



* IN THE HIGH COURT OF DELHI AT NEW DELHI

NEUTRAL CITATION NO.: 2022/DHC/002316

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Reserved on: 12th July, 2022

Pronounced on: 21st July, 2022

CRL.A. 823/2017

RAMESHWAR @ RANU

..... Appellant

Represented by: Mr. Anwesh Madhukar,
Advocate (DHCLSC) and
Ms. Prachi Nirwan,
Advocate

versus

STATE

..... Respondent

Represented by: Mr. Ashish Dutta, APP
for the State.

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

J U D G M E N T

1. By this appeal the appellant assails the order and judgment dated 15th February, 2016 whereby he was convicted for offence punishable under section 302 IPC and has been awarded rigorous imprisonment for life vide order on sentence dated 22nd June, 2016 and to pay a fine of Rs.20,000/- and in default thereof, to further undergo simple imprisonment for six months.

The Incident:

2. As per the prosecution, on the intervening night of 31st May, 2012 and 1st June, 2012 at about 1:30 AM, victim (deceased) was



assaulted by the appellant (accused) with an intention to kill and thereby caused his death. This crime was committed in front of Reliance Fresh Metro Food Bazar, 86, Local Shopping Complex, Vivekanand Puri, Sarai Rohilla, Delhi. On 3rd June, 2012, after completion of investigation, the appellant was arrested. Learned Trial Court framed charge under Section 302 IPC to which the appellant pleaded not guilty and claimed trial.

3. Prosecution examined 24 witnesses in support of its case; statement of appellant was recorded under Section 313 Cr.P.C.; no evidence was led in defence by the appellant.

Submissions by the appellants:

4. Learned counsel for the appellant submitted that the prosecution case suffers from many flaws and in order to substantiate the point, the contentions pressed by the appellant are, *inter alia* as under:

i) Learned Trial Court failed to appreciate that on account of various lacunae, the prosecution could not prove its case beyond reasonable doubt and benefit of doubt ought to have been given to the appellant.

ii) The testimonies of some of the prosecution witnesses viz. a viz. PW-2, PW-3, PW-5 ad PW-10 were inconsistent and did not match / support each other's version. Particularly, PW-5 did not state that he had seen the appellant committing the offence and that even when he was chasing the appellant, he could not see him due to darkness in the street.

iii) Since the murder was a consequence of a 'spur of a moment', at best it was a single blow with no previous enmity, at the very least,



Exceptions 1 and 4 to Section 300 IPC would apply but despite that, the appellant has already been incarcerated for almost 10 years. The Learned Trial Court has wrongly convicted the appellant under Section 302 IPC rather than Section 304 IPC and thus, the impugned order be set aside.

iv) The appellant had been reported to be drunk at the time of alleged incident, per testimony of prosecution witnesses and therefore, he could not possibly have had an intention to murder in a scuffle that broke out suddenly. Since as per the case of prosecution itself the appellant was drunk, he could not differentiate between right and wrong in an inebriated condition.

v) The Investigating Officer did not pick up any finger prints from the alleged bottle with which murder is claimed to have been committed and hence, there is no scientific proof to corroborate the prosecution version.

vi) The weapon of offence was not recovered at the instance of the appellant nor was it produced before the learned Trial Court.

vii) Prosecution witness was not asked to explain as to why the incident was not reported immediately to the police despite seeing the dead body or that why he left the spot without informing anyone about the dead body.

viii) While there was record of seizure of floor mat of the vehicle, the witness did not state that it was seized in front of him.

ix) PW-10, the doctor from the Department of Forensic Medicine, stated that pieces of broken glass were found inside the body of the deceased but he did not identify the bottle which was found at the



crime scene. The doctor did not give any opinion regarding the number of weapons which might have been used to cause injuries; in fact, he stated that all the injuries could be possible by single hand and blunt pointed weapon with blunt edge.

x) PW-5, the helper working on transport truck like the deceased, had ran off from the scene of quarrel to call his employers PW-1 and PW-3 and he himself had not seen injuries being inflicted to the deceased by the appellant.

xi) At the time of recording of statement under Section 313 Cr.P.C., no suggestion was put to the appellant that the deceased died because of assault with broken beer bottle which could have afforded an opportunity to the appellant to put forward his version, as known to him.

xii) The date of arrest was 2nd June, 2012 but forensics had not been sent till that date thereby suggesting that incriminating material must have been planted.

Submissions by the Prosecution:

5. Learned APP on behalf of the State countered the submissions of learned defence counsel by stating *inter alia* that:

(i) As per PW-23, the policeman who accompanied the team to the crime scene, had specifically stated that the Investigating Officer (IO) had lifted blood on gauze, broken pieces of beer bottle, blood-stained cemented floor and earth control and all the samples were duly sealed and seized vide seizure memo Ex. PW-3/B. This was duly verified by the testimony of PW-24, the IO himself.



(ii) Circumstantial evidence of 3 witnesses who had seen the appellant running away from the crime scene was important and hence the theory of the last seen would be more than substantiated.

(iii) No suggestion was put to PW-5, the helper, who was with the deceased before the crime was committed, that it was him who had inflicted injuries which led to the death of the victim-deceased and therefore, there was no possibility of injuries made by anyone else other than the appellant.

Analysis:

6. Learned counsel for the parties were heard and Trial Court record was perused. It would be appropriate to appreciate testimonies of prosecution witnesses in a broad chronological sequence, as under:

i) PW-5 stated that he was a helper with transport vehicles (Tata Magic) of PW-2, son of PW-1. On 31st May, 2012 he was present in front of Reliance Fresh Metro Food Bazar, 86, Local Shopping Complex, Vivekanand Puri, Sarai Rohilla, Delhi where the transport vehicle was parked. He saw the appellant sitting on nearby bench consuming liquor. PW-5 further stated that he was lying on the rear seat of the vehicle bearing Registration No.5408 while the victim (since deceased) was sitting behind the driver's seat. PW-3, brother of PW-2, warned the victim to be careful from the appellant since the appellant was in habit of quarrelling after consuming liquor. Thereafter, on hearing some noise, PW-5 got up and saw that the appellant was quarrelling with the victim (deceased) whereupon he rushed to the house of PW-2 to inform them immediately about the fight. PW-3 and PW-1 followed PW-5 to the spot and was later joined by PW-2 as well. When they reached the spot, the appellant had



already ran away from the spot and saw the victim (deceased) having injuries in abdomen and neck who was then taken to the hospital in the same transport vehicle. Later on, police was also informed by PW-2 at 1:30 AM and the police arrived at the crime scene at about 2:00 AM.

ii) PW3, the son of PW-1 who was the employer of PW-5 testified that on 31st May 2012 at 12 midnight, he was in his Tata Magic bearing no. DL2W 5408 and parked the same in front of Metro Food Bazaar. The other vehicle Tata DL2W 5420 was also stationed there. The appellant was sitting there on *takht* (bench) and was consuming liquor. The deceased who was also helper in truck with the transport vehicle was also present there. PW-3 specifically warned the deceased to be careful from the appellant as he was used to committing theft and quarrelling. After giving the warning, PW-3 went to his house to sleep. At about 1:30 – 1:45 AM, PW-5 came to their house and reported that the appellant was quarrelling with the deceased and had pressed his neck in the Tata Magic vehicle. PW-3 rushed to the spot and saw that the appellant was coming out of the vehicle and PW-3 started running away upon which PW-3 chased him.

iii) PW-1, the father of PW-3 also reached and joined the chase as well as PW-2, brother of PW3. However, the appellant succeeded in running away and they returned at the spot to see the injured deceased lying in the vehicle and screaming. They noted the injuries on the neck and abdomen. PW-1 called the PCR and the deceased was shifted to the hospital in the same vehicle but the deceased was declared ‘brought dead’ at the hospital.

iv) PW-3 testified that the police team inspected the vehicle and lifted the blood stained blanket, pieces of broken glass bottle having



blood stains, blood-stained mat and sealed the same with his signatures. Thereafter, the IO went to the spot of occurrence and lifted blood from the spot, one blood stained empty whisky bottle and blood stained earth control and seized the same with PW-3's signatures. He also identified the broken bottle as well as the piece of glass which were lifted from the spot, but he stated that the broken pieces of the floor were not lifted in his presence. In his cross examination he confirmed that he had seen that the accused when he was running but also mentioned that due to darkness he could not see as to who was running.

v) PW-1, the father of PW-3, substantially corroborated the narrative given by PW-3 confirming that he saw the appellant running away and his son PW-1 chasing him, whereupon he also joined the chase but the appellant had succeeded in running away. In his cross examination he confirmed that he saw the appellant running away and also called him to stop. He denied the suggestion that any injury was caused by the appellant to the injured in his presence.

vi) PW-2, brother of PW-3 also substantially corroborated the narrative given by PW-3 and confirmed that when he reached the spot upon being called by PW-5, he saw his brother PW-3 and his father PW-1 running after the appellant.

vii) The constable posted at Central PCR confirmed that upon having received the information at 2.02 AM in the night of 31st May, 2012 and 1st June, 2012 to the effect that in front of Reliance Fresh Shop someone had beaten up the helper and had run away and the helper was unconscious.



viii) PW-10, CMO, Department of Forensic Medicine, Deem, pursuant to external examination, testified that there was an abdominal wound of size 5cm x 0.6cm with *“the margins of the wound are ragged with lower margin bevelled. Omentum from the abdominal cavity is protruded out through the opening with broken glass pieces embedded in it”*. He stated that there were six other external injuries while upon an internal examination, he confirmed that the omentum was perforated, was protruding out and had embedded open glass pieces. In his opinion, the death of the deceased was due to the haemorrhage and shocked consequent to the injuries which were *ante mortem* in nature and the external injuries could have been caused by the forceful thrust of a hard blunt and pointed object/weapon which would be sufficient to death in the ordinary course of nature. In his cross examination, he confirmed that all the injuries would be possible by a single hard and blunt and pointed weapon with blunt edges.

ix) PW-24, the IO designated to investigate this crime, stated that the transport vehicle in which the deceased had been brought to the hospital was inspected and a blanket with blood stain was retrieved and also the broken pieces of beer bottle with stains. He also lifted the floor map of the vehicle which had cut stains and picked up the blood with the gauze piece and sealed it. There was blood lying on the cemented floor which was also picked up with a gauze including pieces of cemented floor without blood. He also testified relating to the arrest of appellant from near Sarai Rohilla Railway Station pursuant to his identification by PW3 and on the basis of information received from a secret informer. Blood stained clothes of appellant were provided by him from Najafgarh drain near Uttam Nagar area and were duly sealed.



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x) PW-23, the Sub. Insp. posted at PS Sarai Rohilla arrived at the place of occurrence post the PCR call. He stated that the IO lifted the blood on gauze from the blood on mat of the vehicle as also lifted the broken pieces of the beer bottle which were sealed along with the blood-stained mat. He stated that the blood-stained cemented floor and earth control were also lifted and sealed by the IO.

xii) Pursuant to the *rukka* based on the statement of PW-3, FIR was recorded on 1st June, 2012.

xiii) The examination report of the FSL confirmed that DNA profile generated from the blood stained bottle and glass pieces extracted from the body of the deceased were similar to the DNA profile of the blood sample of the deceased. Further, DNA profile generated from the clothes of the appellant and shirt of the deceased matched. Also, the DNA profile from the blood sample of the appellant, sample of DNA profile generated from vehicle mat was mixed and matched with both the DNA profiles of the appellant and the deceased.

Conclusion;

7. Pursuant to meticulous examination of the documents on record and evidence, this Court is of the opinion that the prosecution has successfully proved its case beyond reasonable doubt. It has been established, with the assistance of evidence, both ocular and medical that the crime of murder of the deceased was indeed committed by the appellant, for *inter alia* following reasons:

a. There was no major or substantial contradiction between the testimonies of prime witnesses' viz. PW-3, PW-2, PW-1 and PW-5 and all of them have deposed on almost similar lines. Further, all of



them were either present at the spot when the alleged crime had taken place or had arrived there just when the appellant was trying to flee the crime scene.

b. There was no major difference in ocular evidence as provided by PW-3 who first arrived at the spot pursuant to the panic call of PW-5 and chased the appellant and PW-1, the father of PW-5 also joined chase which was ultimately a futile exercise. Also, PW-3's testimony is also in line with what he had stated in rukka, which was in fact a more detailed version.

c. The fact that PW-5 had not seen the appellant committing the offence, is not relevant since it was clearly stated by him that PW-5 rushed to call PW-1, PW-2 and PW-3, upon witnessing the appellant quarrelling and attempting to strangle the victim (deceased).

d. It was clear from the nature of evidence that the injuries inflicted upon the victim (deceased) were sufficient to cause death and that the appellant had indeed intentionally inflicted injuries. From the narratives of PW-3 and 5 it is apparent that the deceased had not provoked the appellant in any manner, rather it was the appellant who was in habit of picking up quarrels after consuming liquor. No witness has reported that it was the victim (deceased) who had triggered or picked up quarrel with the appellant.

d. Further, there was no provocation, nor any evidence of the same and neither was there any sudden fight in heat of passion whereupon a sudden quarrel ensued. Therefore, Exceptions 1 and 4 of Section 300 IPC would not apply. In fact, the appellant did take undue advantage and he acted in cruel and unusual manner by entering the transport vehicle and strangulating him and thrusting broken bottle of beer into



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the abdomen of the victim (deceased). Also there was no single blow which had accidentally led to the fatality amounting to culpable homicide. Rather the deceased body is reported to have multiple injuries, clearly showing that the appellant assaulted the victim with premeditated intent to kill. It is well established by judicial precedents that premeditation can occur on the spot, at that moment and does not necessarily have to be far prior in time.

e. The fact that the appellant was drunk at the time of the incident, and hence he was deprived of 'power of self control' would not itself provide any toehold to defence to plead a Section 304 IPC conviction as against Section 302 IPC.

f. Being under influence of any intoxicating substance cannot possibly given an excuse to the offender that to state that the crime committed was less grave, particularly when there was no apparent provocation by the deceased.

g. In fact, the only suggestion about the appellant's repeated abuse that since the victim (deceased) had picked up fight with him and therefore, he would kill him is denied by PW-5, the co-helper nor was that put to PW-3 by the defence counsel. Therefore, if at all, it could not be inferred from that abuse that the deceased had picked up a quarrel with the appellant or if there was some grave provocation.

h. The medical evidence in this regard confirms that the DNA match between the blood samples of the deceased with that of the appellant, as found in his clothes as well as on the floor mat of the vehicle.



i. Presence of the appellant at the crime scene on the very night is confirmed by the testimony of PW-3 and also at 1:30 to 1:45 AM when PWs-1, 2 & 3 rushed to the spot, the appellant was running away.

j. Even assuming for the sake of arguments that the appellant was not the perpetrator of crime, clearly there was no one else at the time of the commission of crime or when the deceased was found lying grievously injured inside the transport vehicle to suggest that it would have been someone else who could have been the perpetrator. Even the accused appellant does not suggest so.

k. The only people who arrived at the sport were PWs-1, 2, 3 and 5. DD entry also indicates the same and is also confirmed by the testimonies of policemen on duty on that date that a call had been made at 2:05 AM stating that the deceased had been attacked and was lying injured and that the assailant had run away. It would be difficult to presume that in such a short span of time between the crime and reporting, the witnesses could have made out a case against the appellant by some collective evil design to implicate him in a murder.

l. The opinion by the doctor from the Department of Forensic Medicine clearly stated that the internal and external examination of the body of the deceased had broken pieces of glass inside the body and hence, it is clear beyond doubt that the fatal injuries were caused by the beer bottle. This also links to the fact that the appellant was seen sitting since the midnight consuming liquor in the close proximity of the victim (deceased).

m. The description of possible weapon by the medical doctor, therefore, corroborates the fact that beer bottle is the possible weapon



which can be both a blunt (in the shape of the complete unbroken bottle) and a sharp edged weapon (as a broken bottle).

n. The assertion of the learned counsel for the appellant that no suggestion put to the appellant that the deceased died because to the assault with a broken beer bottle and thereby denying him of an opportunity to put forth his version, is unwarranted. It is sufficient that the incriminating circumstance in this regard including the post mortem report was put to the appellant while recording statement under Section 313 Cr.P.C. and the appellant did not give any alternate version.

o. As regards the contention of the learned counsel for the appellant that forensics were not sent till the date of arrest, i.e., 2nd June, 2012, this Court is of the view that it is quite irrelevant since as per the testimonies of the IO and other police personnel, seizures were made on the night of incident itself. Therefore, the suggestion that the incriminating material could have been planted is not a valid defence in light of collective reading of testimonies of all the PWs.

8. Having arrived at the above conclusion on the evidence, this Court is of the considered view that the version of the prosecution is duly supported by ocular evidence, medical reports and chain of circumstances which prove beyond reasonable doubt that the alleged crime has been committed by the appellant. Consequently, this Court found no error in the impugned judgment of conviction and order on sentence.

9. Appeal is accordingly dismissed.



10. Copy of this order be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellants and updation of records.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 21, 2022/sm

