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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 1st June, 2022Pronounced on: 5th August, 2022

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CRL.A. 657/2019

AMIT ANAND

..... Appellant

Represented by: Mr. Biswajit Kumar Patra, Advocate.

versus

STATE (N.C.T OF DELHI)

..... Respondent

Represented by: Ms. Asha Tiwari, APP for the State.

J U D G M E N T**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J.**

1. The present appeal is directed against the judgment dated 08.02.2019 and order on sentence dated 08.02.2019 passed by learned ASJ-05 (North, Rohini, Delhi) in Sessions Case No. 58036/2016, CNR No. DLNT01-001067-2012, arising out of FIR No. 299/2012 under Section 302 IPC and 25/24/59 Arms Act, registered at Police Station Shahbad Dairy. The appellant has been convicted for offence punishable under Section 302 IPC and Section 25 Arms Act and awarded sentence of imprisonment for life and a fine in the sum of Rs.1000/-. In default of payment of fine, he has been directed to undergo Simple Imprisonment for one month. The appellant has further been sentenced to Rigorous Imprisonment for three years and a fine of Rs.1000/- under Section 25 of the Arms Act. In default of



payment of fine, the appellant has been directed to undergo Simple Imprisonment for one month. All the sentences were directed to run concurrently by the Sessions Court.

2. In nutshell case of the prosecution before the learned trial court was that the appellant Amit Anand, deceased Raj Kumar and Ritender Singh (PW-3) used to do business of *tehbazari* on the pavement near Udyog Bhawan, Maulana Azad Road, Delhi. Deceased Raj Kumar prospered and left the work of *tehbazari* and started running a taxi. On 26.08.2012 at about 9:00 pm, appellant and Raj Kumar (deceased) gathered in a room on the ground floor of the house No. N-77, Rajiv Nagar Extension, Begumpur, Delhi which belonged to Ritender Singh, and started drinking. Soon an argument started between appellant and Raj Kumar in which Raj Kumar asked the appellant as to what he had achieved in his life and that the appellant was still on the pavement, whereas he (i.e. deceased Raj Kumar) was running a taxi. An altercation ensued, however, Ritender Singh intervened and separated both of them. Thereafter, Ritender Singh came to his room and started watching T.V., whereas appellant went to the first floor of the house to take food, which was served by Smt. Geeta (PW-2), wife of Ritender Singh. After sometime at about 10:30 pm, Ritender Singh and his wife Geeta heard noise of falling of some object. Appellant shouted “Raju Raju”. Thereafter, Ritender Singh heard a shriek. Ritender Singh and Smt. Geeta came out of their room and they found that Raj Kumar was lying on floor and appellant was running outside the house. Ritender Singh caught the appellant and somehow convinced appellant not to worry and that they would take Raj Kumar



to a private hospital. On being convinced, appellant along with Ritender Singh and Smt. Geeta took Raj Kumar to BSA Hospital, Rohini in Ritender Singh's car. There Ritender Singh handed over appellant to H.C. Ram Parvesh who was on the duty in the hospital. Doctors declared Raj Kumar dead.

3. On the statement of Ritender Singh, Ex. PW-3/A, the FIR was registered. After investigation, charge sheet was filed in the court of learned Metropolitan Magistrate, who committed the case to Sessions Court. After hearing arguments, a charge for offence punishable under Section 302 IPC was framed. A separate charge under Sections 25/27 Arms Act was also framed against the appellant. He pleaded not guilty and claimed trial.

4. The prosecution examined 19 witnesses to prove the charges. The learned Trial Court after appreciating the evidence on record convicted and sentenced the appellant as stated hereinabove. Hence the present appeal on behalf of the appellant/convict.

5. Mr. Biswajit Kumar Patra, learned Counsel appearing on behalf of the appellant through Delhi High Court Legal Services Committee, vehemently submitted that the Trial Court had committed gross error in convicting the appellant. According to him there was no eye witness who has seen appellant committing the alleged crime. Perusal of deposition of Ritender Singh suggests that the appellant did not have any altercation with the deceased, which proves that there was absence of *mens rea* on the part of the appellant for the alleged commission of offence. He pointed to the cross examination of Ritender Singh wherein he has categorically deposed that when he



saw the appellant immediately after the incident, his hands and clothes were not stained with blood. Appellant Amit Anand was crying “Dekho Dekho Koi Idhar Ko Gaya Hai”. He also referred to deposition of Geeta, wherein she has deposed that there was no blood stain on the hands and clothes of the appellant when she saw him after coming out of her house because of the alarm raised by the appellant. Learned Counsel for the appellant contended that there were about 7 stab injuries sustained by the deceased on both front and back side of the body. Thus, the fact that no blood stains were found on the hands and clothes of the appellant immediately after the incident, as deposed by both PW-2 and PW-3, clearly pointed to the innocence of the appellant. PW-2 and PW-3 reached the spot of incident on the alarm raised by the appellant i.e. bhaga bhaga as well as sound of something falling down, which means that the appellant had raised the alarm immediately on finding some person trying to kill the deceased, who ran away from the spot after committing the crime. Further, appellant did not try to run away, but he accompanied PW-2 and PW-3 to the hospital. Also, the recovery of the alleged weapon of offence i.e. knife, stated to be on the disclosure statement of the appellant from the bushes in the vacant plot near to the place of the incident, is not reliable and trustworthy. The prosecution has not taken the finger prints from the said knife to compare the same with that of the appellant so as to connect the appellant with the crime. Further, the FSL Report does not prove that the blood recovered from the knife matched with the blood of the deceased. He further referred to the scaled site plan, Ex. 12/A to show that as per the site plan, the knife



was recovered from point 'H' in the bushes and appellant was caught by Ritender Singh, at point 'G'. The appellant had raised alarm immediately and thus, there was no occasion for the appellant to run and hide the knife.

6. On the other hand on behalf of the State, learned APP relied upon the evidence as led by the prosecution. She relied upon the deposition of PW-2 & 3 to establish circumstantial evidence against the appellant. She further relied upon the deposition of PW-8, Dr. Kuldeep Singh, PW-9, Dr. Vijay Dhankar, recovery of knife, sketch - Ex. PW-18/J and opinion regarding weapon of offence, Ex. PW-9/B. She further made reference to FSL Report dated 17.04.2013, Ex. PX-4. She also relied upon deposition of PW-10 H.C. Naresh Kumar. She thus submitted that on the basis of the prosecution evidence, including both oral and scientific, the case against the appellant has been proved beyond reasonable doubt.

7. We have considered the submissions of learned Counsels and perused the record.

8. In order to prove the guilt of the appellant, the prosecution case has been built upon circumstantial evidence. The principle laid down by Hon'ble Supreme Court, while dealing with the cases based upon circumstantial evidence, is that circumstances must form a chain of events, from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible.



9. Ritender Singh deposed to the effect that when he came outside after hearing the noise of something falling down, at that time the hands and clothes of appellant were not stained with blood.

10. To similar effect is the deposition of Geeta, wife of Ritender Singh, who during the course of her cross examination on 12.01.2015 stated that when she saw appellant after coming outside her room upon hearing the alarm raised by him, he was not having his hands and clothes stained with blood.

11. The aforesaid fact assumes significance in view of deposition of PW-9, Dr. Vijay Dhankar, Specialist and HOD, Forensic Medicine, BSA Hospital, Delhi. He deposed that he conducted postmortem on the body of the deceased on 27.08.2012. On examination 7 external injuries (all incised stab wounds) were found on the body. On internal examination, injuries corresponding to the external injuries were found in the body. The injuries found on the body of the deceased, as per deposition of PW-9 are as follows:

“... On examination 7 external injuries (all incised stab wounds) were found on the body. On internal examination, injuries corresponding to the external injuries were found in the body. Extravasation of blood was found in the neck, about 2 litres of fluid and clotted blood present in the right side of chest and about 100cc of fluid clotted blood was present in the abdomen. All internal organs were pale.”

12. As per the prosecution, one weapon of offence which was allegedly recovered at the instance of the appellant, was used. Thus, the assailant took out the same weapon of offence from the body of deceased and inflicted the subsequent injuries. Considering the nature



of injuries caused, it is highly unlikely that the appellant got no blood stains on his hands and clothes, if he was the one who had caused stab injuries to the deceased.

13. It has also come on record during the course of cross examination of PW-2 that the appellant did not try to run away, but accompanied PW-2 and PW-3 to the hospital. PW-2 deposed that the appellant lifted the deceased along with her and PW-3 to take him to the emergency ward in the hospital. PW-3 also deposed during his cross examination that the appellant never tried to run away from the hospital. The appellant was present in the hospital when deceased was being treated by the doctors. Police reached the hospital after about half an hour since the admission of the deceased. Thus, the appellant was having sufficient time and opportunities to flee from the hospital.

14. Another important factor to be considered is that the presence of appellant is recorded in the MLC, Ex. PW-8/A, as one of the persons who brought the deceased along with Ritender Singh and Geeta. Further the MLC does not note that PW-2 & PW-3 stated that the stab wounds on the deceased had been caused by the appellant. Rather, PW-8, Dr. Kuldeep Singh, OSD, Director General Health Services, Karkardooma, Delhi deposed during his cross examination that the persons who brought Raj Kumar to the hospital did not tell as to who stabbed Raj Kumar.

15. As regards the alleged recovery of weapon of offence i.e. the knife, important fact for consideration is that there are no independent witnesses to the said recovery of knife. Recovery Memo of knife, Ex. PW-18/K, does not bear signatures of PW-2 & 3. The police did not



join PW-2 & PW-3 in effecting recovery of the knife, though the plot, from which the knife was recovered, was situated just in front of the house of PW-2 & 3. Thus, recovery of the knife by the police at the instance of appellant, thus does not inspire confidence.

16. There is yet another important aspect. As per the prosecution case, the appellant after inflicting severe incised wound went outside the house to a vacant plot opposite, where he hid the knife in the bushes and came back to the residence of Ritender Singh where the deceased had fallen down. This version of the prosecution is improbable on two counts. Firstly, the timeline given by Ritender Singh and Geeta in view of their deposition that on hearing something fall they immediately came running out from their room and saw the appellant standing there, does not permit enough time to the appellant to go to the vacant plot, hide the knife and walk back. Secondly, the conduct of the appellant in coming back to the place of occurrence after being able to run away is not commensurate to the guilt of the appellant.

17. Then again, the FSL Report Ex. PX/4 simply showed that blood was detected on the allegedly recovered knife, which was mentioned as Ex.9 in the FSL Report. Blood Group could not be detected on the said knife, but it has been opined that the blood was of human origin. The FSL Report does not prove that the blood recovered from the knife matched with the blood of the deceased.

18. Then again, recovery of clothes stained with human blood from the appellant cannot be regarded as an incriminating evidence against him, especially in view of deposition of PW-2 and PW-3 wherein they



have categorically deposed that there were no blood stains on the hands and clothes of the appellant when they saw him immediately after coming out of their room upon hearing the noise and the alarm raised by the appellant. There is every likelihood that the appellant got blood stains on his clothes at the time of lifting the accused while taking him to hospital along with PW-2 and PW-3.

19. Another point for consideration is the deposition of PW-2 & 3 wherein they stated that they reached the spot of incident on the alarm raised by the appellant, as well as sound of something falling down. The appellant has raised the alarm “Bhaga Bhaga” and “Dekho Dekho Koi Idhar Ko Gaya Hai”. This fact that the appellant had raised an alarm on finding some person trying to kill the deceased, who ran away from the spot after committing the crime, was stated by the appellant in response to question 7 and 11 of statement of accused recorded under Section 313 Cr.P.C. Questions 7 and 11 and response of the appellant under Section 313 Cr.P.C. are reproduced as below:

“Q7. It is in evidence against you in the testimony of PW3 that he told the police that only you were present near deceased Raj Kumar @ Raju, when he immediately came outside after hearing the sound of falling. Hence he had a suspicion over you. His statement was recorded as Ex.PW3/A. What have you to say?”

Ans. It is incorrect. PW2 and PW3 are very well having the knowledge of this fact that two persons, after having stabbed injured Raj Kumar (since deceased) fled away from the spot. Even I tried to catch both of them but all in vain. I with the help of PW2 and PW3 got injured Raj Kumar (since deceased) admitted in the hospital. In this process, myself, PW2 and PW3 got blood stains on our clothes respectively.”



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Q11. It is in evidence against you in the testimony of PW6 Ct.Tilak Ram and PW18 SI Sukhi Ram that on 27.8.2012 on receipt of DD No.4A by PW18 about admission of injured Raj Kumar in BSA Hospital with stab injury and doctor declared Raj Kumar dead and the person, who stabbed Raj Kumar, is in custody of ASI Jai Bhagwan. They went to BSA Hospital, where ASI Jai Bhagwan handed over your custody to IO/PW18. PW18 collected MLC of deceased Raj Kumar. What have you to say?

Ans. It is incorrect. The persons/ suspects, who stabbed injured Raj Kumar (since deceased) had already fled away from the spot. I have been falsely implicated in this case."

20. The fact of running away of some person from the place of incident was also put to PW-2 during her cross-examination, wherein she deposed, *"It is wrong to suggest that I am deposing falsely to the effect that accused Amit Anand told me that he chased one person who ran away from our house."* However, involvement of some third person in the commission of crime has not been investigated.

21. The prosecution has failed to prove the motive. Thus, the learned Trial Court has rightly given a categorical finding in the impugned judgment dated 08.02.2019 that the motive for committing the offence in question could not be proved.

22. Hon'ble Supreme Court has held in catena of judgments that where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. In the case of Sharad Birdichand Sarda vs. State of Maharashtra, reported as (1984) 4 SCC



116, Hon'ble Supreme Court has laid down five golden principles to convict a person in case of circumstantial evidence. Hon'ble Supreme Court held as follows:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the following observations were made: [SCC para 19, p. 807: SCC(Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must



show that in all human probability the act must have been done by the accused.”

23. In the present case, the prosecution has not been able to fully establish the circumstances which are fully consistent with the guilt of the accused and inconsistent with his innocence. In our view, there are serious gaping holes in the story of the prosecution, as noted above. There are material discrepancies which go to the root of the case. The circumstances relied upon by the prosecution, do not fully establish the involvement of the appellant.

24. In view of the aforesaid discussion, this Court is of the considered view that the appellant is entitled to the benefit of doubt. Accordingly, the appellant is acquitted. He shall be released forthwith, unless he is required to be detained in any other case.

25. A copy of this judgment be communicated to the Jail Superintendent forthwith for taking necessary action, updation of record and communication to the appellant.

(MINI PUSHKARNA)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 5, 2022

au/PB