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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL A 1/2016

VIKRAM CHHETRI @ BEDU RAM CHHETRI Appellant
Through: Mr. Danish Zubhair Khan with
Mr. Mohd. Asad Khan,
Advocates.

versus

STATE Respondent
Through: Mr. Hirein Sharma, APP.

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

ORDER
02.04.2018

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1. This appeal is directed against the impugned judgment dated 17th July 2015 passed by the learned Additional Sessions Judge-03 (Central), Tis Hazari Courts, Delhi ('ASJ') in Sessions Case No.80 of 2013 arising out of FIR No.178 of 2013 registered at Police Station ('PS') Darya Ganj convicting the Appellant, Vikram Chhetri @ Bedu Ram Chhetri, for the offence under Section 302 IPC and the order on sentence dated 31st July 2015 whereby he was sentenced to undergo rigorous imprisonment 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.

2. The charge against the accused (Appellant) is that between 3 and 4 am on

1st July 2013 at the servant quarters in Bungalow No. 115, Ansari Road, Darya Ganj, Delhi he committed the murder of Lalhming Sanga @ Puia by a chopper (*daw*) thereby committing an offence punishable under Section 302 IPC.

3. Although the Appellant was also charged with concealing the evidence of murder thereby committing an offence punishable under Section 201 IPC, the trial Court has in the impugned judgment acquitted the Appellant of the said offence.

4. The case of the prosecution is that the Appellant was working as a cook at Bungalow No.115, Ansari Road, Darya Ganj, Delhi which was the official residence allotted to Ms. L. Tochhong, Chief Secretary of Mizoram. Her nephew, Sangkima (PW-3), and her son, Zome (PW-8) were also residing at that time in Bungalow No.115, Ansari Road, Darya Ganj, Delhi.

5. While the Appellant was engaged as a cook, the deceased, Puia, was engaged as a driver. From the site plan prepared of the scene of crime (Ex.PW-14/A) it is seen that the rooms of the Appellant and the deceased were adjoining each other in the servant quarters in the rear portion of the aforementioned bungalow.

6. The case is based on the circumstantial evidence. One of the first circumstances that is sought to be established is that there was a quarrel that took place between the deceased and the accused immediately preceding the incident on the intervening night of 30th June/1st July 2013.

7. In order to prove the above circumstance, the prosecution examined PW-3 and PW-8 as well as Pramod Kumar (PW-10) and Bhushan Kumar (PW-11) who were the gate keepers of the bungalow.

8. It has come in the evidence of Sangkima (PW-3) that at the time of the incident Ms. Tochhong was in Mizoram. Four persons were residing at 115, Ansari Road, Darya Ganj at the time of the incident, i.e. PW-3, PW-8, the accused and the deceased. On 30th June 2013, PW-3 had returned to Delhi from Mizoram by flight which reached Delhi at around 7.30 pm. He reached the aforementioned residence at 115, Ansari Road at around 9.00 pm. The deceased dropped PW-3 from the airport to the residence.

9. On the instructions of PW-3, the deceased went to drop Gloria (cousin sister of PW-3) at Satya Niketan between 10 and 11.00 pm. According to PW-3, at around midnight on 30th June 2013, when Puia returned after dropping Gloria at Satya Niketan, he confided to PW-3 that the accused (Appellant) had used the internet mobile package of the deceased without permission of the deceased and exhausted the entire balance. The deceased appeared to be very angry about this. The deceased further told PW-3 that he had purchased a bottle of beer which had been consumed by the accused without his consent.

10. PW-3 asked the deceased to call the accused but the accused did not arrive. After 10-15 minutes, PW-3 noticed that both the accused and the deceased were standing outside of their respective rooms in the servant quarters, and were quarrelling. After asking both of them to quieten down and resolve their disputes, PW-3 went to sleep.

11. According to PW-3, at around 2 am, both PW-10 and PW-11 woke him up stating that the accused had come to their room and said that he would murder the deceased. This led PW-3 to again confront the accused who denied having said so to PWs- 10 and 11. By this time, PW-3 noticed that the accused had already consumed more than necessary liquor and was unable to stand properly. After asking him to go to sleep, PW-3 returned to his room and presumed that everything was ok.

12. At around 3.30 am, PW-3 again went out and found that the accused was talking to someone outside his room on the phone. He asked the accused to go to sleep as he had to travel early in the morning but the accused told him that he was taking a bath and that he would prepare food early in the morning.

13. At around 5.45 am, PW-3 was awoken by PW-8 and they went to the room of the deceased and found him lying dead behind the door. The Appellant was absconding. PW-3 then called the police and named the Appellant as the person responsible for the murder of the deceased.

14. The information given to the police was noted down as DD No.6A. Inspector Ravinder Singh (PW-19) reached the spot along with SI Munish Kumar (PW-12) and Constable Rajender Singh (PW-7). The crime team was also called. They noticed that there were 22 injuries on the body. The finger print expert Head Constable Ajay Kumar was also present. However, no chance prints could be lifted from the weapon of offence i.e. chopper (*daw*) which was found at the scene of crime.

15. Inspector Ravinder Kumar (PW-19), the Investigating Officer ('IO'), deputed different teams in search of the accused. He collected the CDRs of the mobile phone of the deceased. The case properties were deposited in the police *malkhana*. The IO requested the Mizoram police to provide assistance in arresting the Appellant.

16. On 14th July 2013, the IO received a call from the DSP Dispur, Assam stating that the Appellant had been arrested there. The police team was sent by the IO who received the custody of the Appellant from the police at Dispur, Assam on 15th July 2013. Thereafter, taking transit remand, the accused was brought to Delhi on 17th July 2013.

17. After police custody of the accused was obtained on 18th July 2013, he gave a disclosure statement and got recovered his bloodstained *baniyan* and one half-pant which had brown stains. These were seized. On 29th July 2013 these exhibits and the earlier exhibits were sent to FSL, Rohini.

18. In the meanwhile, the post-mortem of the deceased was performed by Dr. Jyoti Barwa (PW-4) who noticed as many as 22 cut lacerated and chop wounds on the body. Injuries 1 to 6 were on the skull and had caused fracture of the skull resulting in extravasation of blood. There were chop wounds present on the back and left side of neck. The opinion given by PW-4 was as under:

"On the basis of post-mortem conducted by me in my opinion, death is caused as a result of combined effect of shock and cranio cerebral damage, consequent upon penetrating trauma to

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the head (injury No. 1,2,3,4,5,6) and to the left upper limb (injury no. 13,15,18) which were individually and collectively sufficient to cause death in the ordinary course of nature. Injury No. 4 is imminently fatal, all injuries were ante-mortem in nature, fresh prior to death in duration and are homicidal in nature. Injury No. 1,2,3,4,5,6,13,15,18 have been inflicted by forceful impact with a heavy weapon with cutting edge. Injury No. 7,8,9,10,11,12,14,16,17,19,20,21,22 have been inflicted by sharp force. All the injuries possibly caused by the same weapon."

19. Later, on 25th March 2014, the opinion of PW-4 was sought on whether the chopper that had been seized could have caused the aforementioned injuries and she answered in the affirmative.

20. The report of the FSL (Ex.PY-1) confirmed that the bloodstains on the T-shirt of the accused were of human blood which belonged to the B blood group which happened to be the blood group of the deceased.

21. The following circumstances were held to be conclusively proved by the trial Court:

- (i) the fact that quarrel took place between the deceased and the accused immediately prior to the occurrence;
- (ii) that the accused went absconding soon after the occurrence and was arrested in Dispur, Assam on 14th July 2013;
- (iii) after his arrest and pursuant to his disclosure, the accused led the police to recover his own clothes, one of which was t-shirt having blood stains;
- (iv) the FSL report confirmed that the bloodstains on the t-shirt worn by the accused matched with the blood group of the deceased.

22. This Court has heard the submissions of Mr. Danish Zubhair Khan, learned counsel for the Appellant, and Mr. Hirein Sharma, learned APP for the State.

23. It was submitted by learned counsel for the Appellant that there were inconsistencies in the evidence of PWs- 3 and 8 as regards the deceased having been sent to drop Gloria, the cousin of PW-3, at Satya Niketan. It is pointed out that in his cross-examination, PW-8 suggested that Gloria was very much present in the house at the time of the incident. He added that Gloria being the key witness ought to have been examined by the prosecution.

24. This Court does not find much turning on the above inconsistency as regards the presence of Gloria at the house. It does not materially alter the key element of the deposition of both these witnesses i.e. a quarrel had taken place between the deceased and the Appellant immediately before the incident.

25. Then it is pointed out that according to PW-3, the gatekeepers, PWs- 10 and 11, came and told him at 2 am that a quarrel was taking place between the accused and the deceased, whereas in the deposition of both PWs- 10 and 11, they maintained that they went to sleep at around 3.30 am and in the morning they awoke at about 5.45 am at which point they came to know the accused had ran away after the incident.

26. The above submission overlooks the fact that in his cross-examination,

PW-10 confirmed that "it is correct that I had seen Vikram last time on 2.30 or 3.00 am while we were walking around the building. I had seen the Puia at 2.00 or 2.30 am". As far as PW-11 is concerned, he too states that he took a round of the building along with PW-10 and went to sleep at about 2.30 am. The Court finds that nothing has been suggested to these witnesses that no quarrel had taken place between the accused and the deceased on the intervening night of 30th June-1st July 2013. In other words, the collective reading of the depositions of PWs- 3, 8, 10, and 11 clearly establishes that the accused was last seen with the deceased and that both of them were quarrelling. This circumstance therefore, has been conclusively proved by the prosecution through the above PWs.

27. The accused has also not been able to challenge the prosecution evidence as regards the homicidal death of the deceased with the post-mortem report revealing the extent of brutality with which the deceased was attacked.

28. Learned counsel for the Appellant referred to the statement made by the Appellant under Section 313 Cr PC where he maintained that on 30th June 2013 at 11.30 pm, PW-3 suddenly asked him to get out with baggage from the house and that he remained the whole of the night at the railway station only to board the Bharamputra Express at about 7 am on the morning of 1st July 2013. He claimed to have gone to his father's house at Guwahati and lived there for 12-13 days.

29. The Appellant has been unable to dispute his absence from the scene of crime soon after the occurrence. His statement under Section 313 Cr PC is consistent with the case of the prosecution in this regard. The Appellant was

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also unable to dispute that he was in fact arrested on 14th July 2013. The explanation offered by him about his absence is not convincing at all. The overwhelming evidence of PWs 3, 8, 10 and 11 explains the manner in which the Appellant went absconding soon after the commission of crime. This circumstance, therefore, has also been proved by the prosecution beyond reasonable doubt.

30. The recovery of the Appellant's bloodstained T-shirt pursuant to the disclosure statement made by the Appellant and the FSL report confirming that the bloodstains thereon matched the blood group of the deceased virtually nails the case against the Appellant.

31. In the considered view of the Court, all the aforementioned circumstances which form a continuous chain conclusively prove the guilt of the Appellant. The conclusion reached by the trial Court against the Appellant that it is the Appellant alone who committed the crime does not call for interference.

32. Lastly it was submitted by learned counsel for the Appellant that the Appellant was a young person at the time of commission of offence and that some leniency ought to be shown in the matter. The Court finds that although the murder was a brutal one with as many as 22 cut and chop wounds all over the body of the deceased, inflicted by a chopper, the trial Court has taken a lenient view and awarded the Appellant the alternative sentence of imprisonment for life. There is no scope for further leniency in the matter.

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33. The appeal is accordingly dismissed. The trial Court record be returned forthwith together with a certified copy of this judgment.



S. MURALIDHAR, J.



I.S. MEHTA, J.

APRIL 02, 2018
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