



* IN THE HIGH COURT OF DELHI AT NEW DELHI

NEUTRAL CITATION NO: 2022/DHC/003523

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Reserved on. 29th August, 2022

Pronounced on: 9th September, 2022

CRL.A. 1012/2018

RAJU

..... Appellant

Represented by: Mr. S.B. Dandapani, Advocate

versus

STATE

....Respondent

Represented by: Ms. Shubhi Gupta, APP for the
State with Inspector Shri Chand,
P.S. Timarpur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the judgment and order dated 30th May, 2018 passed by the Additional Sessions Judge convicting the appellant for offence punishable under Section 302 IPC and order on sentence dated 5th January, 2018 sentencing the appellant for life imprisonment and fine of Rs. 10,000/- for offence punishable under Section 302 IPC (simple imprisonment for 3 months in default of payment of fine).

The Incident:

2. As per the case of the prosecution on 13th November, 2012, a PCR call was received at PS Timar Pur on which DD No.16B was lodged and assigned to PW-21 ASI Jagdish who along with PW-17 Constable Daya



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Nand reached the place of occurrence at Gali No.3, Jagatpur, Deem, where a person was found lying dead with sharp and deep injury marks on his head, face and neck and blood was found on the floor and the cot. The deceased was identified as Parveen. The statement of father of deceased PW-1 was recorded by PW-21. PW-1 stated that he was running a dairy at this address and that on the intervening night of 11th - 12th November, 2012 deceased had gone to the dairy to sleep after taking dinner and when PW-1 reached the dairy at 5.30-5.40 a.m. on 13th November, 2012 morning he found him lying on the floor in injured condition and blood oozing from his head. Based on the above information, *rukka* was prepared and FIR No. 250/2012 was registered. The accused-appellant who was found sleeping on the roof of the dairy was arrested by the Police and after the completion of the investigation a chargesheet was filed. Charges were framed against the appellant for offence punishable under Section 302 IPC. The accused pleaded not guilty and claimed trial. The prosecution examined 24 witnesses in support of the case, the statement of the accused under Section 313 Cr.P.C. was recorded and no evidence was led in defence.

Submissions by the Appellant:

3. The appellant through his appeal and arguments on his behalf by counsel submitted that he was falsely implicated in this case and that the learned Trial Court had failed to consider that there was no eye witness to the murder. The appellant who was employed at the dairy and sleeping on the roof at the time when the deceased's body was discovered was merely a scapegoat to solve the case. The family members of the deceased were interested witnesses and there were many contradictions in their testimony especially regarding the circumstances



of his arrest. Learned counsel for the appellant contended that it would be bizarre that the appellant was sleeping on the roof of the dairy after committing the crime. There was no evidence of any quarrel between the appellant and the deceased and the appellant has been employed at the dairy for the last two years. Further the weapon of offence i.e *favda* allegedly recovered from the field, vacant plot behind the dairy along with the clothes worn by the appellant did not connect the appellant with the offence and the forensic report did not support the version of the prosecution. The counsel further contended that while appellant was taken by the police on 13th November, 2012, he was medically examined on 19th November, 2012 for which he was accompanied by the police and that medical examination showed injuries on the appellant. Moreover, the alleged weapon is a *favda* with broken handle and such grievous injuries (23 injuries) could not be inflicted by one person. Also, the vacant plot where the *favda* was found, as per the site plan, would show that there was 10-11 feet wall and therefore, access to the plot would be quite difficult and it would be impossible that the appellant first committed murder in such a brutal manner and then went to the vacant plot and hid the weapon and his clothes, came back and changed and then slept on the roof just above where murder had been committed. The counsel further submitted that the dog squad which was called to the spot did not point to the appellant or trace his blood-stained clothes or the weapon of offence.

Submissions by the Prosecution:

4. Learned APP on behalf of the prosecution submitted that the appellant was rightly convicted since exhibits Ex. PW-9/A and Ex. PW-9/B which was a pant and one full sleeve shirt were detected with blood



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which was examined and as of being O group which was the same blood group on the *dari* and the slippers at the place of occurrence as well as the stained *favda*. Learned APP further submitted that family members testified that the appellant was working in their dairy and used to live in the dairy and was the only employee working in the dairy. It was also contended that the appellant did not explain in the statement recorded under Section 313 Cr.P.C. how there were 23 fatal injuries on the deceased. He ought to have explained facts relevant to the cause of the death since Section 106 of the Indian Evidence Act would apply to the case. Learned APP relied upon the evidence of PW-2 and PW-7 who stated that the appellant had been quarrelling with the deceased on the issue of not providing him bedding and was threatening to kill the deceased.

The Evidence:

5. The evidence, relevant and necessary for appropriate appreciation of contentions of the parties, as gleaned from the record is as under:

(i) PW-1 Sh. Mahender Singh, the father of the deceased testified that the wife of the deceased had died due to cancer prior to his murder and the deceased has five children. The deceased used to sleep in the dairy which was run by PW-1 and after the death of his wife the deceased had started consuming liquor. On 12th November, 2012 the deceased had gone to sleep in the dairy at around 8:00 p.m. after taking dinner and when PW-1 went in the morning on 13th November, 2012 at about 5:30-5:40 a.m. to give tea to the deceased, he noticed the dead body of his deceased son. He immediately rushed to his house to inform the other family members and his son Nitin made a call to the PCR. As regards the appellant, whom PW-1 identified, it was stated that he was



working at the dairy for about two years prior to the time of death and used to live at the dairy and was served food by PW-1's family. PW-1 also stated that the appellant used to consume sulfa/ganja and sometimes quarreled with deceased son. In his cross-examination, PW-1 clarified that his deceased son used to reside permanently at the dairy and used to visit the house only sometimes and that the appellant was the only employee at the dairy at the time of the incident. He further stated that the appellant was present in the dairy when he went with tea in the morning for the deceased and used to sleep on the roof of the dairy which was about 40-50 Sq. Yards in area. He stated that there was no permanent and fixed staircase to go to the roof and a wooden ladder was used. He stated that the appellant was found sleeping on the roof when PW-1 reached the dairy and on seeing the body of the deceased he called the appellant and when he came down PW-2 asked him what had happened. As per PW-1, appellant was drunk and did not reply.

(ii) PW-2, Sh. Nitin Kumar the brother of the deceased testified that when his father informed them about the discovery of dead body of the deceased on 13th November, 2012, he reached the dairy and made a call to the PCR. He testified that around 8:30 p.m. on 10th November, 2012 he had received a call from his wife that appellant had visited their house and was angry for the reason that deceased was not providing clothes to him for sleep and that he would kill the deceased. In his cross-examination he testified that he did not see the appellant present at the dairy on 13th November 2012 and when he came back to dairy he was apprehended and that PW-2 did not remember the time. He further stated that he had not informed his deceased brother about the telephone call allegedly received by his wife about the threat given by the appellant to



kill the deceased, nor did he inform his father PW-1 or younger brother PW-4. PW-2 stated that the appellant had never threatened the deceased in his presence. He later denied the suggestion that the appellant had visited their house on 12th November, 2012.

(iii) PW-4 Vikas, the younger brother of the deceased testified that around 6.00 a.m. on 13th November, 2012 when his father informed them that the deceased brother was lying in the dairy they rushed towards the dairy. He stated that the appellant was sleeping on the roof of the dairy and later when police and Crime Branch Team came, the dog squad was also called and the appellant was apprehended. He later stated that on 19th November, 2012, six days after the incident Inspector R.K Meena along with other police staff came at the dairy along with the appellant and started a *sustained interrogation* when appellant admitted of committing murder of the deceased.

(iv) As per PW-4, appellant got recovered the *favda* used in the crime and the blood-stained clothes from the bushes at the vacant plot adjoining the dairy, which were seized by the police. In his cross-examination PW-4 stated that no quarrel ever took place between the appellant and the deceased. He further stated that when they had reached dairy in the morning on 13th November, 2012 the appellant had come down from the roof upon being called by the father PW-1. PW-4 upon being further cross examined stated that the appellant had in fact was apprehended from the spot of the incident on 13th November, 2012 itself. He further testified that the plot from where the recovery was affected was owned by his uncle Tejpal and surrounded by a boundary wall. The police had not taken any photographs when the recovery was being effected and PW-4 alone was with the police personnel at the time of



such recovery. No public witness from the neighborhood have been asked to join at the time of recovery while there were 10 to 15 people residing near the dairy.

(v) PW-7 Smt. Poonam, wife of PW-2 testified that wife of the deceased was her sister and after her death the children of sister and the deceased lived with her, while the deceased used to live in the dairy and the family used to send food for him and that he was a habitual drinker. On 12th November, 2012 at about 8-8:30 p.m. the appellant had come to their house demanding bedding for sleep and stating that bedding was taken by the deceased. PW-7 stated that the appellant was in drunk condition and was abusing the deceased and was threatening to kill him. She disclosed this fact to her husband PW-2 the same night. In her cross-examination she stated that the appellant had never in the past come to meet her and therefore she never had a conversation with him and that the appellant was working at the dairy for the last two or so years. She stated that the appellant used to visit the house of father in-law PW-1 regularly.

(vi) PW-8 the Senior Scientist Officer from the Forensic Science Laboratory (FSL) Rohini, Delhi testified that he had examined the viscera of the deceased and submitted his report PW-8/A which concluded that there was no alcohol, tranquiliser or poison detected in the viscera and pieces of the body of the deceased. PW-9 is a doctor who conducted the *post mortem* of the dead body testified that when he had conducted the *post mortem* at about 10.00 a.m. on 14th November, 2012 the deceased was wearing a black colour t-shirt and bluish full pant and clothes were stained with blood and *rigor mortis* had passed. As per his report exhibit PW-9/A, 23 external injuries were found including 12



lacerated wombs, six abrasions and five bruises on various parts of the body including scalp, head, face, ears, neck, arms and shoulder. The *post mortem* for internal examination showed a fracture of the mandible and of bilateral maxillary bone besides, sub scalp bruise and a depressed fracture of left *fronto parieto* temporal bone. There was 40 cc of fluid and clotted blood present in the cerebral hemisphere and about 1700 cc of fluid present at right side of neck. The right jugular vein was found to be lacerated with multiple contusions. In the opinion of PW-9 all injuries were *ante mortem* in origin and the cause of death was hemorrhagic shock due to laceration of the right jugular vein consequent upon blunt force impact sufficient to cause death in ordinary course of nature.

(vii) PW-17 Constable Daya Nand, testified that on 13th November, 2012, on receipt of DD No.16-B he reached at the place of occurrence to find the deceased lying on the ground with one plastic slipper having blood stains lying near the cot. PW-21 ASI Jagdish who had accompanied him called the crime team to inspect the place and a *rukka* was prepared on the basis of statement of PW-1, the father of the deceased and an FIR was registered and the investigation was handed over to PW-24, Inspector R.K Meena. In his cross-examination PW-17 stated that blood-stained spade was recovered at the spot in his presence but then he said that it was not seized in my presence.

(viii) PW-18 SI A.K Singh joined the investigation on 19th November, 2012 and testified that pursuant to the arrest of the appellant and his disclosure, they were led by the appellant behind the said dairy from where one spade having blood stains, mud stains and cow dung stains were recovered which was accordingly sealed and seized. The appellant also recovered one shirt having check prints and blue colored *pyjama*



both having blood stains which was also sealed and seized. In his cross-examination he stated that spade was recovered at about 9.00 p.m. and the place of recovery was open and accessible to the general public. He stated that the place of recovery was neither photographed nor was the IO carrying a kit with gloves for recovery to preserve finger prints. He stated that no public person had come to the place of recovery. PW- 21 ASI Jagdish Singh who had reached the place of occurrence along with PW-17 stated in his testimony that one blood-stained shirt and one cloth mat having blood stained lying on the cot were seized along with the plastic slipper by the police team and that he was also part of the team which recovered the weapon of offence and the clothes worn by the accused from the vacant plot. In his cross-examination he stated that there was no gate in the vacant plot from where the recovery was made, but it was bounded by boundary wall and that they had not made any inquiry regarding the owner of the said vacant plot in his presence.

(ix) PW-24 Inspector R.K Meena (the I.O) testified that he reached the place of occurrence on 13th November, 2012 and he had lifted the blood lying on the floor, a broken brick near the pillar which was also blood stained, the blood-stained shirt kept on the face of the deceased, blood-stained *dari* kept under the head of the dead body and blood-stained plastic slipper. On 19th November, 2012, he arrested the appellant and pursuant to a search the weapon of offence and the clothes worn by the appellant at the time of crime were recovered. PW-24 further testified that on 20th November, 2012 the appellant was taken out from the lock up and taken to Aruna Asaf Ali Govt. Hospital, Delhi where he was medically examined and some old injuries were found on his person and he was referred to Forensic Department for further opinion. In his cross-



examination PW-24 stated that there was common wall of the dairy at the place of recovery which was 10 to 11 feet high and was not easy to jump over the said wall by a person. No permanent stair case was installed for going to the roof of the dairy from the ground. He stated that he had not made any inquiry regarding the ownership of the plot from where the recovery was effected. He stated that the boundary of the said plot was not covered with a wall from all four directions and there was only the wall of the dairy on one side of the plot and it was otherwise vacant.

(x) PW-14 Dr. Priya Ranjan, was posted as Medical Officer at Aruna Asaf Ali Govt. Hospital, Delhi testified that on 19th November, 2012 he had medically examined the appellant and found that he had six old injuries under process of healing which he had reported in his examination report Ex. PW-14/A. The examination report though has a date of 20th December, 2012. PW-13, the doctor who was specialist in forensic medicine gave his opinion on the injuries present on the body of the appellant, when he was presented by the police, in his report PW-13/B. This examination was conducted on 20th November, 2012 and PW-13 opined that the injuries present on the body were by caused by blunt force impact and duration was around one week.

Analysis

6. On the basis of the assessment of the evidence on record and contentions of the parties, this Court is of the considered view that the prosecution has been unable to prove its case of appellant's guilt beyond reasonable doubt for *inter alia* the following reasons:



(i) It was quite evident from the ~~post mortem~~ ^{NEUTRAL CITATION NO: 2022/DHC/003523} report that the death of the deceased was homicidal in nature. There were about 23 external injuries on the body and serious internal injuries, which have been stated in brief above. The opinion of the doctor conducting the *post mortem* was categorical that death was due to haemorrhagic shock due to laceration of right jugular vein consequent upon blunt force sufficient to cause of death in ordinary course of nature.

(ii) There were no eye witnesses to the incident and therefore circumstantial evidence will need to be assessed carefully. As per testimonies of PW-1 (the father of the deceased) and PW-4 (the brother of the deceased), the appellant was found sleeping on the dairy just above where deceased was found, and not being visible from the ground floor had to be called downstairs by PW-1 when they discovered the dead body. PW-2 (the other brother of deceased) was vague in his deposition regarding the presence of the appellant on the roof and said that he had not seen him at the dairy when he reached there but he also could not tell the time when he reached the dairy after knowing about the incident. The presence of the appellant therefore at the first floor of the dairy and that he was sleeping in the morning of 13th November, 2012 at 5.30 a.m. or so when PW-1 arrived at the spot stands proved from the testimonies of PW-1 and PW-4 duly corroborated by the version of PW-24 that when he reached the spot appellant was present.

(iii) There are serious and glaring discrepancies in the testimony of prosecution witnesses regarding time, date and the location when the appellant was apprehended by the police. The following extracts from the testimonies would make it evident that there was something amiss in the circumstance relating to arrest of the appellant:



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(a) PW-1, the father of the deceased states that *“accused Raju was running in the fields when he was apprehended by the police official at about 8:00 a.m. on the day of incident and straightaway took him to the police station. After this, police also apprehended 2-3 persons from the neighbourhood and took them to the police station after a gap of half an hour after arresting Raju”*.

(b) PW-2 (brother of the deceased) stated that *“the accused Raju was apprehended by police when he himself came to dairy. I do not remember when Raju was apprehended by police. After that one rickshaw-puller was also arrested by the police and both Raju and rickshaw-puller were taken to police station. Nobody else was arrested/apprehended by the police from the dairy”*.

(c) PW-4, the other brother of the deceased stated that *“the police arrested Raju at 8:30 a.m. from the field. I could not see anybody else with the accused when he was arrested from the field by the police”*.

It is quite evident from these testimonies that even though the formal arrest of the appellant was shown as 19th November, 2012, the appellant had been apprehended on 13th November, 2012 itself.

(iv) Also noteworthy is the discrepancy in the testimony of PW-4 relating to alleged confession by the appellant to the police, since in one part of his testimony he states that *“the police had taken the deceased to the hospital at 8:30 a.m. Raju had confessed in my presence to the police on the spot that he had killed my deceased brother. There were more than hundred public persons on the scene of the crime when*



accused Raju arrested from the spot”, and in another part he states that on 19th November, 2012 the police arrived with the appellant at the dairy and “the police had interrogated accused Raju for about half an hour in my presence at the spot”. This testimony of PW-4 is in stark contrast to the testimony of PW-21 ASI Jagdeep Singh, who states that the appellant was arrested on 19th November, 2012 by PW-24 IO R.K. Meena and his disclosure statement was recorded. PW-24, IO R.K. Meena also testifies that “the appellant confessed his guilt in presence of PW-4 on 19th November, 2012 and was thereafter arrested”. What is also strange is that in the testimonies of PW-17 and PW-21, the two members of the police team that there is no mention of the presence of the appellant on 13th November, 2012 when they went to the place of incidence. It seems therefore that while the family of the deceased have testified that the appellant was present on 13th November, 2012, confessed his guilt and was arrested on that day itself, the police witnesses seem to conspicuously omit that fact in their depositions and instead state that not only did the appellant confess only on 19th November, 2012 but was also arrested on that day.

(v) What is also highly suspicious is the fact that the appellant, after having been arrested by the police, was produced in the company of PW-24 at Aruna Asif Ali Govt. Hospital, where PW-14 on examination noted that injuries were present on the body of the appellant caused by blunt force impact and the duration of the injuries were “around one week” in duration. From the time of incident on 13th November, 2012 to the examination 20th November, 2012, is exactly a time of one week and the appellant having been found at the place of crime, even though



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sleeping on the roof above, had been apprehended on 13th November, 2012 itself.

(vi) It has been stated by PW- 4 that the dog squad was also taken to the spot and there was nothing on record to state if the dog squad led the police team to the appellant or to the recovery of the weapon or to any other article. However, as per the prosecution, the recovery of the weapon was from a vacant plot adjoining the dairy itself 6 days after the incident on 19th November 2012 and after the police seem to have apprehended the appellant on 13th November 2012 itself, the plot being open and accessible to the general public with no boundary wall around it (as testified by PW-24 in his cross examination). Considering that the date, time and place of arrest of the appellant is suspect and under a cloud, the alleged recovery, without any independent public witness to the recovery, would have to be treated with great caution. The recovery was done in the night about 9.00 p.m. The FSL report PW-23/A and PW-23/B which examined the various seizures made by the Police found the blood group “O” on the *dari* which was next to the dead body including the same blood group on slippers, pants and t-shirt which the deceased was wearing. Ex. 9a and 9b were noted in the FSL report as “*one pant having brown stains*” and “*one shirt full sleeve having brown stain*” (the clothes recovered at the instance of the appellant), were found as having “O” group blood. However, as per the testimonies of the police team including IO PW-24, what was recovered from the vacant plot was a shirt and blue color *pyjama* (not a pant as stated in the FSL Report). Further, the presence of “O” blood group blood on these two exhibits does not in any way implicate the appellant short of any proof that they were indeed his clothes and he had worn them that night. PW-24 in his



testimony states that the recovered shirt and blue color pyjama having blood stains were identified by the brother Vikas PW-4 as the same clothes being worn by the appellant in the night of 12th November, 2012. However, there is nothing in the testimony of PW-4 to suggest that PW-4 had indeed met or seen the appellant on the night of 12th November, 2012 to have confirmed that he was wearing the same clothes as were found in the vacant plot. The identification of the clothes therefore as those of the appellant stands uncorroborated.

(vii) The only other aspect canvassed by the prosecution is the allegation of motive. Even as regards motive despite PW-7's testimony that the appellant had threatened killing the deceased, there is also the testimony of other family members including PW-4 who said that no quarrel ever took place of the appellant with the deceased in his presence. It is also surprising that if PW-7 indeed had heard and witnessed the threat of the appellant (and told PW-2 her husband of this) none of them chose to warn the deceased of this that night nor any other family member including PW-1 or PW-4. Notably it was not abnormal for either the deceased to be sleeping in the dairy (since as per the testimony of the family members he used to reside there), as also the presence of the appellant at the dairy since he was employed for the last 2 years and used to stay there. Even the learned Trial Court concluded in Para 50 of the impugned judgment that *"in my view, the evidence of motive adduced by prosecution is not strong enough to base conviction on it"*.

(viii) As per testimonies presented by the prosecution, the appellant was found sleeping on the roof of the dairy in the morning of 13th November, 2012 when the body was discovered and not found with any blood-



stained clothes. Therefore, as per the theory of the prosecution he would have committed the murder in the intervening night of 12th and 13th November, 2012, then accessed the adjoining plot, left the alleged weapon of offence in the vacant plot and his blood-stained clothes and then changed his clothes into a fresh set of clothes and gone back to sleep on the floor above where the dead body was. Notwithstanding that the case presented by the prosecution does not present a cogent and unbroken chain of circumstantial evidence to prove the guilt of the appellant, this conduct of the appellant would have been highly unnatural.

(ix) The learned Trial Court ought not to have drawn a presumption under Section 106 of the Indian Evidence Act (*reference be made to Para 78 of the impugned judgment*) against the appellant, that the appellant should have explained how the deceased had sustained 23 injuries on the body. The appellant was not sleeping with the deceased but on the roof top separately with no permanent stairs to the roof top but just a wooden ladder.

(x) The accused in his statement recorded under Section 313 Cr.P.C. in answer to question no.1 did state categorically that “*on the day of the incident, I had slept at around 7:30-8:00 p.m. and after that I woke in the morning came to know about the murder. I do not know anything else about it*”. The appellant had therefore fully explained his position regarding his presence at the roof of the dairy on that night. The burden was therefore on the prosecution to prove that despite the statement of the appellant, the appellant was guilty of the crime beyond reasonable doubt. None of the prosecution witnesses have testified that the clothes being worn by the appellant at the time when he was called down from



the roof, being woken up in the morning of 13th November, 2012, were blood-stained in any manner.

(xi) This Court notes the submission of the counsel for the appellant relying upon *Satye Singh and Anr. V. State of Uttarakhand* (2022) 5 SCC 438 that application of Section 106 of the Indian Evidence Act to place a burden of the accused does not relieve the duty of the prosecution to establish the guilt beyond its reasonable doubt. The accused only thereafter has to establish facts which are pre-eminently or exceptionally with his knowledge and the burden cannot simply shift on the accused. The accused certainly cannot prove that he did not commit the murder because “*who would know better than whether he did or did not*” [Para 20 of *Satye Singh (Supra)* quoting from *Shambu Nath Mehra vs. State of Ajmer*, AIR 1956 SC 404]. The prosecution has to prove the basic facts and the burden cannot shift on the accused without cogent evidence being adduced by the prosecution to prove the entire chain of circumstances.

(xii) As a footnote, this Court notes that the IO PW-24 states that when he made the enquiry from the appellants along with others at the dairy on 13th November 2012, the day of the incident, appellant had also named one Munshi Ram with whom the deceased had a quarrel 2-3 days back but when PW-24 went to his house he was not found present. There is no further evidence of any investigation by the Police relating to Munshi Ram thereafter. With the links in this chain of circumstantial evidence not being established, this case of the prosecution stands on an infirm and unstable footing.

**Conclusion**

7. In the light of the above analysis, this Court is of the considered opinion that the prosecution has been unable to prove beyond reasonable doubt that the offence was committed by the appellant. Accordingly, the judgment of conviction of trial court and order on sentence is set aside. The appeal is accordingly disposed of and the appellant is acquitted of the charges framed.

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

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 09, 2022/rk