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

+ **CRL.APPEAL No.1397/2013**

Date of Decision : 23<sup>rd</sup> August, 2016

SUBHASH ..... Appellant

Through Ms.Saahila Lamba, Adv.

versus

STATE GOVT. OF NCT OF DELHI ..... Respondent

Through Mr.Amit Chadha, Additional  
Public Prosecutor for the State.

**CORAM:  
HON'BLE MR. JUSTICE P.S.TEJI**

**P.S.TEJI, J.**

1. The present appeal has been preferred by the appellant under Section 374 (2) of the Criminal Procedure Code, 1973 (Cr.P.C.) against the judgment and order dated 4<sup>th</sup> July, 2012 passed by learned Additional Sessions Judge-II, North-West, Rohini Courts, in Sessions Case No.98/11 emanating from FIR No.312/08 registered at Police Station Shalimar Bagh whereby the appellant was held guilty and convicted under Section 304 Part (I) & 323 of the Indian Penal Code (IPC) and vide order dated 7<sup>th</sup> July, 2012, the appellant was imposed the sentence of rigorous imprisonment for ten years along with fine of Rs.50,000/- and in default of payment of fine, further three months simple imprisonment for the offence punishable under Section 304 Part (I) of the IPC and further the

appellant was sentenced for a period of one year for the offence punishable under Section 323 of the IPC.

2. A thumbnail sketch of the facts of the case is that on 5<sup>th</sup> June, 2008 at 10.00 p.m., a quarrel took place at CA Block Jhuggis, between the deceased Yashwant@Jaswant Meena and Pramod@Natu who used to run juice rehri. Pramod@Natu allegedly refused to give juice to the deceased Yashwant@Jaswant Meena and his friend Pradeep Kumar pursuant to which there arose a verbal altercation in which the victims tauntingly referred him as Bihari. At the time of verbal altercation between Natu and Yashwant@Jaswant Meena, one other person namely Subhash (appellant herein) who was also standing at the juice rehri, also joined and later on ran towards the Jhuggi cluster and called out his other associates who duly armed with dandas and wooden fatta, reached the spot after some time. Thereafter, the said persons started beating Yashwant@Jaswant Meena with dandas and wooden fatta and also gave leg and fist blows to Yashwant@Jaswant Meena. Mr.Pradeep Kumar further informed the Police that upon his intervention, the said boys also gave beatings to him which resulted in injuries to him. It transpires from the record that Yashwant@Jaswant Meena tried to run towards the side of the road to save himself but one of the assailants chased him and gave him a blow on his head with the help of a wooden fatta by which Jaswant Meena fell down on which the other assailant gave beatings to him by leg

and fist blows.

3. Learned counsel for the petitioner has further submitted that the accused Subhash had stated in his statement that he was innocent and had no role to play in the alleged incident in any manner. He further submitted in his statement that he was a poor labourer and was residing along with his family in Jhuggi and was never involved in anti-social activities. He had further stated that police officials came to his house and forcibly took him to Police Station Shalimar Bagh where he was kept in wrongful confinement and was beaten up mercilessly much prior to 9<sup>th</sup> June, 2008 i.e. the alleged date of his apprehension. The accused had also stated that he was shown to various public persons there and many other persons were also kept in wrongful confinement besides him and they were also beaten up. According to the appellant, the police officials let him go after taking money and thereafter falsely implicated him in the present case.

4. Learned counsel for the appellant has vehemently submitted that in view of the above mentioned statement of the appellant, he was thus kept in wrongful confinement and beaten up mercilessly much prior to the alleged date of his apprehension. She has further stated that nothing incriminating was recovered from the possession of the appellant or at his instance.

5. Learned counsel for the petitioner has further submitted that the

Trial Court failed to appreciate the fact that the incident occurred in the heat of passion upon certain quarrel without premeditation and that the same was without motive or intention, which certainly cannot be termed as culpable homicide amounting to murder. Reliance is placed on the pronouncement of the Supreme Court in *Rajender Vs. State (2000) 4 SCC 298* to the effect that the occasion must be sudden and not as cloak for pre-existing malice. It is only an unpremeditated assault committed in the heat of passion upon a sudden quarrel. It is also alleged that as per the case of the prosecution, the accused persons did not exchange any common intention prior to the commission of offence and the weapon of offence is only a lathi and, therefore, presumption cannot be laid against the appellant that he was aware of the intention of the co-accused persons or exchanged any common intention within the spur of moment at the time of incident or that he was under any knowledge that the blunt impact on the head will result into death of the deceased.

6. Learned counsel for the appellant has further submitted that the learned Trial Court had failed to appreciate the fact that PW-7 had failed to depose before the Court about the registration number of motor cycle and number and names of boys who gave beatings to him before his escaping from the spot. It is also submitted that the prosecution had failed to get the length, breadth and width of the wooden fattas and lathis alleged to be used in the incident in question.

7. It is next alleged that the Trial Court did not appreciate the fact that the investigating officer had failed to get the statement of eye-witness i.e. PW 14 Pradeep Kumar on the same day of incident so as to prepare the said witness on its own tricks and tactics. It is also submitted that the learned Trial Court did not appreciate the fact that PW-7 Pradeep Kumar, on the one hand explained by pointing towards the accused that these persons held danda, fatta etc. for beating the deceased Yashwant@Jaswant Meena, on the other hand in his cross-examination, he had admitted that he did not see the incident. It is also submitted that the statement of PW-14 was recorded by the police on the next day of incident and the possibility of tutoring the witness by the police officials cannot be ruled out as the police officials had reached at BSA Hospital but they did not try to record the statement of the said witness in the hospital itself.

8. Learned counsel for the appellant has further alleged that the learned Trial Court failed to appreciate the fact that the charges as framed under Section 302/34 are not made out against the present appellant and, therefore, wrongly convicted the appellant under Section 304 IPC by taking the aid of Section 34 of the IPC. It is added that to convict a person by taking the aid of Section 34 of the IPC, it is necessary on the part of the prosecution to prove that the act was done in furtherance of common intention either pre decided or within the spur of moment.

9. The arguments of defence counsels is to the effect that the recoveries have been planted upon the accused since despite the secret information and prior information, no public witness had been joined and hence no reliance can be placed on the testimony of police witnesses regarding the recoveries. It is also argued that there is nothing on record to suggest that all the accused have shared common intention to kill the deceased.

10. It is next contended by learned counsel for the appellant that the Trial Court ignored the cardinal rule of evidence to the effect that a person cannot be held guilty on mere probabilities. Evidence of witness or circumstances surrounding the incident should, in a definite tendency and unerringly, point towards the guilt of the accused.

11. Learned counsel for the petitioner has further submitted that the petitioner is first time offender and is not involved in any other case. It is also submitted that the petitioner is a young boy and is helping hand in his family and that at the time of incident, he was in early twenties. It is also submitted that keeping in view the fact that the petitioner has already undergone sufficient period of judicial custody, a lenient view may be taken against him.

12. On the basis of the statement given by Pradeep Kumar, investigation commenced, on 9<sup>th</sup> June, 2008, the accused Brijesh Kumar was apprehended and arrested pursuant to secret information received.

Thereafter, at the behest of accused Brijesh Kumar, the other accused persons namely Subhash Kumar, Putul Kumar and Vipin Kumar were also got arrested. Pursuant to their disclosure statement, the accused Subhash and Brijesh got recovered danda and a fatta used in the commission of offence from the bushes near a canal. Test Identification Parade (TIP) of the petitioner was conducted on 12<sup>th</sup> June, 2008 in which he was identified by PW 7 Pradeep Kumar. Thereafter efforts were made to trace out the accused Pramod@Natu and process under sections 82/83 of the Code of Criminal Procedure was issued against him. The accused Pramod@Natu got recovered the wooden Musli used in the juice machine with the help of which he inflicted injuries upon Yashwant@Jaswant Meena.

13. After completion of investigations, charge sheet was filed against all the accused persons before the Court.

14. Learned Additional Public Prosecutor on the other hand, has submitted that keeping in view the nature of the allegations involved and the fact that a young person of only 24 years of age had lost his life by the act of the appellant/accused that too by a casual reference to a particular region by a young boy, the petitioner does not deserve any leniency.

15. I have heard learned counsel for the parties at length; gone through the available records and the judgments cited by learned counsel for the

appellant. So far as the present appeal is concerned, which was moved by Subhash, this Court will keep its findings confined to appellant-Subhash alone. As regards the role attributed to Subhash in the commission of crime, it has come in evidence that it was he who joined the altercation. The accused Subhash after the quarrel, immediately ran away from the spot to the jhuggi cluster and called the others from their jhuggi. He along with the others then came back to the spot with danda with which he gave beatings to the deceased Yashwant@Jaswant and also to Pradeep (inured). In his disclosure statement, the accused Subhash disclosed that he could get recovered the weapon of offence i.e. danda. The accused Subhash was apprehended and arrested on 9<sup>th</sup> June, 2008. So far as recovery of weapon of offence i.e. danda is concerned, the accused Subhash also led the police party near the canal in the bushes from where he got recovered one wooden danda after lifting it from the bushes which was taken into possession vide memo Ex.PW20/E. So far as the statement of the eye witness Pradeep Kumar, PW 7 is concerned, the relevant portion of the same reads as under:-

“xxx I identify the accused Subhash present in the Court and he was having a danda in his hand and inflicted injuries to Yashwant@Jaswant and me. I identified the accused Subhash in Tihar Jail during TIP proceedings. ”

15. That on 08.07.2008, he along with Naresh Kumar, brother of the deceased came to Rohini court and when the case was called, he saw accused Putul,

Vipin, Brijesh and Subhash, who were in custody of the police, then he identified them and investigating officer recorded his statement.”

16. So far as medical evidence is concerned, the same establishes the commission of crime in the manner narrated. The relevant portion of the testimony of Dr.Kulbhushan Goel, PW 1, reads as under:-

“Injuries No.1 and 2 were caused by blunt force impact and the cause of death was brain compression as a result of cranio-cerebral damage.

The witness has further proved that on 04.09.2008, Inspector Puran Chand tendered an application along with a sealed packet inscription of which was PC regarding opinion of weapon of offence. According to him, on opening the packet, it was found to contain one wooden Musli used in fruit juice machine to press the fruits. He has proved having drawn the rough sketch of the object and gave his opinion that the injury No.1 mentioned in post-mortem report Ex.PW1/A was possible by this weapon or similar type of such weapon which opinion and rough sketch of the weapon is Ex.PW1/C. He has correctly identified the weapon of offence i.e. the Musli examined by him which is Ex.P1.”

17. The act of the accused Subhash reflects that he acted in consortium with other co-accused in continuing to run after the deceased Yashwant@Jaswant when he was moving away from the spot to save himself and then they inflicted injuries on the head of the deceased, which conduct has rightly brought the case within the purview of Part – 1 of Section 304 of the Indian Penal Code. The common intention between the accused developed at the spot of the incident itself which is

indicated from the fact that when the deceased Yashwant@Jaswant Meena and injured Pradeep ran from the spot in order to save themselves, the accused followed them while co-accused Brijesh gave a fatta blow on the head of the deceased as a result of which the deceased fell down after running for about 15 steps, in the meanwhile, all the other accused including the petitioner also reached there and again gave fists, legs, danda, fatta and musli blows to the deceased. From the testimony of PW 7 Pradeep Kumar, it has been established that all the accused including the petitioner acted in consortium in commission of crime thereby proving their common intention.

18. The chain of events thus clearly establishes involvement of the petitioner in the commission of crime.

19. The prosecution appears to have rightly proved the identity of the accused as well as the manner in which the commission of crime took place not to mention the investigation conducted; documents in support as well as the medical evidence. The evidences which the prosecution witnesses have tendered, appear to be trustworthy.

20. So far as the ground taken by the petitioner that he has been wrongly implicated in the present case is concerned, the same cannot be considered as correct inasmuch as the accused/petitioner has not suggested any reason as to why he has been falsely implicated in the present case.

21. The recovery of weapon of offence i.e. danda (Ex.P-2) which was used by the accused Subhash in inflicting injuries to the deceased and PW 7 Pradeep Kumar, has also been duly established in the present case. Witness PW 7 in his testimony duly identified the said danda as Ex.P-2 and stated that it was the same wooden danda which was used by accused Subhash for inflicting injuries to him and deceased Yashwant@Jaswant.

22. Learned counsel for the appellant has contended that no such recovery was effected either from the person of the appellant or at his instance and that such recovery was planted upon the appellant. Even no public witness was made part of the said recovery.

23. It is part of evidence that wooden danda Exh.P-2 was got recovered by the appellant from the bushes near a canal in pursuance of his disclosure statement. It is a settled law that disclosure statement made by an accused before a police officer cannot be read in evidence against him but the part of his disclosure which led to recovery and that too from a conspicuous place is admissible in law as per Section 27 of the Evidence Act. In similar situation, Hon'ble Apex Court in the case of *Dhananjay Chatterjee Alias Dhana vs State Of W.B. (1994) 2 SCC 220*, held as under:-

“2. “.....Though, the entire statement made by the appellant before the police is inadmissible in evidence being hit by Sections 25 and 26 of the Evidence Act but that part of his statement which led to the discovery of the shirt and the pant is clearly admissible

under Section 27 of the Evidence Act. We disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the appellant as it is only so much of the statement made by a person accused of an offence while in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered which is capable of being proved and admitted into evidence. The discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence.”

24. The ratio of law settled in *Dhananjay Chatterjee Alias Dhana* (**supra**) has been followed in *Nisar Khan @ Guddu And Ors. Vs. State Of Uttaranchal (2006) 9 SCC 386*, in which it was held as under:-

“6. Regarding the second contention that the recovery of arms has not been proved by the prosecution has also no substance. It is evidence on record that the accused were arrested on 17.12.1999 and pursuant to a disclosure statement made by them, the arms were recovered from the bank of Gaula river where these have been hidden under the sand and covered by the stones. All the arms were recovered as pointed out by each accused hidden under the stones. The High Court fell in error in holding that the recovery has not been proved as these were recovered from a place which is frequented by the public. This finding of the High Court is contrary to the evidence on record. It is now well settled principle of law that the recovery pursuant to the disclosure statement made by the accused under Section 27 of the Evidence Act is admissible in evidence. In *Dhananjay Chatterjee alias Dhana v. State of West Bengal*, it is held that entire statement made by an accused person before the police is inadmissible in evidence being hit by Sections 25 and 26 but that part of his statement which led to the discovery of the articles is clearly admissible under Section 27 of the Act. It is also held that the

Court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. It is further held that the discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence.”

25. So far as the contention of the petitioner to the effect that there were certain lacunae in the manner the prosecution had proceeded with, is concerned, the same cannot be taken into consideration inasmuch as it is well settled law that certain technical defects in the prosecution cannot discard the case of the prosecution in toto. *In C. Muniappan & Ors. vs. State of Tamil Nadu, JT 2010 (9) SC 95*, it has been held that there may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the certain defects in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully,

to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. The observation has been made in *Chandra Kanth Lakshmi v. State of Maharashtra*, AIR 1974 SC 220; *Karnel Singh v. State of Madhya Pradesh*, (1995) 5 SCC 518; *Ram Bihari Yadav v. State of Bihar*, AIR 1998 SC 1850; *Paras Yadav v. State of Bihar*, AIR 1999 SC 644; *State of Karnataka v. K. Yarappa Reddy*, AIR 2000 SC 185; *Amar Singh v. Balwinder Singh*, AIR 2003 SC 1164; *Allarakha K. Mansuri v. State of Gujarat*, AIR 2002 SC 1051 and *Ram Bali v. State of U.P.*, AIR 2004 SC 2329).

26. It is heartening to observe that people are becoming more impatient and egoistic these days and are losing their temperament over petty issues. This is the reason behind commission of many crimes these days. Who could possibly imagine that denial of giving a glass of juice could result into murder of twenty four years old boy. This madness is unacceptable. The petitioner, therefore, deserves no mercy.

27. I, therefore, do not find any illegality, incorrectness, perversity or diversity in the impugned order dated 4<sup>th</sup> July, 2012 passed by learned Additional Sessions Judge-II, North-West, Rohini Courts, in Sessions

Case No.98/11 pertaining to FIR No.312/08 registered at Police Station  
Shalimar Bagh.

28. Consequently, the present appeal is dismissed.

**(P.S.TEJI)**  
**JUDGE**

**AUGUST 23<sup>rd</sup>, 2016**  
**aa**