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**(2010) 06 DEL CK 0044**

**Delhi High Court**

**Case No:** Criminal Appeal No. 143 of 1997

Mahinder

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

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**Date of Decision:** June 4, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

**Hon'ble Judges:** Ajit Bharihoke, J; A.K. Sikri, J

**Bench:** Division Bench

**Advocate:** Arun Sharma, for the Appellant; Pawan Sharma, for the Respondent

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**Judgement**

Ajit Bharihoke, J.

This appeal is preferred by the appellant Mahinder against the impugned judgment dated 17.03.1997 convicting him u/s 302 IPC for committing murder of Ram Singh, and the consequent order on sentence of even date.

2. Briefly put, case of the prosecution is that on 08th March, 1993 at 11:00 a.m., PW14 Constable Balbir Singh, who was on duty at J.P.N. Hospital, informed police station I.P. Estate vide DD No. 8A (Ex.PW14/A) that Constable Azadvir (PW10) had brought one Ram Singh in injured condition to J.P.N. Hospital, who, on examination by the doctor vide MLC No. 13537, was declared dead. On receipt of the said DD report, SI Rajendra Singh (PW11) and Inspector N.P. Singh reached J.P.N. Hospital. They collected MLC of Ram Singh and thereafter, proceeded to the spot of occurrence located at the open parking area of Vikas Minar in front of Nagar Tea Stall. PW2 Nagar Lal was present there, who made a statement Ex.PW2/A claiming that he was the proprietor of Nagar Tea Stall, Shop No. 11, DDA Market near Vikas Minar. The deceased Ram Singh S/o Kali Prasad was employed in his shop as "Halwai" for the last 1 1/2/2 years and used to reside at the shop. The appellant Mahinder S/o Karam Chand was his customer and he used to take meals at his

"dhaba". As a result, he had developed friendship with the deceased. The complainant Nagar Lal further claimed that on the fateful day, there was not much work at his shop because of "Holi" festival. At about 09:45 a.m., appellant Mahinder came to his "dhaba" and chatted with Ram Singh (deceased). A short-while later, he saw that appellant and deceased were quarrelling. The appellant Mahinder was abusing the deceased and saying that he would not spare him. On this, he and his servant Hyat Singh (PW3) intervened and separated them. On enquiry, the deceased told him that the appellant used to ask him for free food and when he refused to serve free meals to the appellant, 3 or 4 days ago, the appellant threatened to kill him and that was the reason for the altercation between them. Complainant also claimed that thereafter, appellant and the deceased went out of the "dhaba" abusing each other and began to grapple. Seeing this, he sent his employee Hyat Singh (PW3) to call the police, and he intervened and separated them. At about 10:15 a.m., appellant Mahinder again rushed towards the deceased and he took out a knife from his right socks and inflicted a knife blow on the left side of the neck of Ram Singh (deceased), and also inflicted three or four injuries on the face of the deceased. In the meanwhile, Constable Azadvir (PW10) and Head Constable Panna Lal (PW8) came running from the side of Ring Road. On seeing them, the appellant ran towards Vikas Marg, ITO with the knife in his hand. Head Constable Panna Lal chased him without success. Constable Azadvir brought a three wheeler scooter from Vikas Marg and took injured Ram Singh, who was bleeding profusely, to the hospital where he was declared dead. Later on, Head Constable Panna Lal also returned to the spot and told that the appellant had escaped. SHO N.P. Singh sent said statement of Nagar Lal along with his endorsement to the police station for the registration of the case. On the basis of said statement, formal FIR (Ex.PW11/A) was registered.

3. The Investigating Officer visited the spot of occurrence. He seized a pair of "chappals" belonging to the deceased from the spot. He also lifted the blood sample as well as control earth from the spot and prepared the rough site plan Ex.PW17/B. Inquest proceedings were conducted on 09.03.1993. Dead body was sent for post-mortem and other formalities of investigation were completed.

4. On 23rd March, 1993, the appellant Mahinder surrendered in the Court. He was formally arrested and his police custody remand was obtained. On interrogation, the appellant made a disclosure statement Ex.PW2/D that he had thrown the knife i.e. weapon offence in the bushes near I.M.A. Hall. Though the appellant took the police party to the place where he claimed to have thrown the knife, the knife could not be recovered. On completion of the other formalities of investigation, a challan u/s 302 IPC was filed against the appellant.

5. The learned Additional Sessions Judge, on consideration of the charge-sheet, charged the appellant for murder of Ram Singh punishable u/s 302 IPC. The appellant pleaded not guilty to the charge and claimed trial.

6. In order to bring home the guilt of the appellant, the prosecution has examined 18 witnesses. The case of the prosecution is mainly based upon the testimony of 4 purported eye-witnesses namely PW2 Nagar Lal, PW3 Hyat Singh, PW8 Head Constable Panna Lal and PW10 Constable Azadvir.

7. PW2 Nagar Lal has deposed that he was running a "dhaba-cum-Tea Stall" near Vikas Minar, DDA. The deceased Ram Singh was his employee, who used to reside at the "dhaba" at night. The appellant Mahinder was one of his customers, who had developed friendship with Ram Singh. Regarding the incident, PW2 Nagar Lal claimed that in the morning of 08th March, 1993 at about 09:45 a.m., appellant Mahinder came to his shop. He was talking with Ram Singh and suddenly, both of them started quarrelling and abusing each other. The appellant was saying that he would not spare the deceased. On this, he and PW3 Hyat Singh intervened and both of them were pacified. Ram Singh (deceased) told him that reason for the quarrel was that the appellant had demanded free meal from him, which he had declined. PW2 Nagar Lal also stated that the appellant thereafter went to the nearby park. Deceased Ram Singh also followed him to the park. They talked for about two or three minutes and again started quarrelling. He sent PW3 Hyat Singh there and while Hyat Singh was bringing Ram Singh back, the appellant took out a knife from his right socks and stabbed Ram Singh on his neck from the backside for 5/6 times. In the meanwhile, Head Constable Panna Lal (PW8) and Constable Azadvir (PW10) came running from the side of Ring Road. The appellant Mahinder Singh, however, ran away with the knife towards Vikas Marg. Head Constable Panna Lal chased Mahinder but he could not be apprehended. Constable Azadvir (PW10), in the meanwhile, brought a three wheeler scooter and took Ram Singh to the hospital. He also stated that police visited the spot and recorded his statement Ex.PW2/A.

8. PW3 Hyat Singh is an employee of PW2 Nagar Lal. He had deposed that on the day of "Holi" at about 09:45 a.m., the appellant came to their "dhaba" which was closed on account of "Holi". Ram Singh (deceased) and the appellant were eating and drinking and they suddenly started quarrelling and abusing. Mahinder threatened that he would not spare Ram Singh. On this, he and Nagar Lal intervened. Thereafter, at the instance of Nagar Lal, he went to call the police from the police station and by the time he returned back, two police officers had already arrived at the "dhaba". He further stated that Mahinder gave knife blow to Ram Singh. In the cross-examination, he stated that the knife blow had been given to Ram Singh before he returned from police station.

9. PW8 Head Constable Panna Lal has deposed that on 08th March, 1993, he alongwith Constable Azadvir was on duty in Beat No. 5, which includes the area of Vikas Minar. At about 10:15 a.m., when they were going towards DDA Market, IMA Hall from the side of Ring Road, he noticed the appellant having altercation with one employee of Nagar Tea Stall and that the appellant later on, started inflicting knife injuries on the person of the said employee, whose name was later on disclosed as

Ram Singh. Ram Singh, because of the injuries, fell on the ground. On seeing the incident, they both ran towards the place of occurrence but the accused managed to run away with the knife. He left Constable Azadvir (PW10) at the spot and chased the appellant but could not catch him. After the unsuccessful chase, he returned to the spot of occurrence and then, he and Constable Azadvir (PW10) removed the injured Ram Singh to the hospital on a three wheeler scooter. He immediately corrected himself and stated that as a matter of fact, only Constable Azadvir had taken the injured to the hospital and he remained at the spot of occurrence. He also stated that on 23rd March, 1993, he identified the appellant Mahinder in the room of Investigating Officer at the police station. PW10 Constable Azadvir also deposed to more or less similar effect.

10. The statement of the accused u/s 313 Cr.P.C. was recorded. In the said statement, the appellant has denied the prosecution story and according to him, he has been falsely implicated by the police with a view to solve a blind murder case.

11. In defence, the appellant has examined two witnesses. DW1 Rakesh has stated that on 08th March, 1993, he had visited the house of appellant Mahinder at Faridabad at 08:00 a.m. to play "Holi" and they remained together in the house of appellant till 11:30 a.m. Thereafter, they both went to the house of DW2 Sat Pal to play "Holi" and remained there till 01:00 p.m. and returned back to the house of Mahinder where he took food and left Mahinder at 02:00 p.m. He further stated that after some time, he returned back to the house of Mahinder. Sat Pal also came there and they played cards till 06:30 p.m. DW2 Sat Pal has also deposed to the similar effect.

12. The learned Trial Judge, on consideration of the aforesaid eye-witness account, found the appellant guilty of murder of Ram Singh and convicted him u/s 302 IPC.

13. Learned Counsel for the appellant, while assailing the impugned judgment, submitted that the appellant is innocent and he has been falsely implicated by the police to solve the blind case. He took us through the evidence on record and pointed out that this is a case based purely upon the evidence of four witnesses namely, PW2 Nagar Lal, owner of Nagar Tea Stall located near the place of occurrence, PW3 Hyat Singh, an employee of Nagar Lal, PW8 Head Constable Panna Lal and PW10 Constable Azadvir, who also are claimed to be the eye-witnesses to the occurrence. Thus, he has submitted the presence of said two witnesses being doubtful, it is unsafe to rely upon their testimony.

14. As regards PW8 Head Constable Panna Lal and PW10 Constable Azadvir, Learned Counsel submitted that their presence at the time of the occurrence is highly doubtful and it appears that they reached at the spot only after the occurrence had taken place. In support of this contention, Learned Counsel drew our attention to the MLC of the deceased Ex.PW13/A wherein it is recorded that the deceased was brought to the hospital on 08.03.1993 at 10.50 a.m. by Constable Azadvir with the

alleged history of "being found in an unconscious state within a pool of blood". In the column of name of the victim "unknown, son of unknown" is recorded and below that it is written "Ram Singh, c/o Nagar Ka Hotel behind IMA Market, DDA". From this Learned Counsel for the appellant has urged us to infer that PW8 Head Constable Panna Lal and PW10 Constable Azadvir, who admittedly were together on patrol duty reached at the spot after the occurrence and they were not even aware of the name of the deceased when he was taken to the hospital. Learned Counsel submitted that had PW8 and PW10 actually seen the appellant stabbing the deceased, Constable Azadvir, being a police official definitely would have informed the doctor that the deceased had sustained injuries due to stabbing by knife and this fact would have found mention in the alleged history recorded in the MLC. Thus he has submitted the presence of the said two witnesses being doubtful, it is unsafe to rely on their testimony.

15. Learned Counsel for the State, on the other hand, has submitted that PW8 Head Constable Panna Lal and PW10 Constable Azadvir cannot be dubbed as unreliable witnesses for the reason that the alleged history recorded in the MLC on the basis of information supplied by Constable Azadvir does not state that the injured had sustained injuries because of stabbing of knife. He submitted that learned Trial Judge has rightly relied on this evidence as they are public servants and had no axe to grind with the appellant.

16. Learned Additional Sessions Judge has dealt with this argument of the appellant in Para 6 of the impugned judgment wherein he has inter alia observed thus:

6. The doubt expressed by Id. Counsel has no real basis. It has to be kept in mind that the MLC Ex.PW13/A was prepared by a Junior Resident doctor. Probably he was not conversant with legal formalities and therefore he did not take the necessary precaution. Nothing much should be read in the word "unknown" written in the column of name of patient on the MLC and no significance can be attached to the writing of "PP JPN" in the column of police docket. In this context the statement of PW10 Const. Azad Bir is significant. He states on cross examination that he did not tell the name of injured to the Duty Constable. Then Duty Constable Balbir (PW14) says that he had no talk with the doctor. It is quite probable that the body was taken to the doctor by the Duty Constable in the first instance and that might be the reason for the original entries in the columns of name and police docket. The important thing to be noted is that the name of Const. Azad Bir was written in the column of "name of relative" at the first opportunity. Therefore, it was quite natural that the name of the patient and the other particulars were correctly filled in when Const. Azad Bir had interaction with the doctor.

17. From the above discussion of the learned Additional Sessions Judge, it appears that while dealing with the issue raised by learned defence Counsel, the learned Additional Sessions Judge has strayed into the arena of surmises and conjectures and started looking into the possible reasons for the aforesaid infirmity in the

evidence of PW8 and PW10 vis-a-vis the facts recorded in the MLC, which is not permissible under law. Be that as it may, the fact remains that the learned Additional Sessions Judge has not answered the basic argument raised by the accused against the reliability of PW8 and PW10 i.e. as to how and why PW10 Constable Azadvir failed to inform the doctor at the hospital that the deceased had been stabbed with knife by someone, which under the normal course of circumstances, he was expected to tell the doctor if he had actually witnessed the incident of stabbing. Thus, under the circumstances we find that the testimony of PW10 is not reliable and it is not safe to rely upon their testimony alone. Since it is claimed that PW8 was also on patrol duty along with PW10, in view of the above his testimony also cannot be relied upon. However, this by itself cannot be taken as reason to discard the other evidence at the outset.

18. Learned Counsel for the appellant has submitted that even the testimony of the only remaining eye-witness PW2 Nagar Lal is not reliable for the reason that he has made several improvements in his testimony in Court vis-à-vis his earlier statement Ex.PW2/A given to the police which formed basis for registration of the FIR. In order to appreciate this argument it is necessary to have a look on the improvements pointed out by the Learned Counsel, which are contained in cross-examination. Relevant portion of cross-examination inter alia reads thus:

I had mentioned in my statement to the police that employees of the nearby offices are my customers. (confronted with statement Ex.PW2/DA where there is no mention) I had not stated to the police that on the holly day of 1993 Ram Singh refused to give food to Mahender Singh I had mentioned in my statement to the police that Mahinder went to nearby park and Ram Singh also went there (confronted with Ex.PW2/A where it is not so recorded) I had mentioned to the police that Ram Singh and Mahender had talked for 2-3 minutes and they again started quarrelling (confronted with Ex.PW2/A where there is no mention of the talks for 2-3 minutes) I had not mentioned to the police that I sent Hyat Singh to bring Ram Singh and when he was bringing Ram Singh Mahender attacked with knife. I had mentioned to the police that Mahender attacked with knife 5-6 times on Ram Singh (confronted with Ex.PW2/A where it is mentioned that attack was for 3-4 times).

19. Bare reading of above cross-examination of PW2 Nagar Lal makes it clear that the improvements pointed out by the Learned Counsel for the appellant are immaterial and do not touch the core of the issue. These improvements are of minor nature and can be attributed to the failure of memory of the witness due to lapse of time between the date of occurrence and his examination in Court, which took place almost after one year and nine months. Another criticism against the testimony of PW2 is that he has testified in the Court that on 08.03.1993 at about 9.45 a.m. the appellant and the deceased suddenly started quarrelling and abusing each other and they were pacified by him (witness) and PW3 Hyat Singh. Thereafter,

appellant Mahinder went to a nearby park and Ram Singh (deceased) also went there. After talking for two or three minutes they again started quarrelling and on this he sent PW3 Hyat Singh there and while Hyat Singh was bringing the deceased towards his Dhaba, the appellant took out a knife from his right socks and inflicted knife wounds on the person of the deceased, resulting in injuries. Learned Counsel for the appellant has submitted that aforesaid version of the appellant is contradictory to his earlier statement Ex.PW2/A made to the police wherein he had stated that when the appellant and the deceased indulged in a scuffle, he sent PW3 Hyat Singh to call the police and he intervened and separated both of them. At about 10.15 a.m. appellant Mahinder again rushed towards the deceased and after whipping out a knife from his right socks he gave a knife blow on the left side of the neck of the deceased followed by three or four blows, which version implies that Hyat Singh was not present at the time of stabbing. PW3 Hyat Singh has also contradicted the version of PW2 by stating that at the time of the occurrence he was not present at the spot as he had gone to the police station and by the time he came back, the deceased had already sustained injuries. Learned Counsel, in view of the aforesaid contradictions, has urged us to infer that PW2 Nagar Lal is not an eye-witness and he has been introduced by the police to implicate the appellant Mahinder.

20. We do not find any merit in this contention. Perusal of the record reveals that the occurrence took place on 08.03.1993 at around 10.15 a.m. As per the MLC, the deceased was brought to JPN Hospital by Constable Azadvir on the same day at 10.50 a.m., rukka Ex.PW2/A was sent to the police station from the spot of occurrence at 1.15 p.m. and the FIR was registered on the same day at 1.20 p.m. i.e. within three hours of the occurrence. Perusal of statement Ex.PW2/A of Nagar Lal, which formed basis for the registration of FIR as well as the FIR EX.PW11/A indicates that the name of the appellant as the culprit who had stabbed the deceased Ram Singh had come on record at the very first instance when the statement of complainant was recorded by the investigating officer at spot. Therefore, by no stretch of imagination it can be said that the police has falsely implicated the appellant with a view to solve a blind case. As regards the contradiction in the testimony regarding presence of PW3 Hyat Singh at the time of occurrence, it is suffice to say that the rule falsus in uno, falsus in omnibus is not a rule of evidence in criminal trials in India. In a criminal trial it is always a duty of the Court to read evidence as a whole to separate grain from the chaff to arrive at the real truth. In our aforesaid view we find support from the judgment in the matter of [Triloki Nath and Others Vs. State of U.P.](#), . In the instant case when the evidence of PW2 Nagar Lal is read as a whole in the context of other evidence, we find no reason to suspect his credibility. Otherwise also from the record it would be seen that the appellant Mahinder Singh is resident of Faridabad and there is nothing on record to suggest that PW2 Nagar Lal had any enmity or motive to falsely implicate the appellant. We, therefore, find no reason as to why PW2 Nagar Lal would depose falsely against the

appellant. Though PW3 Hyat Singh is not an eye-witness to the actual occurrence but his testimony referred to above is important to the extent that it tends to corroborate the version of PW2 Nagar Lal regarding the presence of appellant Mahinder Singh at the spot in the morning of 08.03.1993 and also that before he proceeded to police station to call the police there had been an altercation between the appellant and the deceased. To that extent testimony of PW3 Hyat Singh corroborates and provides credence to the testimony of PW2 Nagar Lal. Thus we find that learned Trial Court has rightly relied upon his evidence.

21. Learned Counsel for the appellant also submitted that the learned Trial Court has failed to appreciate that in the instant case prosecution has not been able to establish any motive nor the weapon of offence has been recovered. He, therefore, urged that benefit of this infirmity in the prosecution case ought to have been given to the appellant.

22. Though motive for crime is an important factor in a criminal trial to establish the guilt of the accused, but at the same time failure of the prosecution to prove the motive is not fatal to the case against the accused if there is direct evidence to establish the guilt. In the matter of *Molu v. State of Haryana* AIR 1996 SC 2499 while dealing with the question of motive Supreme Court observed thus:

11. ...It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eyewitnesses is creditworthy and is believed by the court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant....

23. From the above enunciated principle of law, it is clear that absence of proof of motive is insignificant where there is direct evidence to establish the guilt of the accused. Similarly, non recovery of the weapon of offence during investigation is not such an important factor to neutralise the direct evidence of complicity of the appellant in the murder of the deceased, provided by PW2 Nagar Lal whose version finds corroboration in the version of PW3 Hyat Singh. Thus we find no merit in this argument.

24. Lastly it is argued that a possibility of manipulation and false implication of the appellant cannot be ruled out in this case because there is delay of three hours in registration of FIR. In support of this contention Learned Counsel for the appellant has relied upon *N.H. Muhammed Afras v. State of Kerala* 2009 AIAR (Cri.) 171 SC. In the aforesaid case, unexplained delay of 15 hours in reaching the FIR to the Court situated at a distance of 250 yards was taken as one of the circumstances to cast doubt against the correctness of a prosecution case. There can be no quarrel with the aforesaid proposition of law. However factual matrix of this case is entirely



different. On perusal of record, it transpires that the occurrence took place at about 10.15 a.m., the deceased was brought to the hospital at 10.50 a.m., intimation about his admission in hospital was conveyed by the duty constable to the police station vide DD report Ex.PW14/A at 11.00 a.m., rukka was sent to the police station at 1.15 p.m. and the FIR in this case was registered at 1.20 p.m. It has come in evidence that on the receipt of the information vide DD No. 8A Ex.PW14/A the I.O. first visited JPN Hospital and collected the MLC of the deceased. When he did not find any eye-witness there, he came to the spot and recorded the statement of PW2 Nagar Lal Ex.PW2/A which was sent along with the endorsement to the police station for the registration of case. All this obviously must have consumed some time. Therefore, the delay of three hours in the registration of the FIR cannot be termed as an inordinate, unexplained delay to make the prosecution case unreliable, particularly when there is no reason to disbelieve the eye-witness account given by PW2 Nagar Lal.

25. The appellant, at the fag end of the trial, has tried to set up a plea of alibi. He has examined DW1 Rakesh and DW2 Sat Pal to prove his alibi i.e. on the relevant date and time when the occurrence took place he was at Faridabad and, therefore, he could not have committed the murder of the deceased. On careful perusal of record, we do not find the testimony of DW1 and DW2 reliable and it appears that they have been examined by the appellant on an afterthought to set up a false plea of alibi. On perusal of evidence, we find that no suggestion relating to plea of alibi was given to the relevant witnesses including the Investigating Officer. Even in the statement u/s 313 Cr.P.C., the appellant came up with a vague explanation that he was not present on the alleged date of occurrence. If the defence of the appellant was true he, under the ordinary course of nature, would have come out with the clear explanation that on the fateful day, he was celebrating "Holi" in Faridabad, which is not the case. Therefore, the plea of alibi of the appellant must fail and this circumstance also goes against the appellant and tends to add strength to the prosecution case.

26. In view of the discussion above, we find that the learned Trial Judge has rightly relied upon the testimony of PW2 Nagar Lal which finds corroboration from the evidence of PW3 Hyat Singh to find the appellant guilty. We find no merit in this appeal which is accordingly dismissed.

27. Appellant is on bail. He be taken into judicial custody for undergoing his remaining sentence.

28. The appeal is disposed of accordingly.