



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

Date of decision: 16th JULY, 2025

IN THE MATTER OF:

+ **CRL.A. 171/2002**

HANS KUMAR

.....Appellant

Through: Ms. Suruchi Suri, Adv.

versus

THE STATE (GOVT. OF NCT OF DEL

.....Respondent

Through: Mr. Laksh Khanna, APP for the State

+ **CRL.A. 243/2002**

RAJPAL

.....Appellant

Through:

versus

STATE N.C.T. OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the State

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant appeals have been preferred by the Appellants herein challenging the impugned judgment and order dated 25.01.2002 passed by the Additional District and Sessions Court, Tis Hazari, New Delhi (*hereinafter referred to as "Trial Court"*), convicting the Appellants for the offences under Section 302/34 of the IPC in SC No. 93/2000 arising out of FIR No. 723/95 registered at Police Station Janak Puri, Delhi. *Vide* order of



sentence dated 01.02.2002, which is also under challenge in the present case, the Trial Court sentenced the Appellants herein to rigorous life imprisonment and a fine of Rs. 5,000/- and in case of default in payment of the fine, each of the convict to undergo further rigorous imprisonment of 1 year.

2. Shorn of unnecessary details, the facts leading to the filing of the instant appeal are as follows –

- a. It is stated that one Shakuntala (PW-5) was married to one Brahm Dutt, who was serving in UP Police and was posted in Pillibhit, UP in the year 1988. However, due to unknown reasons, Shakuntala's husband disappeared for 8 years, for which she received a compensation of Rs. 50,000/- from the Government.
- b. It is stated that one Pramod, who is the main accused in the instant case, living in the same neighbourhood of Shakuntala started demanding the amount of compensation of Rs. 50,000/-. It is alleged that Pramod had threatened to kill Shakuntala if she does not part with the said amount. Upon receiving several demands, Shakuntala transferred the entire amount to her brother, Suresh Sharma (*hereinafter referred to as the "deceased"*), and started living with him in Delhi. After knowing her whereabouts, Pramod also moved to the same neighbourhood and started threatening to kill the deceased if the said amount is not given to him.
- c. On the fateful night of 08.10.1995, DD No. 18A was received by the Police Station, Matiala and SI Swadesh Prakash (PW-11)



and Constable Satish Kumar (PW-7) rushed to the spot and found the dead body of Suresh Sharma lying between Plot No. D-7 and D-1, Bajaj Enclave. It is stated that the deceased had stab injuries in his chest as well as his stomach.

- d. When the police reached the place of incident, one Sumer Singh (PW-1) and one Mahesh were already at the scene, however, it was not them who had informed the police about the incident.
- e. Thereafter, the police conducted the investigation and identified the five accused persons. The police arrested four accused persons namely – Hans Kumar, Raj Pal, Shamsheer Allam and Virender Singh on 31.10.1995. Pramod Kumar was declared a proclaimed offender (PO). The role assigned to Hans Kumar/Appellant herein, is that he aided Pramod in killing the deceased by holding his hands and the role assigned to Raj Pal/Appellant herein is that he threatened the sister and wife of the deceased with a knife not to inform about this incident to anyone.
- f. All the accused persons were charged under Section 302/34 of the IPC and Sections 24, 54, 59 of the Arms Act, 1959. All the accused persons pleaded not guilty and chose to be put on trial.
- g. *Vide* impugned judgment and order 25.01.2002, the Trial Court acquitted accused persons Shamsheer Allam and Virender Singh for lack of evidence against them. The Trial Court, however, convicted the Appellants herein i.e., Hans Kumar and Raj Pal under Sections 302/34 of the IPC and were sentenced to



rigorous imprisonment of life along with a fine of Rs. 5,000/- *vide* order of sentence dated 01.02.2002.

h. It is these orders which are under challenge in the instant appeal.

3. Learned Counsel for the Appellants submitted that the Trial Court has not appreciated the evidence on record in the correct perspective and has solely relied on the testimony of the deceased's wife, Jagwati (PW-6) while convicting the Appellants herein. It is contended that the Trial Court has erroneously considered PW-5 and PW-6 as eye-witnesses, when there was no one present at the scene when the incident took place. It is stated that there are serious discrepancies in the statements of the witnesses. It is stated that the testimony of PW-6 is not supported by the testimonies of PW-1 and PW-5. PW-1 deposed that he found the body of the deceased and has informed PW-5 and PW-6 about the same. The same stance has been taken by PW-5 as well in her examination, thereby eliminating the possibility of PW-5 and PW-6 being the eye-witnesses of the incident. PW-6 has deposed that she has witnessed the entire incident from her house, along with her sister-in-law i.e., PW-5, and saw her husband getting killed by Pramod with the help of the Appellants herein which is contrary to the testimony of PW-1 who is an independent witness.

4. PW-6 has deposed that she was a witness to the entire incident from the place of the deceased. Material on record shows that the place of incident cannot be seen from the house of the deceased. It was stated that the incident took place on a pitch dark night, where there was no electricity in the neighbourhood and therefore, it is impossible for PW-6 to witness the entire incident from the deceased's house and identify the perpetrators and



the weapon used by them. Moreover, it is brought to the Court's attention that there are 4 houses situated in a row next to the deceased's house, with two built-up plots and three vacant plots and that the boundary walls are about 5-6ft in height. It is also stated that the site plan prepared by the police merely mentions the spot of the incident and does not point out the position of the eye-witnesses. Therefore, the contention of PW-6 that she has witnessed the incident is unreliable as there is no material basis to the same.

5. It is further contended that the prosecution failed to prove that there is a direct nexus of the Appellants here to the incident or failed to show any motive or intention on the Appellants' part. The prosecution also failed to corroborate the testimony of PW-6 with substantial material, and therefore, the instant case was not proven beyond reasonable doubt against the Appellants herein and that they must be acquitted.

6. *Per Contra*, learned APP for the State submitted that the Trial Court was right in convicting the Appellants herein under Sections 302/34 of the IPC based on the testimony of PW-6 as she is a reliable and a material witness in the instant case. It is stated that both PW-5 and PW-6 recorded their statements under Sections 161 of the IPC, wherein they have categorically mentioned the involvement of the Appellants herein in the commission of the offence, thereby supporting the case of the prosecution. However, while giving her statement under oath, PW-5 turned hostile indicating that she has been influenced and PW-6 reiterated the same narrative, proving that there is credibility in her testimony.

7. It is also submitted that the testimony of witnesses cannot be disregarded merely on the basis that they are interested/related witnesses. Although PW-6 is an interested/related witness, she was placed in such a



position that she witnessed the commission of the offence and was able to identify the accused persons as well as the weapon involved. PW-1, in his cross-examination, stated that PW-6 was present at the place of incident when the police arrived. Therefore, the Trial Court had evaluated the evidence appropriately and the prosecution also proved the case against the Appellants herein beyond reasonable doubt, and hence, were rightly convicted under Section 302/34 of the IPC.

8. Heard learned counsel for the parties and perused the material on record.

9. The case of the prosecution is that Shakuntala, sister of the deceased, received Rs. 50,000/- as compensation from the Government for the disappearance of her husband for more than 8 years. Pramod, who is the main accused and proclaimed offender in the instant case, was living in her neighbourhood and had started demanding the said money from her. Upon receiving life threats and repeated demands, Shakuntala transferred the amount to her deceased brother and later, also moved in with him in Delhi. Pramod also shifted to the said neighbourhood to stay close to Shakuntala. He along with the other accused persons threatened to kill the deceased brother if he fails to part with the said amount. On the intervening night of 08.10.1995, at around 9:30 PM, Pramod with the aid of four co-accused persons, killed the deceased by inflicting multiple stabs on his chest and stomach.

10. It is the case of the prosecution that while the incident was taking place, Shakuntala and Jagwati were waiting for the deceased to reach home and while waiting at the front door, witnessed the entire incident. Upon seeing the incident, Jagwati became unconscious and by the time she



regained her consciousness, the police had been informed. Jagwati, who was an eye-witness to the incident, stated that she saw Hans Kumar holding the hands of the deceased by restricting him from defending himself while Pramod stabbed the deceased multiple times. She also stated that Raj Pal threatened to kill both Shakuntala and Jagwati with a knife if they ever revealed this incident and their identities to the police. Moreover, the house of the deceased was merely 500 metres from the place of incident and therefore, there is a strong possibility that Jagwati had not only witnessed the incident but has also in a position to identify the perpetrators as well as the weapon carried by Raj Pal.

11. On the contrary, it is the case of the Appellant that the prosecution failed to prove the case beyond reasonable doubt against the Appellants herein and the Appellants have been falsely implicated. Further, the testimonies are contradictory in nature, thereby defeating the veracity and credibility of the PW-6's testimony. Material on record also does point out that the testimony of PW-6 cannot be believed.

12. Before adverting to the merits of the case, it is apposite for this Court to examine and evaluate the testimonies of the witness statements give before the Trial Court.

13. Sumer Singh, PW-1, stated that a few days before Diwali of 1995, at about 10:00 PM, he was returning from his job when he found the dead body of the deceased on the road. He stated that the deceased was his neighbour and upon finding his body, he informed the deceased's family. In his cross examination, he stated that he has been living in the neighbourhood for around 1.5 years prior to the incident. In the cross-examination, he stated that the wife of the deceased was also present at the spot. Regarding the



proximity of the incident to the deceased's house, he stated that there is one house between his house and deceased's house and that there are 4 houses situated in a row near the deceased's house with 3 vacant plots and 2 built-up plots from plot bearing No. D-14 and D-10.

14. PW-2, HC Shishu Pal, in his testimony, stated that on 08.10.1995, at about 11:30PM, he received a *rukka* sent by SI Swadesh Prakash (PW-11) and Ct. Satish Kumar (PW-7), based on which he registered an FIR bearing No. 723/95 for the offence under Section 302 of the IPC.

15. PW-3, Dr. L.K. Baruah, conducted the post-mortem of the deceased on 09.10.1995 at the Civil Hospital, Delhi. He stated that the body of the deceased was brought by Ct. Satish Kumar at around 10:15 PM with stab injuries on his body. Upon examination of the body, he observed the following external injuries, which are as follows –

1. One incised wound in the front of chest on his middle part at the level of the nipple. The size of the injury was 3 Cms x 1 CM? (Depth to be ascertained). Its upper end was blunt and lower end was acutely cut.
2. Incised wound on the right hypochondrium (right side upper abdomen). Placed obliquely of size 2.5 Cms x 1 Cm? Its upper medial end was blunt and the other end was acutely cut.
3. Incised wound on the left side upper abdomen size 3.5 Cms x 1 Cm with lower outer end was seen to be trailixed for 1 Cm.

16. He stated that the Injury No. 1 was sufficient to cause death in ordinary course of nature. He further stated that the time since death was approximately 15-16 hours and that death was due to haemorrhagic shock resulting from Injury no. 1.

17. SI Mahesh Kumar, PW-4, prepared a Site Plan of the place of incident based on the rough notes and measurements he had taken when he visited the site. In his cross examination, he testified that the height of the boundary



walls were about 5 to 6 feet. He also stated that he does not remember taking any measurements of the distance between the road and the place of incident.

18. PW-5, Shakuntala, the sister of the deceased deposed that she was married to Brahm Dutt about twenty years back. While her husband was posted in Pilibhit, UP, he disappeared in 1988. Due to his disappearance, the Government gave her a compensation of Rs. 50,000/-. Pramod, who stays in her neighbourhood, started demanding the said amount from her and also threatened to kill her if she does not part the money with him. She transferred the said amount to her deceased brother and moved in with him in Kakrola Mor, Delhi. Upon receiving this information, Pramod took a room near to the house of the deceased. He alone visited the deceased to demand the money from him. She stated that her brother usually returns home around 9 PM, however, on 08.10.1995, he did not return home at the normal time. She stated that one person came to the house of the deceased to inform them that the deceased was lying on the road unconscious. When she and her sister-in-law i.e., PW-6 reached the place of incident, they saw Pramod fleeing the scene.

19. In her cross-examination, she stated that she does not know whether the co-accused persons lived with Pramod. She specifically stated that it was incorrect to suggest that the co-accused persons threatened to kill the deceased and demanded money from him. She further stated that it was false to suggest that the deceased died while she was standing at the door along with her sister-in-law at around 9:45 PM. She denied that Hans Kumar held the hands of the deceased and that Raj Pal threatened her with a knife. Although she conceded that the sister-in-law was unconscious at the spot,



she denied that the reason for the same was due to her husband being stabbed in front of her eyes. She further denied all the recorded statements given to the police under Section 161 of the CrPC.

20. Jagwati, PW-6, is the wife of the deceased. In her chief examination, she stated that PW-5 received a total compensation of Rs. 70,000/- which was kept in the Bank. Once PW-5 started living with them, the five accused persons came to the deceased's house and threatened to kill him if the said amount does not reach them. She stated that on 08.10.1995, at around 9:30 PM, she and PW-5 came out of the house to look for the deceased, when they witnessed that Hans Kumar held the hands of the deceased while Pramod was stabbing her deceased husband. Upon noticing their presence on the scene, Raj Pal threatened them with a knife to leave the spot without making any noise, whereas the other two accused persons were keeping a watch. She stated that she became unconscious on the spot and that none of the accused persons were arrested in her presence. It is recorded in her testimony that she identified four accused persons – Hans Kumar, Raj Pal, Shamsher Allam and Virender Singh in Court as well as the weapon used by Raj Pal for threatening her and PW-5.

21. She stated in her cross-examination that she did not meet PW-1 on the date of the incident and neither did he inform her about the deceased lying on the road unconscious. She stated that the deceased was lying about 5-6 yards away from their house. It was stated that she did not cry for help when the deceased was getting killed due to being threatened by Raj Pal. Further, she does not know in which direction the accused persons ran after the incident as she fell unconscious. It was further testified that by the time she regained her consciousness, the deceased's body was already removed. It



was stated that on the intervening night, there was no electricity in the neighbourhood. She stated that the deceased's body was found in another street other than that of her house. She also stated that she did not give any statement to the police on the intervening night. It was also stated that she identified the accused persons because they visited the house of the deceased along with Pramod.

22. PW-7, Constable Satish Kumar, testified that on 08.10.1995, at about 10:15 PM, a copy of DD No. 18A was received by him and SI Swadesh Prakash (PW-11). When they reached the place of incident, the deceased was found between D1 and D7 plots in Bajaj Enclave and was identified as one Suresh. It was also recorded that by the time they reached the place of incident, public persons were present at the scene. Thereafter, the *rukka* was prepared and was handed over to the duty officer,

23. PW-8, Inder Pal, is the brother-in-law of the deceased. He stated that the dead body was received by him after the conduct of post-mortem.

24. Constable Narinder, PW-9, stated in his examination that on 31.10.1995, at about 1:00PM, he along with other police officers interrogated PW-6, wherein she mentioned that the accused persons are living in the same neighbourhood. She disclosed the accused persons names as Raj Pal, Shamsher Allam, Varinder and Hans Kumar. She pointed out the room to him and all the four accused persons living in the room were identified and arrested. It is also stated that they have recovered a knife from Raj Pal and the same was seized by them.

25. Constable Kishan Singh, PW-10, who is a photographer, stated that on the direction of the SHO, he took photographs of the place of incident.



26. PW-11, SI Swadesh Prakash, deposed that he received DD No. 18 on 08.10.1995 at about 10:15 PM. Upon reaching the place of incident, he found the deceased's body lying in a pool of blood and was identified as one Suresh. He stated that he made enquiries in the neighbourhood and recorded statements of the witnesses i.e., Jagwati, Shakuntala and Sumer Singh. It is also stated that on 31.10.1995, he arrested Raj Pal, Varinder, Hans Kumar and Shamsheer Aalam based on Jagwati's statement. It was also stated that a knife was recovered from an almirah at Raj Pal's room. However, it was stated that he could not arrest Pramod as he was untraceable and therefore, declared a proclaimed offender. He further stated that Jagwati's house is situated 0.5 km away from the place of incident and the same cannot be seen from her house due to a turn. Moreover, he stated that Jagwati was not present at the time of recovery of the weapon.

27. It is pertinent to mention that the Appellants herein have pleaded not guilty and claimed trial.

28. After perusing the foregoing witness testimonies and the material on record, this Court is of the view that there are serious discrepancies in the case of the prosecution. Upon reading the impugned judgment and order dated 25.01.2002, it is clear that the conviction of the Appellants herein under Section 302/34 of the IPC was based solely on the testimony of PW-6, who happened to be an "eye-witness" in the instant case. However, the veracity and the credibility of PW-6's testimony is disputed.

29. For the sake of convenience, the list of discrepancies in the case of prosecution are as follows –

- i. As per PW-6, on 08.10.1995, at around 9:30 PM, she has witnessed killing of her deceased husband by one Pramod. She



also explained in detail that Hans Kumar held the hands of the deceased while the deceased was subjected to stabbing and that Raj Pal threatened her and PW-5 with a knife to not make any noise. However, the said statement cannot be found to be reliable as on the date of incident, there was no electricity in the neighbourhood and it was pitch dark. There arises little to no possibility of PW-6 witnessing not only the entire incident but also the identification of the accused persons as well as the weapon carried by Raj Pal. Moreover, as per PW-11, the house of the deceased is situated 0.5km away from the place of incident and it has come on record that the place of incident cannot be seen from the deceased's house.

- ii. According to PW-6's statement, she along with her sister-in-law were present at the scene of incident. However, as per PW-1 and PW-5, it was Sumer Singh who informed both of them about the death of the deceased, which defeats the credibility of her statement.
- iii. Regarding the identification of the weapon, the scenario seems to be staged as PW-6 could not have observed the details of the weapon carried by Raj Pal. Moreover, the police has not seized the weapon in front of PW-6, therefore, questions on reliability of PW-6 further arises.
- iv. The motive as brought forward by the prosecution is that Pramod had a motive to kill the deceased as he had demanded compensation received by PW-5. However, in her testimony, PW-5 has not mentioned about this and, in fact she admitted it



to be false, that the Appellants herein were involved in threatening or demanding money from the deceased. No intention or motive has been proved by the prosecution.

- v. The site plan prepared by PW-4 merely mentions where the body of the deceased is found but does not mention the place from where the eye-witness would have witnessed the incident. Only a rough site plan has been prepared, the same cannot be relied on for corroboration.

30. Throwing light on the veracity of related and sole eye-witnesses, the Apex Court in the case of Anil Phukan v. State of Assam, (1993) 3 SCC 282, observed as under –

“3. This case primarily hinges on the testimony of a single eyewitness Ajoy PW 3. Indeed, conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect. It is in the light of these settled principles that we shall examine the testimony of PW 3 Ajoy.

4. Ajoy PW 3, on his own showing, is the nephew of the deceased. He had accompanied the deceased to the



place of occurrence when the latter went to recover the loan from Anil, appellant. This witness, therefore, is a relative of the deceased and an interested witness. Of course, mere relationship with the deceased is no ground to discard his testimony, if it is otherwise found to be reliable and trustworthy. In the normal course of events, a close relation would be the last person to spare the real assailant of his uncle and implicate a false person. However, the possibility that he may also implicate some innocent person along with the real assailant cannot be ruled out and therefore, as a matter of prudence, we shall look for some independent corroboration of his testimony, to decide about the involvement of the appellant in the crime. Since, there are some doubtful aspects in the conduct of Ajoy PW 3, it would not be safe to accept his evidence without some independent corroboration, direct or circumstantial.”

31. In the present case, PW-6 is the wife of the deceased and is a related witness. However, the Trial Court has examined her as an eye-witness and relied solely on her testimony while convicting the Appellants, finding her version believable. Since PW-5 turned hostile, no reliance has been placed on her testimony even though she claimed to have seen Pramod fleeing the place of incident.

32. It is a well settled principle of criminal jurisprudence that the case must be proven beyond reasonable doubt. However, the foregoing list of discrepancies show that the prosecution has failed to prove their case beyond reasonable doubt and he should not have been convicted based on the sole testimony of PW-6, which according to this Court is unreliable. From the material on record, it is apparent that she was not an eye-witness in the present case.



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33. On an analysis of the material on record, this Court is of the opinion that the prosecution has failed in proving their case against the accused beyond reasonable doubt.

34. Resultantly, the impugned judgment is set aside. The Appellants are acquitted. They are directed to be released forthwith.

35. Copy of this order be sent to the concerned Jail Superintendent for the immediate release of the Appellants herein.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHANSHANKAR, J

JULY 16, 2025

RJ/SM