

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

% Reserved on: 13.02.2023
Decided on: 10.03.2023

+ **CRL.A. 1320/2019**
SIKANDER

..... Appellant

Represented by: Mr. Rahul Gupta, Adv. with Ms.
Mansha Gupta, Advs. (Pro-Bono)

versus

..... Respondent

STATE

Represented by: Ms. Shubhi Gupta, Addl.PP for State
SI Lovely Priyanka, PS Connaught
Place.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :-

1.0 Vide this appeal the appellant is assailing the judgment dated 19.02.2019 ('**impugned judgment**' in short) passed by Ld. ASJ-03, Patiala House Courts, New Delhi, whereby the appellant was convicted for the offence punishable under Section 302 Indian Penal Code, 1860 ('**IPC**' in short), in Sessions Case No. 9096/2016, in FIR no. 72/2015, Police Station Connaught Place ; and order on sentence dated 26.02.2019, whereby the appellant was sentenced to undergo rigorous imprisonment for life under Section 302 IPC with fine of Rs.10,000/-, in default to undergo simple imprisonment for two months.

2.0 Briefly stating, the case of the prosecution is, that on 23.03.2015, at about 7.20 pm, an information was received in the police control room

regarding the injury caused to a boy with a pointed weapon at Shivaji Stadium, Bhagat Singh Marg. Accordingly, PCR Form Ex. PW-23/A was filled in and the call was forwarded to the concerned Police Station Connaught Place, which was reduced into writing vide DD no. 26-A/Ex. PW-1/D by PW-1 HC Ravinder Singh; and the said DD was marked to PW-25 SI Pritam Singh. Accordingly, PW-25 SI Pritam Singh reached the spot i.e. Shahid Bhagat Singh Marg, near Wine/liquor shop, where PW-22 HC Kuldeep Singh met him and produced a man who looked like a drug addict i.e., the appellant/accused as well as an ice pick (*sua*), which was recovered from the appellant/accused. PW-25, SI Pritam Singh after giving necessary instructions to PW-22 HC Kuldeep, rushed to the RML Hospital, where he found that the injured Selvaraj K. who was brought to hospital by CATs Ambulance, was declared brought dead vide MLC Ex. PW-3/A. The information regarding death of the injured Selvaraj K., was sent to the parents/relatives of the deceased, Office of SSB (as the deceased was identified as constable of SSB, J&K Unit) as well as to the senior police officials. Crime team was called at the spot and scene of crime was got inspected and photographed. Thereafter, PW-2 Ram Chander, who was an eye-witness to the incident, met PW-25 SI Pritam Singh and his statement Ex. PW-2/A was recorded by PW-25.

2.1 In his statement Ex.PW2/A, PW-2 Ram Chander stated that he used to ply TSR no. DL-1N-4195 and on 23.03.2015, he was present near Basant Road, Pahar Ganj, New Delhi Railway Station. On that day, one person (deceased) hired his auto-rickshaw to go to Old Delhi Railway Station and when they reached Outer Circle, Connaught Place, New Delhi, the said

person asked him to fetch a beer for him; and accordingly, he took his auto near a liquor vend/shop, P-Block, Shaheed Bhagat Singh Marg, Connaught Place. It was about 7.15 pm, when he went to bring a bottle of beer after taking Rs. 100/- from his passenger and while he was returning with a beer bottle, he noticed that one drug addict type of a person, who was holding an ice pick (*sua*) in his right hand, was fighting with his passenger and the said person gave blows to the passenger in his chest with the said *sua*. When he (PW-2) and his passenger raised alarm, said person ran towards Marina Hotel along with *sua*. On enquiry, his passenger informed that the said person (appellant/accused) attacked him with *sua* when he refused to give money to him and thereafter, his passenger lied down by the side of the road. He (PW-2) then chased the appellant/accused and caught hold of him with the help of one police official and on inquiry, his name was revealed as Sikandar s/o Sarfaraz Baba r/o Vegabond. PW-2 then returned to his TSR, made a call at 100 number and the injured/passenger was shifted to RML hospital with the help of an Ambulance, which was passing by. He also followed the ambulance to the hospital, where passenger was declared brought dead by the doctor. On the basis of said statement of PW-2 Ram Chander, Ex. PW-2/A, PW-25 SI Pritam Singh prepared rukka Ex. PW-25/A and got the FIR Ex. PW-1/A registered through PW-1 HC Ravinder Singh. After registration of the FIR, further investigation was marked to PW-24 Insp. Harish Kumar.

2.2. During investigation, the Investigation Officer (IO)/PW-24 Inspector Harish Kumar seized the beer bottle make 'Godfather' (Ex. P-1) which was produced by PW-2, vide seizure memo Ex. PW-24/G. Thereafter, sketch of

sua Ex. PW-2/P-2 was prepared and the same was seized vide memo Ex. PW-2/D. Appellant/accused was arrested vide arrest memo Ex. PW-2/F, his personal search was conducted vide memo Ex. PW-2/G and his disclosure statement Ex. PW-2/H was recorded. On the next morning, i.e. on 24.03.2015 postmortem on the dead body of the deceased was got conducted through PW-12 Dr. Rahul Band and PW-13 Dr. Sukhdeep Singh vide postmortem report Ex. PW-12/A; and thereafter, sealed exhibits of the deceased as well as personal articles of the deceased were seized vide memos Ex. PW-15/A and Ex. PW-15/B, respectively. As per the postmortem report, cause of death is 'shock consequent upon cardiac temponade as a result of puncture wounds of heart, aorta and lung.'

2.3 During the course of further investigation, scaled site plan Ex. PW-10/A was got prepared. Exhibits were sent to the FSL, Rohini as well as RFSL for examination and seeking expert opinion. Subsequent opinion Ex. PW-12/B regarding weapon of offence/*sua* was collected by the IO Harish Kumar/PW-24. Vide Ex. PW-12/B, it was opined that the injuries no. (1), (2), (3) and their corresponding internal injuries could have been caused by the said weapon (*sua* Ex. PW-2/P-2) or similar weapon. On completion of investigation, charge-sheet u/s 302 IPC was filed against appellant/accused Sikander.

2.4. After receipt of FSL results (Ex.PA, Ex. PB, Ex. PC and Ex. PD), same were filed in the Court vide supplementary charge-sheet.

3.0 In order to prove its case, the prosecution examined 25 witnesses.

4.0 On incriminating evidence being put to the appellant/accused, he vide his statement under Section 313 Cr.P.C denied the allegations. He, in response to Question no. 60, stated that he was taking food at Hanuman Mandir, Connaught Place, where some police officials came and asked his name and later on, he was falsely implicated in this case after taking his thumb impression on blank papers and after planting a *sua* upon him. Though, the accused wished to lead evidence in his defence and moved an application u/s 315 Cr.P.C, he did not examine any witness in his defence.

5.0 Learned counsel for the appellant/accused argued that the learned ASJ failed to appreciate that the testimony of public witness/eye witness suffers from the contradictions and exaggerations which makes the prosecution version unbelievable. On one hand, PW-2 stated that he ran after the appellant/accused and on the other hand, he stated that the deceased had told him that the appellant was demanding money from him. Further, the prosecution has failed to join any independent/public witness, though, it has come in the testimony of prosecution's own witnesses that public persons were present around at that time, which also raises serious doubt about prosecution story. In support, Ld. Counsel placed reliance upon the judgment in the case of '*Anil Phukan vs. State of Assam*', MANU/SC/0228/1993. He also argued that the FSL failed to examine the shirt and T-shirt of the deceased and returned the same unexamined; and PW-5 Adesh Kumar also in his cross-examination stated that he had not seen blood stains on the clothes of the deceased, which also raise doubt about the prosecution story.

5.1. Ld. Counsel for the appellant/accused also argued that weapon of offence i.e. *sua*, was allegedly recovered from the hands of the appellant at the time of his arrest from the spot itself and crime team including finger print proficient was called at the spot, but no finger prints were lifted from the alleged *sua*. It was further argued that when the said *sua* was sent to the FSL for examination, no blood stains were found on the said weapon of offence as per the FSL report Ex. PB and as has come in the testimony of PW-22 HC Kuldeep Singh. Hence there is no forensic evidence on record against the appellant. Thus, the possibility of planting the alleged *sua* on the appellant in order to falsely implicate him in this case cannot be ruled out. In this regard, ld. Counsel has placed reliance upon the judgment in '**Anil Kumar vs. State of NCT of Delhi 2022 SCC Del 2149**'.

5.2 Ld. Counsel further argued that there are contradictions even in the testimony of the purported eye witness/PW-2 and other prosecution witnesses-PW-19 Ct. Ajit and PW-25 SI Pritam Singh. It has come in the testimony of PW-18 that beer bottle to PW-2 was sold on 13.03.2015, whereas, the PW-2 has deposed that he purchased the beer bottle for the deceased on the said day i.e. 23.03.2015. Further, PW-2 in his cross-examination has stated that his statement was recorded at the spot at about 12:00 a.m. by IO Harish Kumar/PW-24. Whereas, PW-19 and PW-25 testified that the statement of PW-2 was recorded by PW-25 SI Pritam at the hospital between 08:30 p.m. and 09:00 p.m.

6.0 *Per contra*, the Ld. Prosecutor argued that the prosecution has been able to prove its case beyond reasonable doubt. The eye witness PW-2 Ram Chander has fully supported the prosecution case and has categorically

testified that he saw one *kangla* type person stabbing his passenger/deceased 2-3 times with a *sua* and even described the *sua*. PW-2 had run towards Marina Hotel while chasing the appellant/accused and meanwhile, PW-22 HC Kuldeep, who was coming from the opposite side also ran after the appellant/accused; the appellant/accused was apprehended at the spot. PW-2 withstood the test of cross-examination and has remained consistent and cogent in his deposition. His deposition is corroborated by PW-22 HC Kuldeep Singh and PW-19 Ct. Ajit and there is hardly any material inconsistency or contradiction in their version. Ld. Prosecutor further argued that testimony of PW-2 Ram Chander and PW-22 HC Kuldeep Singh and other witnesses regarding the manner of assault with *sua* is further corroborated by post mortem report Ex.PW12/A and testimonies of PW-12 Dr. Rahul Band and PW-13 Dr. Sukhdeep Singh, who have opined that the deceased had suffered three punctured wounds on the chest. PW-12 vide his subsequent opinion Ex.PW12/B has opined that the injuries numbers 1, 2 & 3 and their corresponding internal injuries could have been caused by the same weapon or the similar weapon.

6.2 Ld. Prosecutor also argued that the PW-2's testimony that he was asked by the deceased to buy a beer bottle for him and hence, he purchased the same from a liquor store in P-Block Market on Shahid Bhagat Singh Marg is corroborated by PW-18 Gopu Kumar vide their written reply Ex.PW18/A.

6.3 Ld. Prosecutor also argued that even the motive of fatal assault by the appellant/accused has come out in the testimony of PW-2, who has stated that the deceased had told him that the appellant/accused was demanding

money from him. He contended that even if the motive is ignored, the cogent evidence of a trustworthy eye witness PW-2 and that of police official, PW-22 HC Kuldeep Singh, clearly establishes the guilt of the appellant/accused. In support, the Learned Prosecutor placed reliance upon the judgments of Hon'ble Supreme Court in *Bipin Kumar Mondal Vs State of West Bengal, (2010) 12 SCC 91* and *Shivji Genu Mohite Vs. State of Maharashtra, AIR 1973 SC 55*

7.0 We have duly considered the submissions made by both the sides and have perused the record.

8.0 Prosecution case is based on eye witness account of PW-2 Ram Chander. PW-2 testified that he is an auto-river and drives his own TSR bearing no. DL-1N-4195. On 23.03.2015 at about 07 p.m., while he was standing at main market Pahar Ganj, a passenger aged about 25-26 years, who was carrying blue coloured bag, approached him for taking him to old Delhi Railway Station. While he was taking the passenger and reached Connaught Place, the said passenger requested him to buy him a beer bottle. He stopped the auto near a liquor vend at P-Block Market on Shahid Bhagat Singh Market. The passenger gave him Rs.100/- and he went to buy the beer. After buying beer, as he turned towards his auto rickshaw he saw one *kangla* type person grappling with his passenger and then stabbed the passenger 2-3 times with a *sua*, the kind used for breaking ice etc, having a pointed long iron attached to a wooden handle. The injured passenger fell down on the road and shouted to him “*Chacha* catch hold of him” and also told him that the appellant/accused was demanding money from him. The appellant/accused ran towards Marina Hotel and he ran after the

appellant/accused and even tried to stop him by frightening him by threatening to throw beer bottle at him. Meanwhile, one policeman, who was coming from the opposite direction also ran to catch hold of the appellant/accused; he along with public persons also chased the appellant/accused. The appellant/accused was nabbed by that policeman. He then returned to the passenger and made a call at number 100 from his mobile phone.

8.1 PW-2 further deposed that one ambulance which was passing by, was stopped by him and the injured passenger was taken to RML Hospital by the ambulance. He also followed the ambulance in his TSR. The passenger was declared “brought dead” at RML Hospital. He checked the bag of the passenger, which was still lying in his TSR. It contained a card of SSB in the name of the deceased named as “Selvaraj”. His statement Ex.PW2/A was recorded by the police. He had also shown the place of occurrence to the police on which site plan Ex.PW2/B was prepared. PW-2 identified the said passenger/deceased on photograph being shown to him in the court. He also identified the appellant/accused as the person who had assaulted the passenger/deceased. PW-2 also deposed that sketch of *sua* Ex.PW2/C was prepared. Sua and beer bottle were seized vide seizure memos Ex.PW2/D and Ex.PW2/E, respectively. The appellant/accused was arrested and searched vide arrest and personal search memos Ex.PW2/F and Ex.PW2/G, respectively, in his presence. Accused’s disclosure statement Ex.PW2/H was recorded. PW-2 identified the beer bottle make ‘God Father’, when shown to him during his testimony stating that it is the same bottle (Ex.PW2/P-1), which he had purchased for the passenger/deceased. He also identified the

sua Ex.PW2/P-2, which was used by the appellant/accused in commission of the offence.

8.2 PW-2 has stood by his testimony in his cross-examination. He reiterated that he was asked to buy the beer bottle by the passenger/deceased and clarified that as the deceased was carrying luggage, he requested him (PW-2) to buy beer for him at about 07:00 p.m. He also stated that it might have taken him only 1-2 minutes to buy the bottle and as he returned after buying the beer bottle, he saw the appellant/accused grappling with the deceased with a *sua*. PW-2 categorically denied that it was dark at about 07:00 p.m. He also stated that while he was running after the appellant/accused, people around also shouted and policeman caught hold of the appellant/accused. He also stated that there was no other liquor vend on the way as he left New Delhi Railway Station. PW-2 reiterated that he had stated in his statement to the police that he had seen one *kangla/nashedi* type person grappling with the passenger. Same is borne out from the PW-2's statement Ex. PW2/A. PW-2 however admitted that he did not mention in this statement about *sua* being attached to a wooden handle.

8.3 It is significant to note that on one hand, the appellant/accused suggested to PW-2 in cross-examination, that seeing a military man, PW-2 intended to loot him thinking that he must be carrying money and valuables and when the deceased resisted, PW-2 attacked him causing injuries; and that it was the appellant/accused who had seen PW-2 assaulting the deceased and when the appellant/accused tried to attract people's attention, PW-2 being a clever person, instead caught hold of the appellant/accused, who is a feeble bodied person. On the other hand, the appellant/accused himself gave

suggestions to the PW-2 in cross examination, which were replied as '*It is correct to suggest that I tried to frighten the accused shouting that I will throw the beer bottle on him. It is correct to suggest that I along with public person ran after the accused*', thus accepting the PW-2's version.

8.4 In view of the above suggestions put by the appellant/accused himself to PW-2 in cross-examination, the facts that the deceased was travelling in PW-2's TSR on that fateful day, presence of the appellant/accused at the spot, appellant being a feeble bodied – (*kangla* type person), the deceased had suffered injuries, PW-2 ran after the appellant/accused and even tried to frighten him by threatening to throw beer bottle on him and that the appellant/accused was apprehended at the spot, remained uncontested. Further, PW-2's version that before succumbing to his injuries, the passenger/deceased told him that the appellant/accused was demanding money from him, has remained uncontroverted as PW-2 was not cross-examined in this respect.

9.0 Testimony of PW-2 is corroborated by PW-22 HC Kuldeep Singh. PW-22 deposed that on 23.03.2015, he was posted at PS Connaught Place. While performing patrolling duty, at about 7:15 pm, when he was present near Hotel Raddison Blu also known as Marina Hotel, he saw the appellant/accused (duly identified) was coming running from Bhagat Singh Marg and was followed by some persons shouting *chor chor*. He apprehended the appellant/accused with the help of public persons and saw that the appellant/accused was having a *sua* meant for breaking ice, in his hand. On inquiry, one Ram Chander PW-2 who was running behind the appellant/accused told him that the appellant/accused had caused injury by

the said *sua* to the passenger in his TSR at P Block near wine shop. He along with PW-2 Ram Chander took the appellant/accused along with weapon of offence to near wine shop P Block where one person aged about 26-27 years was lying in unconscious condition at the corner of the road; a TSR was also parked near the injured. He requested PW-2 Ram Chander to take the injured to hospital. Meanwhile, one CATs ambulance was stopped and the injured was removed in the said ambulance to RML hospital. TSR driver Ram Chander also followed the CATs ambulance in his TSR. PW-22 further deposed that after sometime SI Pritam/PW-25 along with Constable Ajit/PW-19 reached the spot. He apprised PW-25 about the incident who along with PW-19/Constable Ajit then left for RML hospital, asking him to guard the spot and the appellant/accused. After sometime, IO PW-24 Inspector Harish Kumar along with PW-25 SI Pritam Singh and PW-2 Ram Chander reached the spot. He handed over the weapon of offence i.e. *sua* and the appellant/accused to PW-24 Inspector Harish Kumar. PW-22 further deposed that IO Inspector Harish Kumar/PW-24 prepared the sketch of *sua* Ex. PW2/C; on measuring, the length of the handle was found to be 9 cm and length of the iron part was 11 cm and total length of the same was 21 cms; between the wooden handle and iron part, there was an iron ring measuring 1 cm. IO seized the same vide seizure memo Ex. PW2/D and sealed it with the seal of HK. PW-22 identified the said *sua* Ex PW2/P-2.

9.1 Nothing of significance could be extracted in PW-22's cross examination so as to dent his testimony. PW-22 in cross examination stated that four-five public persons besides PW-2 Ram Chander were also chasing the appellant/accused, who was apprehended at the road situated opposite G-

Block outer circle Connaught Place. He also explained that except PW-2, no public person joined investigation in his presence. PW-22 categorically denied that he was not present at the spot or that he had not seen the appellant/accused running with the weapon of offence and that he is a planted witness. He also denied that the appellant/accused was not arrested in his presence.

10.0 PW-19 Ct. Ajit has deposed that on 23.03.2015, while he was posted at PS Connaught Place, he was working as Beat Constable, P-Block, Connaught Place. On that day, at about 07:45 p.m. while he was on patrolling duty and reached near Shahid Bhagat Singh Marg, P-Block, he saw HC Kuldeep/PW-22 had apprehended the appellant/accused, who looked like a drug addict with a *sua* meant for breaking the ice. The appellant/accused was duly identified by PW-19. He also testified that he came to know about the injured/Selvaraj having been taken by TSR driver to RML Hospital by CATS Ambulance. On arrival of PW-25 SI Pritam Singh, he accompanied him to RML Hospital, where MLC of the injured was obtained by PW-25. Crime team was called by PW-25 at the hospital, who inspected the dead body and took its photographs. Report was obtained by PW-25. Meanwhile, PW-15 Ct. Dayanand produced one sealed pullanda sealed with the seal of doctor of RML Hospital along with the clothes of the deceased to PW-25 SI Pritam Singh, which were seized vide seizure memo Ex.PW15/A; personal search articles of the deceased were taken into possession vide memo Ex.PW15/B. PW-25 SI Pritam Singh also recorded the statement of PW-2 Ram Chander, who was present in the hospital and prepared a rukka, which was handed over to him (PW-19) for registration of

FIR. He took it to the police station and returned after registration of FIR and handed-over the same to PW-24 Insp. Harish Kumar. He has also deposed that on 24.03.2015, while he was in the mortuary, RML Hospital for safeguarding a dead body, the same was identified by one Pankaj Bhagwati and Tusharan.

10.1 PW-19's testimony has remained unimpeached in his cross-examination. PW-19 in cross-examination stated that he had noted the blood at the spot; TSR was also standing there but he had not noticed blood inside the TSR. The appellant/accused was in the custody of PW-22 HC Kuldeep at that time; and that he along with PW-25 SI Pritam Singh went to the hospital. He also stated that statement of the eye witness was recorded in his presence between 08:30 p.m. – 09:00 p.m. He categorically denied that he never joined the investigation and deposed at the instance of the IO.

11.0 Testimony of PW-2 and PW-22 regarding the deceased Selvaraj K., aged about 27 years being taken to RML hospital by CATs Ambulance Sera, finds corroboration in the testimony of PW-5 Adesh Kumar Tyagi, Assistant Ambulance Officer and PW-3 Dr Neha Sharma, CMO, Dr. RML hospital and the deceased's MLC Ex. PW 3/A.

11.1 PW-5 has deposed that on 23.03.2015 at about 7.30 pm he was on duty in CATS Ambulance Sera-8 as Assistant Ambulance Officer and they were on duty in Connaught place area; as they turned from outer circle Connaught Place towards Shaheed Bhagat Singh Marg, one TSR driver signaled the ambulance to stop near the wine shop and requested for transporting a passenger who was lying on the road. They had taken the injured person in their ambulance to RML hospital and got him admitted

there; he was declared brought dead. He had then informed the control room. In his cross examination PW-5 stated that the body of the deceased was lying about four to five feet from the wine shop. He also stated that he had not observed any blood stains on the clothes of the deceased but had noted puncture wound above the nipple on the left side.

11.2 Dr. Neha Sharma PW-3 testified that the patient Selveraj K. was brought to the RML hospital by CATS ambulance and was examined by her vide MLC Ex.PW-3/A. She deposed that she had observed three pin point circular puncture marks on left side of chest just above the nipple. The patient was declared brought dead in the hospital. Her testimony and MLC Ex. PW3/A have remained uncontroverted, as PW-3 was not cross examined. Relevant portion of MLC Ex. PW-3/A reads as under:

“MLC No. Name Son/Daughter Age Sex
E/6619/15 Selvaraj K. Gopi 27 years Male

Brought By: - CATS Sira-8 Adesh Tyagi

Date of Examination: - 23.05.2015

Date and Hour of Arrival: - 23.03.2015 (08:00 P.M.)

Police Station: - Connaught Place

...

SYSTEMIC EXAMINATION: Brought dead to casualty

...”

11.2.1 As per MLC Ex. PW-3/A, the deceased was brought to hospital at 8:00 pm on 23.03.2015 by CATS ambulance which corroborates PW-2’s

version of the deceased being removed by ambulance to RML hospital around the same time.

11.3 Learned counsel for the appellant/accused contended that there are contradictions in the testimony of PW-2, the purported eye witness and other prosecution witnesses, PW-19 Constable Ajit and PW-25 SI Pritam, which raise doubt about credibility of PW-2. It was argued that PW-2 in his cross examination has stated that his statement was recorded at the spot at about 12 am by PW-24 IO Harish Kumar. Whereas, PW-19 and PW-25 testified that statement of PW-2 was recorded by PW-25 SI Pritam Singh at the hospital between 8:30 pm to 9 pm. It is seen that PW-2 Ram Chander in his examination in chief while narrating the sequence of events has stated that patient could not be revived in the hospital; and that he had given statement Ex. PW2/A to the police; and had shown the place of occurrence to the police. However, in his cross examination, PW-2 stated that his statement was recorded at the spot after returning from the hospital at about 12 midnight by IO Inspector Harish Kumar. As per record, subsequently, supplementary statement of PW-2, Ex. PW24/H was recorded by Inspector Harish Kumar/IO on 24.03.2015. In view of the same, we find force in the Learned Prosecutor's argument that PW-2 may have got confused about the two statements. Be that as it may. Even otherwise, such a discrepancy is hardly of any consequence in view of cogent and consistent testimony of PW-2 and other witnesses.

12.0 PW-2's version that he had purchased beer bottle for the deceased from a liquor shop at P-Block Market at Shahid Bhagat Singh Marg, is corroborated by PW-18 Gopu Kumar D. Nair. PW-18 testified that he has

been working at a liquor shop situated at P-22/90, P-Block, Connaught Place since 2003. On 24.03.2015, on receipt of a letter from Insp. Harish Kumar (PW-24) for providing a copy of sale of beer bottle, he, vide his reply Ex.PW18/A, had informed that a beer bottle make “God Father, S.S. International, 650 ml”. having batch no. 138 with bar code was purchased from their liquor shop on 23.03.2015. He had also provided original Transport Permit regarding the transportation of beer bottle Ex.PW18/B, Bar Code details mentioned on the bottle Ex.PW18/C and tax invoice Ex.PW18/D to the IO. Though PW-18 in his cross-examination could not tell the time of sale or the details of the person, who had purchased the beer bottle, nothing of substance could be extracted in his cross-examination so as to dent his testimony. PW-18 categorically denied that he handed over false documents.

12.1 Learned counsel for the appellant argued there is a major contradiction in the version of PW-2 Ram Chander and PW-18 Gopu. As Per Ex. PW18/A, PW-18 allegedly sold beer bottle to PW-2 on 13.03.2015 and not on 23.03.2015, the date of the incident, as has come in the testimony of PW-2. Suffice it to state that as per Ex. PW18/A, bottle of ‘Godfather beer’ was purchased from the said liquor shop on 23.03.2015; though due to the manner of formation of figure ‘2’ (written in hand) it may give an impression of ‘1’.

13.0 Testimony of the eye witness PW-2/Ram Chander and PW-22/HC Kuldeep Singh is further corroborated by medical evidence. Post mortem of the deceased was conducted by PW-12 Dr. Rahul Band and PW-13 Dr. Sukhdeep Singh, Professor, Department of Forensic Medicines and

Toxicology, LHMC and S.K Hospital, who proved Post Mortem Report Ex.PW-22/A, relevant portion of which reads as under:

***“Reference : P.S Connought Place P.S. Case FIR
No. 72 dated 23.03.15***

***Postmortem Examination & Report No. 131/2015 dated
: 24/3/15***

***Name : Salvaraj K. Age : 27 years Sex :
Male***

***.....
“Date and Time of conducting autopsy: 24.03.2015 at
02:45 pm***

Summary of Inquest report :

Alleged history of deceased had been attacked with ice pick by a vagabond at about 7.15 pm dt. 23/3/15 at P-block, Connought Place. He was then taken to Dr. RML Hospital vide MLC no. E/66169/15 at 8.00 pm dt 23/3/15 where he was declared ‘brought dead’. Shirt and vest were sealed by ‘CMO’.

External Injuries

- 1. Puncture wound of size .2 x .2 x 11 cm, present over left side of the chest, 2.5 cm lateral to midline between costal cartilage of 3rd and 4th rib, 9 cm below left sterno-clavicular joint and 135 above heel. Track of wound cuts through 3rd intercostal space, parietal and visceral pleura. Interior margin of upper lobe of left lung, parietal and visceral pericardium, left atrium, root of aorta and antero-medial surface of right atrium to enter into it. Margins of the wounds were inverted and direction of injuries inwards and slightly medially.***

2. ***Puncture wound of size .4 x 2 x 5 cm present over left side of chest, 4 cm lateral to injury no. 1 and 4 cm medial to nipple, in third inter costal space, it is 13 cm below clavicle and 135 cm above heel. Track of wound cuts through third inter costal space muscles, parital and visceral pleura and anterior surface of upper lobe of left lung. Medial margin and edge of wound is contused and under mined with slopping of lateral aged. Direction of injury inwards and medially.***
3. ***Puncture wound of size .4 x .3 x 5 cm, present on left side of chest, 2 cm above and 3 cm lateral left nipple, in second inter costal space, 17.5 cm below clevical and 137 cm above heel. Track of wound cuts through second inter costal space muscles parital and visceral pleura and antero-lateral surface of upper lobe of left lung. Infero-medial margin of the wound is contused. The direction of injury is medially towards and slightly downwards.***
4. ***Partial healed abrasion, black scabbed of seize 3 x 2.8 cm present over media aspect of right leg, 18 cm above medial malleolus.***

Internal Examination :-

Walls, Clavicle, Ribs & Intercostal muscles :

Slight extra vessation of blood was present around the tracks of injury no. 1, 2, 3 in second and third inter costal space.

Pleurac & Pleural cavity

Left pural cavity was containing about 180 ml of free blood.

Lungs :

1. ***One through and through puncture wound corresponding to injury no. 1 present near anterior margin of upper lobe of left lung. Two puncture wounds corresponding to***

external injury no 2 and 3 present on anterior surface of upper lobe of left lung. Left lung found collapsed and right lung intact.

Pericardium :

Puncture would corresponding to external injury no. 1 present in superior part of ventral surface of pericardium. Pericardial cavity contains about 350 ml of blood.

Heart & Large Blood vessels :-

Through and through puncture would present in left atrium and root of aorta and one through anterio medial surface of right atrium corresponding to external injury no. 1. Extra vessation of blood present surrounding root of aorta.

Stomach & its contents : *Stomach mucosa haemorrhagic and congested contains about 200 ml of semi solid yellowish food material, smell of alcohol was present.*

OPINION

Cause of death : *Shock consequent upon cardiac temponade as a result of puncture wound of heart, aorta and lung. All injuries mentioned above are anti mortem in nature. Injury no. 1, 2 and 3 and their corresponding internal injuries were collectively or individually sufficient to cause death in ordinary course of nature and are fresh in duration. Injury no. 4 is 7 to 10 days old in duration. However viscera has been preserved to rule out any intoxication especially alcohol.*

Approximate time since death: About 28 hours (consistent with inquest report)”

13.1 Post mortem report also records in history- deceased has been attacked by vagabond.

13.2 PW-12/Dr. Rahul Band testified that on 12.01.2016 he had received sealed parcel with five intact seals with the impression of “FSL Delhi Dr. BB” which was containing one plastic jar containing one sua/ice pick for opinion, which was shown in diagrammatic representation on subsequent opinion Ex. PW-12/B given by him. PW-12 identified the sua Ex. PW2/P-2 in the court. He deposed that he gave his subsequent opinion (Ex. PW12/B) after perusing the FIR, Post mortem report Ex. PW22/A and FSL report. Relevant portion of the subsequent opinion Ex. PW12/B records that:

“Injuries numbered 1, 2 and 3 and there corresponding internal injuries could have been caused by this weapon or similar weapon.

The quantity of ethyl alcohol found in the viscera (Blood) of deceased i.e. 31.6 mg/100 ml, is not sufficient enough to cause death of a normal human being in ordinary course of nature.

In this particular case, the level of alcohol intoxication might have affected capability of deceased to defend himself in homicidal attack. The quantity is not sufficient to cause death.”

13.3 PW-13/Dr. Sukhdeep Singh also testified on the same lines. Testimonies of PW-12 and PW-13 have remained unimpeached. In cross examination they categorically denied that they gave the post mortem report under pressure of police. Rather, the appellant/accused himself suggested to PW-12 and PW-13 in their cross examination that the injuries suffered by the deceased may be caused by any pointed weapon. Both the witnesses, PW-12

and PW-13 stated that it is unlikely that the injuries suffered by the deceased may be caused by falling on surface having nails on it.

14.0 Further, Ex.PD/FSL report dated 28.12.2015 by Dr. Bharti Bharadwaj, Senior Scientific Officer (Physics), FSL, Delhi, which has been admitted by the appellant/accused vide his statement dated 11.10.2018 before the Id. Trial Court, also corroborates the version of PW-2 that the appellant/accused had stabbed the deceased two three times with a sua. More so when read with MLC Ex. 3/A, which records three pin point circular puncture marks on left side of the chest horizontally just above the nipple of the deceased. Vide aforesaid report Ex PD, the Senior Scientific Officer after examining the deceased's clothes and sua has been opined that cut marks Q1 and Q2 on Ex. 1(a) (deceased's full sleeves shirt with dark brown stains having two cut marks in front left upper portion) and cut marks 'Q3' & 'Q4' on Ex. 1b (deceased's t-shirt with dark brown stains having two cut marks in front left upper portion marked as) could have been caused by sua/ice pick (Ex. PW2/P-2).

14.1 Id. counsel for the appellant/accused argued that in absence of any finger prints being lifted from sua despite Finger Print Proficient having been part of the crime team called at the spot and no blood stains having been found on the *sua* as per FSL report Ex.PD, the possibility of the *sua* being planted to falsely implicate the appellant/accused, cannot be ruled out. There is hardly any merit in this contention in view of the unimpeached cogent and consistent oral testimonies of PW-2, the eye witness, (who saw the appellant/accused stabbing the deceased with sua), PW-22 HC Kuldeep Singh (who chased and nabbed the appellant/accused near the spot having

sua in his hand) and PW-19 Constable Ajit who also saw the appellant/accused with a *sua* meant for breaking the ice in his hand and having been apprehended by PW-22; seizure of the said *sua* (Ex.PW2/P-2) from the appellant/accused vide seizure memo PW 2/D proved by PW-2, PW-24 Inspector Harish Kumar and PW-25 Pritam Singh and the same being further corroborated by subsequent opinion PW-12/B. As far as the plea of the appellant/accused that no blood was detected on *sua* is concerned, suffice it to state that the appellant/accused did not cross examine PW-12, who gave the subsequent opinion, to seek any such clarification. In view of these facts, the judgment in *Anil Kumar's case (supra)* relied upon by the appellant/accused is of no assistance to him.

14.2 In view of the above evidence on record, the judgment in *Anil Phukan's case (supra)* as relied upon by the appellant/accused in support of his argument that an accused cannot be convicted on the basis of sole testimony of eye witness, also has no applicability to the present case. Learned counsel also referred to the judgment of the Hon'ble Supreme Court in *K V Chacko alias Kunju' V. State of Kerala MANU/SC/0776/2000* to further his argument that chain of circumstances should be complete and should unerringly point towards the guilt of the accused, which could not be established by the prosecution in the present case. The said observations were made by the Hon'ble Supreme Court in that case which was based on circumstantial evidence. Whereas in the instant case, prosecution case is based on eye witness account of PW-2 Ram Chander and the appellant/accused was apprehended at the spot and testimony of eye witness/PW-2 is further substantiated by other witnesses, medical and

forensic evidence. Thus, the said judgment also is of no help to the appellant/accused in the facts of the instant case.

15.0 It is noteworthy that the appellant for the first time in his statement under Section 313 Cr.P.C took the defence of alibi stating that he was taking food at Hanuman Mandir, Connaught Place at the relevant time and was subsequently falsely implicated by the police in the present case. No such defence was put to PW-2, the eye witness much less to any of the police witnesses. Rather, the appellant/accused by virtue of his own suggestions to the PW-2 in cross examination, accepted his presence at the spot and that he was followed by PW-2 and public persons, when he ran from there; and that PW-2 even tried to frighten him by threatening to throw beer bottle on him. Thus, evidently the appellant/accused took a false plea of alibi at a belated stage, which itself calls for drawing of an adverse inference against the appellant/accused (*Sahabuddin V. State of Assam (2012) 13 SCC 213*).

16.0 Argument of the Learned counsel for the appellant/accused that non joining of any public witness despite their presence at the spot raises serious doubt about the prosecution story, also lacks merit, in view of the evidence on record.

17.0 In view of the unimpeached testimony of eye witness PW-2/Ram Chander, corroborated by testimonies of PW-22/HC Kuldeep Singh and PW-19/Constable Ajit, PW-5/Adesh Kumar Tyagi and PW-3/Dr. Neha Sharma and also by virtue of suggestions put by the appellant/accused himself to PW-2 and uncontroverted facts, it is established that the appellant/accused demanded money from the deceased; he then assaulted the

deceased/Selveraj K. with *sua* Ex. PW2/P-2 meant for breaking ice; and after the assault, the appellant/accused ran from the spot trying to flee away but was chased by the PW-2 and PW-22 and was apprehended by PW-22 near the spot with the said *sua* in hand. The deceased was removed to RML Hospital by CATS Ambulance, where he was declared brought dead vide MLC Ex.PW-3/A. MLC records three pin point circular puncture marks on the left side of the deceased's chest horizontally just above the nipple, which are further corroborated by post mortem report Ex. PW-12/A. Further vide subsequent opinion Ex. PW 12/B and testimony of PW-12 Dr. Rahul Band, it has come on record that the said injuries could have been caused by the said *sua* Ex. PW2/P-2, seized from the appellant/accused. Further, as per post mortem report Ex. PW12/A, the injuries no. 1, 2 and 3 i.e., three punctured wounds over left side of the chest of the deceased and their corresponding internal injuries, were collectively or individually sufficient to cause death in ordinary course of nature.

17.1 Learned counsel for the appellant argued that the appellant/accused cannot be convicted for murder in absence of proof of motive on the part of the appellant/accused to assault/kill the deceased. PW-2 has deposed that the deceased before succumbing, had stated that the appellant/accused had asked for money. Motive for the assault can be drawn from the same. Even if the same is ignored, suffice it to state that absence of motive is not always fatal to the prosecution case (*Bipin Kumar Mondal Vs State of West Bengal, (2010) 12 SCC 91 and Shivji Genu Mohite Vs. State of Maharashtra, AIR 1973 SC 55*). Much less in the facts and circumstances of the present case where the prosecution case has been proved beyond reasonable doubt on the

basis of the trustworthy eye witness account of PW-2 and testimony of other witnesses and other evidence on record.

18.0 In view of the above, the appellant has failed to demonstrate any infirmity or illegality in the impugned judgment. We thus, find no reason to interfere with the impugned judgment.

19.0 Appeal is therefore dismissed.

20.0. Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 10, 2023/g.joshi