

Devender vs.state of Nct of Delhi

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Court : Delhi

Decided On : Apr-03-2018

Appellant : Devender

Respondent : State of Nct of Delhi

Advocate for Def. : Mr. Hirein Sharma

Advocate for Pet/Ap. : Mr. Ajayveer Singh Jain, Ms. Divya Garg, Mr. Atul Aggarwal, Mr. U.R. Bokadia

Judgement :

\$~4 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 118/2017 % DEVENDER Appellant Through: Mr. Ajayveer Singh Jain, Advocate with Ms. Divya Garg, Mr. Atul Aggarwal and Mr. U.R. Bokadia, Advocates. versus STATE OF NCT OF DELHI Respondent Through: Mr. Hirein Sharma, APP for State. CORAM: JUSTICE S. MURALIDHAR JUSTICE I.S. MEHTA

ORDER

0304.2018 Dr. S. Muralidhar, J.:

1. This appeal is directed against the impugned judgment passed by the learned District & Sessions Judge (East), Karkardooma Courts, Delhi dated 29th September 2016 in Sessions Case No.1354 of 2016 arising out of FIR No.419 of 2012 registered at Police Station (PS) New Ashok Nagar, convicting the Appellant for the offence under Sections 302 and 307 of the Indian Penal Code (IPC).

2. This appeal is also directed against the order on sentence dated 3rd November 2016 whereby, for the offence under Section 302 IPC, the Appellant was sentenced to undergo life imprisonment and pay a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for six months; and for the offence under Section 307 IPC, he was sentenced to undergo rigorous imprisonment for a period of seven years and pay a fine of Rs. 5,000/-, and in default to undergo simple imprisonment for three months.

3. The Appellant was charged by the trial Court, by its order dated 4th May 2013, with committing the murder of Neha Yadav (deceased) at around 4.30 pm on 31st December 2012 at the Timber Market, Dallupura, Delhi by stabbing her with a knife thereby committing an offence punishable under Section 302 IPC. The second charge against him was that at the same time, place and date the Appellant caused a knife injury to Gaurav (PW-3) on his cheek thereby committing an offence punishable under Section 307 IPC. Background 4. The deceased was the daughter of Dev Lal Yadav (PW-4) who lived in Rajvir Colony, Delhi. The deceased was working in a private company in Noida. The Appellant was a neighbour residing in the same Rajvir Colony along with his parents, Ramesh Chand (DW-1) and Sarla (DW-2).

5. According to PW-4, in the month of July 2012, the deceased told him that the Appellant was harassing her. PW-4 used to drop his daughter at her place of work and pick her up from there after work. It is the case of the prosecution, as spoken to by PW-4, that on 25th December 2012, he had dropped off his daughter at her place of work. During the day, the deceased informed PW-4 telephonically that there was an office party and, therefore, she would be late and would return home with Gaurav (PW-3) who also worked in the same company and who, according to the prosecution, was her team leader. The deceased further informed PW-4 that the Appellant had reached her office, caught hold of her arm, dragged her and forced her to accompany him. The deceased complained to PW-4 that the Appellant was harassing her. PW-4 then assured her that he would reach her office. While PW-4 was still on the way to her office, the deceased informed him telephonically that the Appellant had run away and that

she was returning home with PW-3. PW-4 stated that he complained to the parents of the Appellant about his offending attitude with the deceased and also stated that he would lodge an FIR against him. According to PW-4, the mausi (aunt) of the Appellant requested him not to lodge any FIR and assured him that she would ensure that the Appellant did not repeat such act.

6. On 31st December 2012, PW-4 again dropped off the deceased at her office in the morning. The deceased informed him that there was an office party planned in the office due to which she would be late and that she would return with PW-3. The incident 7. PW-3 stated in his deposition in Court that on 31st December 2012, he went to the office in the morning and came out after about an hour and a half. The deceased did not come to the office as it was her off day. She met PW-3 outside the office at 10.30 am. They then went to the Bangla Sahib Gurudwara in his Alto car and remained there for around an hour. From there, they came to a sweet shop at Vikas Marg and remained there for half CRL.A. 118/2017 Page 3 of 24 an hour. Thereafter, they reached a mall where the deceased did some shopping. They remained there for about 3-4 hours.

8. Thereafter, at around 4.30 pm, while they were returning and had reached Dallupura Timber Market, the Appellant came there on a motorcycle. The Appellant is stated to have parked his motorcycle in front of the car and then come to the drivers side window. When PW-3 alighted from the car, the Appellant slashed at him with a knife. While trying to avoid the attack, PW- 3 received the knife blow on his cheek as a result of which blood started oozing out. PW-3 noticed that the deceased had stepped out of the car from her side. The Appellant then ran towards her and gave her several knife blows while shouting tu meri nahi hui to kisiki bhi nahin ho sakti. As PW-3 ran towards Noida, he noticed a motorcyclist coming; he took a lift from the said motorcyclist who dropped him near the red light of Noida- Delhi Border. PW-3 then informed the police personnel present at the police post there. An ambulance was called. He returned to the spot only to find that the Appellant had already been apprehended by a public person and Neha had been taken away to the hospital. PW-3 was also taken to the hospital thereafter. The version of PW-1 9. Gurpal Singh (PW-1) was a passerby who, at the time of the incident, was on his motorcycle coming from Noida towards

his house in Laxmi Nagar. At about 4.45 pm, he reached Timber Market, Dallupura Chowk on his motorcycle. He noticed a girl running while shouting and the Appellant running behind her having a knife in his hand. PW-1 then stopped his bike. CRL.A. 118/2017 Page 4 of 24 He saw the Appellant giving the deceased knife blows and then run away from the spot. PW-1 noticed that some members of the public were chasing the accused. PW-1 stopped his motorcycle at the spot in order to take care of the deceased (girl). With the help of the police officials, he took her to LBS Hospital in a private cab where the doctor declared her as having been brought dead.

10. The MLC of both the deceased and PW-3 drawn up at the LBS hospital revealed that both of them were brought there at around 5.10 pm. As far as PW-3 is concerned, he was examined by Dr. P.C. Sahu. One incised wound measuring 8 x 1 x 1 cms on the left cheek was noticed. PW-3 was given first aid and the nature of injury was described as simple sharp. The handwriting of Dr. P.C. Sahu was identified by Dr. Rakesh Singh (PW-24) who was the CMO of the same hospital. As far as MLC of the deceased (Ex.PW-24/C) was concerned, the date and time of arrival is shown as 31st December 2012 at 5.10 pm and she is shown as having been brought by PW-1. It is clearly noted in the said MLC that she was brought dead. Arrest and seizures 11. Inspector Sanjeev Solanki (PW-31), the Investigating Officer (IO) in the present case, deposed that when he reached the spot at around 5.30 pm on 31st December 2012, he found a crowd and found that Constable Surender (PW-29) was holding the Appellant. He made enquiries from the Appellant present there. He found blood on the jacket and shoes of the Appellant. During the enquiry, PW-31 learned that PW-3 and the deceased were stabbed by the Appellant and had been shifted to LBS Hospital. CRL.A. 118/2017 Page 5 of 24 12. PW-31 also found a motorcycle and an Alto car at the spot. He then called the crime team to the spot. The blood lying on the spot was collected as well as an earth control sample. The photographs were also taken. PW-31 also noticed Rahul Singhania (PW-19) who was present at the spot. He made enquiries from him and recorded his statement. The motorcycle and the Alto car were seized and from inside the car, two mobile phones of Samsung and Nokia make were recovered. A mobile phone of LG make was recovered from the possession of the Appellant. His bloodstained jacket was collected and sealed in pullanda and so

were his bloodstained shoes and socks. The Appellant was sent for medical examination in the custody of the Sub- Inspector Narender Singh (PW-30) and Constable Sanjeev. After medical examination, the Appellant was sent to the lock-up at PS Kalyan Puri. PW- 31 recorded the statement of PW-1 under Section 161 Cr PC.

13. On 3rd January 2013, the police team reached the drain at Dallupura from where the knife purportedly used for the commission of the offence was recovered on the pointing out of the Appellant. Sub-Inspector Narender Singh (PW-30) deposed that the place pointed out by the accused was searched by HC Sandeep (PW-11) and a mud-stained knife was recovered. Apparently, this entire exercise was videotaped, although the video recording of the recovery has not been exhibited by the prosecution.

14. On 5th March 2013, the statement of PW-1 under Section 164 Cr PC was got recorded before the learned Metropolitan Magistrate (MM). The said statement (Ex.PW-33/B) was more or less along the same lines as his earlier statement to the police, viz., that on 31st December 2012, when he reached CRL.A. 118/2017 Page 6 of 24 Dallupura Mor as he was returning home from Noida to Laxmi Nagar, he saw a girl screaming and running and a boy pursuing her with a knife in his hand. He saw the boy give three or four knife blows to the girl and then run away. Some public persons chased him and PW-1 reached near the girl and took her to the hospital with the help of the police. Post-mortem examination 15. The post-mortem of the deceased was performed by Dr. B.N. Acharya (PW-27) on 1st January 2013 at the LBS hospital. As far as the clothes were concerned, PW-27 noticed that the deceased was wearing a pink sweater, blood stained blue jeans, a T-shirt with a pink collar having cut mark of size 6.5 x 1 cms, chunni, and a green-coloured necklace. The sweater had a tear on the back measuring 11.5 cm x 0.5 cm and the jeans showed cut marks corresponding to the thigh injuries.

16. As far as external injuries are concerned, PW-27 noticed that there were ligature pressure marks on the middle of the neck on both sides; two incised wounds on the right thigh, one incised wound above the heel, and an incised stab wound on the back of the left chest measuring 5 x. 2.5 x 8 cms. The stab was at

an acute angle upward and longitudinally placed. The wound had entered the chest between 7th and 8th places and cut the 8th rib. In all, therefore, five external injuries were noticed.

17. As far as the internal examination was concerned, there was a cut in the lower lungs of size 2.5 x 0.5 x 8 cms. The blood and clot in chest cavity was 1.5 litres. CRL.A. 118/2017 Page 7 of 24 18. PW-27 gave his opinion as to the cause of death as haemorrhagic shock consequent to injury to left lung and right femoral vessels. All the injuries were ante-mortem and caused by single edged sharp weapon. Injury Nos.2 and 4 were individually and collectively sufficient to cause death in ordinary course of nature. Injury No.1 was caused by chunni present on neck. Trial 19. The charge-sheet was prepared and filed in the Court. As already noticed, by an order dated 4th May 2013, the trial Court charged the appellant with having committed the offence punishable under Sections 302 and 307 IPC.

20. Thirty-three witnesses were examined on behalf of the prosecution. Of these thirty-three, as already noticed, there were two eye-witnesses. One was the injured eye-witness Gaurav (PW-3) and the other the independent eye-witness Gural Singh (PW-1). The father of the deceased, Dev Lal Yadav, was examined as PW-4 and her brother, Vikrant Yadav, was examined as PW-5. Rahul Singhania, the other passerby was examined as PW-19. He, however, was declared hostile as he declined to identify the accused in the Court. Nevertheless, he did speak of witnessing the deceased being attacked by a person who was chased by the public and was subsequently apprehended by the public and handed over to the Police at the relevant time and date at Dallupura crossing. Statement of the accused under S313Cr PC21 In his statement under Section 313 Cr PC, the Appellant denied the circumstances which incriminated him with the standard replies of It is CRL.A. 118/2017 Page 8 of 24 incorrect and I do not know. He denied having misbehaved with the deceased on 24/25th December 2012 at her office. He stated that he and the deceased were in love with each other and wanted to get married. He claimed that since he was not present at the spot, the question of (his) apprehension does not arise at all. As regards his arrest, while denying the case of the prosecution, he stated, I was called at the police station in night at about 8.30 or 9 pm by police personnel, who visited my house on the

pretext that my presence was needed in PS for some inquiry in any matter. I was at my house for the whole day.

22. The Appellant denied the circumstance that he had borrowed the motorcycle from one Jai Singh who had subsequently got the said motorcycle released in his favour by a superdarinama (Ex.PW-26/A). He claimed that the families of the deceased and his were ready for their marriage. Defence evidence 23. Four defence witnesses were examined. The parents of the deceased, i.e. Ramesh Chand and Sarla, were examined as DW-1 and DW-2 respectively. While both of them maintained that the police came to their house at around 8:30 or 9 pm on 31st December 2012 and took away the accused, they also admitted as correct that they did not make any complaint to anyone about the Appellant having been taken away. DW-2 additionally volunteered that the Appellant and the deceased were in love and that the Appellant had taken his parents permission to marry the deceased. CRL.A. 118/2017 Page 9 of 24 24. Satender Kumar (DW-3) was the neighbour of the Appellants family in Rajbir Colony. He claimed to have seen the police in front of the house of the accused and, upon making enquiries, he learnt that they had come to take the accused away. In his cross-examination, he agreed that he had not seen the accused accompanying the police personnel and he had not gone to the PS to enquire about the accused. Rahul (DW-4) also deposed to the same effect. He too, in his cross-examination, stated that he had not enquired with anyone about the arrest of the accused or complained to any senior officer about the arrest. Impugned judgment of the trial Court 25. In the impugned judgment dated 29th September 2016, the trial Court came to the following conclusions: (i) The ocular evidence of PWs 1 & 3 clearly showed that it was the accused who had assaulted both PW-3 and the deceased with the knife. Although PW-19 had turned hostile by not identifying the accused, he had corroborated the case of the prosecution to the extent that he saw a person running and public persons chasing him at the date, time and place of the incident. (ii) The blood stains on the jacket, shoes and socks of the accused when sent for examination to the FSL were found to contain human blood on them. The blood group could not be ascertained. There was no satisfactory explanation from the accused for the presence of human blood on the jacket, shoes and socks. (iii) The delay in recovering the knife was not fatal to the case of the prosecution as, based on the

FSL report, it was clear that there were CRL.A. 118/2017 Page 10 of 24 remnants of mud present on the knife that matched the sample soil sent for examination. (iv) Dr. S. Lal, Specialist, Forensic Medicine, LBS Hospital confirmed that the seized knife could have been used in inflicting the injuries No.2,3,4 & 5 mentioned in the post mortem report. (v) Dr. B.N. Acharya (PW-27) confirmed that the cause of death was hemorrhagic shock consequent upon the stab injury to left lung and right femoral vessels. (vi) From the conjoint reading of the testimonies of PWs 27 and 32 and the FSL reports, it was clear that the injuries were caused by the knife recovered at the instance of the accused. (vii) The failure to examine the shop keeper from whom the knife was purchased was not fatal to the case of the prosecution. Likewise, the failure to investigate the non-recovery of the helmet worn by the accused was also not fatal to the case of the prosecution. (viii) Since it was not the case of the prosecution that the incident had taken place inside the car, the question of there being blood stains in the car did not arise. It was also not the case of the prosecution that the accused had caused injuries to Neha while he was chasing her. Moreover, blood was found lying at one place and not scattered over a large area. (ix) The failure to join public witnesses in the investigation and in the recovery of the knife was not fatal to the case of the prosecution, as it was not uncommon for members of the public to be reluctant to join proceedings for fear of harassment. CRL.A. 118/2017 Page 11 of 24 (x) The defence witnesses did not prove that the Appellant had been falsely implicated or that it was PW-3 who had caused injuries to the deceased. The contradictions in the testimonies of the injured eye- witness and the independent eye-witness were not material enough to discredit their respective testimonies.

26. For the aforementioned reasons, the trial Court concluded that the prosecution had been able to prove the guilt of the accused beyond all reasonable doubt. Law relating to eye witnesses 27. Before beginning to analyse the evidence of the eye witnesses, the law in this regard may be recapitulated. The settled legal position is that the Court must attempt to, while appreciating the evidence of an eye-witness, separate the truth from falsehood and not reject an eye-witness testimony entirely only because there are some embellishments. In Ugar Ahir v. State of Bihar AIR 1965 SC277 the Supreme Court explained the legal position as under: The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a

sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. 28. Further, as explained in *State v. Saravanan* AIR 2009 SC152 the Court can overlook minor discrepancies on trivial matters which do not affect CRL.A. 118/2017 Page 12 of 24 the core of the prosecution case. In *State of U.P. v. Krishna Master* AIR 2010 SC3071 the Supreme Court emphasised that that it is the duty of the Court to separate falsehood from the truth, in sifting the evidence. At the same time, the eye-witness testimony must be credible and reliable. It should not be contradicted by other eye-witnesses or by the medical and forensic evidence, if any.

29. In *Rammi alias Rameshwar v. State of Madhya Pradesh* AIR 1999 SC256 it was observed :

"When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non- discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny".

30. Further in *Bhajan Singh v. State of Haryana* (2011) 7 SCC421 the Supreme Court explained the legal position as regards the evidence of an injured or a 'stamped' witness as under:

"21. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the

actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an CRL.A. 118/2017 Page 13 of 24 injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness. Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: Abdul Sayeed v. State of Madhya Pradesh, (2010) 10 SCC259 Kailas & Ors. v. State of Maharashtra, (2011) 1 SCC793 Durbal v. State of Uttar Pradesh, (2011) 2 SCC676 and State of U.P. v. Naresh & Ors., (2011) 4 SCC324.

22. In State of U.P. v. Hari Chand, (2009) 13 SCC542 this Court re- iterated the aforementioned position of law: In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy. 23. Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis--vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. [Vide: Abdul Sayeed (Supra)].. Deposition of the injured eye-witness 31. This Court has perused the entire evidence available in this case with the assistance of the learned counsel for the Appellant and the learned APP. No doubt the injured eye-witness, i.e. PW-3, was the lynchpin of the prosecution case as regards the actual assault by the accused with the knife first on himself, i.e. PW-3, and then on the deceased. The Court finds that PW-3 was subjected to extensive cross-examination over three months and yet he was unable to be shaken by the counsel for the accused. CRL.A. 118/2017 Page 14 of 24 32. It was submitted by the learned counsel for the Appellant that if indeed it took PW-3 about 20 to 25 minutes to return to the spot after being attacked by the Appellant, it would be improbable that he would have reached the hospital at the

same time as the deceased. It is pointed out that there were numerous contradictions with his previous statements to the police that emerged from the confrontation of this witness which made him an unreliable witness. Thirdly, it is pointed out that there was not a single public witness who has talked about any third person being present at the spot and importantly of anyone seeing PW-3 run away from the spot in search of the police as claimed by him. Further it is suggested that while PW-3 stated that there was a divider between the road with cement grill placed along with some bushes on the divider, the eye-witness i.e. PW-1 does not speak of their being any cement grill with bushes on the divider. The attention of the Court was further drawn to the statement of PW-3 in the cross-examination to the effect I do not remember whether there were blood stains on outside my car but was there inside the car and yet no blood stains were in fact found by the crime team inside the car. Lastly it is pointed out that on 31st December 2012, even according to PW-3, there was foggy weather and therefore it would not have been possible for passers-by to clearly witness who was attacking the deceased.

33. A major contradiction that is pointed out is that according to PW-3 the deceased was standing near the car on the side where she was sitting when she was attacked by the accused whereas according to PW-1 she was being chased by the accused while she was being attacked with a knife. CRL.A. 118/2017 Page 15 of 24 34. That PW-3 is an injured eye-witness is completely corroborated by his MLC (Ex.PW-24/A) which has been proved by Dr. Rakesh Singh (PW-24). There is no suggestion to him that the knife wound was self-inflicted. His description of the attack on him by the accused is corroborated by the medical evidence. In his statement to the police shortly after the incident as well as in his deposition during the trial, PW-3 stated that even while the Appellant was attacking the deceased with a knife, he said, *tu meri nahi hui to kisiki bhi nahi ho sakti*. There is no suggestion to this witness that no such words were spoken by the accused. This in fact provided the motive for the offence.

35. While no suggestion was made to PW-3 himself as regards the possibility of him being the one who stabbed the deceased, the same was made to PW-31, the IO in the case. His reply thereto reads as under: It is correct that injured Gaurav

was the team leader in the company of Neha Yadav on the day of incident. I cannot say if deceased Neha Yadav had been pressurized by injured Gaurav to marry him and to leave accused Devender. It is incorrect to suggest that injured Gaurav had stabbed deceased Neha Yadav when she refused to marry him. The injuries received by the deceased have been mentioned in the PM report. It is incorrect to suggest that injured Gaurav had stabbed deceased Neha on her thighs when she refused to marry him inside the car of Gaurav. It is incorrect to suggest that there was blood inside the car of Gaurav. It is incorrect to suggest that injured Gaurav ran away from the spot after stabbing deceased Neha Yadav.

36. Far from weakening the case against the Appellant, this line of questioning supplies the motive for the crime. It is perhaps consistent with CRL.A. 118/2017 Page 16 of 24 the claim made by the accused in his statement under Section 313 Cr PC that he and the deceased were in love and that both their parents had consented to their marriage. While they sought to substantiate this by the testimonies of the parents of the accused, there was no suggestion to the father of the deceased, Dev Lal Yadav (PW-4), that the accused and the deceased were in love or that the parents from both families had agreed to their marriage. This is a lapse on the part of the defence counsel who wanted to show that the deceased and the Appellant were in a relationship.

37. On the contrary, the evidence of PW-4 makes it quite clear that the deceased resented the Appellants advances and had, in fact, complained of harassment to her father. This remained unchallenged during the cross-examination of PW-4. There is nothing to show that the defence has even challenged the assertion that the deceased and her father were seriously contemplating filing a complaint with the police about the Appellants behaviour with her in her office on 25th December 2012.

38. Therefore, it seems that the suggestion made during the cross-examination of the IO (PW-31) in order to question the motive for the crime has actually worked against the accused. Instead it has made the circumstances in which the attack took place even clearer.

39. As already noted, the law in relation to appreciation of ocular testimony is well settled. Unless totally contradicted by the medical evidence, the ocular evidence of an uninterested witness will be given the highest regard. Learned counsel for the Appellant placed reliance on the decision in Wahid CRL.A. 118/2017 Page 17 of 24 Khan v. State of Madhya Pradesh (2010) 2 SCC9 to suggest that in the present case, since the medical evidence did not corroborate the ocular evidence, the trial Court erred in placing reliance on the ocular evidence to return a finding of guilt.

40. Apart from the fact that the decision cited by the defence counsel does not actually support the case of the Appellant, even on the facts in the present case, the Court is unable to agree with the suggestion that the medical evidence contradicts the ocular testimony. In the present case, from the evidence of Dr. B.N. Acharya (PW-27) who conducted the post mortem, it stands proved that there were as many as four stab wounds: two on the right thigh, one above the heel, one on the back of the left chest. The chest wound was noted by PW-27 as being at an acute angle upward and longitudinally placed. The argument was made that it is not believable that a person would stab another person who is either stationary or fleeing in an upward motion. This cannot be accepted by this Court for the reason that no question in this regard was put to PW-27, the expert in this matter.

41. Two eye-witnesses have spoken of the deceased being repeatedly attacked by the accused with a knife. The medical evidence thus shows the presence of four stab wounds on the body of the deceased. As far as the corroboration of the ocular evidence by the medical evidence is concerned, the evidence of PW-27 more than sufficiently corroborates the consistent ocular testimonies of both PW-1 and PW-3. The evidence of the independent eye witness-PW-1 42. PW-1s testimony has been very carefully perused by this Court. He is a CRL.A. 118/2017 Page 18 of 24 totally independent witness. He was, in fact, only a passer-by. There was no need at all for him to falsely implicate the accused. In fact, there is no suggestion at all to this witness about any previous enmity he has with anyone for him to falsely implicate the accused.

43. The second important aspect of the testimony of PW-1 is that there is no confrontation of this witness on material particulars with his previous statements

first to the police under Section 161 Cr PC and then before the learned Metropolitan Magistrate (MM) under Section 164 Cr PC. In other words, even according to the defence, this witness was consistent at all stages on his description of the occurrence. It is correct that he did not name the Appellant in his previous statements and identified him correctly in the Court. But then there was absolutely no reason why an independent witness like PW-1 would falsely implicate the Appellant on such a serious charge.

44. His not mentioning the presence of PW-3 is not surprising. It tallies with the evidence of PW-3 that soon after PW-3 was attacked, PW-3 ran away to seek help. At the time when PW-1 spotted the deceased being chased by the accused, PW-3 had already fled towards Noida. PW-3, therefore, had no occasion to witness the chase of the deceased by the accused.

45. The Court does not see there being any major contradiction therefore in the testimonies of PW-1 and PW-3 on this aspect. Secondly, the fact that the accused was seen pursuing the deceased with the knife in his hand has been consistently spoken to by PW-1 at all points in time. The medical evidence which shows as many as four stab wounds on the deceased corroborates the CRL.A. 118/2017 Page 19 of 24 eye-witness testimony of PW-1, i.e. seeing the accused stab the deceased three or four times. That PW-1 was the person who took the deceased to the hospital is proved by the MLC of the deceased (Ex.PW-24/C).

46. PW-1 comes across as both a truthful and a reliable witness. His cross-examination yielded absolutely nothing for the accused.

47. It is not the number of eye-witnesses but the quality of the evidence that matters. Where the eye-witnesses are of a stellar quality and reliability, any other minor contradictions that may emerge will not dilute the probative value of such evidence. Forensic evidence 48. There is also no satisfactory explanation forthcoming from the Appellant as regards the presence of human blood on his jacket, shoes and socks. This further lends weight to the prosecution case by establishing his presence at the spot. Irregularities during investigation 49. It was repeatedly argued by the learned counsel for the Appellant on the basis of the judgment in *Sunil Kundu v. State of Jharkhand* (2013) 4 SCC422 that there were

serious irregularities in the investigation of the present case which went to the root of the matter. It is pointed out that the video recording of the recovery of the knife was never brought before the trial Court despite the trial Court passing an order to that effect on 8th February 2015. It was further submitted, on the strength of the decision in *Pradeep Narayan Madgonkar v. State of Maharashtra* (1995) 4 SCC255 CRL.A. 118/2017 Page 20 of 24 that the mandatory requirement under Section 100 Cr PC to associate members of the public in the search and seizure of the knife was not complied with in the present case and therefore, throws the entire story of the prosecution regarding the recovery of the knife into serious doubt.

50. The Court would like to first refer to the observations of the Supreme Court in *Sunil Kundu vs. State of Jharkhand* (supra) where it was stated that lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of a sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored. On the facts of that case, the Supreme Court found that those lapses were very serious.

51. However, in the present case, in the considered view of the Court, the ocular evidence of PW-1 is indeed of sterling quality. Even the evidence of PW-3, the injured eye-witness, has been unable to be shaken by the defence. The substratum of the case was the causing of fatal knife injuries by the accused upon the deceased. On that substratum, there is absolutely nothing that has emerged in the cross-examination of the eye-witnesses by the defence which could be said to place any doubts on either of their depositions both as regards their truthfulness or reliability. Consequently, the Court does not see the decision in *Sunil Kundu v. State of Jharkhand* (supra) coming to the aid of the accused at all.

52. As regards the non-association of public persons in the search, the Court is inclined to agree with the observations of the trial Court in the present CRL.A. 118/2017 Page 21 of 24 case that the reluctance of public persons to come forward to depose is not an unusual factor. Even in this case, PW-19 was put forth

by the prosecution as another independent witness. He too was a passerby like PW-1. He too was supposed to have witnessed the occurrence and yet, during the trial, he declined to identify the accused, although he was very much present at the spot when the IO reached. In fact, his statement was recorded at the spot itself. This also actually demonstrates how not all independent witnesses who volunteered to give statements are prepared to go the full course.

53. Even otherwise, in the light of the fact that the ocular testimonies of PWs 1 and 3 stand fully corroborated by the medical and forensic evidence, nothing much turns on the actual recovery of the knife and the irregularities associated with it. If, for instance, in the present case, the knife had not been recovered at all, it would have still not made any difference to the conclusion regarding the guilt of the Appellant, since the case of the prosecution finds total support from both the ocular and the medical evidence. Consequently, the Court rejects the submissions of learned counsel for the Appellant regarding the irregularity surrounding the seizure of the knife causing any serious dent in the case of the prosecution.

54. It was sought to be suggested that the failure to seize the bloodstained clothes of PW-1 was a serious lapse on the part of the investigation and, therefore, raises doubts about the credibility of his testimony. The Court does not agree with this submission. The fact that he was the one who took the deceased to the hospital stands proved by the MLC of the deceased which in turn has been proved by PW-24. The failure to seize his CRL.A. 118/2017 Page 22 of 24 bloodstained clothes, therefore, does not dilute the case of the prosecution.

55. As rightly pointed out by the trial Court, since it is not the case of the prosecution that there was any bloodstains inside the car, the failure to find any bloodstains inside the car does not really affect the case of the prosecution. Although PW-3, in his cross-examination, might have suggested that some blood was inside the car, this is a minor contradiction which does not discredit him as far as the substratum of his evidence is concerned. Not culpable homicide 56. Finally, it was urged by the learned counsel for the Appellant that even according to the case of the prosecution, the Appellant was provoked by the fact that the deceased

had spurned his advances and was seen with another male and, therefore, unable to control his impulses he committed an offence in the heat of passion. It was pleaded, therefore, that the offence should be viewed as one of culpable homicide not amounting to murder brought within the Exceptions to Section 300 IPC.

57. It appears from the case of the prosecution, proved by the eye-witnesses, that the murder was pre-meditated. The accused kept track of the movement of the deceased, pursued her on a motorcycle, overtook the car in which she was travelling, and parked his bike in front of the car. Further, he had gone armed with a deadly weapon and was clear why he was stopping the car. At the time of the occurrence, there was absolutely no provocation from the side of the deceased at all. CRL.A. 118/2017 Page 23 of 24 58. Lastly, the manner in which he brutally attacked the deceased not just once but four times and caused stab wounds all over her body takes the offence totally outside the purview of any of the Exceptions to Section 300 IPC or even otherwise to be considered culpable homicide not amounting to murder. The said submission is accordingly rejected. Conclusion 59. The Court finds no grounds whatsoever to interfere with the impugned judgment and order on sentence of the trial Court.

60. The appeal is accordingly dismissed. APRIL03 2018 Rm/dc/nd S. MURALIDHAR, J.

I.S. MEHTA, J.

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