

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

Reserved on: 13th August, 2013
Pronounced on: 30th August, 2013

+ **Crl. A.112/2013**

MANJEET SINGH Appellant
Through: Mr. R.K.Anand, Advocate with
Ms. Payal Juneja Advocate

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Ms. Richa Kapoor, APP.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant impugns the judgment dated 28.07.2012 and order on sentence dated 22.08.2012 passed by the learned Additional Sessions Judge(“ASJ”) in Sessions Case No.104/2009 FIR No.404/2007 P.S. R.K. Puram whereby Appellant Manjeet Singh was convicted for an offence punishable under Section 302 IPC and was sentenced to undergo imprisonment for life and to pay a fine of ₹10,000/- and in default to undergo simple imprisonment (SI) for six months.

2. Facts of the case leading to the filing of a report under Section 173 Cr.P.C. are extracted from paras 1 and 2 of the impugned judgment hereunder:

*“1. Brief facts are that on 19.7.07 at about 8.52PM, an information regarding inflicting of a gun shot injury to a person in office of Haryana Motors, Somdutt Chambers, Bhimaji Cama Place, New Delhi , was received in PS R.K.Puram. DD No. 11A was recorded in this regard and it was handed over to ASI Prakash Chand who reached the spot. SI Parveen Kumar also reached at the spot. On the spot they found blood scattered on the floor in Hundai showroom and that the injured was already taken to S. J. Hospital by a PCR van. SI Parveen left for the hospital leaving ASI Parkash Chand and Ct. Garib Chand at the spot. SI Parveen Kumar received MLC No. 142576/07 of Subhash Tiwari from S. J. Hospital , wherein it was mentioned, **a patient brought dead with alleged history of gun shot injury**. SI Parveen Kumar then recorded the statement of Vinesh Kumar, an eye witness, who stated as under:-*

*“That I am working as a sweeper in Hundai showroom. Today at 8.30AM when I came to the office it was closed. Manjeet Singh, a security guard of showroom, came there within few minutes and opened the office. I along with Manjeet Singh and Subhash Tiwari, a guard of WSP Company and Vikas entered the office . Subhash Tiwari sat on a chair and was reading a pocket book **Amrit Vani**. I was changing the uniform nearby. Gunman Shripal had left his gun .315 inch bore in the room of Gagan Chug, Manager while leaving the office. Manjeet Singh picked up the said gun and pointed it at Subash Tiwari and pulled the trigger. The bullet pierced the chest of the Subhash Tiwari who fell down with blood. The bullet hit the chair, table and then the tile on the floor. I raised noise and closed the shutter so that Manjeet Singh could not escape. One Niranjana of WSP company called the police through his mobile phone. PCR van came there and took Subhash*

Tiwari to hospital. Now I am handing over Manjeet and the gun to you.

The gun with 2 live cartridges & 1 empty fired cartridge was seized. ”

2. On this complaint, a rukka was prepared by SI Parveen. FIR No. 404/2007 under section 302IPC was then registered at PS R. K. Puram, New Delhi. During investigation, coaccused ShriPal was also arrested. After completion of investigation, the charge sheet was filed. The case was committed to the Session’s Court, as it was a Session’s triable case.”

3. On appellant’s pleading not guilty to the charge under Section 302 IPC, in order to bring home the appellant’s guilt, the prosecution examined 28 witnesses. PW22 Vinesh Kumar is the complainant and an eye witness to the occurrence. In addition, the prosecution examined Vikas(PW21) claiming to be an eye witness; Akshay Kumar (PW14) and Dheeraj (PW15) who are the supervisor and the owner of the Armour Security Service, to prove that the appellant was on duty at Samara Hundai Showroom, Bhikajikama Place at the time of the incident. Inspector Braham Prakash Yadav(PW28) who was promoted as ACP at the time of his examination is the IO of the case. SI Pravin Kumar and ASI Parkash Chand(PWs 19 and 25 respectively) are the police officials who had reached the spot immediately after the incident. They deposed about the complainant’s handing over the appellant and the gun to the police. Rest of the witnesses have provided various links in the case of the prosecution.

4. On conclusion of prosecution evidence and in order to afford him an opportunity to explain incriminating evidence appearing against him the appellant was examined under Section 313 Cr.P.C. The appellant denied the prosecution's allegations and pleaded that he was implicated in the case falsely at the instance of PW-22 Vinesh and PW-21 Vikash or by the IO. He stated that he reached the spot later on. He had very good relation with deceased Subhash Tiwari, thus, there was no question of murdering him (Subhash Tiwari) by the appellant. The appellant did not produce any evidence in his defence. He did not give any reason for his false implication by PWs 21, 22 or the IO.
5. Relying on the evidence produced by the prosecution, the trial court opined that the gun shot injury on the person of the deceased was caused by the appellant which resulted in his death. The appellant was consequently held guilty for the offence punishable under Section 302 IPC and was sentenced as stated earlier.
6. We have heard Mr. R.K. Anand, learned counsel for the appellant and Ms. Richa Kapoor, learned APP for the State.
7. Mr. R.K. Anand, learned counsel for the appellant while referring to the report under Section 173 Cr.P.C. and the statements of PWs 8, 19 and 25 argues that admittedly when the police arrived, Vinesh Kumar (PW22) was in possession of the gun. He handed over the gun to the IO. Except for the testimony of PW22, there is no reliable evidence as to who fired the shot. No finger prints were taken from the trigger of the gun, no gun shot residue was obtained from the appellant. Admittedly, the gun did not belong to the appellant as it belonged to the security guard Sripal.

Thus, it cannot be ruled out that it was PW22 himself or some other person who had fired on the deceased. Elaborating his argument, the learned counsel argues that the prosecution has preferred not to examine the owner of the showroom as to how and why the keys of the showroom were kept with the guard. This is a serious lacuna which, according to the learned counsel, creates doubt in the prosecution version, benefit whereof is liable to be given to the appellant.

8. The learned counsel states that as per the scaled site plan Ex.PW23/A, there was a distance of 280 cms, that is, about 9 ft between point 'A' and 'B'. Referring to *Practical Pathology of Gunshot Wounds* by J.Scott Denton, MD; Adrienne Segovia, MD; and James A. Filkins, MD, JD, Ph.D, there would be blackening of skin by smoke and tattooing with unburnt grains of gunpowder when the firearm is discharged from close to the body of the victim or in actual contact to the body. There will not be blackening of the skin or burning thereof if a shot is fired at a distance of about 9ft. The learned counsel, thus, argues that the incident did not take place in the manner as alleged by the prosecution and the appellant will be entitled to the benefit of doubt.
9. On the other hand, the learned APP for the State argues that presence of the appellant at the spot was not disputed during cross-examination of the complainant (PW22), eye witness (PW21) and even in cross-examination of the police officials who reached the spot immediately. Only a vague suggestion was given in the cross-examination of the complainant and other witnesses that the appellant was implicated in the case falsely at the instance of the IO. The learned APP argues that in the absence of any

specific suggestion, the testimony of PW22 was left unchallenged. The appellant did not come forward with any motive to implicate him in the case falsely. The testimony of the complainant and other witnesses examined by the prosecution was credible and trustworthy. Thus, the trial court rightly held the appellant guilty of the offence of murder.

10. Before advertng to the respective contentions raised, we will refer to the testimony of the two eye witnesses examined by the Prosecution. PW22 testified as under:

“On 19.07.2007 I was working as a Safai karamchari in Hundai Samara Shjowroom at B-5, Bikaji Gama Place. Manjit Singh was guard there. When I reached at the showroom it was locked. I inquired from Manjit Singh, if he had the keys then he opened the show room. I, one Subash Tiwari, who was working as a guard in WSF company, Manjit Singh came inside the showroom, I started changing my clothes. Subash Tiwari sat on a chair. Sripal was the right guard on duty at the showroom, Manjit Singh brought the gun of the night guard accused Sripal from outside and pointed the gun towards Subash Tiwari and gave the shot at the above chest. The bullet pierced the chest, the chair, table and then fell on the floor.

I came out and closed the shutter of the said showroom so that the accused Manjeet Singh may not escape. The phone call to police was made from the adjoining showroom. Police reached the spot. The police apprehended accused Manjeet and also kept me in their company. The injured was sent to the hospital. The police then seized the gun and the bullet and the accused Manjeet was arrested. I had given statement to the police and the same is Ex.PW22/A bears my sign at point X”.

11. Thus, PW22 categorically deposed as to how deceased Subhash Tiwari was sitting on the chair, when the appellant entered the showroom with

the gun belonging to night guard Sri Pal pointed the gun at him and opened fire. In cross-examination of this witness the appellant tried to challenge his (PW-22's) posting at Samara Hundai. He boldly stood the test of cross-examination and deposed that initially he had joined in the workshop (of Samara Hundai) at G.T. Karnal Road and thereafter he was posted at Mayapuri for 15 days and then he was working in the showroom (where the accident took place) for the last four/five months, prior to the incident. A suggestion was given to PW22 that he was not present at the spot at the time of the incident and that he had deposed falsely at the instance of the IO which suggestion, of course, was denied by him. No reason was attributed to PW-22 to make a false statement involving the appellant. The fact that PW-22's statement Ex.PW-22/A was recorded at the spot by SI Parveen Kumar immediately after the incident and that the *rukka* was dispatched from the spot at 11:45 am demolishes the appellant's defence that PW-22 was not present at the spot at the time of the incident. Thus, PW22's testimony, by itself, is sufficient to indict the appellant that he fired a shot from the gun belonging to his co-accused Sri Pal who was also prosecuted under Section 30 of the Arms Act.

12. Now we turn to the testimony of PW21. In his examination-in-chief, he testified that on 18.08.2007, he was on duty in the office of WSP as a guard. At about 8:30 pm he heard noise of a gun shot fired in the showroom of Hundai car company. He reached there and found Subhash Tiwari lying on the floor in a pool of blood. He deposed that he noticed Manjeet Singh present there with a rifle. Since this witness had resided

from his statement under Section 161 Cr.P.C. recorded by the police, he was permitted to be cross-examined by the learned APP. In cross-examination, he admitted having seen the appellant picking up the gun and firing a shot with it on the chest of Subhash Tiwari. In cross-examination on behalf of the appellant, PW21 reiterated his version as stated in his examination-in-chief that as soon as he reached the place of incident, he found Subhash Tiwari in bleeding condition and appellant Manjeet Singh was having a gun in his hand. The learned counsel for the appellant criticises this witness on the ground that he was vacillating his stand and, therefore, was not a reliable witness. We are not inclined to agree with the learned counsel for the appellant. PW21's posting in neighbouring office of WSP as a security guard was not challenged in cross-examination. He was, therefore, a natural witness to have reached the spot immediately on hearing the gun shot. He found Subhash Tiwari lying on the floor in a pool of blood and Manjeet Singh (appellant) present with a rifle. It seems that he was not a witness of the actual incident of firing. His testimony, however, lends sufficient support to PW22's testimony to prove that it was the appellant who had fired a shot on the deceased.

13. We have gone through the charge sheet and testimonies of PWs 8, 19 and 25. All these witnesses have stated that Vinesh (PW22) had handed over the gun to the IO. In the absence of any serious challenge to PW22's testimony regarding the manner of incident, the appellant cannot be absolved of the offence of opening the fire on the deceased simply on the ground that it was only PW-22 who handed over the weapon of offence to

the IO. It is important to note that no question was put to PW22 as to how he came in possession of the gun. Although, PW22 did not specifically state in his examination-in-chief as to the time when he took possession of the gun from the appellant, yet in the absence of any cross-examination or any suggestion in this regard, the appellant cannot draw any advantage merely on the ground that the gun was handed over to the police by PW-22. Handing over of the gun by PW-22 has to be read with his testimony which could not be shaken in cross-examination.

14. It is true that the owner of Samara Hundai has not been examined by the prosecution. Admittedly, as per prosecution version, he was not present at the spot at the time of the incident. PW22's testimony that the appellant opened the showroom was not challenged in cross-examination. It is not unusual for owners of the shops/showrooms dealing in goods which cannot be stolen to hand over the keys to one or the other employee to open the same. Thus, non-examination of the owner of the showroom, particularly in the absence of any suggestion to PW22, was of no consequence.
15. It is not in dispute that the finger prints on the trigger were not obtained for comparison with the appellant's finger prints, yet it has to be borne in mind that the finger rolls over the trigger of the gun and there is hardly any possibility of any finger print being available on the trigger. Thus, the contention raised on behalf of the appellant that the finger prints on the trigger were not obtained is not of any avail to the appellant.
16. Admittedly, the IO did not collect any gunshot residue from the appellant's hand. Obviously, presence of gunshot residue would have

corroborated the prosecution version. It is very disturbing to note that even in 21st century scientific investigation is not carried out properly by the investigating agency. But, at the same time, defect in investigation will not enure for the benefit of an accused. In *Paramjit Singh v. State of Punjab* (2007) 13 SCC 530 the Supreme Court emphasized that a defective investigation, however, serious by itself cannot vitiate and nullify the trial. Similar sentiments were echoed by the Supreme Court in its later judgment in *Gajjo v. State of Uttarakhand* (2012) 9 SCC 532 where serologist's report was not obtained in relation to the *daranti* Ex.2 and bloodstained *pyjama* Ex. Ka-5. Paras 19 and 20 of the judgment in *Gajoo*, the Supreme Court observed as under:-

“19. Now we turn to the last submission on behalf of the accused that no serologist report was obtained in relation to the daranti, Ext. 2 and bloodstained pyjama, Ext. Ka-5, and therefore, the prosecution case should fail. This argument does not impress us at all. No doubt both these exhibits were not sent to the laboratory for obtaining the serologist's report, but the absence thereof per se would not give any advantage to the accused. This is merely a defect in investigation. A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court. PW 5 has duly proved the recovery of daranti, Ext. 2 and the bloodstained pyjama, Ext. Ka-5 and has duly stood the test of cross-examination in the court. Both these articles were recovered by the Investigating Officer Brahma Singh, PW 6 and the recoveries have been duly established before the court. The recoveries having been proved and the case of the prosecution being duly supported by two eyewitnesses, PW 2 and PW 3 and two witnesses, PW 4 and PW 5 who were present immediately after the occurrence, have proved the case of the prosecution beyond any reasonable doubt.

20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal (2012) 8 SCC 263 while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36)

“27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P. (1972) 3 SCC 613 this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab (2004) 3 SCC 654, held: (SCC p. 657, para 5)

‘5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.’

28. Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Bihar (1999) 2 SCC 126 enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

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32. In State of Karnataka v. K. Yarappa Reddy (1999) 8 SCC 715 this Court occasioned to consider the similar

question of defective investigation as to whether any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows: (SCC p. 720)

‘19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.’

33. In Ram Bali v. State of U.P. (2004) 10 SCC 598 the judgment in Karnel Singh v. State of M.P.(1995) 5 SCC 518 was reiterated and this Court had observed that: (Ram Bali case (2004) 10 SCC 598, SCC p. 604, para 12)

‘12. ... In case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing

into the hands of the investigation officer if the investigation is designedly defective.'

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a 'fair trial', the court should leave no stone unturned to do justice and protect the interest of the society as well."

17. As stated earlier, the presence of gunshot residue would have been a corroborative piece of evidence to nail the appellant. But, in the absence thereof, it cannot be held that the appellant did not fire the shot on the deceased.
18. Referring to the postmortem report Ex.PW-11/A learned counsel for the appellant urges that presence of a small burnt patch negates the firing of the gunshot from a distance of 9 ft. which is the case of the prosecution as projected from the scaled site plan Ex.PW-23/A. Thus, the learned counsel argues that the incident of firing had not taken place in the

manner as alleged by the prosecution. We have gone through the scaled site plan Ex.PW23/A; the same was prepared by PW23. PW23 testified that he visited the spot and took the measurement of the site of incident at the instance of IO and on the basis of the measurements and rough notes he prepared the scaled site plan Ex.PW23/A. It is not in dispute that the distance between points 'A' and 'B', that is, the place wherefrom appellant fired and where the deceased was sitting was 280 cms, that is, about 9 ft.. From this distance length of the rifle has to be excluded to measure the distance between the point of opening of fire and the deceased. One has also to keep in mind how a person firing a shot holds the rifle/gun. Taking all these factors into consideration the distance between the muzzle of the gun and the object has to be calculated, which in the instant case could be anywhere between 3 to 5 ft. The learned counsel for the appellant relies on the article *Practical Pathology of Gunshot Wounds (supra)*, where it is stated that stippling is caused by unburnt particles of gun powder striking the skin. The presence of stippling indicates that the muzzle of the gun was within 2 ft. of the victim's body when it was discharged. The article further says that there will be no evidence of soot or stippling/tattooing if muzzle of the gun is more than 2 ft away. The learned counsel for the appellant thus argues that the story of the appellant's opening fire from point 'A' to point 'B' where the deceased was sitting is not believable. We are not inclined to agree with the learned counsel for the appellant. As per *Modi's Medical Jurisprudence & Toxicology, Twenty-Second Edition*, (Page 355) also relied upon by the counsel for the appellant, in case of a firearm wound

where the shot was fired from a distance of one to three feet the skin surrounding the wound is blackened, scorched and tattooed, with unburnt grains of powder. At the same time *Modi* also states that even in case of firearm wound where the shot has been discharged from a distance of 6 feet the skin surrounding the aperture may not be blackened or scorched but it is tattooed to some extent. It further states that in the absence of powder residue no distinction can be made between one distant shot and another, as far as distance is concerned (*Page 354*).

19. Dr. Yogesh Tyagi (PW-11) who conducted the postmortem examination on the dead body was not put any question in his cross-examination as to the distance from which the firearm could have been fired in this case. Thus, simply on account of presence of a small burnt patch it cannot be said that the distance between the victim and the muzzle would be less than 3 ft. Moreover, the distance from which the shot was fired by the culprit is not material; what is required to be seen is who was the person who fired the shot? In view of clear cut evidence in the shape of PW-22's testimony that it was the appellant who fired the shot on deceased Subhash Tiwari, the discrepancy if any, with regard to the distance would lose significance.
20. PW-22 is an independent witness. The appellant has not come forward with any motive for him (PW-22) to have falsely deposed against him. As stated earlier, PW-22's testimony is duly corroborated by PW-21 as PW-21 noticed the appellant with the gun immediately after hearing of the shot and he also found the deceased lying in a pool of blood.

21. In view of the foregoing discussion, we are of the view that the prosecution case against the appellant was established beyond shadow of all reasonable doubt. The appeal, therefore, has to fail; the same is accordingly dismissed.

(G.P. MITTAL)
JUDGE

(G.S. SISTANI)
JUDGE

AUGUST 30, 2013
pst/vk