

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

Reserved on: August 08, 2013

Pronounced on: September 09, 2013

+ **Crl. Rev. P. No. 321/2006**

JAI NARAIN

..... Petitioner

Through: Mr. Digvijay Rai, Advocate

versus

BRAHAM SINGH & ANR.

..... Respondents

Through: Mr. Vijender Bhardwaj, Advocate
for respondent No.1

Ms. Mukesh Gupta, Additional
Public Prosecutor for respondent
No.2-State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Petitioner is the brother of deceased, who is aggrieved by impugned order of 10th February, 2006 vide which respondent No.1-accused has been acquitted in FIR No. 485/1997, under Sections 302 of the *IPC*, registered at police station Punjabi Bagh, Delhi. Holding that prosecution has failed to substantiate the case against respondent No.1-accused, the trial court has acquitted first respondent herein.

2. The trial court proceeds to acquit respondent No.1-accused by holding that in circumstantial evidence case, the conduct of the respondent No.1-accused militates against his being guilty of the offence in question. The finding returned by the trial court on this aspect is as under:-

"37. It is in the statements of PW Hukam Singh, Ct. Suresh, HC Suresh and HC Sumer Singh that accused and the deceased were seen going to the barrack together. It is not case of the prosecution that before or while going towards the barrack, the accused and the deceased quarreled with each other. PW5 Balraj and ASI Jai Narain (PW6), brother of the deceased at the time of identification of dead-body of Sat Narain found that the 2nd button, from the top, of the shirt of Sat Narain was missing. Argument put forth on behalf of the prosecution is that this shows that there was scuffle between the accused and the deceased. But I do not find any substance in this argument, particularly when there is no evidence on record to suggest that before the accused and deceased entered the room of the barracks, all the buttons of the shirt of Sat Narain were in place and also because no button was recovered from the spot during the investigation.

38. As noticed above, had their relations not been cordial they would not have gone to the barrack together. Had the accused been involved in firing the shot which hit Ct. Sat Narain, the accused would have tried to run away or conceal his presence or that he was found trembling with fear or raising alarm that he had done this job by hitting Ct. Sat Narain. None of the above four prosecution witnesses has deposed that accused tried to run away or conceal his presence or raised any such alarm. Rather, it stands established from their testimony that the accused helped in bringing the injured down and then removed the injured to the hospital while himself driving the vehicle."

3. The finding returned by the trial court on the circumstance of extra-judicial confession is as follows:-

"32. In the present case, PW Constable Suresh Kumar had deposed that when he reached the place where

Constable Sat Narain was lying on a cot, Braham Singh accused, standing there, replied to his (PW's) query that while he was taking out the clothes from the box per chance a shot got fired and hit Sat Narain.

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35. *HC Hukum Singh, the concerned Duty Officer, who had sent Constable Suresh to go upstairs and check as to what had happened, stepped into the witness box as PW1. He deposed having sent Constable Suresh towards barracks. He further deposed that HC Sumer Singh, who was present in the Duty-officer room, also went and after sometime HC Sumer Singh, Constable Suresh and Constable Brahm Singh (accused) brought constable Sat Narain to take him to hospital as the constable was in injured condition and bleeding. It is pertinent to mention that HC Hukam Singh nowhere deposed that the accused had disclosed to them that shot got suddenly fired when he was taking clothes out of the box.*

36. *Constable Suresh Kumar did not disclose the fact of shot getting fired suddenly either to HC Sumer Singh, who had also reached the place of occurrence, or to HC Hukam Singh, the concerned Duty Officer, who had sent him to that place to enquire as to what had happened there. Therefore, the version narrated by PW9 Constable Suresh Kumar in this respect does not inspire confidence."*

4. On the motive aspect, the finding returned by the trial court is as under:-

"22. In her cross-examination, Smt. Kusum Lata candidly admitted to have informed none whatever her

husband used to tell her during his life time. She admitted to have not made any statement on the day of the present occurrence. Police had visited the village on the day of cremation of dead body of her husband and also thereafter several times, as admitted by PW-8. Therefore, she had ample opportunity to tell the police about the aforesaid incident which allegedly took place in winter season, but she did not narrate the said incident to anyone prior to 02.02.2000 when her statement was recorded by the police. Even otherwise, whatever was told by her husband to her much prior to the present occurrence cannot be said to be admissible in evidence, the same being merely hearsay evidence, when her husband did not lodge any complaint against the accused during his life time.

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24. Had the accused threatened ASI Jai Narain that days of his brother Ct. Sat Narain (since-deceased) were numbered or had the accused ever harassed Ct. Sat Narain, as narrated by his wife in Court, Ct. Sat Narain would not have accompanied the accused to the barrack. Therefore, the motive part of the prosecution story as put forth by ASI Jai Narain and Sm.t Kusum Lata does not inspire confidence."

5. Regarding recovery of the weapon of offence i.e. revolver and bullet, the finding returned by the trial court is as under:-

"48. The revolver was seized by Inspector Ashok Kumar Tyagi, but no step was taken for lifting of finger-prints from the revolver. Finger prints could be lifted from the revolver and sent for analysis to find out as to whose finger-prints it was bearing. Had the accused handled the

revolver, his finger-prints must have been available there, and in case the revolver was used by Ct. Sat Narain, in that situation, his finger prints could help us, in solving the mystery which surrounds his death. While appearing in the witness box, the Inspector (PW30) admitted that he had not got fingerprints lifted from the revolver in question. There is nothing on record to suggest that subsequently, when investigation came to be transferred to Crime Branch, any step was taken in this direction. Unfortunately, there is no explanation for the lapse in investigation on this aspect."

6. The crux of the prosecution case as briefly unfolded at the hearing is as follows. On 18th May, 1997 at around 12.30 a.m., a gunshot was heard on the first floor of the police station Punjabi Bagh, New Delhi which houses the barracks. Head Constable-*Hukum Singh*, who was the duty officer then, directed Constable-*Suresh* to go upstairs and see what had happened. When Constable-*Suresh* entered, he saw the deceased-*Sat Narain* lying on the cot and bleeding whereas accused-*Braham Singh* was standing there and upon enquiry by Constable-*Suresh* as to what had happened, accused-*Braham Singh* told him that while taking out clothes from a box a shot got fired per chance which hit *Sat Narain*. It is also the case of prosecution that ground one and a half hour prior to the occurrence, accused had gone to the house of ASI-*Jai Narain*, brother of Constable-*Sat Narain* and complained that the deceased was not serving him. Accused is also stated to have remarked that days of Constable-*Sat Narain* are numbered.

Initially, FIR was registered against the accused-*Bhram Singh* under Section 304-A of *IPC* but at trial, he was prosecuted for the offence of murder.

7. During the course of hearing, it was submitted by petitioner's counsel that this circumstantial evidence case hinges upon the testimony of *Smt. Kusum Lata (PW-8)*-wife of deceased and the deposition of Constable-*Suresh Kumar (PW-9)*, Head-Constable-*Hukum Singh (PW-1)*, Head Constable-*Sumer Singh (PW-15)*, ASI-*Jai Narain (PW-6)* and the Investigating Officer (*PW-30*). It was asserted by petitioner's counsel that from the deposition of *Smt. Kusum Lata (PW-8)*-wife of the deceased, the motive for respondent-accused to commit the offence in question stands sufficiently proved and the extra-judicial confession made by respondent-accused to constable-*Suresh (PW-9)* inspires confidence and the evidence of *Smt. Kusum Lata (PW-8)*-wife of the deceased, stands amply corroborated from the evidence of ASI-*Jai Narain (PW-6)*, who the brother of deceased. Thus, it was contended that the impugned order discarding deposition of *Smt. Kusum Lata (PW-8)*-wife of the deceased, while labelling it to be hearsay, is unwarranted as the deposition of ASI *Jai Narain (PW-6)*-brother of deceased, on the motive aspect has been illegally ignored by the trial court.

8. It was vehemently asserted by petitioner's counsel that from the deposition of constable-*Suresh Kumar (PW-9)*, the circumstance of extra-judicial confession made by respondent-accused to him stands proved beyond reasonable doubt and the trial court has gravely erred in not relying upon the deposition of Constable-*Suresh Kumar (PW-9)*.

9. Regarding recovery of the weapon of offence, it was urged by petitioner's counsel that clinching evidence of Head Constable-*Hukum Singh (PW-1)* has been illegally ignored by trial court on the specious plea that the weapon of offence i.e. revolver does not carry the fingerprints of respondent-accused. It was strenuously urged by petitioner's counsel that merely because Investigating Officer (*PW-30*) had not lifted the fingerprints from the weapon of offence, it will not cause any dent in the prosecution case as, for the lapse in the investigation, a criminal cannot be made to go scot free. Thus, it was contended by learned counsel for petitioner that upon conjectures, prosecution's evidence has been illegally discarded although the chain of circumstantial evidence unerringly points towards the guilt of respondent-accused.

10. Finally, it was urged on behalf of petitioner that from the evidence on record, prosecution case stands sufficiently proved and impugned judgment erroneously overlooks afore-noted crucial evidence which pointedly incriminates respondent-accused and so, it deserves to be set aside and this matter ought to be remanded back to the trial court for a fresh decision on merits in accordance with the law.

11. In support of the above submissions, reliance is placed by petitioner's counsel upon decisions in *Trimukh Maroti Kikran v. State of Maharashtra* 2006 (8) SC 58; *Balram Prasad Agrawal v. State of Bihar* AIR 1997 SC 1830; *Raj Kumar Prasad Tamarkar v. State of Bihar and Anr.* 2007 (1) Crimes 132 (SC); *Rajendra Pralhadrao Wasnik v. State of Maharashtra* (2012) 4 SCC 37; *Nagesh v. State of Karnataka* (2012) 6

SCC 477 and *Shyamal Ghosh v. State of West Bengal* 2012 (6) SCALE 381.

12. To the contrary are the submissions of learned counsel for respondent No.1, who staunchly supports the impugned order and submits that there is no mis-appreciation of evidence by the trial court and thus, there are no compelling reasons to interfere with the finding of acquittal in revision.

13. Amidst the hearing, it was pointed out by learned counsel for first-respondent that the conduct of respondent-accused was such which militates against his being guilty. It was submitted by respondent's counsel that had respondent-accused been guilty of the offence committed, then he would have tried to flee away but instead thereof, he had promptly extended help to the witnesses to remove the deceased to hospital. It was asserted by learned counsel for respondent-accused that the evidence regarding the motive is clearly an improvement and the same has been rightly brushed aside by the trial court. It was urged by learned counsel for respondent-accused that had there been strained relations between him and the deceased, then deceased would have not accompanied respondent-accused to the barrack and there was no occasion for respondent-accused to have made the alleged extra-judicial confession. It was also submitted that the chain of circumstantial evidence is completely broken as the alleged recovery of weapon of offence does not connect respondent-accused with the offence in question.

14. Lastly, it was contended by respondent's counsel that this petition is without merit and deserves to be dismissed as the decisions relied upon on behalf of petitioner have no application to the facts of the instant case. However, learned Additional Public Prosecutor for respondent-State had supported petitioner-complainant's counsel in seeking decision afresh upon proper appreciation of entire prosecution evidence by trial court.

15. After thoughtfully considering the submissions advanced by both the sides and on scrutiny of the impugned order and the evidence on record, it becomes amply clear that on the motive aspect, there is deposition of not only *Smt. Kusum Lata (PW-8)*-wife of the deceased, but also of ASI *Jai Narain (PW-6)*-brother of the deceased. Trial court has discarded the evidence of *Smt. Kusum Lata (PW-8)*-wife of the deceased, on the ground that her evidence is hearsay and that her deposition is afterthought.

16. A plain reading of the deposition of *Smt. Kusum Lata (PW-8)*-wife of the deceased, reveals that her husband had disclosed that respondent-accused used to harass him by demanding money for liquor and prior to this incident, respondent-accused had quarreled with the deceased. It has come in the cross-examination of *Smt. Kusum Lata (PW-8)*-wife of the deceased that soon-after this incident, her statement was recorded by police, but she was not in full senses because she had lost her husband. Whether it is for this reason that she had not disclosed about respondent-accused harassing deceased for not giving money to him for liquor or about the earlier scuffle, which had taken place between respondent-accused and the deceased, as disclosed by the deceased himself to his

wife *Smt. Kusum Lata (PW-8)*, is an aspect ought to have been considered by trial court and in not doing so, trial court has gravely erred.

17. On the motive aspect, there is deposition of *ASI Jai Narain (PW-6)*-brother of the deceased, which had been left out of consideration altogether by the trial court. Pertinently, *ASI Jai Narain (PW-6)*-brother of the deceased, has revealed as to why respondent-accused was demanding money for liquor from the deceased. It emerges from the deposition of *ASI Jai Narain (PW-6)*-brother of the deceased, that deceased was the driver of SHO whereas the respondent-accused was the driver of DCP concerned and as per the deposition of *ASI Jai Narain (PW-6)*-brother of the deceased, respondent-accused had clearly told *ASI Jai Narain (PW-6)* that deceased does not serve him well and so the days of deceased are numbered. *ASI Jai Narain (PW-6)*-brother of the deceased, candidly admits that he has not disclosed about the motive aspect in his initial deposition to the police because he had not suspected that respondent-accused would murder constable-*Sat Narain* merely because he had not given money to respondent-accused for liquor. Whether this was probable in view of initial version of respondent-accused making an extra-judicial confession to Constable-*Suresh Kumar (PW-9)* of a shot being fired from his pistol accidentally while he was taking clothes out of its box in the barrack, is an vital aspect which needs to be considered afresh by trial court.

18. Infact, deposition of *Smt. Kusum Lata (PW-8)*-wife of the deceased, and *ASI Jai Narain (PW-6)*-brother of the deceased, has to be read together on the motive aspect and trial court has materially erred in

not advertent to deposition of ASI *Jai Narain (PW-6)*-brother of the deceased, on the motive aspect which renders a finding returned on the motive aspect to be perverse.

19. On the circumstance of extra-judicial confession, the deposition of Constable-*Suresh Kumar (PW-9)*, had been clearly misread by the trial court as this witness (*PW-9*) has not been confronted with his police statement to show that he has not stated in his initial version about respondent-accused confessing to him that it was a case of accidental firing. Therefore, trial court could not have legitimately discarded the deposition of Constable-*Suresh Kumar (PW-9)* on the specious plea that he has not disclosed about the extra-judicial confession being made to him by respondent-accused to Head Constable-*Hukum Singh (PW-1)* or to Head Constable-*Sumer Singh (PW-15)*. In any case, Head Constable-*Sumer Singh (PW-15)* has not supported the prosecution case. However, the deposition of crucial material witness (*PW-9*) has to be tested on the strength of his cross-examination. Trial court materially erred in not doing so, which renders the finding returned on the aspect of extra-judicial confession untenable.

20. Regarding the weapon recovered not having the fingerprints of respondent-accused, finding returned by the trial court of Investigating Officer (*PW-30*) not lifting the fingerprints from the recovered revolver, cannot possibly justify the rejection of this circumstantial evidence as the recovered weapon of offence was the service revolver of respondent-accused, who had handed it over to Duty Officer after this incident and it was seized at the spot soon after the incident, as this incident had taken

place in the police station itself. So, on the specious ground of fingerprints of respondent-accused having not there on the recovered weapon of offence, finding of acquittal returned by the trial court is utterly perverse.

21. The conduct of respondent-accused not fleeing from the spot, or of not trembling out of fear is clearly based on surmises as there is nothing on record to suggest that demeanour of respondent-accused was noticed by any of the witnesses after this incident. Since it is case of prosecution that respondent-accused has nursed grievance against the deceased for not giving money to enable him to take liquor, so whether respondent-accused would become nervous or tremble with fear, is the moot question which needs to be reconsidered by trial court. Fundamental Rules of appreciation of evidence require that evidence recorded is required to be evaluated from the view point of a common prudent person. Trial court has failed to do so. It is so said as respondent-accused's presence at the place and time of incident is not disputed nor can be, then in such a situation, respondent-accused offers no explanation which calls for drawing adverse inference. This aspect has escaped the attention of trial court.

22. So far as respondent-accused not trying to flee away from the spot, trial court has committed a patent illegality in ignoring that respondent-accused had no occasion or opportunity to flee away from the spot as upon hearing the sound of firing, Constable-*Suresh Kumar* and Head Constable-*Sumer Singh* were promptly sent by Head Constable-*Hukum Singh* to the spot and in such a situation, there was no option for

respondent-accused except to have helped Constable-*Suresh Kumar* and Head Constable-*Sumer Singh* in removing Constable-*Sat Narain* to the hospital, as he was fatally injured. Infact, the weapon of offence i.e. service revolver was handed over by respondent-accused to the Duty Officer-*Hukum Singh (PW-1)* in the police station and deposition of Head Constable-*Hukum Singh (PW-1)* on this aspect has not been considered by the trial court in its correct perspective nor it has been discarded by the trial court in the impugned judgment. Merely because Investigating Officer (*PW-30*) did not lift the fingerprints from the service revolver of respondent-accused, is of any material consequence as respondent-accused in his statement under Section 313 of *Cr.P.C.* had no version to offer and this crucial aspect requires reconsideration by trial court.

23. Since the circumstance of last seen has not been properly considered by the trial court in the impugned order, therefore, it can be said with authority that the crucial evidence against respondent-accused has been overlooked by the trial court which warrants reversal of acquittal of respondent-accused.

24. When can the High Court interfere with the finding of acquittal in revision, has been reiterated by the Apex Court in *K. Ramachandran v. V. N. Rajan* (2009) 14 SCC 569. The apt observations made by the Apex Court in *K. Ramachandran (supra)* on the scope of interference in revision against acquittal are as under: -

"(i) Where the trial court has no jurisdiction to try the case, but has still acquitted the appellant-accused;

(ii) Where the trial court has wrongly shut out evidence which the prosecution wished to produce;

(iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;

(iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and

(v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal."

25. Upon testing the impugned judgment on afore-noted parameters, this Court finds that trial court has gravely erred in overlooking the above-referred material evidence which renders the impugned order unsustainable. Rather, the flimsy grounds upon which acquittal of respondent-accused rests, cause in manifest miscarriage of justice. Resultantly, impugned order is set aside while remanding this matter back to the trial court with the direction to decide this case afresh upon proper evaluation of evidence on record. Respondent-accused is directed to appear before the trial court on 24th September, 2013 and to furnish bail-bond to the satisfaction of the trial court ensuring his appearance before the trial court till the decision afresh is taken in this case. Upon rehearing, trial court shall endeavour to decide this case afresh expeditiously i.e. within this calendar year.

26. This petition is accordingly disposed of while refraining to opine upon merits and so trial court shall independently and objectively re-assess the evidence already recorded uninfluenced by any observation made in this judgment.

27. Trial court be apprised of this order forthwith.

(SUNIL GAUR)
JUDGE

September 09, 2013
r/s