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

+ **CRL.A. 701/2017**

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Judgment reserved on: 20th May, 2019

Judgment pronounced on: 27th May, 2019

MANNU

....Appellant

Through: Ms. Inderjeet Sidhu, Advocate.

Versus

STATE

....Respondent

Through: Mr. Ravi Nayak, APP for State.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

1. The present Appeal is instituted on behalf of the appellant under Section 374(2) of the Code of Criminal Procedure, 1973, (hereinafter referred to as “Cr.P.C.”) against the impugned judgment of conviction dated 25.03.2017 and order on sentence dated 03.04.2017 passed by the Court of Special Judge (NDPS-01), West District, Tis Hazari Courts, Delhi, in Session Case No.56203/2016 in FIR No.455/2012, registered at Police Station Tilak Nagar under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) whereby the appellant was convicted for the offence punishable under Section 302 IPC and sentenced to rigorous imprisonment for life alongwith a fine of Rs.5,000/-, in default of payment of fine, to further undergo simple imprisonment for a period of one month.

2. Brief facts of the case, as noticed by the Learned Trial Court, are as under:-

“As per the case of prosecution on 18.11.2012 an information regarding a quarrel at H.No. 152, Tilak Nagar near Kali Mata Mandir was received from PCR at PP Tilak Vihar vide DD No.39PP. The same was entrusted to ASI Babu Lal, who rushed to the spot at H. No.152, Double Storey, Harijan Colony, Tilak Nagar, New Delhi, where on enquiry it was found that the injured has been taken to DDU Hospital, New Delhi. Meanwhile information regarding the admission of injured Vijay was received. Accordingly, said ASI alongwith Ct. Sandeep reached at DDU Hospital and collected MLC No.2444512 of Vijay S/o Kailash Chand, R/o H.No.152, Double Storey, Harijan Colony, Tilak Nagar, New Delhi, whereupon doctor mentioned “alleged H/O Physical assault, stab injury. Nature of injuries UO/Stab and Patient was unfit for statement”. Statement of brother of injured namely Sh. Mahender was recorded in the hospital and on the basis of said statement, case was got registered U/s 307 IPC at PS Tilak Nagar on 18.11.2012. In his statement said Mahender alleged that one Monnu has stabbed his brother Vijay over the enmity on account of his illicit relation with the wife of accused Mannu. On 19.11.2012, accused Mannu s/o Late Hukam Chand, R/o Jhuggi No.82, Double Storey, Harijan Colony, Tilag Nagar, New Delhi was arrested and at his instance the weapon of offence i.e. blood stained chhuri (knife) was recovered. Site plan of the place of occurrence was prepared at the instance of accused. Scene of crime was got inspected through Crime Team. Photographer took the photographs of the place of occurrence from different angles. Then sketch of the knife was also prepared. The same was taken into police possession

vide a pulanda sealed with the seal of BL through a seizure memo. On 19.11.2012 at 11.50 PM, an information was received from Safdarjung Hospital, New Delhi that injured Vijay expired during treatment. Section 302 IPC was added in this case. Postmortem on the dead body of deceased was got conducted at Mortuary, Safdarjung Hospital and thereafter, dead body was handed over to his brother. Subsequent opinion about the weapon of offence was taken. PM report of the deceased was collected whereupon doctor mentioned "death is due to shock as a result of penetrating sharp injuries to the chest. Injuries No.1, 2, 3 & 4 are singularly and collectively fatal and sufficient to cause death in the ordinary course of nature". Exhibits of the case were sent to FSL for expert opinion. Statement of witnesses recorded. Then, after completion of investigation charge sheet was filed in the court of concerned Ld. MM. Charge was framed against the accused u/s 302 IPC to which he pleaded not guilty and claimed trial.

3. In order to bring home the guilt of the accused, the prosecution examined 32 witnesses in all. Statement of the accused was recorded under Section 313 of Cr.P.C wherein he stated that he has been falsely implicated as there was some past enmity between him and the witnesses and pleaded innocence. The accused chose not to lead any evidence in his defence.
4. Ms. Inderjeet Sidhu, learned counsel for the appellant contended that the impugned judgment dated 25.03.2017 is based on conjectures and surmises and the same is against the facts and the settled proposition of law and that the case of the prosecution is based upon the testimonies of PW-2 (brother of the deceased), PW-5 (Sunny), PW-8

(Smt. Sunita), but there are material contradictions and inconsistencies in their testimonies which renders the entire case of the prosecution unreliable. The learned counsel for the appellant further contended that the learned Trial Court failed to appreciate that all the star witnesses are interested witnesses, hence their evidence cannot be exclusively relied upon as trustworthy and reliable because there is a very strong possibility of the prosecution witnesses being tutored and influenced.

5. The learned counsel further contended that recovery of the alleged weapon cannot be relied as an incriminating piece of evidence against the appellant as the same was affected from the place which was easily accessible to the public, and no efforts were made to associate any independent witness to the recovery proceedings.
6. Learned counsel for the appellant further contended that neither any motive has been proved, nor there was any premeditation, deliberation or planning hence at best the appellant could have been convicted under Section 304-II of IPC and not under Section 302 of IPC and relied upon the case of *Ashok Kumar Magabhai Vankar Vs. State of Gujarat: (2011) 10 SCC 604*, *State of Rajasthan Vs. Dhool Singh: (2004) 12 SCC 546* and *Ankush Shivaji Gaikwad vs. State of Maharashtra* reported at *AIR 2013 SC 2454*.
7. Per contra, Mr. Ravi Nayak, learned APP for the State contended that the testimonies of PW-2 (brother of the deceased), PW-5 (Sunny) and PW-8 (Smt. Sunita) are consistent and trustworthy and the minor contradictions and discrepancies in the testimonies do not go to the root of the matter. It is a settled proposition of law that even if there

are some omissions, contradictions and discrepancies in the testimonies of the witnesses, the entire evidence cannot be completely disregarded. The learned APP further contended that the testimonies of the eye witnesses cannot be rejected on the mere ground of their relationship because it is not a sufficient ground to discard the evidence of the witnesses.

8. Mr. Ravi Nayak further stated that PW-23 (Smt. Pooja) wife of the appellant has established the motive for the commission of the crime and the post mortem report (**Ex. PW. 20/A**) proves the guilt of the appellant beyond doubt. Learned counsel for the State further contended that in the present case the appellant had come prepared to cause bodily injury with an intention to kill the victim (Vijay) and the number of injuries inflicted on the person of the deceased would show that the appellant had inflicted knife injuries on the vital part of deceased body with an intention to eliminate the victim. For the same he relied on the cases *Ashok Kumar Magabhai Vankar Vs. State of Gujarat: (2011) 10 SCC 604*, *State of Rajasthan Vs. Dhool Singh: (2004) 12 SCC 546*, *Mohd. Imran Vs. State: 247 (2018) DLT 729*.
9. Lastly, the learned APP contended that, it is amply clear that the ocular evidence, medical evidence and more particularly, testimony of the eye witnesses, which is eloquent and self-explicit, connects the appellant with the crime, considering this the impugned order should be upheld.
10. We have heard the learned counsel for the parties and have also perused the material placed on record.

11. At the outset, we deem it appropriate to peruse the testimonies of star prosecution witnesses i.e. PW-2 (Sh. Mahinder Singh/brother of the deceased) and PW-5 (Sunny) and PW-8 (Smt. Sunita). PW-2 (Mahinder Singh/brother of the deceased) during his examination-in-Chief deposed as under:-

*“On 18.11.2012 at about 08:00/08:15 PM I along with my younger brother Vijay were sitting on plastic chairs in front of my house in a jhuggi. We have built a jhuggi outside out abovesaid house. We were talking with each other. At that time accused Mannu present today in the court (correctly identified) came there carrying a Chhuri in his hand. Accused Mannu told to my brother Vijay that Vijay had destroyed his family and snatched his wife and children. Mannu also told my brother that because of Vijay, Mannu had been defamed in the society and unable to show his face in the society and on that day he would not let him alive. Accused Mannu stabbed my brother Vijay with the Chhuri in his chest twice. I raised alarm. My son Sunny and the wife of Vijay came there. Vijay tried to catch accused Mannu but at the same time Mannu again stabbed in his chest with chhuri repeatedly. Accused Mannu ran away from the spot before we could realise as to what had happened all of a sudden. Vijay fell down on the ground and was bleeding from the wound. We took Vijay to police post Tilak Vihar where we were advised to take Vijay to DDU Hospital firstly. We took Vijay to DDU hospital and got him admitted. Thereafter, police also reached the hospital. Doctor had handed over the blood stained clothes of Vijay to the police and police seized the same vide seizure memo **Ex.PW2/B** bearing my thumb impression at point A. Accused Munna was caught by the police from the DDU Hospital. I identified Munna in the hospital. I was called at the police post. Police*

*recorded my statement **Ex.PW2/B** bearing my thumb impression at point A.*

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*Accused told the police that he could get recover the Chhuri by which he had stabbed Vijay. I along with police and accused went to one park behind Peer Baba Majaar from where the accused produced a Chhuri from near a wall. Police prepared the sketch of the Chhuri which is **Ex.PW2/H** bearing my thumb impression at point A.*

My relatives who were with Vijay in DDU Hospital informed me that vijay was shifted to Safdarjung Hospital. On 19.11.2012 my brother Vijay was died in Safdarjung Hospital.

It is wrong to suggest that accused Mannu has not attacked Vijay with knife. Vijay sustained injury in abdominal region. It is wrong to suggest that I had not witnessed the incident. It is wrong to suggest that I was not present at the spot of incident. It is wrong to suggest that my son Sunny and wife of Vijay have not taken Vijay to the hospital.”

12. PW-5 (Sunny) during his examination-in-Chief deposed as under:-

“PW-5 deposed that on 18.11.2012, I was present at my house. At about 7.00/8.00 pm, I heard a noise. I came outside my house and saw accused Mannu present in court today (correctly identified by the witness) was causing stab injuries on the person of my uncle (CHACHA) namely Vijay. My father Mahender was trying to save my uncle Vijay. Due to injuries caused by accused my uncle fell down. Accused Mannu had ran away from the spot with the knife. I and my father Mahender took Vijay to DDU Hospital in a TSR.”

During the cross examination of PW-5 (Sunny), he deposed as under:

“I saw the accused while inflicting the injuries on the person of my paternal uncle from the first floor. I had told to the IO about my position from where I saw the incident. It is wrong to suggest that I did not witness the incident or that the accused has been falsely implicated in the present case to settle the grudge as there was previous enmity between my paternal uncle and accused or that I am deposing falsely.”

13. PW-8 (Smt. Sunita) during his examination-in-Chief deposed as under:-

“PW-8 deposed that my younger brother-in-law (DEVAR) Vijay was on visiting terms with Pooja, the wife of accused Mannu present today in the court (correctly identified). We were not aware about any relationship between accused Mannu and Pooja. I do not remember the date but about three years ago, it was month of November, I was cooking food in the house. At about 07.00/08.00 PM, I heard a noise of quarrel from the gali. I went downstairs. I saw that my brother-in-law Vijay was lying in injured condition. I along with my son Sunny and sister-in-law (DEVIRANI) namely Rani took Vijay to DDU Hospital from where he was referred to Safdarjung Hospital. On 19th November Vijay had expired in hospital. I came to know that accused Mannu had given the stab injury to Vijay.

During the cross examination, PW-8 (Smt. Sunita) deposed as under:

I had also stated to the police that on 18.11.2012, I was present at my house. At about 08.15 PM I had heard a noise of quarrel from outside my house in the

street on which me, my son Sunny and my sister-in-law/DEVRANI went downstairs.

I had stated to the police that on going downstairs, I saw that my brother-in-law Vijay was lying in pool of blood and accused Mannu was giving knife blows to Vijay whereas my husband was trying to save Vijay. I had also stated to the police that on seeing us coming near, accused Mannu ran away from there and I started crying.

Xxxx xxxx xxxx

I had seen the knife used by accused Mannu in stabbing Vijay. Accused Mannu had run away from the spot immediately on seeing us coming near.”

14. In all criminal cases, normal discrepancies are bound to occur in the depositions of the witnesses due to normal errors of observation, namely, error of memory due to lapse of time or due to mental disposition such as shock and horror at the time of the incident. In case of ***Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr.***, reported at (2013) 12 SCC 796, the Apex Court held as under:

“28. As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the

*prosecution version. If an omission or discrepancy goes to the root of the matter ushers in incongruities, the defence can take advantage of such inconsistencies. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (See **Leela Ram vs. State of Haryana and another, Rammi alias Rameshwar v. State of M.P. and Shyamal Ghosh v. State of West Bengal**).*

15. A conjoint reading of the aforementioned testimonies, it is evident that the testimonies of the prosecution witnesses are consistent and corroborate with each other and are trustworthy wherein it has been revealed that on 18.11.2012 appellant Mannu had given knife blows to the deceased Vijay.
16. The Hon'ble Supreme Court of India has repeatedly held that the evidence of interested witnesses can be relied upon, provided they are trustworthy and reliable, but with caution. It would be worthwhile to reproduce the observations of the Apex Court in the case of **Brahmswaroop and another vs. State of UP** reported in **AIR 2011 SC 280**, wherein it was held as under: -

"Merely because the witnesses are closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that affects the credibility of a witness, more so, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove

by leading impeccable evidence in respect of its' false implication. However, in such cases, the court has to adopt - a careful approach and analyse the evidence to find out whether it is cogent and credible evidence."

17. Accordingly, there is no force in the submission of the counsel for the appellant that the testimony of the prosecution witnesses should be discarded because they are interested witnesses and are closely related to each other.
18. Having discussed the testimonies of PW-2 (brother of the deceased), PW-5 (Sunny) and PW-8 (Smt. Sunita), we deem it appropriate to examine the medical and scientific evidence adduced by the prosecution. Dr. Anurag Ashoka (PW-4), Sr. Resident, in-casualty department, DDU Hospital, Delhi examined the deceased on 18.11.2012. The relevant portion from his statement is reproduced below:

"I was working as Senior Resident, Casualty department in DDU Hospital. On that day at about 08.45 PM one injured Vijay S/o Kailash, 45 years, Male was brought to the casualty with alleged history of stab injury. The history was given by injured as well as nephew Sunny, who brought him. I medically examined the injured and found the following injuries: -

- 1. Stab wound of size 1.5 cm x 0.5 cm over right side of chest medially to right nipple.*
- 2. Stab wound of size 3.5 cm x 0.8 cm over right side of chest over right axillary region.*
- 3. Stab wound of size 3.5 cm x 0.8 cm over left lower chest.*
- 4. Stab wound on back of chest 2.5 cm x 0.5 cm.*
- 5. Superficial CLW of 2 cm x .1 over anterior aspect of abdomen laterally superficial."*

19. Dr. Md. Shadab Raheel (PW-20) Sr. Resident, Forensic Medicine and Toxicology, Safdarjung Hospital, Delhi conducted the post-mortem of the deceased Vijay and proved the report as **Ex.PW20/A** wherein he opined that “the death was due to shock as a result of penetrating sharp injuries to the chest of the deceased. All injuries were antemortem and injury no. 1, 2, 3, & 4 mentioned in my report were singularly and collectively fatal and sufficient to cause death in the ordinary course of nature” The relevant portion from his statement is reproduced below-

“I was posted at Department of Forensic Medicine and Toxicology, Vardhman Mahavir Medical College and Safdarjung Hospital as Senior Resident. On that day at 02.30 PM vide post-mortem report no.1931/12 I had conducted the post-mortem on the dead body of a male aged about 45 years namely Vijay son of Sh. Kailash Chand. As per hospital record the said deceased Vijay was admitted in the hospital on 19.11.2012 at 05.00 AM vide MLC No.24445 of DDU Hospital and he had expired on 19.11.2012 at 09.10 PM.

I prepared the post-mortem report on the basis of the external and internal examination of the deceased and reached to the opinion that time since death was about seventeen hours which corresponded to the hospital records and the death was due to shock as a result of penetrating sharp injuries to the chest of the deceased. All the injuries were antemortem in nature and injury no. 1, 2, 3 & 4 mentioned in my report were singularly and collectively fatal and sufficient to cause death in the ordinary course of nature. The post-mortem report is Ex.PW-20/A bearing my signatures on each page at point A comprising of four pages.

On 27.12.2012 on application from Inspector Kishore Kumar, SHO P.S. Tilak Nagar with a pullanda in a green colour polythene bag having no. 455/12, I had given the subsequent opinion in this case. I had mentioned the contents of the pullanda in the memo of subsequent opinion. I examined the sharp-edged weapon sent into the said pullanda and gave the opinion after going through the post-mortem report that injuries no. 1, 2, 3 & 4 mentioned in the above stated post-mortem report could be possible with the said or other similar weapon.”

During his cross examination PW-20 (Dr. Md. Shadab Raheel) deposed as under:

“It is correct that injuries mentioned in the post-mortem report are possible if person falls on sharp object. It is possible that even if width of the blade of the knife is more, similar injuries are possible.”

20. As per the FSL report (Ex. PW29/B) and the serological examination, blood of human origin of group ‘O’ was detected on Baniyan (Ex. 1), Shirt (Ex. 2) and Blood-Stained Gauze (Ex. 6). Moreover, relying upon the above testimony of PW-20 (Dr. Md. Shadab Raheel), who had opined that “It is possible that even if width of the blade of the knife is more, similar injuries are possible”, it can authoritatively be said that, the evidence produced by the ocular witnesses co-relates with the medical evidence. Thus prosecution has been able to discharge its onus to prove the commission of the crime by the appellant.
21. Learned counsel for the appellant contended that the recovery of the knife is doubtful as the same had been recovered from an open space

which is accessible to all. In this context, we find from the record that the knife was recovered from behind Peer Baba Mazar, an open park at the instance of the accused. The weapon of offence i.e. knife was recovered vide **Ex.-PW-2/H** in presence of PW-19 (Ct. Sandeep) and PW-2 (Mahinder/brother of the deceased). PW-19 (Ct. Sandeep) during his examination-in-Chief deposed that ‘After that, accused took us to the park situated behind Peer Baba Mazar and from near the wall of the park, accused took out a knife which was lying there and told us that by the said knife he had caused injuries to Vijay.’. PW-2 (Mahinder/ brother of the deceased) during his examination-in-Chief, confirmed the recovery of the weapon of offence at the instance of the accused and deposed that ‘I along with police and accused went to one park behind Per Baba Majar from where the accused produce a Chhuri from near a wall.’ Admittedly, the incident occurred on 18.11.2012 at around 08:00/08:15 PM and the weapon of offence was recovered from Peer Baba Mazar, an open park on 19.11.2012, there is nothing on record to doubt the recovery of weapon of offence. Moreover, the testimonies of PW-19 (Ct. Sandeep) and PW-2 (Mahinder/brother of the deceased) are clear and unambiguous which proves the recovery of weapon of offence. Hence, the argument raised by counsel for the appellant with regard to recovery of weapon from an open space holds no ground.

22. The testimonies of PW-23 (Smt. Pooja) wife of the accused as well as testimony of PW-2 (Mahinder/brother of the deceased) establish that the accused with a predetermined mind had every intention to

kill the deceased, as the deceased was suspected by the accused of having extra martial relations with his wife. The testimony of PW-23 (Pooja) reads as under:-

“Vijay (deceased) was one of the friends of my husband and he used to visit my house. As and when accused Manny used to quarrel with me in presence of Vijay, he used to pacify between us. Vijay also used to help me financially. As my husband had sold his house due to bad habit of consuming liquor, Vijay had purchased a Jhuggi for me and my children near his house with his own money. Thereafter, I started residing in that Jhuggi with my four children. Accused Manny started visiting my that jhuggi also and he used to quarrel with me and Vijay. Accused used to have suspicion over my relation with Vijay and about my character.’

23. Insofar as, the issue of motive is concerned, it is fairly well settled that, motive does not have a major role to play in cases of ocular testimony. It is also settled law that even if there may not be an apparent motive, but if evidence of the eye-witness is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction. However, the perusal of the aforementioned testimony clearly demonstrates that the prosecution has been able to establish that there was motive for the commission of crime as quarrel took place between the appellant and the deceased prior to the incident.
24. As far as the final argument addressed by the counsel, regarding conversion of sentence from Section 302 IPC to Section 304-II is concerned, a bare perusal of the evidence on record reflects, that the

incident was premeditated and well thought of in advance, as the appellant was carrying the weapon of offence with him at the time of commission of crime. The multiple knife injuries inflicted by the appellant were on the vital part (chest) of the deceased body. As per post-mortem report (Ex.PW-20/A) there were more than five cut marks on the body of the deceased which were caused from a sharp object. PW-2 (Mahinder/brother of the deceased) deposed in his examination-in-Chief that before inflicting injuries on the person of the deceased, the accused has said that ‘Vijay had destroyed his family and snatched his wife and children. Mannu also told my brother that because of Vijay, Mannu had been defamed in the society and unable to show his face in the society and on that day he would not let him alive.’ It is evident that the incident did not occur on the spur of the moment. Moreover, the deceased was determined to cause bodily injuries on the body of the person of the deceased so as to cause the latter’s death. Hence, we do not deem it a fit case to convert the sentence from 302 IPC to 304-II IPC.

25. After elucidating the law laid down by the Apex Court as well as this Court and after considering the entire material placed on record, we hold that the prosecution evidence is completely reliable and trustworthy. We see no infirmity in the finding of the learned Trial Court and therefore the same does not warrant any interference.
26. Consequently, the conviction of the appellant as recorded in the impugned judgment is upheld.
27. Accordingly, the appeal is dismissed.

28. Trial Court Record be sent back along with a copy of this order.
29. A copy of this order be also sent to Superintendent, Tihar Jail Delhi.

SANGITA DHINGRA SEHGAL, J.

SIDDHARTH MRIDUL, J.

MAY 27, 2019
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