

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

RESERVED ON : January 16, 2014

DECIDED ON : January 28, 2014

+ CRL.A. 803/2012 & CRL.M.B. 115/2014

RAHUL @ SUNNY

..... Appellant

Through : Mr.H.S.Phoolka, Sr.Advocate with
Mr.HJS Ahluwalia and
Mr.Gursimran Jit Singh,
Advocates.

VERSUS

STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.
SI Rajesh Kumar, PS Kanjhawala.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Rahul @ Sunny questions the correctness and legality of a judgment dated 09.05.2012 of learned Additional Sessions Judge in Sessions Case No.107/2011 arising out of FIR No.243/2007 registered at Police Station Kanjhawala by which he was convicted under Section 307 IPC and 25/27 Arms Act. By an order dated 17.05.2012 he was awarded rigorous imprisonment for seven years with fine ₹10,000/- under Section 307 IPC and rigorous imprisonment for three years with fine ₹2,000/-

under Section 25/27 Arms Act. Both the sentences were to operate concurrently.

2. Allegations against the appellant were that on 15.12.2007 at about 02.30 P.M. near Dada Mundu Karala, he inflicted injuries to Rajneesh by firing at him with desi katta in an attempt to murder him. Daily Dairy (DD) No.16A (Ex.PW14/A) was recorded at 04.10 P.M. at Police Station Kanjhawawla on getting information from Dr.S.Mittal of Brahmsakti Sanjivani hospital about admission of Rajneesh s/o Satbir by his friend Sunil due to fire shot on head. DD No.17/A (Ex.PW-14/B) was recorded at 04.32 P.M. The information about the occurrence was conveyed from telephone No.9211239057 by Satbir about the incident. The investigation was assigned to ASI Johar Singh who with Const.Rakesh went to the spot. He lodged First Information Report after recording Rajneesh's statement (Ex.PW12/A). During the course of investigation statement of witnesses conversant with the facts were recorded. Rahul @ Sunny was apprehended and arrested. Pursuant to his disclosure statement, a country made pistol was recovered on 18.12.2007. After completion of investigation, a charge-sheet was filed against Rahul @ Sunny for committing the aforesaid offences. The accused was duly charged and brought to trial. The prosecution examined fourteen

witnesses to establish its case. In 313 statement, the appellant pleaded false implication and denied complicity in the crime. After considering the rival contentions of the parties and on appreciating all the evidence, the trial court by the impugned judgment held the appellant perpetrator of the crime for the aforesaid offences. Being aggrieved, the appellant has filed the present appeal.

3. I have heard the learned Sr.counsel for the appellant, learned Additional Public Prosecutor for the State and have examined the record. Learned Sr.counsel urged that the trial court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses without independent corroboration. PW-11 (Sunil) did not opt to support the prosecution and turned hostile. The medical evidence is in conflict with the ocular evidence. The complainant alleged that bullet was fired at point blank range while sitting on the rear seat of the car behind him. However, in the MLC, there was no blackening or singeing of the skin. The CFSL report did not fully support the prosecution. The delay in lodging the report with the police was not explained. No blood stains or bullet mark was found in the car. Vital discrepancies emerging in the testimonies of the prosecution witnesses were ignored without valid reasons. The complainant himself

was involved in four criminal cases. Learned Additional Public Prosecutor urged that there are no sound reasons to discard the testimony of the injured witness who implicated the appellant at the first instance.

4. The occurrence took place at around 02.30 P.M. DD No.16A (Ex.PW-14/A) and DD No.17A (Ex.PW-14/B) were recorded at 04.10 and 04.32 P.M. respectively after admission of injured Rajneesh at Brahmsakti Sanjivani hospital. MLC (Ex.PW-3/A) records the arrival time of the patient at Brahmsakti Sanjivani hospital as 03.50 P.M. The investigating officer after recording complainant-Rajneesh's statement (Ex.PW-12/A) sent the rukka (Ex.PW-14/C) for lodging First Information Report at 06.30 P.M. Apparently, there was no inordinate delay in registration of the case. At the first available opportunity, the complainant disclosed detailed account of incident as to how and under what circumstances, Rahul @ Sunny had fired a bullet on his head when he was going in his car bearing No.7619 to Begumpur at about 11.00 A.M. He further disclosed that after the firing, Rahul @ Sunny along with his associate fled the spot and he informed his friend Sunil about the occurrence. Since the FIR was lodged without any delay there was least possibility of the complainant to fabricate or concoct a false story in such a short interval. While appearing as PW-12, Rajneesh in his Court

statement proved the version given to the police at the earliest opportunity without any variation and implicated the appellant for inflicting injuries to him with a country made pistol. He deposed that on 15.12.2007 at about 11.00 A.M. he left in his car bearing No.DL-3CQ-7619 Essent for Begumpur for giving earnest money/bayana to purchase a plot there. Rahul @ Sunny who was acquainted with him and was a nephew of Naubat resident of the same village boarded his car. He was accompanied by his friend from the same village but was not known to him. When they left for Karala and reached near Dada Mando Mandir out of the village, Rahul @ Sunny who was sitting on the back seat behind him fired at his head from behind. After the firing, he and his friend ran away from the spot. The occurrence took place at about 02.30 P.M. Thereafter he made a telephone call to his friend Sunil of village Barwala and informed him about the occurrence and requested him to come along with his father there. Thereafter Sunil along with his father came and he was taken to Brahmsakti Sanjivani hospital where his statement (Ex.PW-12/A) was recorded. In the cross-examination, he admitted that the appellant was known to him for the last about 5/6 years. He denied the suggestion that there was previous dispute between him and the appellant. He was put number of questions regarding his involvement in criminal cases. He

denied that he was feeling jealous due to status and business of the appellant and falsely implicated him on that count. He explained that he did not make any call to PCR as he felt that if he called the police party, they would waste time in formalities and would take him to some government hospital where he might not get proper treatment and therefore to save his life, he first made a call to his friend.

5. Injuries on the head of the complainant are not under challenge. Only contention of the appellant is that he was not the author of the injuries and it were inflicted by someone else and he was falsely implicated due to suspicion. However, no material discrepancies could be elicited or extracted in the cross-examination to disbelieve the version given by the complainant where he was definite and sure that injuries were inflicted to him by the appellant with a country made pistol inside the car. There was none else present in the rear seat of the car to cause the injuries that time. Presence of the accused inside the car at the relevant time has not been controverted specifically. The appellant did not suggest his presence at any other particular place at the relevant time. The complainant who had sustained grievous injuries on the vital organ of the body was not expected to let the real culprit go scot free. In the absence of prior animosity or ill-will the complainant who was acquainted with the

appellant for the last 5/6 years and had readily allowed him to travel in his car without any suspicion was not expected to fabricate a false story and to falsely rope him in the incident. No ulterior motive was assigned to the complainant for falsely implicating him.

6. PW-11 (Sunil) though was reluctant to give statement in the court, nevertheless, supported the prosecution and corroborated the complainant's version that he was informed by him on phone regarding the injuries caused to him. He also admitted that he had noticed a bullet on his head. He further admitted that Rajneesh was taken by him to Brahmsakti Sanjivani hospital. It is true that he has not supported the prosecution on all material facts but has given the reasons for that. Since both the complainant and the appellant were from the same village, he did not want to spoil his reputation (*yeh sabhi ek hi gaon ke hain, main kyon bura banoo.*). Name of this witness Sunil finds mention in DD No.16A (PW-14A) as well as in MLC (Ex.PW-3/A). Sunil did not give clean chit to the appellant. PW-6 (Satbir Singh), complainant's father, deposed on similar lines whereby he was informed about the occurrence by PW-11 (Sunil) and who in turn informed the police at 100. Telephone number 9211239059 finds mention in DD No.17A (Ex.PW-14/B).

7. Ocular testimony of the victim is in consonance with the medical evidence. PW-5 (Dr.S.Mittal) medically examined the patient Rajneesh on 15.12.2007 vide MLC (Ex.PW-3/A). Patient was admitted with alleged history of gunshot. On local examination, entry wound was found present at occipital region. Foreign body was seen in the depth of wound. There was bleeding from the wound. The patient was declared fit for statement at point X1 on MLC (Ex.PW-3/A). Testimony of the witness remained unchallenged in the cross-examination. PW-3 (Dr.Bharat Bhasin) gave opinion about the nature of injuries as 'grievous' at point 'A' on MLC (Ex.PW-3/A). The injury was grievous as outer table of skull was fractured as found intra operatively, though, inner table was intact. The patient was operated by him on 15.12.2007. In that operation one deformed bullet of about 4 cm with yellow coloured mushroom tip was taken out and sealed. The deformed bullet was handed over to the police. Again the testimony of this witness was not challenged in the cross-examination. No suggestion was put to the witness if the fire was from close range or distance. Apparently, there is no major variation between the medical and ocular witness.

8. Recovery of crime weapon i.e country made pistol (Ex.P-1) on 18.12.2007 is another incriminating circumstance against the appellant

to connect him with the crime. PW-14 (ASI Jor Singh) and PW-7 (Const.Rakesh) have given consistent version on this aspect. As per CFSL report (Ex.PW-9/A) country made pistol .315” bore marked Ex.F1 was found in working order. PW-9 (Puneet Puri) further opined that deformed bullet marked Ex.EB1 was corresponding to the bullet of 8MM/.315” cartridge. He was, however, unable to give specific opinion if this deformed bullet was discharged from the country made pistol marked Ex.F1 as the individual characteristics of striations present on Ex.EB1 were insufficient for comparison and opinion.

9. In 313 statement, the appellant did not give plausible explanation to the incriminating circumstances appearing against him. Merely because the complainant was involved in some criminal cases, it did not give any right to the appellant to inflict injuries to him. The findings recorded by the Trial Court are based on fair appraisal of the evidence and elaborate discussion has been made in the impugned judgment on all relevant aspects and findings warrant no interference. The findings on conviction are affirmed.

10. Alternative argument was adopted by Ld.Senior counsel to modify the sentence order after taking lenient view as the appellant has already remained in custody for about three years and is not a previous

convict. Nominal roll dated 02.12.2013 reveals that the appellant has suffered incarceration for two years, five months and eight days besides earning remission for five months and eighteen days as on 02.12.2013. He was not involved in any other criminal case and his overall jail conduct was satisfactory. The appellant was aged about 18 years at the time of occurrence. There was no previous animosity with the victim prompting him to murder him without provocation. The complainant has not assigned any specific motive to the appellant for suddenly inflicting grievous injuries on the vital organ with a country made pistol. It appears that the complainant has not presented true facts as to what had provoked the appellant to cause injuries to him. The appellant has placed on record number of FIRs i.e. FIR No.129/03 Police Station Bawana; FIR No.290/03 Police Station Bawana; FIR No.396/07 Police Station Bawana and FIR No.1106/04 Police Station Prashant Vihar in which the complainant is involved. The appellant was a student of class X and was unmarried. It is informed that his father left the house in 1990 and is living separate. Considering all these mitigating circumstances, the substantive sentence of the appellant for seven years is reduced to five years. Other terms and conditions of the sentence order are left undisturbed.

11. The appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent back immediately. A copy of this order be sent to Superintendent Jail.

(S.P.GARG)
JUDGE

JANUARY 28, 2014

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