

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

% *Judgment Reserved on : 22nd February, 2010*
Judgment Delivered on : 23rd February, 2010

+ **CRL.APPEAL NO.41/2010**

SANJAY Appellant
Through: Mr.D.S.Sandhu, Advocate and
Mr.R.S.Mandal, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. The appeal was admitted on 14.1.2010 and learned counsel for the parties had stated that every attempt would be made to argue the appeal on 22.2.2010. The appeal was argued on 22.2.2010 and it was recorded in the order that decision would be pronounced on 23.2.2010.

2. The appeal was fast-tracked for hearing since learned counsel stated that the fate of the appeal would be decided with reference to the testimony of PW-2 Smt.Anita.

3. Three persons, Sanjay (appellant), Sunil and Pramod Kumar were sent for trial. Against Sunil and Pramod Kumar the charge was that knowing that a desi katta was used by appellant Sanjay to commit the murder of Ashok they had helped him in disposing of the same. The charge against the appellant Sanjay was of having murdered Ashok Kumar with the desi katta and then concealing the same.

4. The desi katta which was got recovered pursuant to the disclosure statement of Pramod could not be linked as the weapon of offence as the ballistic expert found no connection between a bullet which was recovered from the body of the deceased and the weapon so recovered and hence Pramod and Sunil were acquitted.

5. Two pieces of incriminating evidence have been used against the appellant. The first is the eye-witness account of Anita PW-2 and the second is of the fact that a chappal was recovered from near the place of the crime and its counterpart was got recovered by the appellant after he was arrested and his disclosure statement was recorded. The two chappals have been opined by an expert to be the counterpart of each other and further the soil samples lifted from the chappals were having same physical characteristics.

6. With reference to the two chappals Ex.4 and Ex.6, we note that the second exhibit is the foot got recovered by

the appellant and the witness associated with the recovery is Mohiuddin PW-5 who as per the admission of the investigating officer Satyavrat Yadav PW-29, then working as the SHO of the concerned police station, was a witness to the investigation conducted by him in 2 to 4 cases of murder. It is apparent that Mohiuddin is a stock witness of the prosecution and hence we hold that it would be unsafe to use as incriminating evidence any recovery at the instance of the appellant in which Mohiuddin has been associated as a witness.

7. Thus, we proceed to consider the testimony of Anita PW-2.

8. But before that, we may note that the PCR form Ex.PW-25/A proved by ASI R.S.Bhardwaj PW-25 shows that at 10:30 PM one Shri Srikant Tiwari rang up the police control room from telephone No.7411655 and informed that a person had been shot behind Mother Diary, Mangal Bazar Road, Jahangirpuri, Delhi. Inspector Satyavrat PW-29 proceeded to the spot and as deposed to by him, by the time he reached the spot, the injured had already been removed to BJRM Hospital, he found no eye-witness and saw blood on the ground. He went to the hospital where he found that the injured had been declared brought dead by the doctor in the casualty. He returned to the spot and at that point of time he met Anita whose statement Ex.PW-2/A was recorded by him and after

making an endorsement beneath the same he got the FIR registered for the offence of murder. He lifted control earth and blood control earth from the spot as also a slipper at some distance which was told to him by Anita as having come out of the foot of Sanjay. He drew up the seizure memos and prepared the rough site plan indicating the spot where the deceased i.e. Ashok was shot and the place wherefrom he picked up one chappal. He summoned a photographer who took 16 photographs of the place of the crime including the chappal which was lifted from the spot. Thereafter, he seized the dead body and sent it to the mortuary where Dr.K.Goel PW-21 conducted the post-mortem on 22.7.2000 and prepared the post-mortem report Ex.PW-21/A as per which the deceased had been shot from a close range in the forehead. Death was due to damage to the brain matter. A bullet was recovered which was handed over along with the clothes and the blood sample of the deceased to the investigating officer.

9. Srikant Tiwari has appeared as PW-11. He has deposed that he is the husband of Anita and that when he returned to his jhuggi at 10:15 PM on 19.7.2000 he saw Ashok Kumar lying on the floor. His wife Anita was present and told him that the appellant had fired on the person of Ashok Kumar Giri and had run away and that he i.e. Srikant Tiwari informed the police.

10. Srikant Tiwari's presence soon after the crime has stood corroborated by contemporaneous record i.e. Ex.PW-25/A and the testimony of ASI R.S.Bhardwaj PW-25. We note that the testimony of Srikant Tiwari PW-11 that when he reached his jhuggi at 10:15 PM on 19.7.2000 his wife met him and told him as afore-noted, has not been challenged during cross-examination. We note that Srikant Tiwari admitted that he was not on speaking terms with Sanjay.

11. Smt.Anita W/o Srikant Tiwari appeared as PW-2 in support of the case of the prosecution on 11.2.2003 i.e. after about 2½ years of the incident. During her examination-in-chief she deposed that about 2½ years ago at the time of Saawan season, the exact date, month and year which she did not recollect, she was residing at Jhuggi No.80, A-1 Market, Behind Mother Diary, Mangal Bazar Road, Jahangirpuri, Delhi. She stated that her jhuggi was adjacent to the jhuggi of one person named Surinder who resided there with three-four more young persons of Bihar. In that jhuggi the accused Sanjay used to come with the deceased-Ashok. That when she was cooking meals she heard sounds of a quarrel and accused Sanjay had come to the jhuggi of Surinder. She heard a loud noise and immediately came running out of the house and saw the accused Sanjay running away and that she had nothing more to tell. At that stage the learned APP cross-examined her,

obviously for the reason she had not stated many facts which were recorded in her statement Ex.PW-2/A on basis whereof the FIR has been registered, upon which she deposed that Sanjay was working along with the deceased as a helper. She affirmed that a quarrel had erupted between the accused Sanjay and the deceased in connection with the money transaction. She said that she came to know about the fact of this quarrel from Surinder. She denied the suggestion given by the learned APP that 2/3 days prior to the date of the incident accused Sanjay had visited her jhuggi with a view to enquire about the deceased as he wanted to take money from him. She was confronted with portion 'A' to 'A' of her statement Ex.PW-2/A where it is so recorded. She stated that she heard noise between Sanjay and Ashok outside the jhuggi and in that quarrel accused Sanjay was asking the deceased to return his money and abusing him. She stated that she heard a sound of a fire outside the jhuggi and as soon as she came out of the jhuggi she saw accused Sanjay running towards Mangal Bazar with a revolver type of weapon in his right hand. She deposed that while the accused was running away from the spot one of his chappal was left at the spot and he ran away wearing one chappal only. She stated that the deceased Ashok was lying in front of her jhuggi with blood oozing out from his head and that when her husband Srikant came to the

jhuggi he informed the police on the number 100. She explained her inability to narrate such detailed facts at the stage of examination-in-chief owing to lapse of time. She deposed and affirmed the recoveries effected at the spot on the day of the crime as per the various memos prepared by the police.

12. Anita was subjected to an extensive cross-examination by learned counsel for the accused. During cross-examination she stated that she knew accused Sanjay prior to the incident and they were on visiting terms. She stated to have recognized the accused through his voice as she had heard the voice of the accused while he was talking to others. She affirmed that it was Surinder who had told her that the accused Sanjay was talking to Ashok outside the jhuggi. She affirmed that public persons used to tell that the accused Sanjay had to take some money from Ashok and thus she came to know about the aforesaid fact. She admitted that she is unable to recollect the exact date, month and year of the incident since sufficient period of time had elapsed but stated that the time was 10:00 PM. She stated that as soon as she came out from her jhuggi she saw the accused Sanjay running at the distance of 10 steps and further that she had seen him face to face. She denied the suggestion of having any enmity with the accused Sanjay. She stated that the accused had

shot the deceased in presence of Surinder and upon hearing the fire shot she had come out from the jhuggi alone. She stated that her husband came at about 10:30 PM whereupon he had made call to the police at phone number 100. The police came at the spot after 10 minutes from the said call. The police made enquiry from her but did not make any enquiry from her husband in her presence. She stated that her statement was recorded by the police at her jhuggi and not at the police station. She stated that the police may have read over the statement to her but she does not remember.

13. Learned counsel for the appellant urged three submissions. Firstly, that as admitted by Inspector Satyavrat Yadav PW-29, Anita was nowhere to be found when PW-29 first came to the spot where the crime was committed and that, as per learned counsel, this shows that Anita was a planted witness. Secondly, the factum of relations between Anita and her husband being inimical with the accused, a fact admitted by Anita's husband and lastly the fact that Anita was a hostile witness and thus was wholly untrustworthy.

14. The first plea has to be rejected for the reason Srikant has deposed that when he returned to his jhuggi he saw Ashok lying on the ground and Anita told him that Sanjay had shot Ashok and fled. Srikant has not been even subjected to a cross-examination on this testimony of his. Thus, Anita's

presence at the spot stands proved by independent evidence. Further, Anita's testimony that the crime took place outside her jhuggi has not been challenged when she was cross-examined. The time of the crime is around 10:30 PM. It is a time when a housewife would be expected to be in her house. In the instant case, her jhuggi. Being a poor woman from a humble background, it is within the realm of possibility that Anita held herself back when Inspector Satyavrat came to the spot. Finding nobody present and that the injured had been removed to the hospital, Inspector Satyavrat immediately left for the hospital and returned soon after finding the injured dead and no eye-witness at the hospital. Satyavrat has not been cross-examined to elicit a response as to whether he searched for an eye-witness when he first reached the spot.

15. On the issue of enmity, we note that the only thing said by Srikant is that he was not on speaking terms with the father of the accused. There may be many reasons for a person not to be on speaking terms with somebody. Well, A may feel that B is a person of ill repute and hence is not worthy of being spoken to. A may feel that B is a quarrelsome person and hence should be avoided. These would not be reasons to attribute any motive. The defence has not brought out the reason why Srikant was not on speaking terms with the father of Sanjay.

16. Thus, the so-called motive of Anita being an interested witness is virtually non-existent or is very weak to justify an inference that Anita would let go the real assailant and falsely implicate Sanjay.

17. We have extracted herein above the testimony of Anita and her cross-examination. The slight variations and embellishments have been explained by her as a loss of memory; the incident being 2½ years prior to when she deposed. That she forgot important facets which she had seen and had told Inspector Satyavrat, but admitted having seen them and narrated about them when her memory was refreshed in the form of suggestions does not mean that she is not a truthful witness. To any reader of her testimony, it is apparent that she has successfully withstood the test of cross-examination.

18. The law is clear, where a sole eye-witness stands the scrutiny of credibility, ignoring improvements and blemishes which are the natural attributes of every human being, conviction can be sustained without seeking any further corroboration.

19. Finding Anita to be a truthful witness and without any motive to falsely implicate Sanjay and noting that the deceased was shot in the forehead leaving no scope for

argument that the act did not attract Section 300 IPC, we dismiss the appeal.

20. Since the appellant is in jail, a copy of this order be sent to the Superintendent, Central Jail, Tihar to be made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

February 23, 2010
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