



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 25th July, 2022

Pronounced on: 18th August, 2022

CRL.A. 1246/2019

PANKAJ

.....Appellant

Represented by: Mr. K. Singhal, Ms. Priyal Garg, Mr. Prasanna, Mr. Chetan Bhardwaj, Ms. Saumya Sharma, Advs.

versus

THE STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Represented by: Mr. Tarang Srivastava, APP for State with Insp. Sunil, PS Mahindra Park.

CRL.A. 1452/2019

ANKUSH

.....Appellant

Represented by: Mr. K. Singhal, Ms. Priyal Garg, Mr. Prasanna, Mr. Chetan Bhardwaj, Ms. Saumya Sharma, Advs.

versus

THE STATE

.....Respondent

Represented by: Mr. Tarang Srivastava, APP for State with Insp. Sunil, PS Mahindra Park.



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. These appeals assail the judgment dated 28th August, 2019 whereby the appellants have been convicted for the offence punishable under Section 302/34 IPC and awarded life imprisonment with fine of Rs.1,000/- each, and simple imprisonment for one month each in default of the payment of fine vide order on sentence dated 29th August, 2019. The third accused Amit @ Dabar as per the chargesheet dated 5th September, 2013, passed away in jail on 31st December, 2017 and therefore, the proceedings against him were abated vide order dated 16th April, 2018 during trial.

The Incident:

2. As per the case of the prosecution the deceased (Kamal Bansal) was residing with his girlfriend in the house of appellant Ankush but was not paying him expenses, which led to a quarrel between Kamal Bansal and Ankush. Kamal Bansal alongwith his girlfriend left the house, without paying the expenses and shifted to his factory. This enraged Ankush and with a view to teach Kamal Bansal a lesson, he allegedly discussed the matter with the appellant Pankaj and Amit @ Dabar. On 29th May, 2013, Amit borrowed a motorcycle from his relative and then alongwith appellants Pankaj and Ankush went to the house of Kamal Bansal at about 10:30 p.m. On learning that he was in the factory, on 30th May, 2013 at about 1:30 a.m., both the appellants



and Amit @ Dabar reached the factory on a motorcycle and asked Kamal Bansal to accompany them. As per the prosecution, Kamal Bansal was called outside by the appellant Pankaj and Amit @ Dabar and as soon as he came out, appellant Pankaj held him by the shoulder and demanded to why he did not pay appellant Ankush. Kamal Bansal was taken away from the factory to end of the gali where the appellants started thrashing him with fists and legs. When Kamal Bansal resisted, Amit @ Dabar held his hand to overpower him and appellant Pankaj hit Kamal Bansal's head with a big piece of stone lying nearby. Kamal Bansal collapsed and then appellant Pankaj pulled him to the side of the road to avoid detection and all three namely Pankaj, Ankush and Amit @ Dabar fled on a motorcycle. However, one ASI Inderjeet and Constable Kuldeep were passing through that place in performance of their duty. They chased the motorcycle, saw the accused persons and also noted the number of the motorcycle. The injured was taken to the hospital by PCR van but succumbed to injuries and died on 5th June, 2013. Charges were framed against the appellants and Amit @ Dabar, the prosecution examined 24 witnesses, statement of the appellants under Section 313 Cr.P.C. was recorded and the appellants did not lead any evidence in defence.

Submissions by the Appellants:

3. The appellants contended through the learned counsel appearing on their behalf, through the appeal and written submissions that conviction by the learned Trial Court was not sustainable since the prosecution had failed to prove the motive behind the alleged murder



of the deceased by the appellants. Further, despite that police officials were deployed to collect exhibits and guard the scene of offence from 30th May, 2013, the recovery of the concrete stone was done from an open space at the place of occurrence on 8th June, 2013 allegedly at the instance of appellant Pankaj, which shows that the police officials had planted the recovery of the concrete stone. The appellants further contended that the prosecution's version that the deceased was last seen with the assailants by his girlfriend Maneka who had come to the factory, was not examined by the prosecution and therefore, the last seen theory was unsupported. Even material witnesses viz. Constable Kuldeep who alongwith ASI Injerjeet allegedly saw the assailants on their bike / scooter and Gulran who made the PCR call were also not examined as prosecution witnesses.

4. The appellant also contended that as per the MLC death summary, the cause of death was '*cardio pulmonary arrest*' showing no direct relation between the injury and the cause of death and no further opinion was taken whether the alleged head injury could be caused by the concrete stone. PW-22, the doctor who prepared the MLC, admitted that the injury can also be caused if a person falls backward on a hard surface. Further, as per arrest memo dated 7th June, 2013 appellant Pankaj was arrested in front of D-226, Gali No.3, Swarup Nagar, Delhi by Inspector Rajinder Dubey and the arrest memo was signed by the sister-in-law of the appellant. However, as per the cross examination of the police officers PW-23 and PW-25, who arrested the appellant, arrest was made at this address and information was later sent to the relatives of the appellant through a constable. Further, the disclosure statements of the appellants were not signed by them and therefore, not admissible in evidence.



5. The alternative submission put forth by appellants was that the deceased was not made to die on the spot itself but succumbed to injuries only after five days of the incident. Had the appellants been equipped with the intention to cause death, they would have been carrying a particular kind of weapon with them. A bare perusal of the body diagram (part of the *post mortem* report) shows that a fist blow may have been given on the eye which resulted in the deceased falling down and hitting himself on a concrete stone. Thus the appellants could not be convicted for an offence of culpable homicide amounting to murder. In the circumstance that the appellants have already undergone around 7 years 6 months of incarceration excluding remissions, this Court may accordingly assess the nature of the conviction.

Submissions by the Prosecution:

6. The learned Additional Public Prosecutor on behalf of the State countered the contentions of the appellants and submitted that doctor who conducted the *post mortem* opined that injury no.1 was caused by a blunt force and even though a subsequent opinion was not taken regarding the possibility of concrete stone having been used as weapon, the Court could take notice that such injury could be caused by a heavy stone. Attention was invited to the testimony of PW-23 and PW-25 who testified that the concrete rock / stone was recovered at the instance of appellant Pankaj on which some blood was also seen. Reliance is also placed on testimony of PW-6 ASI Inderjeet where he identified appellant Ankush in TIP proceedings but identified appellant Pankaj and accused Amit from the online dossiers of criminals in the police station. Therefore, even if the TIP proceedings



are discarded, his identification as a responsible police officer ought to be accounted for and since they had the full opportunity to see the assailants from a very close distance in the motorcycle /scooter chase.

The Evidence:

7. PW-2 Bhagwat Singh, the complainant testified that he ran a store in village Ramgarh of timber supply and used to store some timber planks near the park in Gali No.8, Ramgarh and used to sleep near that park for security of his material. In the intervening night of 29th and 30th May, 2013, he heard a commotion and that someone was running and someone was screaming “ruk ja ruk ja ruk ja”. He heard a quarrel start and someone was saying, ‘*mujhse galti ho gayi, mujhe maaf kar do*’. Thereafter, PW-2 saw one red colour motorcycle coming from the side of Anand Maya Hospital and two persons riding the same. The person who was already quarrelling, dragged another person to the motorcycle and after dropping the injured at the spot, the said person also boarded the motorcycle and three of them left on the motorcycle towards Jahangir Puri main road. He further testified that he could not note down the registration number due to it being dark and he made a call to the police from his mobile number whereupon PCR officials reached the spot and he helped them in removing the injured to the hospital. In the meantime, as per PW-2, two police officials came on a scooter from the side of Sanjay Enclave and upon his pointing out about the motorcycle, the two police officials went in the direction of Jahangir Puri to chase the motorcycle.

8. PW-7 Nagender Rai was working at the factory of the deceased and on the night of the incident, as per his testimony, someone rung



the bell of the factory and he went downstairs to open the main gate.

The person standing outside entered the factory and went to the ground floor and he himself went to the bed at the first floor. After about an hour, the bell rung again and he saw from the first floor that three boys were standing at the main gate of the factory and they asked him to call the person on the ground floor. PW-7 responded that they can call that person on their own and that he saw the three boys and the employer of the ground floor standing outside the main gate of the factory and the motorcycle alongside. But he did not testify as to registration number or colour of the motorcycle.

9. PW-3, brother of the deceased testified that on 29th May, 2013 at about 10:30 p.m. three persons viz. the two appellants and Amit @ Dabar had come to his house (PW-3 identified all three accused in the court). They had come on a red colour motorcycle asking for his brother Kamal Bansal and PW-3 informed them that he would be at their factory in Ramgarh. He then received a call from the police on his mobile at about 1:45 p.m. – 2:00 p.m. that his brother had met with an accident and was admitted in hospital at Jahangir Puri. In his cross examination, he denied having told the police that his brother was living with his girlfriend Maneka at the house of appellant Ankush for the last 1½ months and was not paying expenses to appellant Ankush and therefore, there was a dispute between them. Upon being confronted with his statement recorded under Section 161 Cr.P.C., he denied the same and volunteered that he came to know this fact as disclosed by the accused to the police.

10. PW-6 ASI Inderjeet testified that on the night of the incident he was posted at Police Station Mahendra Park and was going with



Constable Kuldeep (who has not been examined as a witness) to the police station on a scooter and were passing by Ramgarh Road. When they reached Gali no.8, PW-2, the complainant informed them that three boys had fled away on red motorcycle to the side of the main road after quarrelling and beating up one person. PW-6 made a call to the police and then went from the main road at a high speed to chase the assailants. PW-6 testified that he saw one motorcycle having registration no. DL8S AR 7632 with three people riding on it, and he chased the motorcycle and moved parallel to the motorcycle. He stated that he saw the three boys and due to heavy traffic he could not continue to chase. On 31st May, 2013, he was called by the SHO of Police Station Mahendra Park and showed online dossiers of criminals in the computer on the official website of Delhi Police. Out of these dossiers he identified two criminals viz. Amit @ Dabar and appellant Pankaj who were both residents of Jahangir Puri, as those who were riding the motorcycle. PW-6 identified these two accused in the court as well and also identified appellant Ankush in the court. He confirmed that on 29th June, 2013 he had participated in judicial TIP and correctly identified appellant Ankush. In his cross examination he stated that he met PW-2 at about 1:30 p.m. – 1:45 p.m. and stayed with him for about 2 minutes and had not seen the place where the incident had taken place. He further confirmed that he had not been called by the Investigating Officer for the judicial TIP of accused Amit @ Dabar. He denied that he had seen appellant Ankush in lockup of Police Station Mahendra Park since there was no lockup and they lodged the accused in Police Station Shalimar Bagh.

11. PW-8 Sandeep was the cousin of accused Amit @ Dabar who testified that Amit @ Dabar had borrowed his motorcycle which was



registered in the name of his father, PW-5. He testified that the accused Amit @ Dabar had not returned the motorcycle to him but came to know from the police that the motorcycle was found in possession of the accused persons. PW-5 Rambir also confirmed that the motorcycle belonged to him.

12. PW-4 ASI Naresh Kumar was posted at PCR, North West Zone and he testified that on receipt of call on 30th May, 2013 he reached Anand Maya Hospital, Gali No.1, Ramgarh where one injured was lying and was bleeding from his head. They removed the injured to the BJRM hospital where he was admitted. PW-1 ASI Babu Khan testified that on 30th May, 2013 at about 4:30 a.m. Constable Laxman came to the Police Station Mahendra Park and gave him *rukka* for registration of FIR. He then registered the FIR No.145/2013.

13. PW-23 SI Hemant Kumar who was the first Investigating Officer, testified that on 30th May, 2013 upon receiving information about the incident, he reached the spot and met PW-2. The injured had already been shifted to the hospital. In the next few days he tried to trace the owner of the motorcycle and also showed the dossier of habitual criminals to PW-6 who identified Amit and appellant Pankaj from the dossier. PW-23 further testified that on 7th June, 2013 upon receipt of secret information they arrested Amit and appellant Pankaj from Block D, Swaroop Nagar and on disclosing the location of the third accused, appellant Ankush was arrested as well. As per PW-23, the three accused were taken to the place of incidence where appellant Pankaj recovered a big stone lying by the side of the park wall which (as per him) had been used to inflict injury on the deceased. He further confirmed that the place from where stone was recovered was a public



place and was accessible to everyone. He testified that he also lifted the blood sample from the spot and the blood stained earth control which was duly sealed.

14. PW-25 ACP Rajender Dubey joined the investigation as the second Investigating Officer on 5th June, 2013 and corroborated the testimony of PW-23 including recovery of a red colour motorcycle and keys at the instance of appellant Ankush as well as block of concrete at instance of appellant Pankaj.

15. PW-22, the doctor who conducted the *post mortem* on the body of the deceased, opined that the death was due to *cranial cerebral damage* consequent upon blunt force trauma to the head. As per the *post mortem* report Ex. PW-22/A, there were two external injuries, the first being a lacerated wound 4cm x 0.5 cm x 1 cm present on the right occipital region and the second being a bluish black contusion 1cm x 1 cm present around the right eye. PW-22 further testified that the death was due to injury no.1 which was sufficient to cause death in ordinary course of nature. In his cross examination, PW-22 stated that both the injuries no.1 and 2 could also be caused by a stick blow / stone blow or through impact of any vehicle or if a person fell backward on a hard surface.

Analysis:

16. On a meticulous perusal of the evidence and documents on record and submissions made by the parties, this Court is of the opinion that there are numerous critical gaps in the chain of circumstantial evidence, discrepancies in the testimonies of the eyewitness and the prosecution has not been able to prove its case beyond reasonable doubt *inter alia* for the following reasons:



(i) The testimony of PW-3, the brother of the deceased is only credible to the extent that three accused had gone to his house at 10:30 p.m. on 29th May, 2013 enquiring about the deceased. The incident itself having taken place at about 1:45 a.m. i.e. after a gap of almost three hours, the prosecution has been unable to explain the chain of events and circumstances during that time period.

(ii) PW-2's testimony cannot be treated as an eyewitness by the prosecution as he did not see the deceased being assaulted by a concrete block / stone but merely stated that he heard a quarrel and the injured person was dropped at that spot. It was possibly because of his ineffective testimony that he was not cross examined by the defence counsel.

(iii) PW-2 does not provide any description of three assailants which he allegedly saw at the factory. However, he was not asked to join the judicial TIP nor was shown accused persons in the court. In the rough site plan Ex. PW-2/B, the location of PW-2 was shown inside the park adjacent to Gali No.8 which in scaled site plan Ex. PW-23/BX has been shown outside the House no.92 of PW-2. The draftsman of the scaled site plan was not examined by the prosecution.

(iv) PW-7 Nagender Rai, who allegedly saw the three accused at the main gate of the factory when they came to confront the deceased, also could not note down the registration number or the colour of the motorcycle nor was asked to join the TIP or identify the appellants in the Court.

(v) The testimony of PW-6 ASI Inderjeet does not inspire confidence since having arrived at the place of incidence after the



accused had left and also had a brief conversation with PW-2, it would be difficult to accept that he would have been able to chase the alleged motorcycle of the assailants (who already had a head start) and catch up with them to the extent of moving parallel to their motorcycle. PW-6 also states that there was heavy traffic and therefore, his testimony that not only he chased them successfully but was also able to catch up with them, even though his interception failed, is not credible. Further, his accompanying Constable Kuldeep was never examined as a prosecution witness to corroborate the testimony of PW-6. It is common knowledge that a motorcycle is of a higher power than a scooter and already had a head start from the place of incidence. For PW-6 to catch up on a road with heavy traffic in a scooter, does not seem plausible.

(vi) PW-6 purportedly identified the appellant Pankaj and Amit from police dossier. As noted above, the fact that PW-6 could have chased the assailants and identified them is itself bleak and does not inspire confidence. Further, the judicial TIP of Ankush was conducted on 29th June, 2013 whereas as per PW-23, the arrests admittedly were made on 7th June, 2013 vide arrest memo Ex. PW-23/J.

(vii) Ex.PW-20/A, the PCR information form, mentions Gulran as the informant, who has never been examined by the prosecution.

(viii) As regards the alleged motive, the girlfriend Maneka of deceased Kamal Bansal was not examined by the prosecution. There is no testimony besides that of PW-3 that there was a dispute regarding payment of rent / expenses to appellant Ankush. Even PW-3 denied during his cross examination and volunteered that this fact was disclosed by the appellants to the police. Therefore, the testimony as



to motive is neither forthcoming nor sufficient to establish it as a critical element in the chain of circumstantial evidence.

(ix) As regards the alleged weapon of offence, the recovery of concrete block / stone was from an open place where public had full access. No public witness was asked to endorse the seizure memo and no photography or site plan of the recovery area was recorded. As per the report given by the Forensic Science Laboratory, blood of human origin was found on the concrete stone however no blood grouping could be ascertained. The scientific report also does not confirm or establish that it was deceased's blood found on the stone.

(x) The deceased was admitted in BJRM hospital on 30th May, 2013 at about 2:30 a.m. and thereafter referred to Lok Nayak Hospital but he died 5 days thereafter on 5th June, 2013. A careful perusal of the opinion of PW-22, the doctor who conducted the *post mortem* of the deceased, would show that both the external injuries could also be caused through stick blow / stone blow or through impact of any vehicle or if a person falls backward on a hard surface. Therefore, the prosecution has not been able to conclusively establish that the injuries were homicidal in nature since the possibility that the deceased could have fallen and hurt himself after a scuffle with the assailants is not ruled out. Further, even as per PW2 the eye witness, he saw two people running, one chasing the other. The person who was quarreling, dragged the other to the motorcycle, dropped the injured on the road, boarded the motorcycle on which two persons were already sitting and ran away. Thus, the possibility of the injury on head due to dropping on the road cannot be ruled out.



Conclusion:

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17. In view of the above analysis of evidence, this Court is of the considered opinion that the prosecution has been unable to prove beyond reasonable doubt, on the basis of circumstantial evidence, that the offence was committed by the appellants. The linkages between the evidence presented by the prosecution cannot sustain a finding of guilt beyond reasonable doubt.

18. Accordingly, judgment of conviction of Trial Court dated 28th August, 2019 and order on sentence 29th August, 2019 are set aside. Both these appeals are accordingly disposed of and the appellants are acquitted of the charges framed.

19. Superintendent, Tihar Jail is directed to release the appellants forthwith, if not required in any other case. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for compliance, intimation to the appellants and updation of records.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 18, 2022/sm