



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

% Reserved on : 30th August, 2022
Decided on : 27th September, 2022

+ **CRL.A. 218/2021**

RAJ KUMAR @ BHEEMA Appellant
Represented by: Mr. Kamlesh Kumar Mishra, Ms.
Tanya Aggarwal, Ms. Shivilika and
Mr. Bibhuti Bhushan Mishra, Advs.

versus

STATE OF NCT OF DELHI Respondent
Represented by: Ms. Shubhi Gupta, APP for State with
Insp. Deepak Sharma, P.S. NFC New
Delhi.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges the impugned judgment dated 12th February, 2021 whereby the learned Additional Sessions Judge while acquitting the appellant for offences punishable under Section 3, 3(1)(i), 3(1)(ii), 3(2) and 3(4) MCOCA & 396/307/397/412/34 IPC, convicted him for offence punishable under Section 302 IPC and the order on sentence dated 20th February, 2021 directing him to undergo life imprisonment along with a fine of ₹5,000/- and in default thereof to undergo simple imprisonment for one month.



2. Learned counsel for the Appellant Raj Kumar @ Bheema contends that the Learned Trial Court has acquitted all the accused persons except for the appellant for the offences charged with and that no separate charge under section 302 having been framed against him, appellant cannot be convicted for the substantive offence. Prosecution has led no evidence against the appellant. Merely because police finds that appellant is a habitual offender and has been involved in other cases in past comes to the conclusion that the appellant was involved in the present case. The injured, Smt. Indra Prabha, (PW-18) while identifying the accused Naeem Khan @ Muta stated that 8 years have passed so she cannot say whether he was among those persons or not and that she was not sure about the second boy but was sure about the appellant being one of the five accused persons. As per prosecution, “*chheni*” was recovered from the appellant but no injury was found from the said weapon. MLC of injured & post mortem report of the deceased were not proved as the doctor who examined her and who conducted the post mortem was not examined by the prosecution deliberately. Finger prints of all the other four accused were found but not of the appellant. The fact that TIP was refused cannot be the sole ground to convict. Recovery of the blood-stained pant after 18 days of incident from open space is highly doubtful and cannot be treated as an incriminating evidence in the chain of circumstances. The alleged pant and the recovered articles were not shown to the sole eye witness, PW-18 for identification.

3. On the other hand, Ld. APP for the State submits that the motive of the appellant was to illegally trespass into the house of the deceased and commit robbery as the door of drawing room was removed and glass were shattered. As per Head Const. Ravinder Kumar (PW-14), appellant was



arrested on secret information and pursuant to the disclosure statement recoveries were made. Dr. Arvind Kumar (PW-1) who had given subsequent opinion regarding the weapon of offence concluded that the exhibit V i.e., the recovered “*chheni*” was one of the weapons of offence and that injury B, C, D on body of injured PW-18 were possible by the said weapon. Injured, PW-18 who was examined through video conferencing had clearly identified the present appellant as the boy who had given blows to her husband twice before the Ld. Trial Court. Devender Kumar, Ld. ADJ (PW-16) stated that he got the TIP of the recovered articles conducted in his presence. As per the testimonies of Head Const. Ravinder Kumar and Insp. Sunil Kumar Sharma (PW-15), the said stolen articles, Ganesh idol (gold om) and CD player were recovered from the jhuggi of Appellant and were duly identified by (Vivek) son of the deceased. The brutality of the murder is clearly made out from the post mortem report of the deceased where the doctor found total of 21 injuries on the body and cause of death opined was due to shock and haemorrhage consequent to multiple ante mortem injuries. As per the FSL result, human blood was detected on the alleged pant of the appellant which he was wearing at the time of the incident. Reliance is placed on the decision reported as (2010) AIR (SCW) 5701 Abdul Sayeed Vs. State of Madhya Pradesh, to contend that the testimony of injured victim can be awarded special status in law and that the statement of injured witness should be relied upon.

4. Case of prosecution in nutshell is that on the intervening night of 2nd and 3rd November 2008 at about 1:50 AM, Jawa-54 wireless operator informed that in House No.81, Sukhdev Vihar, some persons have intruded in the tenanted premises. SI Sanjeev Solanki (PW-17) along with Constable



Ashok Kumar (PW-9) reached the spot i.e., house and found the sliding door of drawing room was broken. After reaching the lobby he found the dead body of the deceased aged about 85 years & the impression of dragging of the dead body on the ground. He also saw one old lady crying of pain and was lying in pool of blood. He informed additional SHO, who was on patrolling duty. Statement of Smt. Indraprabha w/o Sh. Madan Mohan Gulati (PW-18) was recorded on which the FIR was registered. She stated that she lives at 81, Sukhdev Vihar with her husband. She retired from Delhi Administration and her husband retired as an Executive Engineer with the railways. Her son and daughter live and work in US. They live on the ground floor, and have tenants on the first floor. By 9 – 9.30 PM on 2nd November, 2008 her husband ate his meal, locked the house from all sides and went to sleep in his room at the back. At around 12.30 they heard some noise from the kitchen. Her husband went towards the kitchen and called out. 3-4 guys emerged from the kitchen carrying a knife, screw driver, iron rod and attacked her husband with the knife and the rod and kept asking for the keys of the almirah and where the cash and jewellery was. She told them that she will tell them everything and asked them to leave her husband. They beat her husband up and he collapsed. Then they attacked her and her head got severely injured. She fell down in the courtyard. They dragged her to the room. They broke open the almirah, took some ₹20,000/- cash and the jewellery and threw the stuff outside. She raised a noise but as she was hurt she could not move from the room. The guys left and they must have been around 20-25 years of age.

5. The injured was immediately sent to Trauma Center through PCR, who remained in the hospital for about two months. Insp. Sunil/PW-15,



(first Investigating Officer) reached the spot where other staff was already present and found that the sliding door of drawing room has already been removed and was found partly broken. Personal blood-stained articles of the injured and deceased were recovered. Three vegetable knives out of which one was twisted, one screwdriver in twisted condition were found lying near the dead body. One blood-stained knife was found near the injured. Crime Team was called to inspect the spot. On 5th November, 2008 deceased Madan Mohan Gulati was identified by his son (Vivek) and nephew of the deceased. Fingerprints were lifted by experts i.e., Naresh Kumar (PW-2). MLC of injured (PW-18) was obtained and post mortem of the deceased was duly conducted.

6. The MLC of the injured Indraprabha was conducted on 3rd November, 2008 at about 3:01 AM. Report was prepared by Dr. Sharwan who had left the hospital at the time of deposition and his signature were identified by Dr. Inderjeet (PW-21), JPNA, Trauma Center, AIIMS. MLC of injured noted *“Injured was fit for statement. All injuries were grievous in nature. Multiple stab injuries. Blood clots from vagina. 8 x 2 cms. scalp deep, right eye brow. CL.W scalp deep wounds. The kind of weapon is sharp.”*

7. Post mortem report of deceased was conducted on 5th November, 2008 at about 1:30 PM at AIIMS, New Delhi by Dr. Shiva Prasad who had left the hospital and could not be examined, thus his writing and signature on basis of record were identified by PW-23, Dinesh Kumar, JMRO, Forensic Medicines, AIIMS. Post mortem report of deceased noted as under:

- 1) A laceration of size 5 x 0.5 cms x skull deep with adherent blood, at the edges of the wound present over left parietal prominences and 5 cms from the midline.



- 2) A laceration of size 15 x 0.7 cms x skull deep with adherent blood at the edges over. Left parietal region 2 cm anterior to injury no.1 and 5 cms. from midline.
- 3) A laceration of size 4 x 0.7 cms x skull deep with adherent blood at the edges over right parietal prominence 4 cms lateral to midline and 9.5 cms above right mastoid prominence.
- 4) A laceration of size 4 x 0.5 cms x skull deep in right parietal region. 2 cms anterior to injury no.3 with adherent blood.
- 5) A laceration of size 3 x 0.5 cms x skull deep in right temporal region. 3 cms anterior to injury no. 4.
- 6) A stab wound of size 2 x 0.3 x 5 cms deep, 2 cms below right mastoid prominence in the posterior upper right side of neck with hematoma in the wound track and directed downwards, anteriorly and medially.
- 7) An abrasion of size 9 x 5 cms (illegible), red in color, longitudinally placed on posterior aspect of right forearm.
- 8) An abrasion of size 1 x 0.5 cms, red in colour over left shoulder tip.
- 9) A stab wound of size 2 x 0.5 cms x 4 cms deep over lateral aspect of right side of neck, 5 cms below right mastoid prominence. The wound track is filled with hematoma. It is directed anteriorly and medially. There is hematoma in the intermuscular places of neck muscles of about 100 ml. The wall of external jugular vein is punctured and a number of minor vessels are cut. The hematoma is extended up to the posterior aspect of neck.
- 10) An incised wound of size 4 x 1 x muscle deep present over right cheek, 6 cms anterior to right tragus and 4 cms from angle of mouth obliquely placed at the lower edge of right jaw.
- 11) A stab wound of size 1.5 x 0.4 x 8 cms deep over right chest. 6 cms medial to right nipple, 11 cms above costal margin. 17 cms below clavicle and 3 cms lateral to midline. It is directed posteriority, medially and horizontally. The wound track is filled with hematoma. The upper diaphragmatic surface of left lobe of liver is pierced.
- 12) A stab wound of size 2 x 0.5 x 9 cms deep over left chest. 6 cms below left nipple, 7 cms lateral to midline and 8 cms above left costal margin. It is directed posteriority, medially and upwards,



on opening the wound the 6th left rib is cut, intercostal muscles of 5th left intercostals space are cut. Pericardium at the apex of the heart is cut. The pericardium is filled with 100 ml of blood. Right ventricle at the lower border of the heart is pierced. Also the right atrium is punctured inside the heart, the wound is passing from right ventricle to right atrium piercing both cavities

- 13) A stab wound of size 2 x 0.5 cms in left lateral chest wall in midaxillary line, 20 cms from anterior midline in 6th intercostal space, 3 cms deep, directed medially and upwards. On opening the wound the intercostals muscle in 6th intercostal space are cut. The track is filled with hematoma.
- 14) An abrasion of size 3 x 0.5 cms over thyroid cartilage area of anterior neck on right side. It is red in colour.
- 15) A laceration of size 3 x 07 cms x subcutaneous tissue deep over anterior aspect of right arm 10 cms above umbilical fossa with adherent blood at the edges.
- 16) An abrasion of size 2 x 1 cms red in colour over middle 1/3rd of left skin.
- 17) A contused abrasion of size 2.5 x 0.5 cms over lateral aspect of left eye with size of contusion being 3 x 2 cm, red in color.
- 18) An incised wound of size 1 x 0.5 x 0.2 cms deep, red in colour over dorsal aspect of left thumb.
- 19) An incised wound of size 5 x 0.2 x 0.1 cms deep, red in color, transversely placed over dorsum of left hand.
- 20) An incised wound of size 1 x 0.5 x 0.1 cms deep, red in color, placed over dorsum of right hand.
- 21) An incised wound of size 1 x 0.5 x 0.1 cms deep, red in color, over dorsum of right hand, 1 cm above and parallel to injury no. 20.

8. The post mortem report further noted, "Cause of death due to shock and hemorrhage consequent to multiple injuries which are due to sharp weapon. Other injuries due to blunt force. The time of death was about 60 hours. Injury No.9, injury No.11 and injury No.12 can individually or collectively cause death in ordinary course of nature. Injuries No. 6, 9, 10,



11, 12, 13, 18, 19, 20 and 21 are due to sharp weapon. Other injuries are due to a blunt force”.

9. Based on the description given by the main injured eye witness, Smt. Indraprabha Gulati, all accused persons were arrested and recoveries were made pursuant to their disclosures. On disclosure statement of appellant, his cream colored, blood-stained jeans of Eagle brand from Pul Prahladpur and one iron “*chheni*” from behind his jhuggi under the bush near Railway track beyond Priyanka Camp and one golden idol, CD player of Panasonic from his jhuggi no.24, Priyanka Camp were recovered. On 22nd November, 2008 appellant was produced before the court in muffled face. During the course of trial, 27 prosecution witnesses were examined and on the other hand one defence witness was examined by accused Ramesh @ Shankar were examined. Statements of accused were recorded under section 313 CrPC.

10. Smt. Indraprabha Gulati on examination through video conferencing reiterated her statement made in the rukka and stated that all five persons had entered the house from the drawing room door with “*chheni*”, screwdriver and knives in their hands. They asked for the keys from her husband who asked them to wait when one boy gave iron blow on the husband’s head and then on her head. Both of them fell unconscious. She remained in the hospital for two months, had 8 inch cut in the stomach. She identified the appellant in the Court as one of the assailants and did not identify the other assailants. She was cross-examined by the learned APP when she stated that she did not know what all was robbed and she did not go to Patiala House Court on 26th December, 2008 as she was unwell and did not identify the four boys. In her cross-examination by the learned counsel for the accused she clarified that she regained consciousness after 3-



4 days and was on ventilator. However, her condition was critical. She further clarified that Raj Kumar was wearing a black shirt and though she did not recall the name of the tenant but they were in occupation for 2.5 years prior to the incident. Thus, the prosecution case is based on the identification of the appellant by the injured victim and the recoveries made at the instance of the appellant.

11. Inspector S.K. Sharma who appeared as PW-15 stated that he reached H.No. 81, Sukhdev Vihar and found that the sliding door of the drawing room was removed and lying in the courtyard. The glass had also been removed and was partly broken. Articles kept in the drawing room were lying scattered. Some finger-prints were found on the glass. Grill door of the lobby was also forcibly broken. Dead body of the husband of the injured was lying in the drawing room. Pair of Bata slippers was also found near the floor of the room. Blood-stained lower portion of Madhani was also found near the dead body and handle of the Madhani was found lying in the drawing room. A lady was lying in the injured condition in a nearby room and told that 4-5 boys beat her and her husband. She was sent to the Trauma Centre through PCR and she was declared fit for statement by the Doctors. The appellant was arrested on 21st November, 2008 at Badarpur border on a secret information. Pursuant to the disclosure statement of the appellant, he took the police party to an open area near bushes which was situated near Pul Prahladpur where appellant got recovered one blood-stained jeans of Eagle brand from a pit and told that the aforesaid pant was worn by him at the time of incident, which was duly seized and sealed. On the next date after the appellant was released on police remand on refusal of TIP, when at his instance co-accused were arrested. On 25th November, 2008, pursuant to



a supplementary disclosure statement Ex.PW-14/N, appellant got recovered one “*chenni*” which was lying in the bushes near Railway track behind Priyanka Camp, which was also seized and sealed. Thereafter appellant got recovered robbed articles i.e. one idle of lord Ganesha and one small CD player of Panasonic from his Jhuggi.

12. Contention of learned counsel for the appellant that the identification of the appellant by Smt. Indraprabha was vague as she failed to identify the other accused deserves to be rejected for the reason, as far as the present appellant is concerned, she was specific in her testimony that he was one of the five accused. Non-recovery of finger prints of the appellant from the place of incident does not absolve him of the participation in the offence which is proved by the identification of the injured victim Smt. Indraprabha Gulati. As noted in the testimony of Dr. Arvind Kumar/PW-1, “*chheni*” recovered from the appellant was one of the weapon of offence used, as evident from subsequent opinion which indicated that injuries B, C and D on the body of PW-18/ i.e. the injuries were possible by the said weapon. Further, pursuant to the disclosure of the appellant, the pant which he was wearing at the time of incident was recovered, on which human blood was detected. No explanation has been given as to how the blood came on the pant. Merely because the son of the deceased and injured victim who identified the robbed articles in TIP did not appear in the witness box to identify the robbed articles recovered at the instance of the appellant, will not discredit rest of the evidence led by the prosecution which is sufficient to prove the guilt of the appellant for the offences alleged, beyond reasonable doubt.



13. In view of the discussion aforesaid, this Court finds no error in the impugned judgment of conviction and order on sentence.

14. Appeal is accordingly dismissed.

15. Copy of judgment be uploaded on the website of this Court and be also communicated to the Superintendent Jail for intimation to the appellant and updation of record.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

SEPTEMBER 27, 2022

'KJ'

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