

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

% Reserved on: 11th January, 2023
Decided on: 6th January, 2023

+ **CRL.A. 860/2019**

ARUN CHAUHAN Appellant

Represented by: Mr. Ajay Verma, Advocate

versus

STATE Respondent

Represented by: Mr. Prithu Garg, APP for State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By way of this appeal, the appellant challenges the judgment of Trial Court dated 06th April, 2019 convicting the appellant for murder of one Akash (“deceased”) by stabbing him with knife; and also the order on sentence dated 15th April, 2019, whereby, the appellant was directed to undergo rigorous imprisonment for life along with fine of ₹5,000/- in default whereof, simple imprisonment for six months for offence punishable under Section 302 of the Indian Penal Code, 1860 (“IPC”).

2. In nutshell facts of the case are that the deceased was the tuition teacher of appellant’s son and during the Diwali days in the year 2014, the appellant suspected his wife to be in a relationship with the deceased, whereafter on 15th November, 2014, the appellant took the deceased to the area between Kadampuri Sewage and Cemetery, beneath an under-construction metro line at Kadampuri and inflicted multiple stabs resulting in his death.

3. Investigation was set into motion on receipt of information by SI Mahavir Prasad (PW-10) that a dead body was lying near *Kabristan*, Kadampuri, near drain, which was forwarded to the control room, on which DD No. 10A was recorded by W/HC Poonam (PW-7) and was assigned to SI Dinesh (PW-18). On reaching the spot, SI Dinesh (PW-18) found a dead body of a male at the *Kabristan* gate under the metro railway line. In the meanwhile, Anil (PW-5) who was the maternal uncle of the deceased, reached the spot and disclosed the name of the deceased as Akash. SI Dinesh made an endorsement on the DD No. 10A and prepared the *rukka* (Ex.PW-18/A) pursuant to which, FIR No. 922/2014 dated 15th November, 2014 under Section 302 IPC was registered at PS Jyoti Nagar (Ex.PW-7/B) and investigation was handed over to Insp. Ramesh Kalsan (PW-22). The body was identified by Anil (Ex.PW-5/A) and Vishal (Ex.PW-3/A), and after the post mortem examination at GTB Hospital, the body was handed over to them.

4. Dr. Vishwajeet Singh conducted the post mortem examination on the body of the deceased on 16th April, 2014 and tendered his report (Ex.A-1) noting the following injuries :

1. *Incised stab wound of size 3.4 x 0.2 cm x 9 cm is present obliquely over left side of neck, lower medial end is 2.5 cm from midline and upper lateral end is just above left angle of mandible. Wound is directed upwards, backwards and towards right and goes deep cutting underlying soft tissues, muscles, sub mandibular gland on left side, vessels and nerves, margins are clean cut, upper lateral angle acute and lower medial angle is blunt.*
2. *Incised wound of size 1.8 x 0.2 cm x 0.5 cm is present obliquely, just above injury No.(1), margins are clean cut.*
3. *Incised stab wound of size 1.8 cm x 0.2 cm x 2.2 cm is*

present obliquely over left side of neck, lower medial angle is 4.5 cm from midline and upper lateral angle is 4 cm below angle of mandible. Wound is directed upwards, backwards and towards right cutting underlying soft tissues and muscles. Upper lateral angle is acute and lower medial angle is blunt. Margins are clean cut.

4. Incised stab wound of size 3.4 x 0.2 x 6 cm is present obliquely over left side of chest, 1.2 cm from midline in the plane of sternal notch. Wound is directed upwards, backwards and towards right and goes deep cutting underlying soft tissues, muscles, nerves, blood vessels. Upper medial end is blunt and lower lateral angle acute.

5. Incised stab wound of size 2.4 x 0.2 x 8.5 cm is present over left side chest obliquely, lower medial end is 6.5 cm from midline and upper lateral end is 7 cm below clavicle. Wound is directed upwards, backwards, towards right and goes deep cutting underlying soft tissues, muscles, 2nd intercostals space upper lobe of left lung through and through and apex of right lung. Upper lateral angle is blunt and lower medial angle is acute.

6. Incised stab wound of size 2.4 x 0.2 x 3 cm is present vertically over left lateral chest, 16 cm from midline and 16 cm below shoulder top. Wound is directed towards, backwards and towards right and goes deep cutting underlying soft tissues, muscles. Upper end is blunt and lower end acute.

7. Incised stab wound of size 3.4 x 0.2 x 7.0 cm is present obliquely over left lateral chest, lower medial end is 16 cm from midline and upper lateral end is 7 cm below axilla. Wound is present in anterior axillary line and is directed upwards, backwards, towards right and goes deep cutting underlying soft tissues, muscles, 4th intercostals space and posterior aspect of left lung. Lower medial angle is blunt and upper lateral angle is acute.

8. Incised stab wound of size 3.8 x 0.2 x 11 cm is present obliquely over left lateral chest, lower medial end is 8.5 cm from midline and upper lateral end is 6.5 cm below left nipple. Wound is directed upwards, backwards, towards

right and goes deep cutting underlying soft tissues, muscles, 6th intercostal space, pericardium and left ventricle of heart, lower medial and acute, upper lateral blunt.

9. Incised stab wound of size 3.4 x 0.2 x 7.0 cm is present vertically over left side of abdomen, 3.5 cm from midline and 5.4 cm below xiphisternum. Wound is directed upwards, backwards, towards right and goes deep cutting underlying soft tissues, muscles, left lobe of liver. Upper end is blunt and lower end is acute.

10. Incised stab wound of size 2.8 x 0.2 x 5.0 cm is present vertically over left side of abdomen, 6 cm from midline and 3.0 cm below lower end of injury No.(9). Wound is directed upwards, backwards, towards right and goes deep cutting underlying soft tissues, muscles, and intestinal loop. Upper end is blunt, lower end is acute.

11. Incised stab wound of size 3.4 x 0.3 cm x 6.5 cm is present obliquely over left side lower back, 13.5 cm from midline and 4 cm above left posterior superior iliac spine. Wound is directed upwards, forwards and towards right and goes deep cutting underlying soft tissues, muscles, retroperitoneal tissues and intestinal loop. Lower medial end is acute and upper lateral is blunt.

12. Incised wound of size 3.8 x 0.2 cm x 0.4 cm is present over left fronto-temporal region obliquely, 11 cm from midline and lower medial end is 6 cm above supra orbital ridge. Wound shows fanning over lower medial end for a distance of 0.8 cm.

OPINION: *Time since death is about one day.*

CAUSE OF DEATH – *Haemorrhagic shock as a result of ante-mortem injury to neck, chest and abdomen produced by single edged sharp cutting weapon. Injury No. (1), (4), (5), (7), (8), (9), (10) and (11) are sufficient to cause death in ordinary course of nature individually and collectively. All injuries are ante-mortem in nature. Injury no. (2), (3), (6) and (12) are produced by sharp edged weapon.*

5. On 16th November, 2014, the appellant was produced at Karkardooma Court, and after seeking permission of the Court, the appellant was arrested in present FIR vide arrest memo Ex.PW-11/A and his disclosure statement (Ex.PW-11/C) was recorded. After completion of investigation, the chargesheet was filed and the deceased was charged for offence punishable under Section 302 IPC and to prove its case, the prosecution examined 24 witnesses.

6. Learned counsel for the appellant assails the impugned judgment on the grounds that there is no evidence against the appellant and that the entire case of the prosecution hinges upon weak and feeble circumstantial evidence which does not establish the guilt of the accused and thus, the learned Trial Court was in error in convicting the appellant and therefore, the impugned judgment be set aside and the appellant be acquitted. It was pointed out that the prosecution did not examine the person who allegedly gave the information about the dead body to SI Mahavir Prasad (PW-10), and no details of the said person were ever brought on record. It was further contended that Anil (PW-5) who was the maternal uncle of the deceased denied the suggestion that appellant and his family used to visit house of the deceased or that the deceased used to visit the appellant, rather he stated that the son and daughter of the appellant used to visit the house of PW-5 to take tuitions from deceased and therefore, the story of the prosecution that the appellant had disclosed about murder of deceased in his disclosure statement recorded in FIR No. 1170/2014 was a false and concocted story. It was further contended that the prosecution failed to establish any motive or previous enmity between appellant and the deceased, and also that no independent person was made a witness to the recovery proceedings.

7. On the other hand, learned APP for the State submitted that the chain of circumstances was duly established in the present case, which leaves no doubt about the guilt of the appellant and thus, the Trial Court judgment be upheld and the present appeal be dismissed. To buttress his contention, learned APP relied upon the following:

- i. The deceased was last seen with the appellant on a red motorcycle at 6.30-7 am on 15th November, 2014, which was proved by five witnesses i.e. PW-1, PW-2, PW-3, PW-4 and PW-19 in their respective testimonies before the Court.
- ii. The dead body was recovered lying near the drain near *Kabristan*, Kadampuri with several stab injuries and the fact of recovery of body was corroborated by the testimonies of PW-2, PW-3 & PW-5.
- iii. The appellant got recovered his shirt (Ex.PW-14/A), which he was wearing at the time of commission of offence from a pile of bricks and stones, behind the wall of Ambedkar College and a red color motorcycle (Hero Honda Passion Plus) bearing registration no. DL-5SY-3620 parked outside the house of Sanjeev (PW-6) who was the owner of the motorcycle. As per the testimony of PW-6, the said motorcycle was borrowed by the appellant on 15th November, 2014 and it was seized vide seizure memo Ex.PW-6/A. The weapon of offence i.e. the knife was also recovered and seized (Ex.PW-14/C) at the instance of the appellant on 16th November, 2014 from the bushes/slope where the knife was thrown after committing the offence.
- iv. As per the call detail records of the deceased (Ex.PW-23/A) and the appellant (Ex.PW-24/A), it is evident that the appellant made

three calls to the deceased in the morning of 15th November, 2014 and two calls to Sanjeev (PW-6).

- v. As per the post mortem report (Ex.A-1), there were 12 incised stab wounds on the body of the deceased from a sharp edged weapon and as per the subsequent opinion (Ex.A-2), all those 12 injuries were possible by the weapon recovered at the instance of the appellant.
- vi. As per the FSL Bio Report (Ex.A-3) and the FSL Serological Report (Ex.A-4), human blood was detected on the knife recovered and the recovered shirt of the appellant was also found to contain human blood of AB group which was that of the deceased.

8. Learned APP for the State submitted that the reason for “no reaction” result for ABO grouping on the blood on the knife could be because of recovery of knife from mud and reliance in this regard was placed on (2012) 11 SCC 768 *Jagroop Singh v. State of Punjab*. It was further submitted that the appellant has merely denied the circumstances alleged against him and has not offered any cogent explanation of the circumstances, which is another link in the chain of circumstance against the appellant.

9. Having heard both the counsel for the appellant and learned APP for the State at length and perusing the record, the following evidence emerges.

10. Subhash Chand (PW-1) stated that the appellant was residing with his family at the second floor of the same building and at about 7 am on 15th November, 2014, the appellant moved in the stairs 2-3 times looking for his son Pintu. He further stated that the deceased, who was the son of his sister-in-law, was waiting on a red motorcycle outside his house and that the

appellant sat on that motorcycle, and both the deceased and appellant went away.

11. Prashant Goswami (PW-2) stated that on 15th November, 2014, he was standing outside his gym when he saw Arun @ Bablu and Akash @ Soni coming from the side of C-Block on a red motorcycle. He stated to have known both of them as they were residing in the same locality.

12. Vishal Kumar (PW-3) deposed that the deceased was his elder brother and on 15th November, 2014, at about 6.30 am, the deceased received about 2-3 calls and thereafter, the deceased told him that he was being called by Arun, who was residing as a tenant at the house of his uncle Subhash. He stated that when he went to lock the gate behind his brother/ deceased, he saw appellant standing with a motorcycle on the corner of the *gali* at distance of about 30-40 yards. His brother/deceased took the rider seat and the appellant took the pillion seat and they both went away. After some time, when he went to the house of his uncle Subhash where a number of persons and police had gathered, he came to know that the appellant had killed his wife and thereafter, calls were made to the appellant but he did not answer any of the calls. Thereafter, on receipt of information, he went to a place near drain ahead of Ambedkar College, where the dead body of his brother/ deceased was found lying.

13. Pankaj Sharma (PW-4) deposed that on 14th November, 2014, at about 10 pm, his motorcycle got punctured near red light of Gokalpuri, and as it was late, he pulled up his motorcycle to the house of his friend Anil at E-Block, Ganga Vihar, and after parking his motorcycle, he took Bajaj Pulsar of black color from Anil and went to his house. On the next morning, at about 6.45 am, he went to the house of Anil to take his motorcycle, and on

his way, he saw Akash @ Soni coming on a motorcycle from the side of Ganga Vihar and going towards Gokalpuri, and Arun Chauhan was sitting at the back seat of the motorcycle. Thereafter, he went to Anil's house, left Anil's motorcycle and took his motorcycle for repair. He stated that Subhash was brother-in-law of Anil and that on occasions like birthday, he had met Arun Chauhan at Subhash's residence.

14. Ramchander (PW-19) deposed that the deceased was his grandson and that on 15th November, 2014, at about 7 am, when he was coming back from his walk and was at Reliance Fresh Store, he saw Akash and Arun going on a motorcycle towards Gokalpuri. Akash was driving the motorcycle and further stated that he knew the appellant as the appellant was residing as a tenant at the house of his daughter Babita.

15. Anil (PW-5) stated that the deceased was his nephew and that on 15th November, 2014, he received a call from his sister Babita wife of Subhash that 'K' was lying unconscious at her house and that son of 'K' had already made a call at no. 100. After returning from his work, at about 8.15 am, he reached the house of Babita where a number of persons had gathered and someone informed him that a body was also found near *kabaristan nala* at Kadampuri. Thereafter, he reached the spot and found that it was the dead body of Akash. In his cross examination, he stated that the son and daughter of deceased used to come to his house to take tuition from deceased Akash. He denied the suggestion that Arun and his family used to visit the house of Akash, or that Akash used to visit Arun.

16. Sanjeev Kumar (PW-6) deposed that the appellant used to take his motorcycle whenever needed by the appellant and that the appellant last took his motorcycle on 15th November, 2014, on which day, the appellant made a

call to him but as he did not pick the call, the appellant reached his house at about 6-6.30 am, and asked for his motorcycle for going to Yamuna Vihar. After about half an hour, he received a call from the appellant who informed him that the motorcycle was parked behind Gokalpuri police station, near garbage house as the appellant had to go to some other place urgently and that the keys of the motorcycle were inside the motorcycle itself. He then went to the place where his motorcycle was found parked and he brought it back.

17. SI Mahavir Prasad (PW-10) stated that on 15th November, 2014, at about 9.25 am, one person came to him and informed him that dead body of male was lying near *Kabristan* at Kadampuri near the drain. He gave this information to the control room and went to the spot where he found one male person lying dead with several injuries on his body.

18. SI Dinesh (PW-18) deposed that on 15th November, 2014, DD No. 10A relating to dead body at *Kabristan* was assigned to him and accordingly, he along with Ct. Sunil reached at the spot where he found one male dead body lying with several stab injuries. In the meanwhile, one Anil (maternal uncle of deceased) reached the spot from whom name of the deceased was found to be Akash. Thereafter, SHO and ACP reached the spot as also the crime team. He made an endorsement on the DD No.10A and prepared the *rukka* (Ex.PW-18/A), which was given to Ct. Harimohan for getting the FIR registered after which the body was sent for post mortem examination. Further investigation was handed over to Insp. Ramesh Kalsan.

19. IO/Insp. Ramesh Kalsan (PW-22) stated that on 15th November, 2014 he started the investigation of the case after registration of FIR and visited the spot. He prepared the site plan (Ex.PW-18/B) and seized the shawl

(Ex.PW-18/C), slippers (Ex.PW-18/D), the blood lying on the spot (Ex.PW-18/E) and earth control (Ex.PW-18/F) and deposited them in *malkhana*. On 16th November, 2014, he received information that the appellant was to be produced in Karkardooma Court and he moved an application before the Karkardooma Court for interrogation and arrest of the appellant and after Court's permission, the appellant was arrested and his disclosure statement was recorded. The appellant led the police team towards a drain near the construction site of metro and told that the knife was thrown towards the drain, however, despite search, the knife could not be recovered. Thereafter, the appellant took police to a place behind the wall of Ambedkar College and from a pile of bricks and stone, the appellant got recovered his shirt which he was wearing at the time of killing Akash. Thereafter, the appellant led the police team to Gali No.4, Ganga Vihar, in front of H.No.C-85 for recovery of motorcycle and accordingly, motorcycle bearing no. DL5SY3620 make Passion belonging to Sanjeev (PW-6) was seized (Ex.PW-6/A). On 17th November, 2014, the appellant again led them to the place near *kabaristan* for search of knife and on the slope of the drainage, the appellant demonstrated the manner of throwing the knife towards the drainage. On searching again, knife was found lying in the mud just at the end of the slop of the drainage. In his cross examination, he stated that no blood stains were noticed on the knife.

20. During trial, the appellant admitted the post mortem report (Ex.A-1), subsequent opinion (Ex.A-2) and the FSL Reports (Ex.A-3 and A-4), as recorded by the Trial Court in the order dated 01st October, 2016, thus no witnesses were examined to formally prove these documents.

21. In his statement under Section 313 of the Code of Criminal Procedure, 1973 (“CrPC”), the appellant stated that he was a tenant at the house of Subhash (PW-1) and used to reside there with his wife ‘K’ and children Pintu and Khushi. He denied having spoken with Subhash on 15th November, 2014 and stated that on that day, he had left his house at about 5.30-5.45 am. He further denied having met Akash and Sanjeev Kumar on the day of incident. He denied having borrowed the motorcycle and stated that he was unable to drive a two-wheeler. He admitted having been convicted for the murder of ‘K’, his wife. He denied having made any disclosure statement and stated that he did not get the knife recovered. He stated that he was innocent and that a false and concocted story was present against him.

22. The case of the prosecution was that the appellant suspected that the deceased and the appellant’s wife were in illicit relationship, and therefore, the appellant conspired to kill both of them, and for which, in the morning hours of 15th November, 2014, the appellant first murdered his wife ‘K’ and thereafter, called the deceased to help him to trace his son and took the deceased to the *kabaristan* at Kadampuri near drain, where the appellant killed the deceased by stabbing him as many as twelve times, resulting in his death. It may be noted that the appellant was also charged for murder of his wife in FIR No. 1170/2014 at PS Gokalpuri, for which he was convicted and sentenced to life imprisonment and the appeal against the said conviction and sentence was dismissed by the judgment dated 11th July, 2018 by a Coordinate Bench of this Court in CrI.A.191/2017.

23. As regards the facts of the present case, the testimony of PW-6 as also the CDR of the appellant (Ex.PW-24/A) shows that that the appellant called

PW-6 twice at 6.52 am and 6.54 am, and when PW-6 did not answer the call, the appellant went to PW-6's home and asked for his motorcycle on pretext of going to Yamuna Vihar for some work. Further, the CDR of the appellant (Ex.PW-24/A) and the deceased (Ex.PW-23/A) reveals that the appellant called the deceased thrice between 6.46 am and 7.02 am as also corroborated by the testimony of deceased's brother Vishal (PW-3), that the appellant had called the deceased on the pretext of searching his son, after which the deceased went to the appellant's house. On reaching the gate of the house of appellant, the deceased took the rider seat while the appellant took the pillion seat on the motorcycle as was deposed by PW-1, PW-2, PW-3, PW-4 and PW-19 in their respective testimonies before the Court. PW-4 and PW-19 further deposed to have seen the appellant and deceased heading towards Gokapluri at about 7 am on 15th November, 2014. Thus, it was established beyond reasonable doubt that the deceased was last seen with the appellant.

24. Learned counsel for appellant has vehemently contended that the prosecution has not proved the motive. It is not possible to prove what travels in the mind of an accused except by attending circumstances. The present case pertains to the incident after the murder of 'K'. Subhash (PW-1) had clearly deposed that the appellant's son Pintu had called him and informed him that 'K' was unconscious and that Pintu had made a call at no. 100 regarding the same. Thus, it becomes evident that Pintu was in fact present at the house itself, however, on the false pretext of searching Pintu, the appellant called the deceased and went with him on the motorcycle in the early hours on the day of incident soon after which the dead body of the deceased was found near *kabaristan*. The fact that the appellant killed his wife and thereafter within two hours killed the deceased one after the other,

is sufficient evidence that the appellant in fact suspected an illicit relation between his wife and the deceased.

25. The contention of learned counsel for the appellant that the person who informed SI Mahavir about the dead body was not examined would not be of much avail, as soon after the receipt of information by SI Mahavir, he duly forwarded the said information to the Control Room and which was duly recorded vide DD No. 10A, which was then marked to SI Dinesh (PW-18) and the information to SI Mahavir was found to be correct as he saw the dead body and then made the PCR call.

26. During investigation, the weapon of offence i.e. knife was recovered from near the drain at the instance of the appellant and injuries were opined to be possible by the said recovered weapon (Ex.A-2). The post mortem report (Ex.A-1) clearly records 12 stab wounds inflicted on the deceased, out of which 8 injuries were opined to be individually and collectively sufficient to cause death. The infliction of as many as 12 injuries on the deceased leads to the only conclusion that the same were inflicted with the sole intention to cause death of the deceased.

27. Further, the FSL and the serology report (Ex.A-3 and A-4 respectively) established that the blood detected on the shirt of the appellant was that of the deceased, which establishes his presence with the deceased at the time of incident.

28. Thus, in totality of the circumstances, the prosecution has been able to successfully establish the complete chain of circumstances thereby proving beyond reasonable doubt that appellant committed the murder of Akash. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence.

29. Appeal is accordingly dismissed.
30. Copy of the judgment be sent to the Superintendant Jail for updation of record and intimation to the appellants.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

FEBRUARY 06, 2023

