

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

Date of Hearing : 11th February, 2011
Date of Decision : 28th February, 2011

+ **CRL.L.P.12/2011**

STATE

Through: ... PETITIONER
Mr. Sanjeev Bhandari, Additional
Standing Counsel for the State.

Versus

RAJE RAM & ORS.

Through: ... RESPONDENTS
Nemo

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

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

J U D G M E N T

G.P. MITTAL, J.

1. **Crl.M.A.No.186/2011 (under Section 5 of the Limitation Act.)**

Delay condoned for the reasons as stated in the application.

Crl. L.P. No. 12/2011

2. By virtue of this petition, the State seeks leave to file an Appeal against the judgment dated 05.03.2010 whereby the Respondents were acquitted of the charge for the offence punishable under Section 307/34 of the Indian Penal Code (hereinafter "the Code").
3. On 16.08.2008 at about 7:24 P.M. wireless operator G-60 appeared before the Duty Officer and produced one QST PCR on the basis of which DD No.53-B was recorded in Police Station (PS) Najafgarh to the effect that bullets were being fired at Plot of Suraj Bhan in Deenpur, Goyla Mor and

one person had been injured. The DD entry was handed over to SI Ved Prakash, Investigating Officer (IO) who along with Constable Satya Pal left for the spot.

4. On reaching the spot i.e. Plot No.5, Main Chhawla Road, Village Deenpur, Najafgarh belonging to Suraj Bhan, IO came to know that the injured has already been removed to Rau Tula Ram Memorial Hospital (RTRM Hospital) Jaffarpur in a PCR van. He, therefore, left Constable Satya Pal at the spot and proceeded to RTRM Hospital as no eye witness was available at the spot. IO found Anil, son of Sumer Singh admitted in the hospital. He moved an application to the doctor to record statement of the injured. However, the injured was declared unfit to make the statement. No eye witness was found available in the hospital. The IO, therefore, returned to the spot. Again, no eye witness was found there. On inspection of the spot and considering the facts an offence punishable under Section 304/34 of the Code and Section 27 of the Arms Act was found to have been committed; a rukka was accordingly sent to PS at 9:45 P.M. on the basis of which the FIR was recorded in PS Najafgarh at 10:00 P.M.
5. During the course of investigation the statement of PW-1 Suraj Bhan was recorded. Suraj Bhan informed the IO that litigation in respect of Plot No.5, Main Chhawla Road, Village Deenpur, Najafgarh was pending in the Civil Court. He along with Anil Kumar (injured) PW-2 had gone upstairs to inspect the bathroom roof which used to leak during the rainy season. Respondents Raja Ram, Din Dayal, Jagdish and Ms. Kavita with whom there was a civil litigation in respect of this plot, reached there. Kavita exhorted her co-accused to kill them as they had harassed the prosecution witnesses in connection with the plot. The respondent Raja Ram took out a pistol and handed it over to the respondent Jagdish. The respondent Din Dayal also joined in exclaiming that they (PW-1 and PW-2) should be done to death. The respondent Jagdish opened fire. The

bullet hit near the right elbow of Anil and the other bullet touched Anil's arm in passing.

6. According to the prosecution, Suraj Bhan got terrified and ran to the room. He bolted the room from inside whereas the respondents continued to exhort asking him (PW-1 Suraj Bhan) to come out. Four-Five bullets were also fired at the door. Suraj Bhan raised an alarm as a result of which the respondents fled from the spot.
7. According to the prosecution injured Anil (PW-2) was referred to RML hospital for further investigation and management. At the time of admission itself, the injured was discharged from RTRM Hospital on 20.08.2008. Dr. Someshwar Bordoloi (PW-6) opined the injuries suffered by Anil, son of Sumer Singh to be dangerous. After completion of the investigation a challan for the offence punishable under Section 307/34 of the Code was filed against the respondents.
8. The respondents pleaded not guilty to the charge. In order to prove its case, the prosecution examined nine witnesses. Suraj Bhan (PW-1), Anil (PW-2) the injured, Dr. Someshwar Bordoloi (PW-6), who had medically examined the injured at the time of his admission in RTRM Hospital, SI Harender Singh (PW-7) incharge of the crime team, (who had inspected the spot immediately after the incident at the instance of the IO and given his report Ex.PW-7/A), Constable Satya Pal (PW-8), SI Ved Prakash (PW-9) investigating officer of the case, are the most important witnesses.
9. During their examination under Section 313 Cr.P.C., the Respondents denied the prosecution allegation and alleged their false implication in the case. The Respondents came out with a specific plea that the complainant and the injured had fabricated the case in collusion with the doctor of RTRM hospital, Jaffarpur. The socalled injured Anil, son of Sumer Singh, resident of District Sonapat, Haryana was a hired person who had not sustained any bullet injury on his person as was alleged by the police. The injury was fabricated in order to falsely implicate the Respondents in the

case. They stated that the case had been foisted to capture the plot in question which was worth more than ₹ One Crore and civil litigation in respect of it was pending between the complainant and the Respondent Raja Ram.

10. By the impugned order, the learned Additional Sessions Judge (ASJ) acquitted the Respondents holding that there were large number of discrepancies in the prosecution case as well as in the testimony of prosecution witnesses, PW-1 Suraj Bhan, in particular. He held that the case appeared to have been manipulated and PW-9 SI Ved Prakash had not honestly and carefully investigated the case.
11. We are in full agreement with the conclusion reached by the learned ASJ. We shall refer to some of the discrepancies and contradictions in the prosecution case and the testimony of witnesses:-
 - (i) According to PW-1 Suraj Bhan, the injured had fallen on the ground after being hit by the bullet and was bleeding. This was contradicted by PW-7 SI Harender Singh of the Crime Team who made his report Ex.PW-7/A which revealed no blood at the spot. PW-9 SI Ved Prakash, IO too stated that he had not seen any blood at the spot. PW-6 deposed that he had referred the patient at the time of his admission itself to RML hospital. He found the patient bleeding at that time. It is obvious that if a bullet injury had been inflicted near the ribs, some bleeding was inevitable, irrespective of whether the bullet exited the body. The absence of any blood thus falsifies the prosecution version.
 - (ii) DD No.53-B was recorded in PS Najafgarh only on the basis of information by PW-1 Suraj Bhan to the PCR, which was ultimately passed on to PS Najafgarh. According to this DD, the bullets were being fired at the Plot of Suraj Bhan in Deenpur, Goyla Mor. This means that there was a flurry of bullets. In his statement in the Court PW-1 Suraj Bhan stated that only two rounds were fired. One hit the door of the room and another hit the injured. In his statement under Section 161 Cr.P.C. this witness

informed the police that 4-5 rounds were fired by the accused. This witness was duly confronted with his statement recorded under Section 161 Cr.P.C. (Ex.PW-1/D-2). PW-2 injured Anil, on the other hand, stated that three shots were fired; two at him and one at Suraj Bhan. According to PW-9 SI Ved Prakash as also PW-7 SI Harender Singh no used bullet was recovered from the spot. This is the reason that number of shots fired were reduced from four five to two by PW-1 Suraj Bhan. Not only this, since in case of firing of the two shots one used bullet was bound to be present at the spot, PW-1 cleverly made an improvement in his statement when he deposed that “*accused persons had fled away with the bullet, used from the spot.*” PW-2 also stated that the used bullets were taken away by the accused persons. Assuming that just two shots were fired as was stated by PW-1 and one shot hit the door, there would be some evidence of the bullet striking the door. PW-7 SI Harender Singh, in charge of the Crime Team, who reached the spot immediately after the incident and PW-9 IO of the case, did not notice any such mark. It is true, a weapon of offence used for commission of the crime may not be recovered from the accused but tell tale signs of the crime ought to have been noticed by the person in charge of the Crime Team and by the IO of the case. In all fairness, if there was any shot fired at the door, either the door could have been seized as evidence of the crime or at least some photographs of the place of occurrence including the door ought to have been taken by IO. For the reasons best known to the IO, he fails to do so.

- (iii) PW-2 claimed to have become unconscious at the spot and regained consciousness only in RML hospital; meaning thereby that he remained unconscious till the time he was in RTRM Hospital. Ex.PW-6/A however tells a different story as the injured was found to be “*bleeding from the wound, O/E - Conscious, BP - 140/80 mmHg, Pulse - 86/min, Chest – Clear, CVS/Cm – NAD*”.

- (iv) PW-6 admitted that in case of profuse bleeding, there is reduction in the blood pressure. However, as per MLC Ex.PW-6/A the blood pressure of the injured was found to be 140/80 mmHg, which is fairly normal.
- (v) PW-6 Dr. Someshwar Bordoloi in cross examination deposed that the patient was sent to RML Hospital in the Ambulance. However, in response to the RTI application dated 16.02.2009 Respondent Din Dayal was informed that the injured had gone to RML hospital by his own vehicle.
- (vi) The time of arrival of injured Anil in RTRM Hospital as per MLC Ex.PW-6/A is 8:30 P.M. At that time, after preparation of the MLC he was referred to RML Hospital for further investigation and management. According to PW-9 IO of the case, he had reached the RTRM Hospital and had moved an application Ex.PW-9/A for recording statement of the injured. In cross examination he stated that he reached the Hospital between 7:45 P.M. to 8:00 P.M. and met the doctor there. IO denied the suggestion that the doctor declared the injured unfit to make the statement at about 8:30 P.M. This statement of the IO is palpably false because the injured could not have been declared fit or unfit to make the statement before his arrival at 8:30 P.M. A specific question was put to PW-9 in this regard. We would like to extract the same hereunder:-

“Ques: As the doctor had already referred the said injured to RML Hospital at 08:30 p.m., how he could declare him unfit to make statement?”

Ans. I cannot say anything in this regard as it is for the doctor to tell.”

- (vii) According to PW-9 the injured was unfit to make the statement on 16.08.2008. Case was registered after the IO returned to the spot. The accused were arrested on that very day at 10:45 P.M. The IO, however, preferred to meet injured only on 18.08.2008 and moved an application Ex.PW-9/C to the CMO for recording the statement of the injured. During

cross examination he categorically admitted that he had not visited RML hospital from 16.08.2008 to 18.08.2008, but, did not volunteer to give any explanation as to why he preferred not to get the first hand information from the injured in respect of the incident for more than two days.

- (viii) As stated earlier by us, the injured was immediately referred to RML Hospital by the doctor on duty at RTRM Hospital. The IO of the case, however, preferred neither to obtain the MLC nor the treatment papers of the injured from RML Hospital. He was content to obtain a photocopy of the discharge slip. It is not known how the prosecution obtained the said discharge slip. Curiously enough, PW-6 Dr. Someshwar Bordoloi who had simply examined and referred the injured to RML Hospital was approached by the IO of the case to give the nature of the injuries. PW-6 was frank enough to admit that *“The injured was bleeding at the time I referred him to RML Hospital. It is correct that since RML Hospital examined him, they alone were entitled to give final opinion as to nature of the injuries.”*
- (ix) The IO of the case cannot be said to be a novice, unaware of the procedure as to which doctor in the facts would give opinion about the nature of injuries. Even if, he was not aware as to which of the two doctors i.e. the doctor at RTRM Hospital who simply referred the injured to RML Hospital or the doctor at RML Hospital who had allegedly treated the injured and where the injured had remained admitted from 16.08.2008 to 20.08.2008, it was at least expected by the IO to have obtained the MLC and the treatment papers of the injured from RML Hospital and to have cited the concerned doctors as prosecution witnesses in the case.
- (x) PW-1 Suraj Bhan did not accompany injured Anil to the hospital. It is improbable that an employer whose employee had suffered serious injury while working for him would not prefer to accompany the injured to the Hospital. As per PW-2 injured Anil, he was unconscious after receiving the injuries at the spot and regained consciousness only in RML Hospital.

At the same time, PW-2 deposed in the Court that his blood stained clothes were removed by the doctor of the Hospital where he was initially taken, as was informed to him by Suraj Bhan. It is not possible for Suraj Bhan to know of this fact if he had not accompanied the injured to RTRM Hospital.

- (xi) During investigation Shirt Ex.P-1 alleged to be worn by the injured was seized by the doctor of RTRM Hospital. When the shirt was produced in the Court, it was found to contain too big a hole which could not be said to be a regular bullet hole. Moreover, when injured PW-2 was asked to wear the Shirt, the same could not fit him. The statement of this witness was recorded on 7.03.2009 whereas the incident had taken place on 16.08.2008. The witness had not given any explanation that he had gained so much of weight during the course of a few months that Shirt Ex.P-1 could not fit him. It was also noticed by the Court that the place where the hole in the shirt appeared was much below the ribs, which falsifies the version given by PW-2 regarding the site of injury.
- (xii) Apart from the fact that the hole did not correspond to the site of injury as claimed by PW-2, as has been noticed by us earlier there is contradiction in the site of injury as noticed by PW-6 Dr. Someshwar Bordoloi of RTRM Hospital and the photocopy of the discharge summary dated 20.08.2008. According to MLC Ex.PW-6/A there are two entry wounds; one on the right iliac region and one on the lumbar region. Whereas as per the photocopy of discharge summary, *"Entry wound present in (Rt.) flank 4 cm. above the iliac crest, around 1 cm x 0.5 cm, bleeding around the entry wound. Exit wound smaller than entry wound, 3-4 cm. below the entry wound without bleeding around the wound margin"*.
- (xiii) IO was aware that there was civil litigation between the Complainant on the one hand and the accused persons on the other. PW-1 Suraj Bhan when confronted with the Site Plan Ex.PW-1/D-1 prepared at his instance by the police admitted that there was Pappu Halwai shop at Point A and houses

belonging to Mr. Shokeen at Point B and C, a bus stop at Point D, a tent house at Point E and a Barber Shop at Point F. He also agreed that there were houses in front of the plot in question.

- (xiv) We have already discussed earlier that as per the initial story of the prosecution several rounds were fired which were restricted to three as per deposition of the PW-2 in the Court and only two as per statement of PW-1 in the Court. The attention of the neighbours would have been attracted to the spot immediately on hearing such gunshots in spite of the enmity. The IO preferred not to examine any person even if not in respect of the actual incident, but, at least to the respondents' escaping from the scene of the crime, on hearing the gun shot. According to PW-8 Constable Satya Pal and PW-9 IO, Site Plan Ex.PW-1/D-1 was prepared by the IO at the instance of PW-1 but there is absolutely no mention in Ex.PW-1/D-1 as to at whose instance the Site Plan was prepared. No document has been placed on record by the IO to show that the injured was declared fit to make the statement nor the said doctor was cited as a witness.
12. Even if two views are possible and one is taken by the Trial Court, the High Court has no power to replace the view of the Trial Court with its own view. In view of the above observations and the discrepancies pointed out, it is clear that the case of the prosecution is untenable. The conclusion reached by the learned Additional Sessions Judge in this case was reasonable, justified and plausible and, therefore, does not call for any interference. This leave petition is without any merit and is, therefore, liable to be dismissed; it is dismissed accordingly.
13. This case reveals that either the Investigating Officer was a party to all the manipulations or that he was too incompetent to bring out the truth by fair investigation.
14. A copy of the order, therefore, be sent to the Commissioner of Police to hold an inquiry into the conduct of SI Ved Prakash, the Investigating

Officer of the case within eight weeks and to submit a report in this regard on 16th May, 2011.

15. A copy of the order may also be sent to the Principal Secretary, Law and Justice, Govt. of NCT of Delhi so that leave petitions in frivolous cases are not filed and the precious time of the Court is not wasted.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

February 28, 2011
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