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

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Date of decision: 30.10.2025

+ CRL.A. 489/2003

BHIM MAHATO

.....Appellant

Through: Mr. R.S. Dham, Mr. Vinay Modi,
Mr. Mohd. Shahzad Ansari, Advs.

versus

THE STATE

.....Respondent

Through: Mr. Aman Usman, APP for the State

CORAM:**HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE MR. JUSTICE VIMAL KUMAR YADAV****JUDGMENT****DINESH MEHTA, J. (ORAL)**

1. The instant appeal under Section 374(2) of the Code of Criminal Procedure ('Cr.P.C.'), 1973 has been preferred by the appellant/Bhim Mahato against the judgment dated 08.07.2002 and order on sentence dated 10.07.2002, passed by the learned Addl. Sessions Judge, Delhi (hereinafter referred to as 'Trial Court') in Sessions Case No.54/99 whereby, the appellant/accused has been convicted as follows:

| S.No. | Section | Sentence | Fine |
|-------|---------|-------------------|---|
| 1. | 302 IPC | Life imprisonment | Rs.3,000/-; in default thereof to further undergo SI for one year |

However, the learned Trial Court acquitted the accused/appellant of the



offence under Sections 25/27 of Arms Act, 1959.

2. The facts appertain are that on 09.04.1999, an information was given to Police Station Nabi Karim that one person was lying injured at AB-75/1, Amar Colony; consequently, the entry in Daily Diary was made. In furtherance of the information so received; the police reached the place of occurrence, where it was found that a dead body was lying on the floor of the house. The police also found a knife and wrist watch of HMT make on the spot.

3. A person named Manjan Mahto, who claimed to have seen the incident was available on the spot, who informed the police that the deceased (Kishan Mahto) is his brother and had been killed by the appellant/accused. The appellant/accused was, however, not found on the place of occurrence. On investigation being made and the statement of other relevant persons being recorded, the police tried to arrest the appellant/accused, however, he had fled. The appellant however did surrender after a month.

4. Postmortem of the deceased was also conducted, consequent whereof it transpired that the deceased had suffered 26 injuries out of which a few were inflicted with a sharp weapon. After completion of the investigation, a charge-sheet inculpating the accused for commission of offence punishable under Section 302 IPC and Sections 25/27 of Arms Act came to be filed. During the course of trial, the accused denied the charges and claimed trial.

5. On behalf of the prosecution, 15 witnesses were examined out of which, Manjan Mahto (PW-3), Ramji Mahto (PW-4) and Bimla Devi Gupta, the landlady (PW-5) being eye-witnesses supported the case of the prosecution. Dr. P.C. Dixit (PW-15), who conducted the postmortem



appeared in the witness box and proved the postmortem report and deposed that there were multiple injuries with the sharp edged weapon, out of which injury No.6 being incised wound admeasuring 3.3 x 1.2 cm over the left side of the upper part of the chest obliquely placed with one angle acute and other obtuse, 4.5cm below and outer to the suprasternal notch and 10cm above and medial to left nipple, injury No.7 being incised deep wound 7.5 x 2.2 cms over upper part of the chest, were sufficient to cause death in the ordinary course of nature individually and collectively.

6. Manjan Mahto (PW-3) deposed in the witness box that he and various other persons who were working with said Kishan Mahto as paper-setters in Hindustan Times press on contractual basis, resided in the same house with the deceased Kishan Mahto. He also stated that the contract was in the name of Kishan Mahto the fateful night of 08.04.1999, he slept on the roof after taking meal, whereas the deceased and accused were sleeping in the room at the ground floor. According to him at about 3:00 am in the night, they got up due to thumping noise and found that the grill gate fixed on the staircase was locked. He saw a person who appeared like accused Bhim Mahto running from the room and found that the deceased Kishan Mahto was lying dead; he however clarified that he did not see Bhim Mahto doing anything. At this juncture, the Public Prosecutor requested cross-examination of this witness, as he was deviating from the truth.

7. During cross-examination, PW-3 admitted his signature on the statement (Ex. PW-3/A) and also admitted that there was a dispute between the accused and the deceased for the last 3-4 years. During his cross-examination by the Public Prosecutor, he admitted that the scene of the occurrence was photographed and that sample of the blood lying at the place



of the incident was taken with the help of cotton. He also deposed that the wrist watch of the accused which was lying on the floor was taken in custody/seized by the police, while also accepting the factum of seizure of other articles vide seizure memo and his signatures thereupon.

8. PW-4/Ramji Mahto deposed that the deceased/Kishan Mahto was his cousin and the accused-Bhim Mahto had been insisting the deceased to transfer the contract in his name and that the accused took Rs.25,000/- and papers of Kora Colony from the room and when the deceased confronted the accused-Bhim Mahto about the same, he responded that he had taken the same. He deposed that the dispute was because when the deceased demanded the same back, the accused did not give it back.

9. He also stated that the accused used to threaten Kishan Mahto that he would kill him with a knife. PW-4 also deposed that about 3:00 am on the date of the incident, he heard noise of thumping and cries, due to which he got up and got down and he and Manjan Mahto (PW-3) saw the accused stabbing the deceased with the knife whereafter, Bhim with his clothes smeared with blood escaped. He also stated about the presence of landlady Bimla Devi, who came down before the accused fled and who telephonically informed the police.

10. Bimla Devi Gupta (PW-5) also supported the prosecution's case that dispute was over some papers and cash amount of Rs.22,000/- and Rs.25,000/- which the deceased had been demanding from the accused. She further deposed that at about 3:20 am, Santosh approached her by saying "*bomb mar diya, bomb mar diya*" and when she went upstairs (third floor), she saw Kishan Mahto lying dead and the knife lying near him. She also stated that two watches were lying in the room. The said witness identified



the wrist watch which was found at the spot (Ex. P-2) to be that of the accused and also identified the knife (Ex. P-3).

11. Sub-inspector Satish Kumar was examined as PW-9, who proved the recovery of the relevant articles and supported the story as portrayed by the prosecution. So has been the position of the Investigation Officer Kanta Prasad Kukreti (PW-12).

12. In his explanatory statement under Section 313 Cr.P.C., the accused denied all the allegations and circumstances against him and took a defence that three persons were in the room when the incident took place. The accused added that when he was sleeping in the room, at about 3:00/3:30 am on the date of the incident, someone knocked at the door and when the door was opened by deceased-Kishan Mahto, he was caught by two persons, who assaulted him with knife blows and he having witnessed the incident shouted for help, whereafter chose to run away, because of the threat given by them.

13. On the basis of the evidence, learned Trial Court convicted the accused for the offence under Section 302 IPC by pinpointedly observing thus:

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- 1) *The relations between accused and deceased were enimical.*
- 2) *Accused and deceased were sleeping in the same room on fateful night and no out-sider had come in the building on that day.*
- 3) *Accused was seen running from the spot by P. W.3 and P.W.4 and had the grill not been locked then accused would have been caught at the spot.*
- 4) *Soon after accused was seen running Kishan Mehto was found dead.*
- 5) *Wrist watch of accused having blood stains of the group of deceased Ex. P-2 was found at the spot.*
- 6) *The blood-stained pant and vest of accused having blood group of deceased were recovered.*



7) And lastly accused surrendered in Court on 10.05.2000."

14. Learned counsel for the appellant argued that the learned Trial Court has not appreciated the evidence in its correct perspective. He argued that the I.O. has left glaring lacunae in the investigation, which are fatal to prosecution's case and, therefore, conviction of the appellant/accused is liable to be set aside. In this regard, he submitted that in light of the fact that the presence of Satish and Santosh and other persons had come on record, it was incumbent upon the I.O. to have recorded their statements. He argued that the Trial Court has relied upon the version of PW-3 and PW-4, who were interested witnesses.

15. In relation to the trustworthiness of PW-4, he submitted that he was an interested witness, as is evident from his cross-examination, because though the contract was transferred in the name of Manoj (son of the deceased) but the bank account was being operated and transactions with cheques were being done by said Manoj and Ramji Mahto (PW-4).

16. Learned counsel further submitted that no finger prints were obtained from the knife and other articles. He raised a concern that in respect of the fact that 22 people used to reside in the house, but statements of no independent witness were recorded. It was argued by him that in a house where 22 people resided, it cannot be believed that they would not have woken up upon hearing the sound of scuffle (if any) between the deceased and the accused.

17. Learned counsel further argued that blood stained pant and vest (banyan) of the accused were recovered, but such recovery is manipulated. He argued that Medico Legal Certificate (MLC) shows that there were multiple injuries out of which, some were with a sharp edged weapon and



some with blunt object or force which could not be inflicted by one person alone. In light of the aforesaid, learned counsel argued that there are several lapses and irregularities in the investigation, followed by the evidence led by the prosecution, for which, the impugned judgment deserves to be quashed and set aside.

18. Learned Addl. Public Prosecutor, on the other hand, argued that the blood stained pant and banyan, and, the sample of the blood lying on the floor, were taken and the FSL got done and the corresponding report clearly suggests that the blood found on the clothes (pant and banyan) was of the same blood group, which the deceased had. Learned Public Prosecutor further underscored that the knife (Ex. P-3), wrist watch (Ex. P-4) of the deceased, clothes of the deceased (Ex. P-5), pant of the accused (Ex. P-6) were identified by the witness PW-4 and PW-5 which proves the guilt of the appellant/accused.

19. Learned Addl. Public Prosecutor invited Court's attention towards the explanatory statement of appellant/accused recorded under Section 313 of Cr.P.C., more particularly question No.3, question No.17 and question No.34 thereof, and submitted that the appellant/accused failed to explain the circumstance against him, thus the prosecution's case has been aptly proved.

20. Learned Addl. Public Prosecutor also submitted that even as per the explanation given by the accused under section 313 Cr.P.C., he was present at the spot when the incident took place, however, with a plea that two persons came and murdered the deceased. He argued that when the appellant is admitting his presence on the scene and at the time of the murder, it would be natural reaction of the appellant to have raised an alarm, if not making an attempt to stop the accused person(s) from committing the offence, if at all



someone else was murdering the deceased. He added that the accused not only fled from the incident, but remained absconded for about a month and that his such conduct proves his guilt.

21. In rejoinder, learned counsel for the appellant pointed out from the cross-examination of Ramji Mahto (PW-4) that he and Manoj (son of the deceased), were jointly operating the bank account. He argued that though technically the business had been transferred in the name of Manoj but the fact that Manoj and PW-4 were operating the account jointly, shows that actually the business had come to Ramji Mehto (PW-4) and thus he had every reason to falsely implicate him.

22. Heard learned counsel for the appellant, learned APP and perused the record.

23. Considering the submissions advanced at the bar and upon carefully going through the testimonies of Manjan Mahto (PW-3), Ramji Mahto (PW-4) and Bimla Devi Gupta (PW-5), we find that presence of the accused at the time of incident is proved. Though there is some minor difference in their version inasmuch as PW-3 said that he did not see the accused doing something and Bimla Devi/PW-5 deposed that when she came down, she did not see the accused present on the spot but nevertheless said that PW-3, PW-4 and other members were crying whereas PW-4 had said that he had seen the accused inflicting knife blows to the deceased.

24. If the statements of these three witnesses are read with each other, it transpires that each of them came on the scene one after the other and it is because of the time gap between their arrival, there is a difference in their version. But the common version of these eyewitnesses had been that the accused was with the deceased, when they came to the place of occurrence.



Apart from that PW4 and PW5 had supported the prosecution case that there was animosity between the appellant and the deceased in relation to the business and the sum of Rs.25,000/- which the accused had taken away from the room of the deceased. As such, the testimony of PW-3, PW-4 and PW-5 has remained unimpeached and is sufficient to hold the appellant guilty of murdering the deceased.

25. During his statement under Section 313 of Cr.P.C., the accused himself had admitted his presence in the room at the time of the murder. His conduct of not raising any alarm and then fleeing from the scene and remaining absconded speaks volumes about his felony. His wrist watch was found in the room and moreso, his pant and shirt which were having blood stains were recovered at his instance. The blood group of the blood stains on his clothes matched with the blood group of the deceased.

26. The number of injuries suffered by the deceased are 26 in number, out of which many were with sharp weapon and each one of them according to the testimony of the doctor was sufficient in ordinary course to cause death. Hence, it was a clear case of homicide.

27. We are not much convinced with the argument of learned counsel for the appellant that the I.O. did not take finger prints of the knife and did not try to find out who were the other persons who have been named by PW-4. Because if the deceased was related to PW-3 & PW-4, then accused-appellant he too was having the same relationship with them.

28. The argument of the learned counsel for the appellant that no independent witness was examined is also untenable, because the landlady/PW-5 cannot be said to be an interested witness; she was an independent witness for all purposes.



2025:DHC:9688-DB



29. PW-3, PW-4 & PW-5 all in unison have deposed that the appellant & the deceased were having an animosity because of the business agreement and the amount of Rs. 25,000/- rupees which the accused had taken from the room of the deceased.

30. On appraisal of the evidence on record, we are of the view that the prosecution had proved its case beyond all reasonable doubt and the evidence on record clearly points towards the guilt of the appellant and no other view is possible.

31. As an upshot of the discussion foregoing, the appeal is liable to be rejected, which is hereby rejected.

32. The appellant, who is on bail, is directed to surrender before the learned Trial Court on or before 05.11.2025, failing which, the police will arrest and lodge him in jail.

DINESH MEHTA, J

VIMAL KUMAR YADAV, J

OCTOBER 30, 2025
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