

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

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Reserved on: 26th September, 2022

Pronounced on: 17th October, 2022

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CRL. A. 1267/2019

HEMRAJ @ BHINDI

..... Appellant

Represented by: Ms. Aishwarya Rao and Ms.
Mansi Rao, Advocates.

versus

STATE

....Respondent

Represented by: Mr. Prithu Garg, APP for the
State with SI Amit Kumar, PS:
Kalyanpuri, Delhi.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the impugned judgment dated 17th January, 2019 passed by the learned Trial Court convicting the appellant for offences punishable under Sections 302, 307, 394 and 397 IPC but acquitting him of charge under Section 27 of the Arms Act; and order on sentence dated 19th January, 2019 awarding the following sentence to the appellant:

- (i) Imprisonment for life with fine of Rs.50,000/- (simple imprisonment for six months, in default of payment of fine) for offence punishable under Section 302 IPC.

- (ii) Rigorous imprisonment for seven years with fine of Rs.20,000/- (simple imprisonment for two months, in default of payment of fine) for offence punishable under Section 307 IPC.
- (iii) Rigorous imprisonment for five years with fine of Rs.20,000/- (simple imprisonment for two months, in default of payment of fine) for offence punishable under Section 394 IPC.
- (iv) Rigorous imprisonment for seven years with fine of Rs.20,000/- (simple imprisonment for two months, in default of payment of fine) for offence punishable under Section 397 IPC.

All sentences to run concurrently.

The Incident

2. As per the case of the prosecution, the complainant PW-1 Bhuri Singh and his family members were returning to their house in Section-29, Gurgaon, Haryana on 27th October, 2013. He and his brother-in-law Naresh were riding on his Bajaj Platina Motorcycle whereas his wife PW-6 Laxmi was riding on the other motorcycle being driven by his maternal uncle PW-8 Satyavan. Satyavan stopped his motorcycle for filling petrol on the way and the complainant alongwith Naresh waited on the motorcycle near Chand Cinema, Mahila Park. One unidentified boy (later identified as the appellant) came near their motorcycle and asked Naresh to hand over whatever he had on him on his person. When Naresh refused, the boy stabbed him in his stomach with a knife and snatched the Micromax mobile of Naresh. The appellant asked the complainant PW-1 to hand over his purse and when he refused to do so, he assaulted PW-1 with a knife and caused injury on his left arm. The appellant took away the complainant's purse having two currency notes of Rs.500/- each. The appellant tried to run from there, but the complainant and deceased chased him and apprehended him while he

was trying to jump the wall adjacent to the park. Public also reached there and gave beatings to the appellant and subsequently the PCR reached the spot and took the complainant and the deceased to Lal Bahadur Shastri Hospital, while apprehending the appellant and recovering the knife from him. After completion of the investigation, a chargesheet was filed against the appellant. Charges were framed under Sections 394, 397, 302, 307 IPC and Section 27 of the Arms Act. The prosecution examined 24 witnesses in support of the case, statement of the appellant was recorded under Section 313 Cr.P.C. and one witness was examined in defence.

Submissions of the Appellant

3. The appellant submitted through his appeal and arguments led by his counsel, that the statements of the prosecution witnesses were contradictory particularly on the issue of apprehension of the appellant. While PW-6 deposed that the appellant was apprehended by PW-1 and the deceased, PW-8 deposed that the deceased had stab injury and was sitting there, and the appellant was apprehended only by PW-1. It was contended that the learned Trial Court ought to have considered that PW-8 was declared hostile on this point and therefore his testimony was not reliable. The testimony of DW-1 Smt. Somwati, mother of the appellant ought to have been appreciated, who stated that on 25th October, 2013 police officials lifted her son forcibly from the house and took him to the police station. When she reached the police station and asked as to why they had lifted her son, the police stated that they would leave the appellant if she could produce her elder son Pawan, and upon her refusing to do so police falsely implicated the appellant in this case. It was the contention of the appellant that the deceased had a quarrel with somebody else and the appellant was unnecessarily implicated in

what was a blind case for the police. The recovery of the mobile phone and the wallet from the park which was a public place was after a considerable delay and had been falsely planted on the appellant by the police. The recovery of mobile phone and purse from the possession of the accused is also doubtful as the same were not recovered from his possession but from the bushes in the park having an 8 ft. Wall. The recovery of mobile phone and purse is not as per Section 27 Evidence At. It was overlooked that there was no proper light at the place of incident and therefore it was not possible for PW-1 or other witnesses to properly see the accused at the time of the alleged incident. While PW-6 and PW-8 had stated that the appellant had a knife in his hand when he was apprehended, PW-23 deposed that the knife was recovered from the bushes inside Mahila Park. The recovery of knife is doubtful from the possession of the appellant/accused. None of the prosecution witnesses have stated in their evidence that knife was recovered from the possession of the accused and various prosecution witnesses have themselves stated that knife allegedly used in the incident was not recovered from the possession of the accused but was given by some unknown person. Since the appellant was a "*bad character*" of the area, he had been falsely implicated by the police to solve a blind murder case. The recovery of the blood stained shirt at the instance of the accused appears to be improbable and the same has been planted upon him. Further, it was contended that the injuries on the body of PW-1, Bhuri Singh was simple in nature and therefore the case could not be covered under Section 307 IPC and at least that conviction ought to be set aside. Also there was only a single injury alleged to have been inflicted with a knife by the accused on vital part of the body of the deceased. Hence the case is not covered under Section 300 IPC as the

accused had no intention to kill Naresh and the alleged incident occurred all of a sudden without any pre-meditation and was therefore covered under Exception 4 to Section 300 IPC as there was no intention to cause death. The counsel for the appellant relied upon *Ajmal v. State of Kerela* (2022) SCC Online SC 842 and *Khokan @ Khokan Vishwas v. State of Chhattisgarh* (2021) 3 SCC 365 in support of their arguments.

Submissions by the Prosecution

4. Countering the submissions of the appellant, the learned Additional Public Prosecutor (APP) contended that PW-1 was an injured eyewitness and also victim of the offence committed by the appellant, who had narrated the entire incident in his statement under Section 161 Cr.P.C. and before the learned Trial Court. He had correctly identified the appellant and the knife (Ex. P-1) during his deposition, which was consistent and cogent. PW-6 Laxmi and PW-8 Satyavan fully corroborated his testimony, to the extent of witnessing the complainant and the deceased chasing and apprehending the appellant and the public giving beatings to him. The medical evidence in this regard was clear that the deceased had multiple incised wounds on his body and the cause of death was due to stab injuries. The blood-stained knife was sent for forensic examination and subjected to DNA testing and the DNA profile on the knife was the same as that of the deceased. As per PW-16, PW-21 the knife was handed over to the police by people who accompanied the injured persons, and it was duly handed over to the Investigating Officer. The mobile phone and purse that had been snatched by the appellant was recovered from bushes inside Mahila Park by PW-17 and the IO PW-23 SI Murtza Khan. The scaled site plan corroborated the ocular testimony of PW-1 and other witnesses which would show that there was sufficient lighting on that spot to lend credibility of identification by eyewitnesses.

The Evidence

5. The evidence, relevant for assessment of the contentions of the parties, as gleaned from the records, is *inter alia* as under:

5.1 PW-1, Bhuri Singh deposed that on 27th October, 2013 when he was returning with his wife and daughter to his house in Gurgaon, he and his brother-in-law Naresh were on one motorcycle, while his maternal uncle Satyavan and his wife were on the other. When Satyavan stopped on the way for refuelling, PW-1 alongwith Naresh waited for him near Chand Cinema next to Mahila Park. At that point, the appellant (whom he identified in Court) came running and threatened Naresh with a knife and to handover him whatever was available with him. Naresh opposed it and the appellant stabbed Naresh in the abdomen and snatched Naresh's mobile. The appellant also threatened PW-1 and asked him for his purse but on PW-1's reluctance, appellant assaulted him with a knife on his left arm and took away his purse. PW-1 and Naresh chased the accused, while Satyavan also reached there. The appellant was trying to jump but was apprehended by them. Subsequently, the public also reached, and the appellant was beaten up by the public. Later, the PCR reached the spot and took Naresh and PW-1 to the hospital and apprehended the appellant and recovered the knife from him. In his cross-examination, he stated that Satyavan and Laxmi were at a distance of about 20-30 meters from their motorcycle and there was street light on the road, as well as light of the vehicles crossing at the spot and everything was visible. Public had gathered only subsequently when the appellant was apprehended and was trying to flee. He chased the appellant for about 10-15 meters and the incident had taken place 4-5 meters from the Chand Cinema Chowk. PW-1 does not know as to who made the call to the police, but the PCR reached at the

spot after 5 minutes of apprehending the appellant. PW-1 remained in the hospital for about 10-15 minutes and thereafter reached the spot along with the police.

5.2 PW-8 Satyavan corroborated the testimony of PW-1 to the extent that after getting his bike refuelled, he reached in front of Mahila Park and saw the appellant present there (whom he identified in Court) and having a knife in his hand. He also saw Naresh having stab injuries and sitting there. PW-8 further stated that the appellant was trying to climb the wall of Mahila Park when he was apprehended. However, PW-8 was declared hostile and was later cross questioned by the learned APP.

5.3 PW-6 Laxmi deposed that when she and Satyavan came out of the petrol pump, they saw at some distance her brother Naresh and her husband PW-1 chasing a boy. When they reached there the boy was going to jump into the park and was apprehended by Naresh and PW-1. She identified the appellant in Court. She stated that blood was oozing out from the abdomen of Naresh and PW-1 was bleeding from upper part of his arm. She confirmed that about 20-25 people had gathered there, and the police had reached in about 10-15 minutes. She further stated that there was some light at the spot although it was dark near the wall of the park which the appellant was trying to jump but persons were visible.

5.4 PW-22 Dr. Virendra, the Medical Officer at LBS Hospital deposed as to the MLC dated 27th October, 2013 (which had been signed by Dr. Abhilash, who had left the services of the hospital) and was exhibited as Ex. PW-22/A. This MLC recorded the incised wound near the elbow of PW-1 who had been brought by the police to the hospital at about 08:30 p.m. Upon being referred to the surgery, the opinion of Dr.

Ranvir S.R. was that the nature of the injury was simple, and treatment had been given. The MLC of deceased records that there were multiple incised wounds on the body and that he was referred to surgery for treatment. The MLC of the appellant Ex. PW-22/B and later Ex. PW-19/A (the second MLC recorded on the following day) noted that there were multiple abrasions on the appellant, and he had been reported as beaten by public.

5.5 PW-3, Dr. Vinay Kumar Singh, Forensic Specialist from LBS Hospital deposed that he had carried out the *post mortem* of the deceased, the report being exhibited as Ex. PW-3/A, which notes five incised wounds on the deceased in the area of the chest. He opined that all injuries were *ante mortem* in nature and recent in duration and the injury was sufficient to cause death in the ordinary course of nature. The cause of death was haemorrhagic shock consequent upon the stab injury caused by a single edged sharp cutting weapon/knife. In his subsequent opinion, regarding the weapon of offence, he opined that injury no.1 could have been caused by the said weapon.

5.6 The knife recovered was exhibited as Ex. P-1 and sent for forensic examination. Pursuant to DNA testing of the blood which had stained the knife and the blood of the deceased, the FSL report Ex. PW-24/B reported that the alleles from the blood of the deceased were accounted for in the alleles recovered from the knife.

5.7 PW-23 SI Murtza Khan, the Investigation Officer (IO) deposed that upon receiving an information that one person was stabbed, when he reached the place of incidence, both the injured and the accused had already been taken to hospital. He informed the crime team and reached the hospital to find the injured and the appellant under treatment. He

recorded the statements of PW-1 which is exhibited as Ex. PW-1/A and prepared the sketch of the knife recovered from the appellant exhibited as Ex. PW-1/C. Upon his endorsement, *rukka* was prepared and FIR was registered. Thereafter, he reached the spot alongwith PW-1 and prepared the site plan (Ex. PW-23/C) and seized the stone sample (Ex. PW-1/E), which was blood stained, shirt of PW-1 and other articles. On 28th October, 2013, he received information that the injured Naresh had expired during treatment. At about 06:45 p.m. that day when he received information that the hospital was discharging the appellant, he took custody and arrested him and recorded his disclosure statement. At his instance, Micromax mobile phone and one wallet was recovered from Mahila Park from behind the bushes. In his cross-examination, he stated that the appellant had pointed out towards the wall of the park where he had thrown the mobile and purse and the gate of the park was locked. He had jumped inside the park over the wall to recover the said articles from behind the bushes.

5.8 PW-16 H.C. Anil Dutt deposed that about 08:15 p.m. on 27th October, 2013, a person came to the PCR van which was stationed at their base, near Chand Cinema and was told that a boy was being beaten outside Mahila Park as he had stabbed someone. Upon reaching the spot, he found some persons beating the appellant (whom he identified in Court) and found two persons with stab wounds, and one was in critical condition. He was handed over the knife of about 1 foot which was used by the appellant by the people present there.

5.9 PW-21 Constable Pradeep who was working as duty constable at LBS Hospital deposed that the PCR van brought three injured to the hospital who were medically examined. The PCR in charge also handed him over the knife. When IO reached the hospital, he handed over the

knife to him which was seized, and his signatures were on the seizure memo Ex. PW-17/A.

5.10 PW-17 Constable Mohit who accompanied the IO corroborated the testimony of PW-23 and stated that the knife was given to him by PW-23 at the hospital which was sealed and seized. At about 06:45 p.m. on 28th October, 2013, he accompanied the IO PW-23 to arrest the appellant from the hospital who then got recovered the mobile phone and the purse at his pointing out. He confirmed that PW-23 had jumped inside the park and recovered the same from behind the bushes, which was then seized and sealed.

Analysis

6. After a detailed examination of the evidence on record and on appreciation of 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:

6.1 As per the testimony of PW-3 the doctor who conducted the *post mortem* and prepared the *post mortem* report, it is quite evident that the death of the deceased Naresh was caused due to the knife wound which was considered sufficient to cause death in ordinary course of nature. Their injury was recent in duration since the deceased had been taken by the PCR van to the hospital immediately after reaching the spot. The death was clearly homicidal in nature and caused by the knife, as confirmed by the subsequent opinion of PW-3.

6.2 PW-1 was an injured eyewitness who not only was threatened by the appellant with a knife for the purpose of robbery but also was injured by the appellant on the left arm. His testimony regarding the place of

incidence, the assault by the appellant on the deceased and himself, the subsequent chase of the appellant who was apprehended by them while trying to escape by climbing the wall of the park, the collection of public persons who gave the appellant beatings before he was apprehended by the police who had arrived in the PCR van, is all cogent and consistent throughout his deposition and cross-examination. His testimony is also corroborated by PW-6 and PW-8, even though PW-8 was declared hostile, but he confirmed that he had seen the appellant holding a knife of about 1 foot in length and that PW-1 and the deceased had sustained injuries, as also the appellant was trying to climb the wall but was apprehended by PW-1 and public gave beatings to the appellant thereafter. PW-8 also stated in response to a Court question that the time of incident was about 08:00 p.m. The fact that the MLCs of PW-1 and the appellant record the arrival at the hospital at 08:30 p.m. on 27th October, 2013 would confirm the timeline.

6.3 The recovery of the knife was immediate by members of the public where they apprehended and beat up the appellant at the spot himself. The said knife was handed over to the PCR which in turn handed it over to PW-21 who handed over the knife to the IO. The chain of custody of the said blood-stained knife was therefore clear and consistent and unbroken. The DNA examination of the blood on the said knife was found to be matching as that of the deceased thereby clearly corroborating that it was the weapon of offence. The question of giving benefit to the accused under Exception 4 to Section 300 IPC does not arise in these circumstances.

6.4 The recovery of the stolen mobile and wallet of PW-1 was at the instance of the appellant who pointed out that he had thrown it over the wall of the park. The testimony of the IO PW-23 is fully corroborated by

PW-17 regarding the fact that the IO had to jump over the wall and recover it from the other side in the park from the bushes. The fact of the robbery therefore was stood confirmed as also the use of the deadly weapon while committing robbery.

6.5 As regards the contention of the appellant that it was dark at that time and the identification by the eyewitnesses would be unreliable, this Court notes that PW-1 had stated in his cross-examination that there was street light as well as lights of the vehicles crossing at the spot and every thing was visible. PW-6 also corroborates the same since she had also arrived at the spot just a bit later. Further, the scaled site plan Ex. PW-7/A clearly shows that there was an electric sodium light pole very close to the spot of the incident (about 150 meters) on the footpath and that spot of incidence was next to a main road which had a central verge and a petrol pump right across which would have its own lighting. On a holistic assessment of these testimonies and evidence, this Court is of the view that there was enough light for the eyewitnesses to identify the appellant, notwithstanding the fact that the appellant was apprehended at the spot and beaten up by the public and therefore there was no question of any doubt as to his identity. The unscaled site plan Ex. PW-17/D which was prepared on 28th October, 2013 in fact shows that there were two light poles (pole no.844 and pole no.843) just next to the place where the incidence had happened.

Conclusion

7. In light of the above discussion and analysis, this Court finds that the guilt of the appellant on all accounts of armed robbery, murder of the deceased and attempt to murder of the complainant, was proved beyond reasonable doubt by the prosecution. Consequently, this Court finds no

error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

8. Appeal is accordingly dismissed.

9. 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

OCTOBER 17, 2022/mk

