

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

**RESERVED ON: 04.04.2011
PRONOUNCED ON: 25.04.2011**

CRL.A.32/2011

RAJU @ KUNDAN

..... APPELLANT

Through : Ms. Ritu Gauba, Advocate

VS.

STATE

..... RESPONDENT

Through : Mr. Lovkesh Sawhney, APP for the State.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

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

MR. JUSTICE S.RAVINDRA BHAT

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1. The appellant (hereafter called “Raju”) impugns a judgment and order dated 24.05.2010 in S.C. No. 1107/2009 whereby he was convicted of the offence punishable under Section 302 IPC and Section 25, 27, 54, 59 of the Arms Act. For the offence under Section 302 IPC, the appellant was sentenced to undergo Rigorous Imprisonment for life with fine of Rs.2,00,000/- (Rs. 2 lakhs) to be paid to the family of the deceased, in default of payment of fine the convict would further undergo Simple Imprisonment for 2 years. For the offence under Section 25 of

Arms Act, the appellant was sentenced to Rigorous Imprisonment for 3 years with fine of Rs.2,000/- in default of which he shall undergo Simple Imprisonment for one month. The appellant is also sentenced to Rigorous Imprisonment for 5 years with fine of Rs. 2,000/- for the offence under Section 27 of Arms Act, in default of which he shall under Simple Imprisonment for one month.

2. The case of the prosecution is that on 21.11.2006, at about 7:30 PM, Paras Mehto (PW-1, “complainant”) and Vikesh (the “deceased”) were returning from *Mangal Bazaar* after purchasing vegetables. When they reached in front of B-3/30, Subzi Market, Jahangir Puri, the deceased accidentally collided with the appellant (as there was a lot of rush in the market) upon which the appellant (Raju) started quarreling and abusing the deceased. PW-1 is said to have tried to separate them and end the quarrel, but he failed to do so and was pushed aside by the appellant. The appellant allegedly took out a country made pistol from his left *dub* and pointed it at the deceased’s chest, and fired. Thereafter the appellant tried to escape but was chased by Constable Jagdish (PW-15) and Constable Mukesh (PW-12), who were patrolling Block A, B and C in Jahangir Puri. The deceased was taken to BRJM hospital but could not survive and expired later in the hospital.

3. On the basis of the statement made by PW-1 (Paras Mehto, eye witness) to PW-13 SI Ramesh Kumar an F.I.R bearing no. 799/2006 was registered with P.S. Jahangir Puri at 11:10 PM. A charge was framed against the accused under Section 302 IPC and Section 25, 27, 54 and 59 of the Arms Act. The accused pleaded not guilty and claimed trial. The Trial Court convicted him as charged, by the impugned judgment.

4. The learned counsel for the Appellant urged that there was insufficient light in the market and therefore it would be impossible for PW-1 to see who fired the shot at the deceased. It was argued that there was further discrepancy in the ocular evidence; on the one hand PW-1 stated having gone to the hospital in an auto rickshaw; however, PW-1 was not even mentioned in the deposition of the police witnesses who claim that they accompanied the body. Learned counsel also submitted that even though the incident allegedly occurred at 7:30 PM, the FIR was registered much later, at about 11:30. This circumstance casts a cloud over the prosecution

version.

5. It was argued that the recovery of the *katta* does not inspire any confidence. If indeed the incident occurred in a crowded market place, there was no reason for the police not to associate an independent public witness, and instead rely on someone who claimed to be the deceased's friend. Furthermore, submitted learned counsel for the appellant, the police made no effort to lift the finger prints, from the *katta*, and refer them for expert opinion. That would have conclusively proved if indeed the appellant was culpable, or someone else had committed the crime.

6. Impeaching the credibility of the witness, it was urged that PW-1 concededly was an interested person, who too, like the deceased belonged to Bihar, and was his friend. His antecedents were not investigated; the possibility of his deposing falsely and implicating an innocent person, like the appellant, could not be ruled out.

7. It was submitted that the prosecution did not lead any evidence to prove motive on the part of the appellant. Elaborating on this, it was urged that the appellant was unknown to the deceased; they did not work together, nor did the appellant have any criminal antecedents. Therefore, the entire prosecution story about his being allegedly offended when colliding with the deceased, was unbelievable. Unless the prosecution could adduce convincing material to establish motive, the court had to take its story with circumspection, because there was every possibility of planting a false case on the appellant, to solve a blind murder.

8. The prosecution relied on the testimony of PW-1, PW-12 and PW-15 to prove the charges. PW-1 Paras Mehto (eye witness to the incident) deposed to having gone to *Mangal Bazar* on 21.11.2006, along with his friend Vikesh (deceased) to purchase vegetables at about 7:00 PM. He stated that at about 7:30 PM they were returning to their factory after purchasing vegetables. When they reached B-3/30 Subzi Market Jahangir Puri, Vikesh collided with the accused as there was rush in the market; the accused started quarrelling with and abusing Vikesh. He stated that he tried to separate Vikesh from the accused but was not able to do so as the accused pushed him away. He further deposed that the accused took out a country made pistol from his left *dub*, pointed it at Vikesh's chest and fired it. He further stated that thereafter, the

accused tried to escape but was unable to do so as he was overpowered by two policemen who were patrolling the area; the accused was chased by them for about 10/15 yards. He further stated that Vikesh started bleeding from the chest and he along with some other persons took him to BJRM Hospital. He states that his statement was recorded in the hospital by the police. He further states that he along with the police went back to the spot and the IO prepared the sketch of the country made pistol and took it into possession in his presence. Blood, blood stained concrete and earth control were also lifted from the spot and sealed. He states that the accused was arrested in his presence. On 22.11.2006, the dead body was handed over, after the post mortem.

9. PW-12 Constable Mukesh Kumar, deposed that, on 21.11.2006, he was on duty in his beat i.e. beat no. 2, A, B and C block, Jahangir Puri, He stated that at about 7:30 PM, he and Constable Jagdish (PW-15) were present near B-3 Market at *Man Mangal Bazaar Road* and all of a sudden they heard the noise of a gun shot from the direction of A block and saw one boy running towards E block chowk. He further stated that they followed the accused and PW-15 overpowered him; they found that the accused had a desi katta in his hand. PW-15 took the *katta* from the accused's hand. He further stated that they saw another boy lying injured in the gali and that PW-15 informed the local police; before long other police officials also reached the spot. The injured and the accused along with the desi katta were taken to the hospital by Addl. SHO and other staff members. He deposed that he was directed to remain at the spot. He left the spot once the Addl. SHO, other staff and the crime team reached the spot.

10. PW-15 Constable Jagdish, who was also on patrol duty at Jahangir Puri with PW-12 on the day of the incident deposed that, while on duty in beat no. 2, A, B and C block of Jahangir Puri, at about 7:30 PM he heard the noise of a gunshot; while standing near *Mangal Bazaar Road*, near B-3 market. He further stated that they (PW12 & PW-15) saw a boy trying to run from A block upon which he along with PW-12 chased the boy (accused) and apprehended him. He further stated that the accused was carrying a *desi katta* in his right hand which he (PW-15) snatched and thereafter went to the spot where the boy who was shot was lying injured with a bullet injury. He further stated that on inquiry he found out that the name of the injured boy was

Vikesh and the name of the accused was Raju. He states that thereafter the injured and accused were taken to BJRM Hospital. SI Ramesh and Constable Devender reached the hospital and he handed over the accused and the desi katta to SI Ramesh. He further stated that on checking of the desi katta, one empty cartridge was found and he informed the IO that the accused had fired upon Vikesh, with that desi katta. He further stated that PW-1 too had gone to the hospital and his statement was recorded by the IO in the hospital itself. The IO prepared a sketch of the desi katta; the length of the barrel was 12.5 cm and total length of desi katta was 26.5 cm, length of the body was 4.5 cm and of the butt was 9.5 cm. He further stated that the desi katta and the empty cartridge were sealed and seized in his presence. The IO prepared the rukka and handed over the same to Constable Devender for getting the F.I.R registered. He stated that injured Vikesh died in the hospital and thereafter IO got the post mortem (of the body) conducted.

11. The testimonies of PW-1, PW-12 and PW-15 establish the identity of the appellant as all of them correctly identified him as the same boy apprehended from the spot itself, with a desi katta in his hand. Furthermore PW-1 has proved that he had seen the accused fire a gunshot at the deceased at about 7:30 PM, in front of B-3/30, Subzi Market Jahangir Puri. He has also proved that the accused tried to run away from the spot but was apprehended by two police officials (PW-12 &PW-15) who were patrolling the area. PW-1 was cross examined extensively but no discrepancies are noticeable in his statement. PW-1's story has been corroborated by PW-12 and PW-15 to the extent that they heard a gunshot from the side of A block and then saw a boy running towards E block; the boy was overpowered by them and was found having a desi katta in his hand. Therefore, if the testimonies of all three witnesses are read together, the entire sequence of events stands proved; the three witnesses have corroborated each other. Furthermore no material discrepancies have been found in the testimonies of the three witness's; all three have stated that there was a gunshot and the accused tried to run away from the spot but was apprehended by two constables who were on duty in that area.

12. The prosecution examined PW-4 (Dr. Upender Kishore), who had conducted the post mortem on the dead body. He deposed to having conducted the post mortem on 22.11.2006, on Vikesh's body. He further deposed that there was an alleged history of gunshot injury on

21.11.2006 at about 7:40 PM. He also deposed that there was a firearm entry wound the size of 2.8 X 1.8 cm on the left side of the chest. He stated that he preserved the bullet and blood in a piece of gauze. He further stated that, in his opinion the cause of death was “ *shock due to hemorrhage as a result of ante-mortem injury to the left lung produced by projectile of a rifled firearm. Sufficient to cause death in ordinary course of nature possible*”.

13. PW-9 (HC Suraj Bhan) deposed that on 22.11.2006, PW-14 (Inspector Inderjeet, IO) handed over to him 6 sealed pullandas and PW-13(SI Ramesh Kumar) handed over to him one sealed pullanda which he deposited in the malkhana. On 29.01.2007, he sent 7 pullandas to FSL through PW-10 (Constable Rajpal) on the directions of the IO. He stated that out of the 7 pullandas, one was to be deposited in the Ballistic division and the other six were to be deposited in the Bio Lab. PW-10 (Constable Rajpal) deposed that on 20.01.2007, he took 7 sealed pullandas to FSL Rohini.

14. The FSL Report (FSL 2007/F-0325) dated 28.04.2008, states that on 29.01.2007, one sealed parcel containing one country made pistol .315” marked exhibit “F1” and one 8mm/.315” cartridge marked exhibit “EC1” were received in their office through Constable Rajpal. The report proves that the country made pistol .315” is designed to fire a standard 8mm/.315” cartridge and that the fired empty cartridge 8mm/.315” “EC1” was fired through the country made pistol .315” “F1”. The FSL Report (FSL 2007/B-0321) dated 28.04.2008, states that one sealed parcel was received in the Ballistic division on 26.03.2008 through the Biology Lab Division containing one bullet marked exhibit “EB1”. The report proves that the bullet corresponds to the bullet of 8mm/.315” cartridge and that the said bullet “EB1” has been fired through the country made pistol .315” “F1”. These facts prove that the bullet marked as “EB1” which was taken out from the body of Vikesh during the post mortem, is the same which was fired from the country made pistol .315” marked as “F1”.

15. So far as the appellant’s argument about insufficiency of light is concerned, the court notices that PW-13 (Ramesh Kumar) and PW-14 (Inspector Inderjeet) both, in their cross examination stated that there was street light in the market. Moreover, PW-1 stated that he and the deceased went to the market to buy vegetables, and that they completed shopping at 7:30 PM

when they were returning. In view of the specific line of questioning by the appellant, which resulted in evidence – by way of testimonies of prosecution witnesses, that the light in the area was sufficient, this argument has no force.

16. The appellant tried to point to some discrepancies in the description of those who accompanied the deceased – when he was injured, to the hospital, to undermine the prosecution version that the incident did not take place in the manner made out. Similarly, an argument was made that PW-1 was an interested witness, and that the recovery ought to be disbelieved, since no finger prints were taken or analyzed, though an opportunity to do so presented itself, to the police authorities. It was also urged that there was some delay in registering the FIR. This court is of the opinion that the omission of police to mention PW-1 as the public person accompanying them is not such a serious discrepancy or contradiction as to discard the prosecution version altogether. It is sometimes said that courts have to be wary of too perfect a story, which does not throw up some discrepancies, and that witnesses' recollections of persons and events, especially when they involve a rapidly occurring set of facts, or sequence of events. The MLC of the deceased – which is on the record, records that he was removed to the hospital at about 8:15 PM. In the circumstances, the omission of one or the other witnesses to mention the presence of others is hardly fatal, especially when the identity would have obviously been unknown, contemporaneously. As far as PW-1 being an interested witness is concerned, his acquaintanceship or friendship can be hardly characterized as one which would debar him from deposing or testifying to false facts. It is not as if the witness is closely related to have a vital stake in the outcome, as to result in the likelihood of perjuring himself.

17. As far as the recovery of the *katta* is concerned, the events which unfolded and led to the untimely death, were so rapid, that the police was able to catch hold of the appellant. The witness available at hand, who could depose about the facts, and the recovery, PW-1 was present at the time; he is a natural witness. Once the court concludes that the eyewitness testimony of PW-1 is acceptable, and worthy of credence, the other omissions such as failure to lift finger prints, or lack of proof of motive, pale into insignificance. It has been held that where ocular evidence is available, and acceptable, motive becomes an irrelevant or secondary factor.

18. In view of the above discussion, the Court is of opinion that the Trial Court's judgment, holding the appellant guilty of having committed the offences he was charged with, does not call for interference. The appeal therefore has to fail; it is accordingly dismissed.

(S.RAVINDRA BHAT)

JUDGE

(G.P. MITTAL)

JUDGE

APRIL 25, 2011