



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21st July, 2022

Pronounced on: 03rd August, 2022

CRL.A. 184/2020

SANDEEP

..... Appellant

Represented by: Ms. Inderjeet Sidhu,
Advocate (DHCLSC)

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr.Prithu Garg, APP for
the State with Inspector
Rajiv PS Mangolpuri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T

ANISH DAYAL, J.

1. This appeal assails the judgment dated 19th May, 2016 convicting the appellant for offences punishable under Sections 302 and 201 of Indian Penal Code, 1860 ('IPC') and order on sentence dated 19th May, 2016 sentencing the appellant to (i) rigorous imprisonment for life for offence punishable under Section 302 IPC and a fine of Rs.30,000/- (simple imprisonment for six months in default of payment of fine); and (ii) rigorous imprisonment for three years for offence punishable under Section 201 IPC and a fine of



Rs.20,000/- (simple imprisonment for a period of three months in default of payment of fine). All sentences to run concurrently.

The Incident:

2. Case of the prosecution was that on 16.03.2014 at about 02:45 AM, Harbansh Lal (the complainant) was sleeping in his *jhuggi* when he heard voice of his neighbour Suresh Tanwar that there was a fire on the first floor of his house No.1-2, LSC, DDA Market, Mangolpuri, Delhi ('the said property'). The complainant rushed to the first floor of the said house but the main gate was locked, therefore they broke open the lock and used water to extinguish the fire. They saw that shoe cartons kept in the said room were burning and a boy in burnt condition with throat slit and a half-burnt blanket over him lying amidst the cartons.

3. In the meantime, owner of the factory that was operating from the said property viz. Tota Ram also reached the spot and identified the dead body of the boy as Rizwan, his factory employee. In the meantime, someone made a call to the PCR, the police and the fire brigade reached the spot and an FIR was registered subsequently. On 20th March, 2014, the appellant was arrested from Mangolpuri Railway Station, Delhi and on 21st March, 2014 the weapon of offence i.e. one paper cutter and a key was recovered at the behest of the appellant from inside Indra Park, J-Block.

4. Charges were framed under Section 302 & 201 IPC against the appellant to which he pleaded not guilty and claimed trial. The prosecution examined 27 witnesses, statement of appellant u/s 313 of Code of Criminal Procedure, 1973 ('Cr.P.C.') was recorded and one defence witness was examined.



5. The appellant contended through the appeal and arguments on behalf by the learned counsel that the impugned judgment and order was bad in law and facts and liable to be set aside. There was no eye witness to the crime and the prosecution had not proved the case beyond reasonable doubt on the basis of circumstantial evidence. The recovery of the weapon, allegedly found at the instance of the appellant was from the vicinity and from an open area. Even the evidence of last seen of PW-23 Tota Ram, the factory owner was not specific as regards time but had merely stated that when he left the factory in the evening, both appellant and deceased were in the factory. There was a discrepancy in the testimony regarding place of occurrence since the site plan mentioned it was first floor while the witness PW-23 said that it was the second floor. It was stated by DW1, the mother of the appellant that since her husband and father of appellant had passed away the day before, the appellant had come to the village. PW19, father-in-law of the appellant and DW-1, mother of the appellant, both stated that the appellant suspected an illicit relationship between his wife PW-18 and the deceased and they used to quarrel about it often. Therefore, the appellant had been falsely implicated for the crime.

Submissions by the Prosecution:

6. Countering the contentions of the appellant, learned Additional Public Prosecutor on behalf of the State submitted that as per testimony of PW-23, the factory owner, the appellant was last seen with the deceased in the factory that night where the crime had taken place. Moreover, the weapon had been recovered at the behest of the



appellant and the blood stains had matched with that of the deceased.

As also the medical evidence was of the opinion that injuries in postmortem report were possible with the said weapon examined. The appellant's plea of *alibi* was falsified since he had not left for the village but reached the day after and was therefore present in town on the date of the incident. The motive was also evident since there were various testimonies as regards the suspicion that the appellant harboured about an alleged illicit relationship between his wife PW-18 and the deceased. As regards the presence of the appellant in the factory at the night of the incident, he had no alternative information to offer on his own, when the suggestion was put to him in his statement under Section 313 Cr.P.C. and thus, in view of Section 106 of the Indian Evidence Act, 1872, the burden was not discharged by the appellant.

The Evidence:

7. The complainant testified as PW10 that on 16th March, 2014 between 02:00 – 03:00 a.m. he had heard the scream of Suresh Tanwar about a fire and when he reached there, they noticed that there was a fire on the first floor of the house and smoke was rising. Since the main gate was locked, they broke open the lock with the hammer and upon extinguishing the fire with water, they spotted a seriously injured and half -burnt body of a boy in between burnt cartons. PW-11 Suresh testified that the second floor of the building had been leased out to PW-23 Tota Ram 5-6 months prior to incident who was running a factory manufacturing shoes and *chappals* and upon hearing commotion that night, he had made a call to the PCR.



8. PW-23 Tota Ram who ran the factory in that premises testified that he had taken the factory on rent from Suresh and employed about 6-7 persons in the factory which included the appellant (whom he identified) and the deceased (whom he also identified). On the date of the incident, he was in the factory and while all other workers left for their houses after finishing the work. Only deceased and the appellant were in the factory. He confirmed that the appellant suspected the deceased of having relations with his wife and they quarreled many times in the factory and the appellant frequently threatened the deceased by saying “*main Rizwan ka kaam tamam kar doonga*”. PW-23 further testified that on 15.03.2014 he was informed by the uncle of the appellant that the father of the appellant had expired in his native village and he had, accordingly, informed the appellant. Consequently, the appellant took Rs.500/- from PW-23. PW-20 Pappu who worked as labourer in the factory of PW-23 also testified that whenever the wife of the appellant used to visit the factory, the appellant used to abuse her and refused to pay her and the deceased used to advise the appellant not to quarrel with his wife, whereupon the appellant started accusing the deceased of having relations with his wife. PW-23 and PW-20 also testified that the father of the appellant’s wife, Man Singh used to remain tense about his daughter and had told the appellant to either keep his daughter with him or give her divorce and they also had some altercations in the past.

9. PW-18, wife of the appellant testified that the appellant was always addicted to alcohol and substances and used to sleep in the factory itself. She stated that the appellant never used his income to maintain her or the children and therefore she started living with her parents. However, her father PW-19 was also alcoholic and he used to



berate her and told her to go back to her husband. Since neither the father nor the husband were willing to take care and give her shelter, she took a room on rent in Mangolpuri for which initially the appellant paid half the rent and then abandoned her taunting her to stay alone and fend for herself. She confirmed that the appellant had started suspecting that she had illicit relations with the deceased, however, she only knew the deceased as co-worker of the appellant and the appellant had unnecessarily picked up a quarrel with the deceased. On 15th March, 2014 when she got the news of death of her father-in-law from the appellant, the family was scheduled to leave the house for the native village at about 04:00 or 04:30 p.m. However, as soon as they were in the vehicle, the appellant started objecting to her going to the village which resulted in an altercation between them. Consequently, both her and the appellant did not board the vehicle. PW-19, the father of PW-18 confirmed the fact that the appellant had not gone to the village and had returned to the factory and he denied that the deceased had any relations with his daughter.

10. PW-27 who was the designated Investigating Officer for this crime and had been called to the scene of the crime testified that he had called crime team at the spot and had lifted the exhibits from the spot, prepared the site plan, recorded the statements, prepared the inquest paper. Thereafter, on 20.03.2014 he, alongwith PW-25, went in search of the appellant in Mangolpuri when a secret informer told them that the appellant was sitting at the Mangolpuri Railway Station at platform no.1 on a bench. Both, PW-27 and PW-25 reached the spot and arrested the appellant and recorded his disclosure statement. On 21.03.2014, PW-25, PW-26 and PW-27 went to the J-Block Park at about 08:30-09:00AM when the appellant led them to some bushes



from where they recovered a key and a paper cutter knife which was duly seized and sealed.

11. PW-12 was Scientific Officer from FSL, Rohini who testified as to the biological and serological examination of the exhibits. PW-16 was the doctor who conducted the postmortem on the body of the deceased and as per his report, the death was caused by cut throat wound and that the injury was caused by a sharp edged weapon. He had given a subsequent opinion after examining the weapon recovered that the injury was possible with it or something similar. The forensic report detected blood on the paper cutter knife though the blood group could not be identified.

Analysis:

12. On appreciation of the evidence, the documents on record and submissions of the parties, this Court is of the opinion that the prosecution had successfully proved its case beyond reasonable doubt, based on circumstantial evidence for *inter alia* the following reasons:

- (i) As per the testimony of PW-23 duly corroborated by PW-20, the deceased and the appellant were the only two people who slept in the factory after all workers and PW-23 had left on the night of 15th March, 2014;
- (ii) The plea of *alibi* offered by the appellant that he was in the village cannot be sustained since his own mother (DW1) stated that “my son reached in the evening of ***the next day of the death of my husband in the village.***” Considering that the death of the husband of the witness and father of the appellant had happened on 15th March, 2014, the question of appellant being in his



native village in the intervening night of 15/16.03.2014 is not possible. Moreover, this fact was corroborated by the testimony of the wife PW-18 that when they tried to leave as a family for the village on 15th March, 2014 in the evening, they quarreled and both, the wife and the appellant did not leave. Even PW-19, father of PW18 corroborated this fact;

- (iii) The appellant had a clear motive to kill the deceased since as per the testimony of PW-23, PW20, PW18, PW19 and even DW-1, he harboured a suspicion about illicit relations of his wife with the deceased and numerous quarrelsome scenes had been witnessed at various points of time;
- (iv) The recovery of the weapon was clearly at the behest of the appellant/accused as duly testified and confirmed by the police witnesses.
- (v) The FIR had been registered at 06:10 a.m. in close proximity of the estimated time of the death i.e. around 02:45 a.m. and the arrival of the police at the crime scene;
- (vi) Recovery of the weapon (paper cutter) at the behest of appellant has been duly testified and duly corroborated by the testimonies of police witnesses which was brought out by the appellant from a concealed place (bushes). The testimony of PW-25, PW-26 and PW-27, the police officers who were present at this recovery was consistent. The appellant also extracted a key from the same bushes which he stated had been used to lock the room after setting deceased on fire;
- (vii) As per the testimony of the doctor having conducted the postmortem, fatal injury could have been caused by the



recovered weapon i.e. the paper cutter knife and the forensic report proved presence of blood on the said knife;

- (viii) Considering that the fire had been caused by the appellant to cause disappearance of the evidence of the offence and the intention to insulate the appellant as an offender, learned Trial Court's finding of conviction under Section 201 IPC is also correct.
- (ix) The contention of the appellant that there was a discrepancy between the site plan (which identified the place of occurrence as the 1st floor of the building) and the testimony of PW-23, the factory owner who stated that the factory was on the 2nd floor, is untenable. A careful perusal of the testimony of PW-23 would show that though he describes his factory as being on the '2nd floor' but further describes it as 'next to the ground floor'. The mere mentioned of the phrase '2nd floor' does not make his testimony inconsistent with the place of occurrence since he does describe it further as being next to the ground floor, which makes it the 1st floor as per normally understood terminology.

Conclusion:

13. In the light of the above analysis, this Court is of the considered view that the case of the prosecution is duly supported by evidence which proves beyond reasonable doubt that the alleged crime had been committed by the appellant. Consequently, this Court finds no error in the impugned judgment for conviction and order on sentence. The appeal is, accordingly, dismissed.



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

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 03, 2022
SSC

