

#J-1

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On : 31.08.2021
Judgment Pronounced On : 30.11.2021

+ **CRL.A. 625/2020**

YOGESH

..... Appellant

versus

THE STATE (GOVT.OFNCTDELHI)

.... Respondent

+ **CRL.A. 626/2020**

AKASH @ BUNTY

..... Appellant

versus

THE STATE (GOVT.OFNCTDELHI)

.... Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Sumeet Verma and Mahinder Pratap Singh, Advocates
for Appellant Yogesh.
Mr.Manu Sharma, Advocate for Appellant Akash @
Bunty

For the Respondent: Mr. Ashish Dutta APP for the state with Inspector Ravi Kumar, P.S: Alipur

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present Criminal Appeals instituted under section 374(2) read with Section 383 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “CrPC”) emanate from a common judgment dated 29.02.2020 and order on sentence dated 06.03.2020 passed by the Ld. Additional Sessions Judge (NDPS), North District, Rohini Courts, Delhi, whereby the Appellants have been convicted and sentenced for committing the murder of the deceased, Vimal Kumar *alias* Mohit, by stabbing him with a knife whilst robbing his mobile phone.
2. By way of the common judgment dated 29.02.2020 and order on sentence dated 06.03.2020, both the Appellants have been convicted for commission of offences punishable under section 302 read with section 34 of the Indian Penal Code, 1860

(hereinafter referred to as “IPC”) and sentenced to undergo rigorous imprisonment for life along with a fine of Rs.10,000/- each, in default whereof, both the Appellants have been sentenced to undergo simple imprisonment for two years, each. For the commission of offences punishable under section 392 read with section 34 of the IPC, both the Appellants have been sentenced to undergo rigorous imprisonment for five years along with a fine of Rs.10,000/- each, in default whereof, both the Appellants have been sentenced to undergo simple imprisonment for one year, each. The Appellant in Criminal Appeal No.626 of 2020 (hereinafter referred to as “Appellant No.2”) has also been convicted for the commission of offence punishable under section 397 of the IPC has been sentenced to undergo rigorous imprisonment for seven and a half years along with a fine of Rs.10,000/- each, in default whereof, the Appellant No.2 has been sentenced to undergo simple imprisonment for one year. Further, Appellant No.2 has also been convicted for the commission of offence punishable under section 27 of the Arms Act, 1959, and has been

sentenced to undergo rigorous imprisonment for four years along with a fine of Rs.10,000/- each, in default whereof, the Appellant No.2 has been sentenced to undergo simple imprisonment for six months. All sentences have been ordered to run concurrently.

3. The case of the Prosecution giving rise to the present appeals is that on the intervening night of 13/14.07.2012, information regarding a stabbing incident near Kacha Rasta, Tikri Village was received and pursuant to the same, PW-13 (HC Rajender Singh) alongwith gunman and driver reached the spot and saw a person lying in a pool of blood. The victim was put in the PCR van and taken to SRHC Hospital. A DD No.34A (Ex.PW-6/A) was prepared, pursuant to which, SI Dinesh Dahiya (PW-26) alongwith SI Dinesh (PW-28) reached the spot and came to know that the injured person had been taken to SRHC Hospital. They called the beat staff at the spot and proceeded to SRHC Hospital. After reaching the hospital, it was found by them that the victim had been declared as “brought dead”. Upon inquiry at the hospital, a witness i.e.,

PW-3 was found, and his statement was recorded (Ex.PW-3/A). As per the statement of PW-3, they were attacked by the Appellants who approached them on their motorcycle. The Appellants stabbed the victim, Mohit, and also robbed him off his mobile phone. They also caught hold of PW-3, but he managed to free himself from their clutches and ran home and informed his uncle (PW-4) of the incident. PW-4 collected some people from the locality and reached back to the spot with PW-3. After reaching back at the spot, they found that victim had been taken to the hospital by the PCR van. They also reached the hospital thereafter and found that the victim had succumbed to the injuries inflicted upon him.

4. After the completion of investigation, Chargesheet was filed in the court of Ld. ACMM, North District, Rohini Courts, Delhi whereafter the case was committed for trial to the Ld. ASJ. Thereafter, Charge was framed against the Appellants under section 302 read with section 34 of the IPC, and under section 392 read with section 34 of the IPC to which they pleaded not guilty and claimed trial. Charge was also framed against

Appellant No.2 under section 397 of the IPC as well as under section 27 of the Arms Act, to which he pleaded not guilty and claimed trial.

5. The Prosecution examined 39 witnesses during the course of the trial. Whereafter, the statements of the Appellants were recorded under section 313 of the CrPC. In their statements, both, Appellant No.1 and Appellant No.2 stated that they had no role to play in the incident. They also stated that the vehicle i.e., motorcycle bearing number DL 8S AA 4405 was called to the police station and retained by the police [Ex.PW-11/3]. They further stated that there was no recovery made at their instance and there has been no identification of the alleged weapon of offence i.e., a knife [Ex.PW-11/6]. They both further stated that the recovery was planted by one of the police officials. Both the Appellants also stated that they were taken to the police chowki Bhorgarh at 09:00 P.M. on 13.07.2012 after some police officials came to their house in plain clothes and asked them to accompany them on the motorcycle for investigation. They stated that on 14.07.2012,

they were asked to call their mother to the police station with their ID proofs. They also stated that they were both illegally detained for two days. They further stated that they did not make any disclosure statement to the police. They also denied that any document or pointing out memo was prepared on their pointing. They stated that they have been falsely implicated in the matter and that the police has falsely deposed against them. They also stated that they were forced to sign on papers and that they were abused and beaten by SI Satyair as well as by other police officials. They also stated that in this regard, a complaint was filed against SI Satyavir and the proceedings *qua* the same were pending in the Court of Ld. Metropolitan Magistrate, Rohini Courts, Delhi. They deposed that owing to the complaint made them against the police, they have been falsely implicated in the matter.

6. *In sum and substance*, the Ld. Counsel for the Appellants have raised the following contentions challenging the case of the prosecution as well as for assailing the impugned judgment and order on sentence passed by the Ld. Trial Court:

- (i) The testimony of PW-3 is completely unreliable as he has completely recanted from his statement made in examination-in-chief. There are major contradictions in the statement of PW-3 in as much as the date of the incident is stated to be 14.07.2012, whereas it has been noted as 13.07.2012 in the FIR [Ex.Pw-2/A]. In his cross-examination, PW-3 deposed that he could not identify the motorcycle and the knife. PW-3 has also stated that there was no light at the spot of the incident and that, therefore, he could not possibly have seen any of the assailants. Further, in the FIR, there is arguably no mention of robbery.
- (ii) The recoveries made in the case cannot be accepted as legal recoveries to bring home the guilt of the Appellants since the same were not even recovered in the present case.
- (iii) Alternatively, the offence, even if hypothetically deemed to have been committed, is only one of culpable homicide not amounting to murder, since the

injury admittedly had been caused on the thigh, which is a non-vital part of the body, and because there is no evidence on record to demonstrate the intention of the Appellants to cause death of the deceased victim.

7. We have heard the learned Counsel for the Appellant and State at considerable length. The homicidal death of the deceased is not in dispute. It was specifically stated by PW-30 in the Postmortem report (Ex.PW-30/1) prepared by him as well as in his testimony that *“death was due to hemorrhagic shock consequent upon stab injury no.1. The injury was antemortem, fresh in duration and caused by single edged sharp object like knife. The injury was sufficient in the ordinary course of nature to cause death.”* He further deposed that the injury upon the person of the deceased victim could have been possible from the examined knife [Ex.PW-11/5]. Further, a reading of the testimony of PW-3 would reveal that deceased victim had been stabbed in the thigh with a knife, which corroborates the medical evidence adduced by PW-30. The

same is also corroborated by the statements made by the police officials that they were informed of an incident of stab injury.

8. The only question which thus subsists is, whether the Appellants are responsible for causing the death of the deceased by inflicting stab injury on his person, whilst committing the robbery of his mobile phone.
9. The Prosecution's asseverations against the Appellants, rest in large measure on the ocular evidence of PW-3 who deposed in his examination-in-chief that he resides at B-4/6, Swaran Jyanati Vihar, Tikri Khurd, Delhi with his uncle (PW-4). The victim/deceased used to stay at the first floor of the same house and used to work with PW-3 at a factory of slippers at DSCIDC, Narela. On intervening night of 13/14.07.2012, PW-3 was returning home from work with the deceased when the Appellants approached them on a motorcycle. The Appellants forcibly searched the pocket of PW-3, and when nothing was found, they caught hold of his neck and started beating the victim, Mohit. They also snatched and robbed the mobile

phone of the victim. One of the Appellants contemporaneously stabbed the victim on his thigh. After PW-3 managed to free himself from the clutches of the Appellants, he ran to his house and informed his uncle (PW-4). PW-4 collected some people from the locality and reached back to the spot with PW-3. After reaching back at the spot, they found that victim had been taken to the hospital by the PCR van. They also reached the hospital thereafter, where their statements were got recorded.

10. In his cross-examination, PW-3 resiled partly from the statement he made during his examination-in-chief. However, there appears to be no reason in law why the entire testimony of PW-3 ought to be effaced or entirely and completely disregarded as unreliable on this ground because during his examination-in-chief, PW-3 correctly identified the Appellants [*Ref: Khuji @ Surendra Tiwari vs State of Madhya Pradesh* reported as **1991 (3) SCC 627**, as well as, *Hari & Anr vs The State of Uttar Pradesh* pronounced by the Apex Court on 26.11.2021 in CrI A.186/2018]. His testimony with regard to

the robbery of the mobile phone of the deceased victim also remained unchallenged and consequently uncontroverted on behalf of the Appellants. He also identified the weapon of the crime as well as the motorcycle. The seizure and recovery have been proved by the testimony of PW-11, which has remained unshaken during the cross-examination. His testimony further proved the seizure of the motorcycle and the recovery of the weapon of the crime i.e., knife. [Ex.PW-11/3 *qua* Motorcycle; Ex.PW-11/4 *qua* Mobile phone, and Ex.PW-11/6 *qua* Knife]

11. Further, the Appellants categorically refused to participate in the judicial TIP, which also lends itself to drawing an adverse inference against them. No witness has been examined to prove the uncorroborated defence of the Appellants that they had been shown to many persons while they were in police custody, and to the effect that they were also brought to the court unmuffled and shown to interested persons/public.
12. Therefore, in view of the above, it can reasonably be concluded that the prosecution has successfully proved beyond

a shadow of doubt that the Appellants, in order to commit robbery, attacked the victim and PW-3, robbed the mobile phone of the victim and stabbed him with a knife causing his unfortunate death at the young age of 25 years.

13. With regard to the argument advanced on behalf of the Appellants that this is not a case of culpable homicide amounting to murder, it would be profitable to apply the test in ***Virsa Singh*** (reported as **AIR 1958 SC 465**) to the facts of the present case. Per the *Virsa Singh* Test, the prosecution must first, establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature.

14. In the present set of facts, it has been established beyond reasonable doubt that the stab injury inflicted upon the person of the victim was committed by the Appellants whilst robbing him of his phone and at the time of attacking both the victim and PW-3. There remains no shadow of doubt that this bodily injury, which has been opined as sufficient to cause death in the ordinary course of nature, was caused with intention and not accidentally.
15. From the foregoing, there is clear and irrefutable ocular evidence which inspires the confidence of this Court in establishing the guilt of the Appellants beyond reasonable doubt, which is also independently corroborated and supported by, (i) the recovery of the weapon of the offence/crime i.e., the knife at the instance of the perpetrators; and (ii) the medical evidence with regards to the stab injury which was opined to have been caused by the knife and opined further as likely to cause death in the ordinary course of nature; and (iii) the

motive for the commission of the crime i.e., robbery of the mobile phone of the deceased victim.

16. Before parting with the case, it would be trite to note that the present is an extremely unfortunate case where a young boy, who worked hard in order to make ends meet, tragically lost his life because of the menace created by the delinquents of society. Safety and security of the people is axiomatically paramount for them to lead a good, dignified life. Owing to delinquency, the society is losing faith in the system. The offenders, thus, need to be dealt with a stern hand. Even one life lost, is an irreparable loss we bear as a nation forever.
17. Thus, in our considered opinion, there is no merit in the appeals and the decision of the Ld. Trial Court warrants no interference or modification. The judgment dated 29.02.2020 as well as the order on sentence dated 06.03.2020 passed by the Ld. Trial Court are upheld.
18. The present Appeals are accordingly dismissed.

19. Pending applications, if any, are also disposed of.
20. No order as to costs.
21. A copy of this judgment be communicated to the Appellants through the Superintendent, Tihar Jail, as well as to learned counsel appearing on behalf of the parties electronically and be also uploaded on the website of this Court forthwith.

**SIDDHARTH MRIDUL
(JUDGE)**

**ANUP JAIRAM BHAMBHANI
(JUDGE)**

NOVEMBER 30, 2021

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[Click here to check corrigendum, if any](#)