

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. L.P. No. 48/2008**

% Date of Order : February, 17, 2009

STATE (GNCT) OF DELHI Petitioner
Through : Mr. Sanjeev Bhandari, Addl.
Standing Counsel.

VERSUS

SARWAR SIDDIQUI Respondent
Through : Nemo.

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

PRADEEP NANDRAJOG, J.(Oral)

1. The learned trial Judge has acquitted the accused. The plea of alibi has been held to be successfully established. Even the conduct of the star witness of the prosecution, Rais Ahmed Khan PW-7 has been found to be suspicious.

2. The date was 28th November, 2002. Wife of Rais Ahmed Khan PW-7 was shot dead in her house. Rais Ahmed Khan PW-7 received a superficial injury: the result of a bullet

hitting the right forearm.

3. We note that the injury on Rais Ahmed Khan is akin to an injury where a bullet grazes past the right forearm.

4. In his testimony, Rais Ahmed Khan PW-7 deposed that on the date of the incident he and his wife were in their house and on the roof Sarwar Siddiqui, the accused, was playing with his son. This was disturbing their sleep. He made a request to the accused to refrain from making a noise at which accused took out a country made pistol and fired a shot which hit his wife. The accused fired another shot at him. He sustained a bullet injury on his right forearm and fled. The accused followed him. After covering some distance, he looked behind and found that the accused had stopped chasing him. He took a cycle rickshaw and reached Lion's Hospital near New Friends Colony, where he was medically examined. That he learnt about his wife expiring at the hospital.

5. With reference to the distance travelled by Rais Ahmed Khan PW-7 from his house till the hospital, the learned trial Judge has found that Rais Ahmed Khan had to cover a distance of nearly 1 km. Learned trial Judge has found it is strange that Rais Ahmed Khan never raised a hue and cry of his wife being shot at. The learned trial Judge has found it a strange

conduct of Rais Ahmed Khan of not informing anybody, even at the hospital, that his wife was shot at.

6. The injury on Rais Ahmed Khan was so superficial that it could not have made him unconscious. Indeed, he was not unconscious as is evident by the fact that he claims to have run a short distance and hired a rickshaw to reach the hospital.

7. With reference to the plea of alibi, learned trial Judge has believed the testimony of DW-1 Satya Narayan Soni, a health worker in District Hospital Jhabua (MP) who produced the record of the District Hospital Jhabua (MP) which shows that the accused was admitted at the hospital on 24.11.2002 and was discharged on 29.11.2002. The medical record Ex.DW-1/A was produced.

8. The second defence witness, Dr.L.S. Rathore, then working as a medical specialist at District Hospital Jhabua (MP) deposed that he was working in the hospital in question and had treated the accused for five days from 24.11.2002 to 29.11.2002. He deposed that he had treated Sarwar Siddiqui as per the daily note sheet maintained by him. He affirmed that the daily note sheet Ex.DW-1/B was signed by him.

9. The learned trial Judge has noted that the said medical record shows that the accused was suffering from

falsiferam malaria, which could be fatal to life.

10. The learned trial Judge has held that there was no reason to disbelieve the record maintained by a Government Hospital.

11. Learned counsel for the petitioner, at the hearing of the petition today has drawn our attention to Ex.DW-1/B wherein it appears that the date 24.11.2003 has been corrected to 24.11.2002.

12. Learned counsel urges that it is apparent that the accused managed a late admission, a year after the incident and by making interpolation showed as if the admission was on 24.11.2002, whereas the fact was that the date of admission was 24.11.2003.

13. It is true that the year 2003 has been corrected to read 2002, but it appears that the same is not an interpolation but is a contemporaneous correction, for the reason the daily medical sheet (Page 125 of the petition paper book) shows that the doctor concerned has not only written the day, month but even the year; the year being 2002.

14. It is trite that where the learned trial Judge considers the evidence and acquits the accused, the presumption of innocence is reinforced.

15. Unless there is perversity in the appreciation of evidence or where material evidence is ignored or mis-read, it would be impermissible for the Appellate Court to re-read the evidence.

16. We have gone through the impugned decision. We have briefly noted hereinabove the strange conduct of the husband of the deceased. We have noted hereinabove the evidence relating to the plea of alibi, held successfully established.

17. We are satisfied that the learned trial Judge has correctly considered the broad contours of the case of the prosecution and has considered the defence.

18. We find no infirmity with the impugned decision.

19. No case is made out to grant leave to appeal.

20. The petition is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

February 17, 2009

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