was concerned, despite his statement that he accompanied the deceased, who was bleeding from gunshot wounds, to the hospital and that he took help of a neighbour, neither were his bloodstained clothes seized nor the neighbour who helped him take the deceased to the hospital examined. Even the car in which the deceased was taken was not examined. The person who made the PCR call i.e. Mahesh Kumar was not examined despite his mobile number being available with the police. Also, nobody from the first hospital to which the deceased was taken, i.e. the New Life Hospital, or even the doctor from there, i.e., Dr. Harish who first examined the deceased, was examined.

17. In the considered view of the Court, if the evidence of an eye witness inspires confidence, the mere fact that the prosecution had not examined other witnesses who may have corroborated the statement of such witness will not by itself weaken the evidence of such witness. PW-14 by all counts is a natural witness. A perusal of the PCR form clearly shows that the fact of the deceased having been brought to the New Life Hospital and Dr. Harish stating that he had been taken to the Hindu Rao Hospital are clearly set out. What is stated therein is consistent with the version of PW14 who was certainly present throughout. The mere fact that the bloodstained clothes

of PW-14 were not seized does not throw doubts on the veracity of his version.

18. It is then urged that PW14 did not name the Appellant in his first statement to the police and, therefore, his identification of the Appellant in the Court was of no value since by then the Appellant had been shown to PW-14. It is also submitted that the site plan prepared by the police does not show precisely the position of the two eye witnesses in relation to the position of the assailant. It is submitted that this is because in fact neither of them was present at the spot. It is submitted that there was absolutely no motive for the Appellant to kill the deceased; the weapon of the offence was not recovered and there was delay of about four hours in lodging the FIR. Two of the co-accused i.e. Sanjay and Sameer have been discharged even at the time of framing of charges although one of them was named by PW15.

19. The above criticisms of the evidence of PW-14 do not impress the Court for more than one reason. Unlike PW-15, PW-14 did not know the Appellant from before and, therefore, was not in a position to name him while he gave his first statement to the police. PW-15 belonged to the same village as the Appellant and knew him from before but at the time PW-14 gave his statement to the police, she was not conscious. Therefore, it is but natural for PW-14 not to have named the Appellant in his first statement.

20. Further, as already noticed, the Appellant refused to participate in the TIP and it is only thereafter that while he was kept up in the police lockup at PS Mukherjee Nagar that PWs 14 and 15 were brought there to identify the accused. This, therefore, does not in any way detract from the proper

identification of the Appellant by these two eye witnesses.

21. The non-recovery of the weapon used by the Appellant is of no consequence once both the eye witnesses without any ambiguity state that the deceased was killed as a result of the gunshot injuries. The Appellant has been correctly identified by them as one of the two persons who fired a gunshot on the deceased. The motive also has been clearly explained as relating back to the previous enmity between the families of Chand and the Appellant. These are matters of record since the husband of PW-15 stood in fact convicted for the murder of Chand's brother. This is, therefore, not a case where the motive for the crime has not been established. It has also come in evidence that the Appellant who belonged to the same village as the PW-15, was working for the sons of Chand.

22. Once the evidence of two eye witnesses is clear and cogent, the failure to clearly state in the site plan as to where they were standing and in relation to the positions of the respective accused, is not of much consequence. While certainly such a site plan might have clearly shown the relative positions of the eye witnesses. However, the absence of such a site plan does not detract from the veracity of their evidence.

23. It was submitted that it was unusual that PW15 did not seek any medical help and even after regaining consciousness did not inform anyone about what she saw till she spoke to the police the next morning. As far as this submission is concerned, the Court finds it wholly probable that PW15 who was walking just ten steps behind the deceased was deeply disturbed on seeing the deceased being gunned down in front of her eyes. Her losing

consciousness appears totally natural and probable. Likewise her explanation that she regained consciousness only the following morning also appears entirely probable. The fact that she herself may not have been injured in any significant way, does not detract her from the truth of her version. Since also, there are no external injuries suffered by her and she only lost her consciousness, the failure to call a doctor at that point in time cannot be said to be unusual. What is significant is that even in her first statement to the police under Section 161 Cr PC, PW15 named the Appellant and this was but natural since she had known him from before at her village where he had abused her while she was going to drop her children to the school.

24. Nothing much has been elicited from PW15 in her cross examination which could be said to assist the defence. The minor inconsistencies in the statement made by her to the police in the first instance under Section 161 Cr PC were confronted to her but were not material enough to cast any grave doubts on the truth of her version. The failure by the police to note whether there were any articles like vegetables etc strewn at the place of occurrence, does not per se falsify the versions of PWs 14 and 15.

25. This Court has also carefully examined the evidence of the IO, PW23. Learned counsel for the Appellant sought to suggest that the IO ought to have investigated into PW15 becoming unconscious and ought to have collected the CDRs of the mobile phones used by PWs 14 and 15. It was for the IO to make an assessment of the strength of the evidence of PWs 14 and 15. If he felt that they were trustworthy and credible witnesses and could

withstand cross-examination, he might not have further probed any alternative explanation to the events. The IO's assessment in the present case was found to be correct as both eye witnesses stood firm in their respective versions despite intensive cross-examination.

Conclusion

26. This Court is unable to find any legal infirmity in the impugned judgment or order on sentence of the trial Court. The appeal is accordingly dismissed but, in the circumstances, with no orders as to costs. The trial Court record be returned forthwith with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 05, 2018

Rm/rd