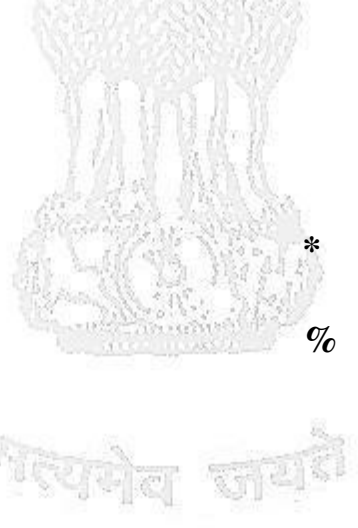




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IN THE HIGH COURT OF DELHI AT NEW DELHI

NEUTRAL CITATION NO: 2022/DHC/003763

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Reserved on. 8th August, 2022

Pronounced on: 19th September, 2022

CRL.A. 1264/2019

MOHD. SUMER

..... Appellant

Represented by: Mr. Sharad Malhotra & Mr.
Harshit Chopra, Advocates

versus

STATE GOVT. OF NCT OF DELHI

....Respondent

Represented by: Ms. Shubhi Gupta, APP for the
State SI Sandeep Kumar, PS
Sadar Bazar

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the judgment and order dated 26th August, 2019 passed by the Trial Court convicting the appellant for offences punishable under Section 302 and 324 IPC and order on sentence dated 27th September, 2019 awarding sentence to the appellant for life imprisonment for offence punishable under Section 302 IPC and fine in the sum of Rs. 10,000/- (simple imprisonment for one month for default in payment of fine) and rigorous imprisonment for 3 years for offence

punishable under Section 304 IPC and fine of Rs. 5000/- (simple imprisonment for fortnight for default in payment of fine).



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The Incident:

2. As per the case of the prosecution on 4th November, 2013, at about 7-8 P.M. the deceased Faizan @ Faizi, Mohd. Feroz (complainant PW-12) and Samiruddin (PW-3) were going for a movie to Filmistan. While on their way they met with the accused/appellant Mohd. Sumer who was consuming liquor alongwith his 4-5 friends near Model Basti Chamelian Road, Sadar Bazar, Delhi. The appellant knew the deceased and his companion and in fact the appellant had a prior dispute with the deceased. On that date, the deceased again counselled him to get rid of the habit of pick-pocketing and consequently the appellant got annoyed and attempted to stab the deceased. In the scuffle which ensued, the complainant Feroz got injured in his hand and they moved from there towards Filmistan, however, when they reached Filmistan they saw the appellant present there and the appellant took out his knife and stabbed the deceased and ran away from the spot. The complainant and PW-3 took the deceased to Hindu Rao Hospital. Both the injured, Faizan and Mohd. Feroz, were treated in Hindu Rao Hospital but Faizan succumbed to his injuries and expired while Mohd. Feroz survived.

3. A PCR call had already been made at 9-10 P.M. and then again at 10:30 P.M. based on which DD No.34A and DD No.65 B were recorded and subsequently an FIR No. 229/2013 was registered on 5th November, 2013 under Section 307 and 506 IPC. Sub Inspector Kuldeep Singh (PW-28) inspected the spot and prepared the site plan and called the crime team for further inspection. Upon receiving information, DD No.10/B, that Faizan had expired Section 302 IPC was added and



investigation was transferred to Inspector Rishi Pal Singh (PW-30). On 6th November, 2013 the appellant was arrested and his disclosure statement was recorded. He disclosed that he had a monetary dispute with PW-3 and that PW-12 and the deceased were supporting PW-3. On 9th November, 2013, the appellant made further disclosure and pursuant thereto knife and clothes worn by the appellant were recovered. After completion of investigation the chargesheet was filed under Section 302 and 323 IPC and charges were framed vide order dated 25th February, 2014. The prosecution examined 31 witnesses, the statement of the accused was recorded under Section 313 Cr.P.C., and two witnesses were examined in defence.

Submissions by the Appellant:

4. The counsel for the appellant contended in support of the appeal that there were contradictions and material improvements in the statements of prosecution witnesses. The star witness PW-12, the complainant, had completely resiled from his statement made in his complaint and denied that the appellant was the perpetrator of crime. Despite being cross-examined at length by learned APP for the State, PW-12 denied that the appellant was the author of the crime. The testimony of PW-12 would have to be given credence since he was an injured witness. The counsel for the appellant further contended that eight injuries were found on the deceased which is possible only if more than one person gives injuries whereas PW-3 had stated that only a single knife blow was given to the deceased. Further, the testimony of PW-3 was not credible since he had stated that on the first encounter with the appellant, PW- 12 had grabbed the knife from the front portion and when the appellant had removed the knife, blood had oozed out



from hand of PW-12, while there was no mention of PW-12 having been taken for any dressing nor the MLC (Exhibit PW-10/A) mentions any such injuries. It was further contended that there were material improvements and contradictions in the statement of PW-19 and PW-16. When the deceased was brought to the hospital he was neither conscious nor fit to make the statement and therefore there was no dying declaration. PW-16 in fact states in his cross-examination that he had not stated that the deceased had taken the name of the appellant as an assailant in his statement recorded under Section 161 Cr.P.C. It was further contended that the scientific evidence could not prove the guilt of the appellant since no DNA report was obtained in respect of the case property including the knife and the clothes of the appellant and no reaction as the blood group could not be ascertained. Further, there were no fingerprints found on the knife and therefore whether the knife recovered was actually a weapon of offence could not be established. DW-1 and DW-2 had deposed at the time of the incident that the appellant was not on the spot and that he had gone to Sanjay Gandhi Transport Nagar in a Maruti van to deliver goods, thereby supporting the appellant's plea of *alibi*.

Submissions by the Prosecution:

5. Learned APP for the State submitted in response that the motive for the offence had been stated by PW-3 regarding an existing dispute between the deceased and the appellant. Besides, PW-3 was present at the spot with the deceased at the time of the incident and had witnessed the entire incident and had categorically named the appellant as the assailant. PW-3 had been cross examined at length and his testimony stood ground. PW-12, who was also present at the spot corroborated the



testimony of the PW-3 by stating that one person stabbed the deceased on his stomach although he had preferred not to give the name of the appellant as the assailant. The recovery of the blood stained clothes and the weapon of offence was at the instance of the appellant. It was further contended that as per the *post mortem* report fatal injury was caused by the stab wound and that the knife recovered could have caused the said wound is categorical. As regards plea of *alibi*, no suggestion regarding the same was put to any of the prosecution witnesses and even in the statement of the appellant recorded under Section 313 Cr.P.C. nothing had been stated. Further, no proof of employment had been placed on record by the appellant that he was working for DW-1 and that he had gone along with DW-2 on that day in late evening to make a delivery.

The Evidence:

6. The relevant evidence as gleaned from the records and relevant to the assessment of facts and circumstances in this matter, is as follows:

(i) PW-3 Samirruddin Qureshi deposed that on 4th November, 2013 he, accompanied by his friend Faizan (the deceased) and Firoz (PW-12) were going to see a movie and they were accosted by the appellant who was sitting along with his 4-5 friends and consuming liquor near Modern Basti. When the deceased asked the appellant to leave his illegal activities of pick-pocketing, the appellant became furious and took out a knife and shouted that he is going to teach a lesson to the deceased. Seeing this, Firoz tried to catch hold of the knife but the appellant pulled the knife and Firoz sustained injury on his hand and blood was oozing out from his right hand. Since the appellant continued to advance threats to kill the deceased, PW-3, PW-12 and the



deceased went towards Filmistan Cinema for bandaging the wound but when they reached near the cinema, the appellant appeared there as well and stabbed the deceased in his abdomen and ran away from the spot. PW-3 and PW-12 shifted the deceased to the hospital and after about half an hour in the hospital, he was declared dead. In his cross examination he stated that he knew the appellant for 7-8 years prior to the incident as they studied in the same school. He also stated that there was a gap of 15 minutes between the first and the second incident.

(ii) PW-12, Mohd. Firoz, the other eye witnesses deposed along the same lines as PW-3 however declined to name the person who stabbed the deceased on his stomach with a knife. He was accordingly cross-examined by the APP for the State and was confronted with his statement recorded under Section 161 Cr.P.C. of which he denied large parts of what had been stated earlier. However, he did admit that both his clothes and clothes of PW-3 got stained with the blood of the deceased while taking him to hospital and those clothes had been seized by the police. He also confirmed that PW-3 had accompanied him while taking the deceased to the hospital.

(iii) PW-16, Mohd. Sahanawaz deposed that on receiving information from his maternal uncle that there was a quarrel going on between the deceased and some boys, he went to the spot near Filmistan but no one was present there. When he went to the hospital to see his injured brother, the deceased uttered the name of the appellant as the assailant. In his cross-examination he stated that this fact of dying declaration was not mentioned by him to the police since the police did not inquire. PW-19, the maternal uncle of the deceased deposed that the deceased had



informed him telephonically that the appellant had stabbed his friend Firoz and was beating him but thereafter the phone was disconnected. He had therefore made a call to PW-16, the brother of the deceased and after about 20-25 minutes he was informed by PW-16 that the injured had been moved to the hospital.

(iv) PW-9, doctor from the Department of Forensic Medicine of Hindu Rao Hospital, Delhi deposed that he had conducted *post mortem* on the body of the deceased on 5th November, 2013 and that the cause of death was haemorrhagic shock consequent to injuries which were all *ante mortem* in nature. He opined that the external injury Nos.1 and 2 could have been caused by a forceful thrust of sharp and pointed weapon/object while injury Nos. 3 to 5 could have been caused by blunt force impact with a hard object/surface. However, external injury No.1 individually was sufficient to cause death in the ordinary course of nature. His subsequent opinion with regard to the the weapon of offence was that injury Nos.1 and 2 could have possibly been caused by the weapon produced or any other similar sharp and pointed weapon.

(v) PW-10, the CMO at Hindu Rao Hospital deposed that PW-12 was brought to emergency by the police having been assaulted and the MLC was prepared however he was declared as absconding on the same day at about 11:30 P.M. On the same day on 4th November, 2013, the deceased was brought in the emergency and was noticed with a stab wound on the anterior side of abdomen and a clear lacerated wound on the right arm. However, he died in the hospital at about 12:25 A.M. As per the death summary, the injuries sustained by the patient were recorded as “*stab abdomen with haemoperitoneum*” with live laceration with inferior vena cava laceration (through laceration with hypovolemic shock).



(vi) PW-25, the Scientific Officer from Forensic Science Laboratory (FSL), Assistant Director (Chemistry) examined the viscera of the deceased and as per his report, Ex. PW-25/A, no alcohol, barbiturates, poisons etc. could be detected.

(vii) PW-26, the FSL Biology Scientist deposed that exhibits were examined biologically and serologically and reports were exhibited as PW-26/A and PW-26/B. As per his report blood was detected on the earth control, clothes of the deceased, the clothes of PW-3, PW-12 and metallic knife. While the blood on earth control and the knife showed no reaction, the blood on the clothes of the deceased and that of PW-3 and PW-12 was group 'A'.

(viii) PW-29 who joined investigation with PW-30, the Investigating Officer, deposed that in pursuance of the disclosure statement of the appellant they were led to the house which was locked from outside and later on 8th November, 2016, the appellant had pointed out the place of occurrence but initially, the appellant had not cooperated for the recovery of the case property. On 9th November, 2016, the appellant led them to his house in a tin shed room at 5th floor and took out a plastic bag (sack) from the roof of tin shed which contained one blue, black and light brown colour checkdar shirt and blue jeans pant and one knife like chopper in a plastic bag, which the appellant disclosed that he had used to inflict injuries upon the deceased. He stated that no public person was available on the 5th floor when the bag was recovered. PW-30, the IO, corroborated the testimony of PW-29, and further stated that he had seized the recovered weapon of offence and the bag and had prepared the sketch of the knife which was exhibited as Ex. 29/A. He further stated that on 9th November, 2013 at the time of the recovery, SI Sanjay



and Constable Amit and Naresh had accompanied him. He mentioned that he had asked public persons in front of the house of the appellant to join the investigation but they had refused.

(ix) The appellant in his statement recorded under Section 313 Cr.P.C. did not state anything except that he had been falsely implicated and that he would lead evidence in his defence. DW-1, in support of the appellant's plea of *alibi* stated that the appellant was with him on the particular day when he had gone with Mohd.Yusuf DW-2 to Sanjay Gandhi Transport Nagar, Delhi-84, however, he did not remember the date and the month of the incident but just the year 2013. He also did not remember the mobile number of appellant or that of the DW-2 or that he had any proof with regard to employment of the appellant with him. DW-2 deposed that he had gone with the deceased from the shop of DW-1 to Sanjay Nagar Transport and had returned at about 10-10:30 P.M. However, he did not give a specific date or year or month but merely mentioned that it was on the day of Diwali.

Analysis

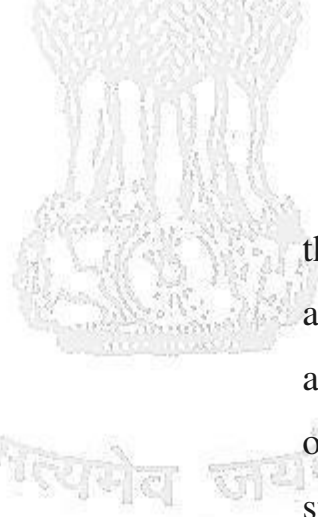
7. Pursuant to a detailed analysis of the evidence on record and the contentions of the parties, this Court is of the considered view that the prosecution has been able to prove the guilt of the appellant beyond reasonable doubt for *inter alia* the following reasons:

(i) The death of the deceased Faizan @ Faizi, was clearly homicidal having been caused by the stab wound as categorically opined by the doctor (PW-10) who conducted the *post mortem*.

(ii) As per the testimonies on record, there were two eyewitnesses of the incident viz. PW-3 and PW-12. PW-12 was an injured eye witness



since he had suffered injuries on his right hand first before the deceased was stabbed in his stomach with a knife. Even though PW-12 became hostile and refused to name the appellant as the assailant, he did confirm the factum of the incident itself i.e 4 to 5 public persons came and started beating the deceased and in the process of rescuing him PW-12 sustained injuries on his right hand and thereafter one of the persons stabbed the deceased on his stomach with the knife due to which PW-12 fell on ground. It is further stated that the assailants had left the spot and he along with PW-3 took the deceased to Hindu Rao Hospital where he was admitted and later passed away. It has been held by the Hon'ble Supreme Court inter alia ***Khuji vs. State of Madhya Pradesh***, 1991 3 SCC 627 at para 6 that “*the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of the evidence which is otherwise acceptable can be acted upon*”. The Hon'ble Supreme Court further held that “*the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent the version is found to be dependable on a careful scrutiny thereof*”. On the facts, in ***Khuji vs. State of M.P*** evidence of two eye witnesses was challenged by the prosecution in the cross examination because they refused to name in the dock the assailants of the deceased. The Hon'ble Supreme Court noted that the Trial Court should have made an effort to scrutinise the evidence of these two witnesses even in regard to the factum of the incident. The Hon'ble Supreme Court also relied upon the FIR which had been lodged immediately after the incident, when the eye witness had narrated the incident and the Hon'ble Court held that “*it was not possible to believe that the Investigating Officer imagined those details and prepared the documents*”. Quite similarly, PW-12's testimony to the incident that



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there was an incident of stabbing and that he was also injured can be accepted by this Court and also the fact that PW-3 had named the appellant as the one who threatened the deceased with a knife and not only that he sustained injuries by that knife but also that the appellant stabbed the deceased due to which he ultimately passed away. In his statement recorded under Section 161 Cr.P.C. (Ex. PW-12/A) on the basis of which the *rukka* was prepared, PW-12 has clearly stated that the appellant was responsible for stabbing of the deceased and also the injury caused to PW-12 himself. The testimony of other eye witness PW-3 is clear and consistent and identifies the appellant as the person who had taken out the knife and stabbed the deceased and prior to that had injured PW-12 in the earlier incident. PW-3 has also categorically stated that he knew the appellant for the last 7-8 years prior to the incident as they studied in the same school. Therefore, there would be no question of mistaken identity as well. On the basis of these two testimonies, it is quite clear that the appellant was responsible for the stab injury to the deceased which ultimately led to his death.

(iii) It has been held by the Hon'ble Supreme Court in a catena of cases that minor discrepancies in the testimony of an eye witness examined at length are possible and such minor discrepancies should not challenge the credibility of the version of the eyewitness and jettison the evidence of the witness referred *inter alia* in ***Rammi alias Rameshwar vs. State of Madhya Pradesh*** AIR 1999 SC 256, ***Bhagchandra vs. State of Madhya Pradesh***, 2021 SCC Online SC 1209 and ***Balvir Singh v. State of M.P.***, (2019) 15 SCC 599.

(iv) Even otherwise, the motive of the offence has also been categorically stated by PW-3. There was a prior dispute between the



deceased and the appellant as the deceased had asked the appellant to stop illegal activities in particular of pick-pocketing and therefore provoked by the presence of the deceased on the date of the incident the appellant chose to stab him. Even though further circumstantial evidence may not be necessary in light of the testimonies of the eye witnesses, there was also a recovery of blood stained clothes of the appellant which he was wearing at the time of incident and also the weapon of offence from his house. The place of the recovery of the weapon of offence was from the house of the appellant at the roof of the 4th floor in a room which was a temporary shed with a tin roof in a white plastic bag.

(v) The appellant had examined two witnesses to establish his plea of *alibi* however both DW-1 and DW-2 were extremely vague in their depositions regarding the date and time of the narrative that they had presented. Both of them seem to have suggested that the appellant who was in the employment of DW-1 had been sent along with DW-2 to Sanjay Gandhi Transport Nagar, Delhi- 84 and had left at about 6:30 P.M and had delivered the goods around 10-10:30 P.M. While DW-1 does not even remember the date and the month of the incident, DW-2 simply states that it was on the day of Diwali without mentioning the year. Also DW-1 does not furnish any proof of appellant's employment with him or any other corroborating evidence to sustain the plea of *alibi*.

(vi) The fact that the knife and the clothes of the appellant had no reaction as the blood group could not be ascertained will not discredit the otherwise consistent testimonies of the eye witnesses.

(vii) The contention of the appellant that testimony of PW-16 relating to the dying declaration may not be considered is not relevant since the

evidence otherwise proves the guilt of the appellant beyond reasonable doubt.

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Conclusion:

8. In light of the above discussion and analysis, this Court finds that the guilt of the appellant for the murder of the deceased has been proved beyond reasonable doubt and duly supported by circumstantial evidence by the prosecution. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

9. Appeal is accordingly dismissed.

10. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellant and updation of records.

**(ANISH DAYAL)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

SEPTEMBER 19, 2022/rk