



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

% Decided on: 6th October, 2022

+ **CRL.L.P. 219/2020**

STATE

..... Petitioner

Represented by: Ms. Shubhi Gupta, APP for
State with SI Kuldeep, PS
Khyala.

versus

RAJAN & ORS.

..... Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J. (ORAL)

1. By this petition the State seeks leave to appeal against the impugned judgment dated 22nd November, 2019 whereby the three respondents were acquitted for the charge of offence punishable under Section 302/149/34 IPC.
2. By the impugned judgment the learned Trial Court noted that out of the five persons allegedly involved in the offence as per the statement of eye-witness two were juveniles and hence were tried before the Juvenile Justice Board and qua the three who were tried before this Court the only evidence against them was the testimony of the sole eye-witness PW-1/Sona Dhari. The Trial Court held that the testimony of this witness was not reliable. It



was held that the evidence led by the prosecution was not sufficient to prove the guilt of the accused beyond reasonable doubt.

3. Relevant portion of the discussion in the Trial Court judgment is as under:

“ 37. He contradicted himself in cross examination and narrated a new version after claiming that after he saw Changar being beaten by accused persons collectively and was threatened at the hands of accused, he ran to save himself and hid himself at a lonely place and then followed Changar to the hospital as Changar went to the hospital. Without even explaining that how Changar was removed to the hospital and what led him to reach one and half hour later at the hospital after arrival of Changar at DDU hospital. It is unexplained by Sona Dhari that how deceased reached to the hospital. As per MLC Ex.7/A, he was brought by SI Ishwar Singh of PCR and was found lying on the road side. Had the removal of deceased Changar being witnessed by Sona Dhari, he must have accompanied the PCR officials and or detailed the history to either them or to the doctor who recorded the MLC. Surprisingly, his presence is nowhere shown during this entire period.

38. As in examination in chief, he claimed that someone called PCR. He did not detail who was the caller. Even IO PW 13 ASI Nafe Singh made no attempt to locate the caller in his presence and or at his instance.

39. IO sent PW 3 Ct. Kulbir to collect PCR form to Headquarter. As per the statement of PW 13, the PCR form was collected and handed over to him. Surprisingly the PCR form is not made part of charge sheet. The caller is ambiguously undisclosed. The name of caller in such circumstance must have linked to the occurrence which would exposed the circumstances leading to his removal to the hospital. A vital link thus has been left out of the charge sheet. SI Ishwar Singh whose name is mentioned in MLC, in such case was a pertinent witness as prosecution could have thrown light on immediately preceding circumstances relating to



alleged occurrence, whoever, surprisingly, even SI Ishwar Singh was not brought as a witness and thus there was complete shadow to the facts relevant in this case to reflect as how deceased was found, where, spotted by whom, who intimated to the PCR and under what circumstance he was removed by SI Ishwar Singh to the hospital.

40. Sona Dhari has not shown his presence at any of the aforesaid relevant places, stage at any time. He contradicted after making allegation of seeing the accused beating deceased about his presence and at one stage, claimed to have rushed to the police post to be told by police about removal of deceased to the hospital and at other claiming that he was hiding at a lonely place and followed the deceased at the time of him being removed to the hospital. Thus, creating doubt about his actual presence at the relevant time and place of occurrence.

41. Further, the identity of deceased was established only on the early hours of next day i.e. 26.08.2013 when a handwritten record is made by PW 13 SI Nafe Singh linking to the family of deceased and even at this stage, it is not Sonadhari but one Pappu who detailed the phone number of the relatives of Changar and after talking to him, PW 2 Dhananjay collected the dead body. The fact that he neither detailed the relation nor the statement of IO SI Nafe Singh connecting with the relatives of deceased through other persons reflect towards his absence.”

4. We have perused the testimony of eye-witness and other evidence led by the prosecution. PW-1/Sona Dhari in his statement deposed as under:

“I run a Zinc factory at my house. My brother Pappu is also running a factory of Zinc at NW-123, Khyala. At the factory of my brother Pappu, there was one labour namely Changar. On 25.08.2013, I was present at the factory of my brother Pappu. On that day (Sunday of the week), at about 06/06.30 pm, the nephew of Rajan namely Dinkar, came at the factory of my brother Pappu and told Changar to go with him to the house of Rajan i.e. at RZB-47, Nursing Garden, Khyala. Rajan was residing in the same premises where I was residing on rent.



Changar along with Dinkar went to the house of Rajan. I waited for some time for Changar and when he did not return at the factory of my brother, I went to the rented premises of Rajah. There, I saw that Rajan and his brother Ramesh were beating Changar with dandas in the street. Pramod, Dinkar and Jinis (nephew of Rajan) were beating Changar with legs and fist blows. I tried to intervene and then, the accused persons told each other to beat me also. On hearing the same, I ran away from there. Someone made a call to PCR. I rushed towards police post from the spot. There, I narrated the incident, about which, the police official told me that he had already received the information in this regard through telephone. The police official also told me that the injured had already been shifted to DDU Hospital. Therefore, I went to DDU Hospital. The medical examination of Changar was got conducted at hospital. Changar had sustained injuries on his head and the CT Scan was also got conducted. At about 02.30 am, I met with the police officials in the hospital. The police officials asked me to go to police post. In the morning, I went to police post where I narrated the incident which was reduced into writing by the police official vide my statement Ex. PW 1/A which bears my signature at pt. A. The accused Rajan, Ramesh and Pramod are present in the court today (witness correctly identified them). After about 3 days of the incident, Changar succumbed to his injuries. I pointed out the place of occurrence to police who prepared a site plan. I alongwith with the police official went to the rented premises of accused persons, where we found the lock on the room. I identified the dead body of deceased Changar vide identification statement Ex. PW 1/B which bears my signature at pt. A. After the postmortem, the dead body of Changar was handed over to me vide receipt Ex. PW 1/C which bears my signatures at pt. A and B.

XXXXXX by Sh. Islamtiddin, Ld. Counsel for all accused.

I am illiterate but can sign. Four workers were working in my factory. On the day of incident, I alone was present in my factory and workers were on leave due to Sunday. Deceased is



son of maternal uncle of my bhabhi. I took the factory on rent from one Bobby. I do not use mobile phone. Vol. My brother is using the mobile phone. I did not give my phone number to the police. At the time of incident, I was not having any mobile phone. The mobile phone number of my brother is 9953279047. The distance of the factory of Rajan is around 100 paces from my factory. Rajan was running his factory for the last 3-4 years from the date of incident. The factory of Rajan was also on rent). Prior to working in my factory, deceased Changad was living in his village. We do not maintain any attendance register but we used to mark presence of the workers on a plain paper. I do not remember whether the police officer took that paper from me or not. The way in front of my factory is a common way. I did not shout for help when accused persons were beating the deceased as no one was present there due to Sunday. When the accused persons were beating Changad, I reached there and they also started beating me to save myself, I ran towards a lonely place. On the day of incident, I did not visit the place of incident again but after that day, I visited that place again and again as my factory is situated in that area. I do not remember as to who called the police. My statement was recorded by the police in the police station. My statement was recorded by the police only once. One draftsman, two policeman and myself was present when the draftsman prepared the site plan at my instance. In my presence, IO did not trace the person who made a phone call to the police. I do not know if one Pappu called the police and informed them about the incident: It is correct that after the incident I did not go to any Police Post or police station to report the matter to the police. Vol. I went to the hospital. I followed the deceased (Changad and he was taken to DDU Hospital and I also followed them to DDU Hospital. The distance of DDU Hospital from the place of incident is around one and a half kilometer. I reached DDU Hospital after one hour of reaching Changad. No police officer met me in the hospital. Vol. At about 04.00 am, police officers met me and they told me to come at police station. Police officers visited my factory for inspection. I do not know whether the factory of



accused Rajan was inspected by the police officer. I do not know whether the police officers investigated from the owner of the factory of accused Rajan. When the draftsman prepared the site plan, I shown him the place where the accused gave beatings to the deceased. They measured the area and prepared the site plan. One building is situated near the place of incident and Pressure tanks are built there. On the day of incident, the building of pressure tanks was closed and no labour was present there as it was Sunday. It is wrong to suggest that I was not present at the spot at the time of incident. I do not know whether Changad was a known criminal and he was released 3-4 months back from the jail from the date of incident. It is wrong to suggest that no fight took place between the deceased and the accused and the death of deceased Changad was accidental as his head was struck against the cover of the sewer. Vol. He was hit by the accused in my presence. There is no sewer at the place of incident. I do not know Whether any article was seized by the police from the spot or not. The statement Ex.PW 1/A was recorded by the police on my instructions. This statement was read over to me by the police after recording it. I narrated the entire incident in my statement except PW 1/A and except my statement I did not narrate anything else. It is wrong to suggest that being the relative of deceased, I am deposing falsely against the accused persons. It is wrong to suggest that I never visited DDU Hospital. It is wrong to suggest that no incident took place in my presence. It is wrong to suggest that I never saw the incident of beating the deceased.”

5. As noted above, in his cross-examination PW-1 admitted that deceased was the son of maternal uncle of his Bhabhi. Further, no material was placed on record to show that the deceased was working in the factory. In his cross-examination PW-1 stated that he did not shout for help when accused person was beating the deceased as no one was present there due to Sunday. He stated that when deceased was being beaten by accused person,



he reached there and they also started beating him and to save himself he ran towards a lonely place. No MLC of this injured witness has been produced. Admittedly, this witness does not name who made the call to the Police. Further, no efforts were made to trace the person who made the phone call to the Police. Though in the rukka he stated that he went to the Police Station after this incident to get the FIR lodged, however in his cross-examination he stated that after the incident he did not go to any Police Post or Police Station to report the matter to the Police. He volunteered that he went to the Hospital. Thus, the very genesis of the FIR based on the statement of PW-1 stating that he has come to the Police Station and made the statement has been discredited in the cross-examination. Further, the place of incident was not exactly found out and the body was found at a place different than the place pointed out by this witness. The MLC of the deceased Ex.PW-7/A notes the name 'unknown' S/o 'unknown' and R/o 'unknown'. It also notes casualty with alleged history of found on road side. No detailed history available. Further, the identity of the deceased was established in early hours of 26th August, 2013 and according to SI Nafe Singh the same was by one Pappu and not by Sona Dhari who is the alleged eye-witness.

6. Considering the fact that the sole evidence against the respondents is the testimony of PW-1/Sona Dhari and there are material contradictions therein and his version is not supported by the other documents on record except the post-mortem report noting that *"the cause of death is due to cranio cerebral injury caused by multiple blunt forceful impacts imparted over face and skull and the injuries over the skull were sufficient to cause death in ordinary course of nature"*, this Court finds that the view taken by the learned Trial Court is a plausible view and hence no interference therein



is warranted. It may be further noted that the respondents were in custody throughout the trial i.e. approximately 5 and a half years before they were acquitted.

7. Leave to appeal petition is accordingly dismissed.
8. Judgment be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

OCTOBER 06, 2022
‘ga’

