

Dev Raj vs.state

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Court : Delhi

Decided On : Nov-28-2016

Appellant : Dev Raj

Respondent : State

Advocate for Def. : Mr. Varun Goswami

Advocate for Pet/Ap. : Ms. Inderjeet Sidhu

Judgement :

\$~ *IN THE HIGH COURT OF DELHI AT NEW DELHI % + DEV RAJ Reserved on
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17. h November, 2016 Date of Decision:

28. h November, 2016 CRL.A. 783/2000 Appellant Through: Ms. Inderjeet Sidhu, Adv. versus Through: Mr. Varun Goswami, APP for Respondent STATE the State CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MS. JUSTICE ANU MALHOTRA JUDGMENT GITA MITTAL, J1 The appellant before us assails the judgment dated 29th September, 1999 passed by the Sessions Judge finding the appellant guilty of commission of the offence punishable under Section 302 IPC and Section 27 of the Arms Act, 1959 with which he was charged in Sessions Case No.1 arising out of FIR No.3 registered by Police Station Seema Puri. The appellant also challenges the order

of CrI.A. 783/2000 Page 1 of 22 sentence dated 30th September, 1999 passed by the learned trial judge sentencing the appellant to undergo imprisonment for life and to pay a fine of `5,000/- for commission of the offence punishable under Section 302 IPC and in default to undergo further simple imprisonment for six months. For commission of the offence under Section 27 of the Arms Act, he was further sentenced to undergo rigorous imprisonment for two years and to pay a fine of `1,000/-, and in default to undergo simple imprisonment for three months. The sentences were directed to run concurrently and the benefit under Section 428 of the Cr PC was given to the appellant.

2. The appellant was arrested on 22nd June, 1998 at 3 p.m. day time and remained in custody during trial.

3. Upon his conviction, the appellant filed the present appeal assailing the judgment dated 29th September, 1999 and the order on sentence dated 30th September, 1999. The appeal was admitted for hearing. By an order dated 17th March, 2005, the sentence imposed on the appellant was suspended.

4. In our order dated 17th November, 2016, we had noted as follows : 2. It is noteworthy that the present appeal came up for consideration on 15.12.2000 when it was admitted for regular hearing and the record of the lower Court was called for. After filing of the present appeal, the appellant filed Criminal Appeal CrI.A. 783/2000 Page 2 of 22 rejection of two No.414/2001 impugning the same judgment dated 29th September, 1999 through the Delhi High Court Legal Services Committee without disclosing the filing of the present appeal.

3. Along with the second appeal, i.e., Criminal Appeal No.414/2001. After similar applications, the appellants third application for suspension of sentence being CrI.M.(Bail) No.1905/2005 was considered by the Court on 17th March, 2005, and the following order was passed:-

" Learned counsel for the appellant submits that appellant has already been in incarceration for a period of over 6 years and 8 months and has also earned remission of 1 year and 3 months. The conduct of the appellant in the jail has been satisfactory. Appellant is of Nepalese origin and accused of having murdered his

own brother. Considering the age of the accused, which is about 25 years, and that there are younger siblings it appropriate to direct suspension of sentence for a period of 4 months from today, subject to the appellant furnishing a personal bond in the sum of Rs.15,000/- with two local sureties of the like amount to the satisfaction of the trial Court/Duty Magistrate. Additionally, appellant would also report once in a week to the concerned Police Station. Appellant would also not leave the town without permission of the Court. Application stands disposed of. to be supported, we consider 4. The appellant sought reduction of the surety amount by way of Crl.M (Bail) No.3599/2005. By the order passed on 11th April, 2005 on this application, the Court sought his willingness to Crl.A. 783/2000 Page 3 of 22 undertake that he will not leave India and would remain here if his sentence for imprisonment was suspended. On 2nd May, 2005, this Court modified the order dated 17th May, 2005 directing as follows: This is an application for reduction in the surety amount and number of sureties. Having considered the matter, we modify the order dated 17th May, 2005 and direct the suspension of sentence of appellant for a period of four months from the date of release. Upon his furnishing a personal bond in the sum of Rs.5,000/- with one surety of the like amount to the trial Court/duty Magistrate. Appellant shall surrender on expiry of four months from the date of release. Appellant would also report once in a week to the concerned police station and would not leave the jurisdiction of this Court without permission of the Court. Application stands disposed of. Dasti. satisfaction of the 5. Crl. Appeal No.414/2001 was thereafter listed on 9th November, 2005 by the Registry upon intimation being received from the Superintendent, Central Jail No.2, Tihar, that the appellant had not surrendered after expiry of the interim suspension of sentence granted by the Court. The Non-bailable warrants issued by the Court were not executed.

6. Accordingly, the Court called for the trial court record with regard to issuance of NBWs of arrest as well as notice was issued to the surety for forfeiting the surety amount and the report was called for from the trial court in this regard. Crl.A. 783/2000 Page 4 of 22 that that the NBWs 7. Our attention is drawn to the report dated 9th November, 2005 received in Criminal Appeal No.414/2001 from the learned Additional Sessions Judge reporting remained unexecuted and the surety had already deposited the amount of fine imposed upon him vide order dated 15th

April, 2005.

8. The record shows that the copy of order dated 3rd July, 2006 from Mr. Rakesh Tiwari, learned Additional Sessions Judge, Karkardooma Courts, Delhi, sent to this Court contains a report to the effect that the appellant was declared Proclaimed Offender after issuance of the process under Section 82 & 83 Cr.P.C. and recording the statement of witnesses.

9. On 2nd May, 2006, the directions were issued to the SHO to make efforts to arrest the appellant following the process under Section Cr.P.C. Finally, the order dated 2nd August, 2006 noted that the appellant had been declared Proclaimed Offender. It was further directed by the Court that Crl. Appeal No.414/2001 being subsequent to Criminal Appeal No.783/2000 would be deemed to have been withdrawn.

10. In these circumstances, this Court appointed Ms. Ritu Guaba, Advocate as an amicus curiae to represent the appellant in this appeal. As she was not appearing on 10th November, 2016 this Court appointed Ms. Inderjit Sidhu, Advocate, who is present in Court, as an amicus curiae on behalf of the appellant. Crl.A. 783/2000 Page 5 of 22 11. The nominal roll of the appellant has been called for from the Jail which shows that the appellant has undergone a total imprisonment of six years eleven months and fifteen days as on 7th June, 2005 when he was released on interim suspension of sentence which liberty he has misused.

12. In view of the pronouncement of this Court reported in Mukesh v. State; Crl. Appeal No.186/1992 and the pronouncement of the Apex Court in Surya Baksh Singh v. State of Uttar Pradesh: (2014) 14 SCC222 is no prohibition to us hearing the present appeal. Having appointed a competent amicus curiae in the above facts the rights of the appellant would be protected. There is no prohibition to our hearing the present appeal. there In this background, we proceeded to hear arguments on 17th 5. November, 2016 in the appeal and reserved the judgment. We have been carefully taken through the record of the case by Ms. Inderjeet Sidhu, Advocate and Varun Goswami, learned APP for the State.

6. The case of the prosecution rests on eye witness account of three witnesses namely Mukesh Gupta (PW1); Doodh Nath Mishra (PW5) and Jalaluddin @ Salim (PW6). Crl.A. 783/2000 Page 6 of 22 Factual Matrix 7. The unfolding of events on the fateful night which led to the implication of the appellant, his conviction and sentence is within a narrow compass and is disclosed in the testimony of Mukesh Gupta (PW1), we summarize the same hereafter.

8. A sweet shop in the name and style of Krishna Sweets Corner was being run on the ground floor of House No.1/422, Gali No.6, Friends Colony, Delhi-95 by Shri Mukesh Gupta (PW1). As is disclosed in the testimony of witnesses, on 22nd June, 1998 at about 8.30-8.45 a.m., Doodh Nath Mishra (PW5) and his friend Jalaluddin @ Salim (PW6) were sitting in front of the Krishna Sweets Corner and taking tea. At that time, other workers in the factory of Moni Wear were drinking tea sitting outside the Krishna Sweets Corner. It is in the testimony of both these witnesses that they were workers at M/s Moni Wear which was situated near the sweets shop where boxes are manufactured. One Bhanu Parshad purchased two samosas and tea from Mukesh Gupta (PW1) also sat down on the bench and starting consuming the same. Mukesh Gupta (PW1) was placed at the counter in his shop.

9. At that time, Devraj, appellant herein who was earlier working in the factory arrived at the Krishna Sweets Corner from the side of the railway line and gave a knife blow to Bhanu Parshad who had by then eaten the samosas. After giving the knife blow, Devraj started Crl.A. 783/2000 Page 7 of 22 running towards the railway line. The knife which he had used for attacking Bhanu Parshad who started bleeding fell on the spot. PW1, 5 and 6 have testified that after being stabbed, Bhanu Parshad also fell on the ground. Doodh Nath Mishra (PW5) and Jalaluddin (PW6) gave a chase to the appellant Devraj. PW1 Mukesh Gupta also ran after them. These three witnesses apprehended the appellant after some distance. When questioned as to why he had attacked Bhanu Parshad, the appellant informed that Bhanu Parshad had not returned an amount of `6,300/- which he had borrowed from the appellant for a long time and therefore, he had given the knife blow. The witnesses have disclosed that they learnt about the name of the assailant after they had apprehended him. The appellant also disclosed that

Bhanu Parshad was his own brother. After having been attacked, Bhanu Parshad fell on the ground and was bleeding from his injuries.

10. Having apprehended the appellant, Mukesh Gupta telephonically informed the police. Investigation conducted and evidence led 11. So far as the police intervention in the case is concerned, the factum of the call by Mukesh Gupta having been made to the police is corroborated in the testimony of Doodh Nath Mishra(PW5) and Jalaluddin (PW6). We also find that in his evidence, Ct. Ilkfat Ali Khan who appeared as PW9 refers to telephonic information received CrI.A. 783/2000 Page 8 of 22 by a public call, logged as DD no.12A at the PS Seema Puri with regard to the murder of a person in front of Sansar Sewing Machine Factory in gali No.6. Copy of this DD was handed over to SI Khemenderpal Singh (PW12) for further action who alongwith Ct. Ilkfat Ali Khan proceeded to the spot which was about two kilometers from the police station. At the spot, these police officials found the dead body of Bhanu Parshad as well as the three eye witnesses, Mukesh Gupta, Doodh Nath Mishra and Jalaluddin who produced Devraj before them. The dead body was lying in a pool of blood with blood on the clothes of the deceased as well as on the ground. The police also found a bloodstained knife and a bloodstained diary lying at the spot.

12. In the meantime, Inspector Narender Mohan (PW13) alongwith Ct. Satender Rathi (PW11) also reached the spot.

13. It is in the evidence of Inspector Narender Mohan (PW13), which is duly corroborated by the testimony of SI Khemenderpal Singh (PW12) and Ct. Satender Rathi (PW11), that Mukesh Kumar Gupta gave the statement (Exh.PW1/A) with regard to the incident on which Insp. Narender Mohan (PW13) made an endorsement Exh.PW13/A. Insp. Narender Mohan (PW13) handed over this rukka to Ct. Satender Rathi for registration of the case. The statement of Mukesh Gupta was scribed by SI Khemenderpal Singh Ex.PW1/A which was signed by Mukesh Gupta at point A and also endorsed by Inspector Narender Mohan (PW13) at point C (Exh.PW13/A). It is CrI.A. 783/2000 Page 9 of 22 duly established on record in the testimony of Ct. Satender Rathi (PW11) that he had taken the rukka to the police station Seema Puri and as a result through FIR No.3

was registered by the Police Station Seema Puri. Ct. Satender Rathi (PW11) returned to the spot alongwith the rukka and copy of the FIR was handed over to the IO Insp. Narender Mohan (PW13), Addl.SHO, PS Seema Puri.

14. SI Mukesh Jain (PW7) who was a draftsman was called at the spot by Insp. Narender Mohan who had taken rough notes and measurements and prepared the scaled site plan Ex.PW7/A.

15. At the spot, IO Inspector Narender Mohan also got the site plan prepared from SI Khemenderpal Singh with correct marginal notes Exh.PW13/B. The crime team was called to the spot by Insp. Narender Mohan (PW13). The spot was photographed which photographs were proved on record as Exh.P1-P7.

16. The bloodstained diary found at the spot was taken into possession after converting it into a pullanda and sealed with the seal of NM vide seizure memo Exh.PW1/D. This diary was produced and proved as Ex.P2 before the trial court.

17. The investigating officer also took into possession the bloodstained knife (Ex.P3) from the spot and converted it into a pullanda and sealed the same with the seal of NM vide ExPW1/C.

18. A rough sketch of the knife was got prepared by SI Khemenderpal Singh (PW12 (Exh.PW1/B), measurement of the CrI.A. 783/2000 Page 10 of 22 knife were taken by SI Khemenderpal Singh (PW12) and noted on Exh.PW1/B.

19. The three eye witnesses Mukesh Gupta, Doodh Nath Mishra and Jalaluddin confirmed these recoveries and signed the memos in witness thereof.

20. A blood sample from the body of the deceased was taken from his body with the help of a piece of cotton gauze which was kept in a small plastic phial and made into a pullanda with the help of piece of cloth and marked as serial no.A. A sample was also taken of a bloodstained piece of cotton from the shirt of the deceased which was also converted into a pullanda and marked as serial no.B. Bloodstained earth control from the ground was converted into a pullanda and marked as serial no.C. The three pullandas mark A, B and C were sealed with the seal of NM and taken into possession vide Exh.PW1/H also prepared by SI

Khemenderpal Singh and signed by the three eye witnesses.

21. The bloodstained shirt (Exh.P4) of the appellant Devraj @ Shyam was also seized and sealed with the seal of NM and taken into possession vide Exh.PW1/G which was scribed by SI Khemenderpal Singh.

22. The dead body of the deceased was sent to the GTB Hospital with Ct. Ilkfat Ali Khan (PW9). Before sending the dead body to the hospital, the IO Insp. Narender Mohan (PW13) had effected a CrI.A. 783/2000 Page 11 of 22 personal search of the dead body and from the pocket of the deceased recovered `30.50, one pen, one bunch of keys, one saving bank account passbook with cheque book, one comb, one wrist watch, which articles were converted into a pullanda and sealed with the seal of NM and taken into possession vide memo Exh.PW1/J.

23. So far as the appellant was concerned, he was arrested vide Exh.PW1/F and his personal search effected vide memo Exh.PW1/E.

24. It is in the testimony of Insp. Narender Mohan (PW13) that he was suffering from pain in the finger of his right hand and consequently all the aforementioned documentation was got scribed by SI Khemenderpal Singh (PW12) under his instructions.

25. The Investigating Officer got filled the inquest report through SI Khemenderpal Singh (Exh.PW13/C) which was signed by him at point A.

26. The dead body of the deceased was identified by Mukund Kumar (Exh.PW13/D) and Bhoj Raj (Exh.PW13/E).

27. A request for post mortem was made by Insp. Narender Mohan who also sent the recovered knife (Exh.P3) for opinion of the doctor vide Exh.PW13/F.

28. So far as the post mortem on the body of the deceased is concerned, the same was performed by Dr. A.K. Tyagi (PW10) in the Department of Forensic Medicine of the UCMS and the GTB hospital on 24th June, 1998 commencing from 10.30 a.m. The post mortem CrI.A. 783/2000 Page 12 of 22 was conducted by Dr. A.K. Tyagi who submitted the post mortem report (Exh.PW10/A) noting that

the autopsy commenced at 10.35 a.m. The doctor had observed that the clothes of the deceased were stained and soaked with blood at places on the body. So far as the details of the injuries were concerned, the doctor has noted the following ante mortem injuries on the body of the deceased : Details of Injuries - Antemortem 1. Abrasion of 1.5 x 1.2 cm present over right side.....(not legible) just above the outer margin of right eye with bruise bluish around in an area of 2 x 2cm around.

2. Abrasion of 1.5 x 0.8 cm was present over upper inner of right side face.

3. Abrasion of 2.0 x 1.8 is present over lower outer aspect of right side face. With bruise bluish around in 2.5 x 2.00 cm area.

4. Abrasion of 2.5 x 2 cm present over back of left elbow.

5. Incised Stab wound of 1.6 x 0.8 cms into cavity deep was present; obliquely over upper inner front of left side chest. The upper outer angle is 6.5 cms below the inner end of clavicle and was 2.5 cm outer to left to midline. The lower inner angle is more outer than the upper outer angle and the lower inner angle was 1.5 cm out into midline. The lower inner angle was more acute than the upper outer angle and also shows fanning of about 1 cm. The injury after cutting the body was going obliquely inwards backward from left CrI.A. 783/2000 Page 13 of 22 to right & slightly down ward made a cut through & through over the inner margin of left lung upper lobe. & then further made a cut in the ascending arch of aorta. The total depth of the injuries was 8 cm. 29. The post mortem report also notes that the left side pleural cavity contains a lot of blood while the heart and lungs had an injury corresponding with the external injuries.

30. It is in the testimony of Dr. A.K. Tyagi and also noted on the post mortem Exh.PW10/A that the clothes of the deceased and the blood sample in the gauze as well as a knife were duly preserved by the doctor.

31. So far as the cause of death is concerned, PW10 had opined that Death in this case was due to shock as a result of haemorrhage caused by injury to chest. Injury nos. 1 to 4 caused by blunt force object and inj No.5 is caused by sharp single edged cutting/stabbing weapon & the No.5 is sufficient cause death in

ordinary cause of nature. 32. The seized articles were received by Ct. Ilkfat Ali Khan. It is in the testimony of Dr. A.K. Tyagi (PW10) and Ct. Ilkfat Ali Khan (PW9) that two sealed parcels, one sealed envelope containing the blood sample of the deceased on a gauze sealed with the seal of AK CrI.A. 783/2000 Page 14 of 22 and two sample seals of AK and the second sealed parcel containing the clothes of the deceased which included one shirt, pant, belt, half pant, pair of socks, pair of shoes were taken into possession vide Exh.PW9/A by the IO, PW13 (which bears the signatures of Insp. Narender Mohan (PW13) at point A from the GTB mortuary after the post mortem of Bhanu Parshad.

33. The prosecution has examined HC Rajeshwer (PW14) who stated that on 26th June, 1998, he was posted as the MHC(M) at the police station Seema Puri when Inspector Narender Mohan had deposited with him seven sealed parcels sealed with the seal of NM. These articles were duly deposited in the malkhana as per the contents of the recovery memo and entries to this effect were made in the register no.19 at serial no.3102, photocopies whereof was proved on record as Exh.PW14/A and Exh.PW14/B.

34. It is in the evidence of Ct. Jitender Singh (PW8) that the seized articles were deposited in the malkhana of the police station. PW8 has deposed that on 10th July, 1998, on the instructions of the investigating officer, he had taken seven sealed parcels sealed with the seal of NM from HC Rajeshwar, the MHC(M) vide RC No.

alongwith the FSL form for depositing the same in the office of the Forensic Science Laboratory, Malviya Nagar for testing. The witness has proved that he had duly deposited the seized articles with the Forensic Science Laboratory. Result of the Forensic Science CrI.A. 783/2000 Page 15 of 22 Examination was tendered in evidence as ExPW13/G and Exh.PW13/H.

35. The investigating officer has also caused the sealed parcel containing the seized knife to be produced before the doctor for examination and his opinion. The same was also subjected to an examination on 24th June, 1998 itself. After examination, Dr. A.K. Tyagi carefully noted the marks of identification of the knife which had a plastic handle on one side on which the word ARISTOCRAT was

scribed. The blade of the knife was made of white metal with one sharp edge while the other side was non-cutting. The blade had blood like stains on it. The doctor noted the following dimensions of the knife and carefully drew the sketch of the knife as well: Maximum length of knife 20.8cms" Maximum length of the blade 10.5 cms on the non-cutting edge 9.11 cm on cutting edge. Maximum breadth of blade is 1.7 cm about 8cm from top."

36. After conducting a careful examination, the doctor opined that injury No.5 present on the body of Bhanu Parshad as noted in the post mortem report No.4 dated 24th June, 1998 could be caused by this weapon.

37. After examination, the weapon was sealed with the seal of AKT, sample seal and inquest report was handed over to the SHO, CrI.A. 783/2000 Page 16 of 22 Seema Puri alongwith the post mortem report as well as weapon report (Exh.PW10/B) and inquest papers in original.

38. We find that the request for the post mortem was made by Inspector Narender Mohan on 22nd June, 1998 (Exh.PW13/F). PW13 has effected a complete submission of the facts of the case in the summary of the case on the prescribed format. It is mentioned therein that it was learnt that Devraj @ Shyam, brother of the deceased Bhanu Parshad inflicted injury to deceased over the payment of `6,300/-.

39. Our attention has been drawn to the FSL report of the Biology division of the Forensic Science Medicine dated 26th February, 1999 Exh.PW13/G which has reported existence of human blood of the B group on the bloodstained gauze containing a sample of blood of deceased Bhanu Parshad. The report has also identified human blood of the B group on the recovered knife as well. On all other articles i.e. the clothes or the shirt, pair of shoes, jeans pant with belt, jeans pant, diary, bloodstained earth as well as the bloodstained cotton, it is reported that some blood was identified thereon. These exhibits were duly sealed with the seal of DSC - FSL which were deposited in the malkhana of the police station.

40. It is in the evidence of Insp. Narender Mohan (PW13) that he had interrogated the appellant on 22nd June, 1998 who had voluntarily made a disclosure

statement which was scribed by SI Khemenderpal Singh (PW12). However, we find that no recovery was effected by CrI.A. 783/2000 Page 17 of 22 the police pursuant to the disclosure statement. In view of the statement having been made while the appellant was in police custody, the same is hit by the prohibition under Sections 24 to 30 of the Indian Evidence Act, 1872.

41. After completion of investigation, the police filed a charge sheet on 18th August, 1998 before the Metropolitan Magistrate. After compliance with the provisions under Section 207 of the Cr PC, 1973, the Metropolitan Magistrate committed the case to the Sessions Court. By an order dated 16th November, 1998, the trial court framed a charge under Section 302 of the IPC, 1860 and a separate charge under Section 27 of the Arms Act, 1959 against the appellant. The appellant pleaded not guilty and claimed trial.

42. During trial, the prosecution examined 14 witnesses in support of its case. The appellant was given an opportunity to explain the incriminating circumstances as stood established by the prosecution through the evidence led by it.

43. The appellant set up bare denial to the circumstances put to him. He claimed that he was innocent and had been falsely implicated in the case. CrI.A. 783/2000 Page 18 of 22 Defence version 44. In his defence, the appellant examined himself as a witness under Section 315 of the Cr PC stating that he was working as a chowkidar in the Ajit Jain Veer Industry situated in Jhilmill area of Delhi for the last 7 years while his brother Bhanu Parshad was living with him in Delhi for about 14 years. The brothers were living in one room and jointly sharing a joint kitchen. It was also claimed that they were having a joint income and that his brother was mukhiya of their house in Delhi. The appellant took up the plea of alibi and submitted that his duty began from 8 p.m. to 10 a.m. daily. He has contended that on the day of the incident, he had left the factory only at 10.15 a.m. for his house. When he reached the spot, he saw several persons of the public standing there and that police had caught the tea shop owner namely Mukesh Gupta who was sitting in the gypsy while his brother Bhanu Parshad was lying on the ground. When he began to weep, the police asked him his relationship with the person on the ground. He had told the police about the fact that his brother had left service at

Cannaught Place about two months ago. It was claimed that he was thereafter beaten and apprehended. After about one hour, relatives of Gupta came and talked to the police whereafter he was let off and the appellant was falsely implicated. In his cross examination, the appellant admitted that he had not made any complaint to any CrI.A. 783/2000 Page 19 of 22 higher official or the court about the above facts and that he had not informed the same to any person.

45. The appellant admitted that he used to come to the Krishna Sweets Corner for taking tea and eating food and that the Veer Industry was situated near the railway line. The appellant denied the suggestion with regard to the offence or the facts established in the evidence of the eye witnesses.

46. After a detailed consideration of the entirety of the case, by the impugned judgment dated 29th September, 1999, the trial court has concluded that the prosecution had succeeded in establishing the commission of the offences with which he was charged and consequently held him guilty for the same. The same also resulted in the passing of the order of sentence on 30th September, 1999.

47. We have heard Ms. Inderjit Sidhu, learned amicus curiae as well as Mr. Varun Goswami, learned Addl. PP for the State who have carefully taken us through the record of the case. Conclusion 48. We have extracted the record above and find that so far as the commission of the offence is concerned, Mukesh Gupta (PW1), Doodh Nath Mishra (PW5) and Jalaluddin (PW6) have carefully described the manner in which the appellant came to the spot and stabbed his brother who was having snacks at the Krishna Sweets CrI.A. 783/2000 Page 20 of 22 Corner owned by Mukesh Kumar Gupta (PW1). The motive for the offence was disclosed by the appellant himself which was to the effect that the deceased had not returned the sum of `6,300/- which had been borrowed by him for a long time.

49. This case is an unfortunate case in which a real brother has stabbed to death his elder brother for an amount of `6,300/-. Given the fact that the commission of the offence has been established beyond any doubt by the testimony of three eye witnesses, the question of motive becomes irrelevant. The photographs Exh.P1/1-7 corroborate the ocular evidence of the crime.

50. The forensic evidence has found blood of the same group as that of the deceased on the knife which was recovered on the spot. Human blood was identified on the other seized articles including the clothing of the deceased.

51. In the instant case, the trial court has held that the eye witnesses were natural witnesses who had no motive at all for false implication of the appellant. The plea of alibi set up by the defence was not put to any of the prosecution witnesses. Even in the evidence lead by the appellant under Section 315 of the Cr PC, the appellant put forth a case which was not put to any of the witnesses. No such plea as was taken in his defence was suggested to the investigating officer or to any of the other prosecution witnesses. The plea of false implication was never made by the appellant by way of any complaint to any person or authority. Crl.A. 783/2000 Page 21 of 22 52. In view of the above briefing facts, we find that the appellant has been unable to assail the finding of guilt by the trial court on any legally tenable grounds. For all these reasons, we find no merit in this appeal which is hereby dismissed. It is essential to observe that the appellant has been declared a proclaimed offender on 2nd August, 2006. The State shall thus endeavour to make all efforts to apprehend and arrest the appellant so that he undergoes the remaining sentence in terms of the order on sentence dated 30th September, 1999. GITA MITTAL, J ANU MALHOTRA, J NOVEMBER28 2016 kr Crl.A. 783/2000 Page 22 of 22

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