

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 829/2014**

Date of decision: 20.05.2015

JEETU SAINI

Through Appellant
Mr.S.S.Gandhi, Sr.Advocate
with Mr.Arvind Nayyar, Adv.

versus

STATE, N.C.T. OF DELHI

Through Respondent
Mr. Varun Goswami, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J. (ORAL)

1. Jeetu Saini challenges his conviction by the impugned judgment dated 28th May, 2014 for having committed murder of Sonu Rana on 26th August, 2008. By the order on sentence dated 31st May, 2014, the appellant Jeetu Saini has been sentenced to imprisonment for life and ordered to pay a fine of Rs.5000/-. In default of payment of fine, he shall further undergo simple imprisonment for six months. The conviction and sentence arises from the charge-sheet filed in FIR No.222/2008, Police Station Vikas Puri.

2. The impugned judgment acquits Shivani Wasan. The State and

the legal heirs of the victim have not questioned the said acquittal.

3. The appellant disputes and calls in question the Trial Court's reliance and acceptance of the testimony of the two police officers, namely, Ct. Subhash (PW4) and HC Satpal (PW7) as eye-witnesses. It is pleaded that they were neither the complainant nor the first informant. The first informant/complainant, Bhanu @ Jaswant (PW14A) has been disbelieved by the Trial Court as a trumped up and contrived eye-witness. The Trial Court, it is asserted, has for cogent reasons rejected the testimony of the foisted "eye-witness" Vinay Sharma (PW18). Drawing our attention to the FSL report marked Ex.PW13/L, Ex.PW22/A and Ex.PW13/K, it is highlighted that blood could not be detected on the all metallic weapon of offence. It is thus submitted, that the police version, that the appellant was apprehended at the spot after committing the offence is far-fetched and unbelievable. Reliance is placed upon the testimony of Rahul Kapoor (DW1). It is pleaded that the appellant has been falsely implicated in the present case, since he happened to be present at the spot as he had gone to see a movie with DW1.

4. We have also heard the counsel for the State who has contested

the contentions raised on behalf of the appellant.

5. At the outset, we record that we are inclined to partly accept the finding of the Trial Court that the renditions by eye-witnesses Bhanu @ Jaswant (PW14A) and Vinay Sharma (PW18) as to the occurrence are not reliable or trust worthy. In all probability, they had not seen the occurrence. However, we would partly rely on their narrative on the question of motive and the background to the occurrence. At the same time, we find that the Trial Court was justified in convicting the appellant Jeetu Saini as the perpetrator of the crime, relying upon the testimonies of Ct. Subhash (PW4) and HC Satpal (PW7). We shall now elucidate and elaborate our reasons for accepting their testimonies and other corroborative and supporting circumstances which show and prove that the appellant Jeetu Saini was the perpetrator who had murdered Sonu Rana on 26.8.2008 at about 9 PM.

6. HC Satpal (PW7), on the relevant date and time, was on patrolling duty at the PVR Cinema, Vikas Puri along with Ct. Subhash (PW4). At about 9 P.M., observing that a group had gathered towards the south side of the police booth, he and Ct. Subhash (PW4) went there. They saw that one person was stabbing the other with a knife.

The person who had inflicted the knife wounds was apprehended and Ct. Subhash (PW4) snatched the knife from his hand. HC Satpal (PW7), thereafter, identified the appellant as the person who had inflicted the knife injuries on the deceased and was apprehended and detained. The SHO was called and reached the place of occurrence in a gypsy. The injured was taken in the gypsy to the Deen Dayal Upadhyay Hospital (DDU Hospital) by HC Satpal (PW7). There, he was declared as 'brought dead'. We have gone through the examination-in-chief and the cross-examination of PW7 and do not find any cogent reason to reject the factual assertion narrated by PW7. Presence of PW7 at the place of occurrence was not incidental or by chance. His presence at the place of occurrence was on call and certain. In his cross examination, PW7 has stated that PW4 had remained at the spot and he alone had gone to the hospital. The appellant was detained and remained in the custody of PW4. PW7 specifically denied the suggestion that he had not witnessed the incident because he was not present at the spot and had not seen the accused inflicting knife injuries on the deceased Sonu. PW7 accepted as correct the suggestion that he did not know the injured, but,

subsequently came to know his name after he had examined his visiting cards. The aforesaid testimony of PW7 finds assured corroboration and support from the MLC of the deceased (Ex.PW6/DA). The aforesaid MLC was put to Constable Suresh Kumar (PW6) in his cross examination.

7. Dr. Vinal Sharma, Medical Officer, DDU Hospital (PW14) had also proved the MLC Ex.PW6/DA, which was signed by him at point B. He had affirmed that on 26.8.2008, he had examined an unknown injured patient brought by HC Satpal (PW7). The patient described as an unknown person was brought dead. Articles like three golden rings, two golden ear rings, one locket with stone, one ATM card, one PAN Card, money and visiting cards were found in a black purse of the deceased person and were handed over to HC Satpal (PW7). Learned counsel for the appellant has contested this assertion, by drawing our attention to the cross-examination, wherein PW14 has stated that the articles mentioned in the MLC Ex.PW6/DA were brought to him by HC Satpal (PW7), who had stated that these had been removed from the body of the deceased. This discrepancy is insignificant and flippant and hence, irrelevant. Further, the MLC Ex.PW6/DA

specifically records that three golden rings, two golden ear rings, one locket with some stone, one SBI ATM card, one PAN card, currency and some visiting cards were found in a black purse and handed over to HC Satpal (PW7). The written note is signed by PW14. The MLC Ex.PW6/DA does not mention the name of the deceased, his parentage and the place of residence have been described as unknown. However, the age of the patient is mentioned as 35 years. The time and date when the patient was brought to the hospital is mentioned as 10.05 PM on 26.8.2008 and the person who had brought the patient to the hospital was HC Satpal (PW7). The details and identity of the deceased were ascertained after he was brought to the hospital.

8. Deposition of Ct. Subhash (PW4) is almost identical and in *seritum*. At about 9 P.M. on 26.8.2008, he and HC Satpal (PW7) were on patrol duty at the PVR cinema, Vikas Puri. While on patrol near the south side of PVR cinema, they noticed a crowd. They entered the crowd and saw that one boy was stabbing the other. They apprehended the assailant namely, Jeetu Saini (the appellant). PW4 identified the appellant in the Court. A knife/dagger recovered from him was also identified as Ex.P-1. The SHO reached the spot after sometime and the

injured was removed to DDU hospital in the vehicle of the SHO by HC Satpal (PW7). Ct. Subhash (PW4) remained at the spot with the appellant. The crime team reached the spot and took photographs. Sketch of the dagger (Ex.PW4/A) was prepared by PW4 and was signed by him at point A. The dagger was seized vide seizure memo Ex.PW4/B ,which was prepared and signed by PW4 at point A. Blood stained T-shirt of the appellant was seized vide seizure memo Ex.PW4/F and sealed with the seal of GSM. One motorcycle bearing No.6464 was also seized vide seizure memo Ex.PW4/G at the instance of the appellant. PW4 identified the T-shirt as Ex.P2. We clarify that the registration number of the seized motorcycle was DL6SAA6464, which was subsequently taken on superdari by the brother of the appellant named Arun. The identity of the motorcycle is not disputed. PW4 in his cross examination has deposed that his patrolling duty would start at 9 AM or 10 AM and he used to remain there till the cinema closed at about 1.30 or 1.45 AM. On the said day, he had joined duty at about 9 A.M. HC Satpal (PW7) had come to the complex at 5 PM. At the time of the incident, public had come out of the cinema as a movie show had ended. He denied the suggestion that

the injured fell from the stairs and had hit some metallic article which had caused the said injuries. He had remained at spot till 6 A.M. Again, a minor discrepancy as to when PW7 had joined the duty is inconsequential, for what is material is whether he was present on duty at the time of occurrence. There is ample evidence to show and accept the presence of PW7.

9. Constable Suresh (PW6) has corroborated the version given by PW4. He has testified that on 26.8.2008, he was posted at Police Station Vikas Puri and at about 9.30 AM after receipt of DD No.42A, he along with SI Umed Singh had visited DDU hospital from where the MLC Ex.PW6/DA was collected. Thereafter, he along with the IO reached the PVR cinema. He noticed that blood had spilled at the place of occurrence. The accused i.e. the appellant Jeetu Saini was in police custody.

10. SI Umed Singh (PW8) has stated that after DD No.42A was recorded, he had visited DDU Hospital along with Constable Suresh (PW6). He collected the MLC Ex.PW6/DA. Subsequently, after handing over the rukka, he came to the spot where Ct. Subhash (PW4) and Ct. Suresh (PW6) were present. Thereafter, the investigation was

transferred to Inspector G.S. Meena. Ct. Subhash (PW4) had produced Jeetu Saini before Inspector G.S. Meena along with the knife. Sketch of the knife (Ex.PW4/A) was prepared and he had signed the same at point B. Knife was also seized vide seizure memo Ex.PW4/B which was signed by him at point B. The T-shirt which the appellant was wearing was taken into custody and sealed with the seal of GSM and seized vide seizure memo Ex.PW4/F. The motorcycle bearing registration Number DL6SAA6464 was taken into possession. As recorded above, the said motorcycle was subsequently given on superdari to the brother of the appellant.

11. Inspector G.S. Meena (PW20) has stated that he was posted as Inspector Investigation at Police Station Vikas Puri. At about 1 A.M. on 27.8.2008, a copy of the FIR was handed over to him for further investigation. At 1.20 A.M., he reached the PVR cinema complex at Vikas Puri and met Constable Subhash (PW4). He interrogated the appellant Jeetu Saini and formally arrested him vide seizure memo Ex.PW4/DA, which was signed by him at point X. He affirmed that he was handed over the dagger by Constable Subhash (PW4) and the sketch and seizure memo was prepared. Similarly blood stained T-

shirt worn by the appellant was seized and converted into a cloth pulanda which was sealed with the seal of GSM vide seizure memo Ex.PW4/F. The arrest memo of the appellant Ex.PW4/D is dated 27.8.2008 and the time of arrest recorded is 2.45 AM. The name of the arresting officer recorded is G.S. Meena i.e. PW20. It is apparent that the appellant had remained in the custody of Ct. Subhash (PW4) after he was detained at the spot itself till the investigating officer Inspector G.S. Meena on reaching the place of occurrence, formally arrested him. We do not, therefore, read or find any discrepancy in the statement of PW4 and the prosecution version that the appellant was detained at the spot i.e. the place of occurrence at about 9 A.M. The contention that the appellant was arrested belatedly and therefore, his presence at the place of occurrence should not be accepted is not correct.

12. Ct. Raj Kumar (PW9) was working as a photographer with the crime team West District and had reached the place of occurrence at 10 P.M. on 26.8.2008. By then, the injured had been taken to the hospital. He took 27 photographs of the spot, marked PW9/1 collectively. The photographs show the presence of blood splashes on

the ground and on other objects in the vicinity. Photographs of the persons present at that time were not clicked.

13. The aforesaid depositions make it crystal clear that appellant Jeetu Saini was detained at the spot itself by PW4 Constable Subhash and PW7, Head Constable Satpal. Subsequently, he remained in custody of Constable Subhash (PW4) till he was formally arrested by Inspector G.S. Meena (PW20). The aforesaid facts were put to the appellant when his statement under Section 313 Cr.P.C was recorded.

In response to question No.41, the appellant had stated as under:-

“This is a false case. I had gone to PVR Vikas Puri for watching a movie as one of my friend had his office there. When I was about to meet my friend a quarrel started nearby. I went to police officials who were present in the nearby police booth to inform about the quarrel. The police officials made me to sit there and subsequently I was taken to police station and falsely implicated in this case.”

14. The aforesaid answer would affirm that the appellant has accepted the prosecution version and the testimony of the witnesses Ct. Subhash (PW4) and HC Satpal (PW7) to the effect that he was present at the place of occurrence and detained. He claimed that he had gone to watch a movie at PVR cinema, Vikas Puri as one of his friends had an office there. When he was about to meet his friend, he

had noticed that some persons were quarrelling. He proceeded to the police booth to inform the police officers about the quarrel. He was made to sit there and subsequently taken to the police station and falsely implicated.

15. Rahul Kapoor, DW.1 was produced as a defence witness and deposed that he knew the appellant Jeetu Saini who used to give him tennis coaching. He along with the appellant Jeetu Saini had made a programme to watch a movie at 9 P.M. at the PVR cinema. On reaching the spot, he learnt that there was some quarrel and a sportsman-type boy who had gone to the police post for giving information, had been asked to sit there. He went to the police post and saw the appellant. Two or three constables were also present. In his cross-examination, DW-1 accepted that he did not inform the family members of appellant Jeetu Saini about the incident as he was not aware of the address of the appellant or phone numbers of his residence or any family members. Statement of DW1 contains nothing to counter the prosecution evidence in the form of deposition of PW4 and PW7. It is highly debatable whether DW1 had at all come to the place of occurrence in view of his statement in the cross-examination.

16. It is imminent and lucid that the aforesaid factual narration in the testimony of PW4 and PW7, that the appellant was arrested at the spot itself, is correct and incontrovertible. PW4 and PW7 have also stated that they had apprehended the appellant with knife/dagger in his hand. They have stated having seen the appellant giving knife blows. Learned counsel for the appellant has drawn our attention to the FSL report (Ex.PW13/K) wherein it is mentioned that on the metallic weapon of offence, no blood could be detected. This is correct, but blood of group A was detected on Exh.P8 i.e. the T-shirt which was worn by the appellant Jeetu Saini. The blood group of the deceased was 'A' as per the report Ex.PW13/A. It is somewhat surprising that the FSL report (Ex.PW13/K) has described the dagger or knife as an 'all metallic weapon of offence'. The sketch of the dagger Ex.PW4/A gives its dimensions. It is clearly a dagger as normally understood. The second FSL report (Ex.PW13/J) mentions that Ex. 4 was a dagger with dark brown stains. It also gives the dimensions of the dagger and the blade. In the second report Ex.PW13/J, the Senior Scientific Officer had examined the dagger and the cut marks on the clothes worn by the deceased. He opined that the cut marks on the T-shirt,

Capri pant and the underpants of the deceased, on physical examination under magnification, corresponded to the cut marks made with the dagger Exhibit 4. It was accordingly opined that the cut marks on the clothes could have been caused by the dagger (Exhibit 4).

17. We have deliberately and intentionally not referred to the testimonies of Bhanu (PW14A) and Vinay Sharma (PW18). As recorded above, we agree with the finding of the Trial Court that the testimonies of Bhanu (PW14A) and Vinay Sharma (PW18) on the eye-witness account are not reliable. However, we would like to record our reasons as to why we feel the eye-witness rendition by Bhanu (PW14A) and Vinay Sharma (PW18) should not be accepted. PW14A had claimed that on 26.8.2008, the appellant Jeetu Saini had called the deceased on landline phone at 8.45 PM and thereafter he along with the deceased and one Vinay had reached the PVR cinema in a car at about 9.05 PM. Over there, Shivani Wasan and the appellant Jeetu Saini were present along with 3-4 other boys. On seeing them, Shivani Wasan identified Sonu and had yelled that today he should be finished. Thereupon Jeetu Saini took out a knife from his pants and

had inflicted knife blows at Sonu. He claimed that both Jeetu Saini and Shivani were apprehended at the spot itself. Almost identical statement is made by Vinay Sharma (PW18). As per the charge-sheet, Shivani Wasan was arrested subsequently on 17.9.2008. She was not apprehended at the spot. Ct. Subhash (PW4) and HC Satpal (PW7) have not deposed about the presence of Shivani Wasan at the spot. Other police officers including Ct. Suresh Kumar (PW6), S.I. Umed Singh (PW8) and Inspector G.S. Meena (PW20) have also not accepted and testified about the presence of Shivani Wasan at the spot. Ct. Subhash (PW4) or HC Satpal (PW7) have not stated or claimed that Shivani Wasan had fled or escaped after the occurrence. This is not even the version and statement of Bhanu (PW14A) and Vinay Sharma (PW18). Bhanu (PW14A) and Vinay Sharma (PW18) may well have reached the place of occurrence afterwards. However, the deposition of Bhanu (PW14A) and Vinay Sharma (PW18) are relevant on the question of motive and what was the impelling cause for the crime. Bhanu (PW14A) has stated that the deceased Sonu knew Shivani Wasan. Sonu used to organise Jagran functions and Shivani Wasan was a singer. There were differences between them. Sonu Rana

had purportedly advanced of Rs.25,000/- to Shivani Wasan, who had refused to perform at his programmes or return the money. The appellant Jeetu Saini was aware of the said differences. Similarly, Vinay Sharma (PW18) has stated that Sonu Rana @ Surjeet Singh was his friend who used to organise Jagran functions being a singer. Shivani Wasan was also a signer and a member of Sonu Rana's group. Three months prior to the occurrence Shivani had taken an advance of Rs.25,000/-, but on one pretext or the other, had refused to perform and sing at the jagran functions. On this account, there were differences between Sonu and Shivani Wasan. The Appellant Jeetu Saini had intervened and intruded in the said dispute. Whatever may have been the reason and cause, it is apparent that there were discerning and perspicuous issues. It is apparent that Shivani Wasan was the common factor. She knew the deceased Sonu and the appellant Jeetu Saini.

18. Learned Additional Standing Counsel has drawn our attention to the statement of Shivani Wasan recorded under Section 313 Cr.P.C. wherein she had stated that the deceased Sonu Rana was interested in being friends with her but she had ignored and had refused to attend

his Jagran parties. This was the reason she had been falsely implicated and she did not know what happened between the appellant Jeetu Saini and the deceased Sonu Rana. However, we would not like to rely upon the said statement of the co-accused (who has been acquitted) recorded under Section 313 Cr.P.C. as such. But at the same time, we have no hesitation in holding that Bhanu (PW14A) and Vinay Sharma (PW18) have underlined and have broadly explained the motive and the cause why the occurrence had taken place. It is also obvious and can be logically held that the deceased Sonu and the appellant Jeetu Saini knew each other and had consternation amid them. There were disputes and differences *inter-se* the two of them regarding Shivani Wasan.

19. The prosecution has also relied upon the visiting card of Shivani Wasan marked as Ex.PW19/B which mentions her two telephone numbers 9818961436 and 9213914452. Photocopy of the visiting card was marked as Ex.PW2/D. This photocopy also has the same telephone numbers. The visiting card Ex.PW19/B was also proved by Sunil Kumar (PW2) who has deposed that he used to do computer designing and printing and had printed the said card along with

another visiting card Ex.PW2/B of Ashok Hasti, father of Shivani Wasan. We do not agree with the reasoning given by the Trial Court to discredit the testimony of Sunil Kumar, PW2 regarding printing of the visiting cards undertaken by him at the behest and on the asking of Shivani Wasan. PW2 had voluntarily deposed that his phone number was printed on the back side of the card at point A. The mere fact that PW2 did not have a printing press and used to get the cards printed from a printer is not a good ground and justification to disbelieve and discredit Sunil Kumar (PW2). Noticeably, the photocopy of the visiting card was also put to PW2 in his cross examination on behalf of Shivani Wasan and was marked Ex.PW2/D. The telephone number 9818961436 was allotted to appellant Jeetu Saini. As per Ex.PW11/A, the call records of the telephone number 9818961436 from 01.06.2008 to 27.08.2008 have been proved. The telephone number of the deceased Sonu Rana @ Surjeet Singh 9891009732 has been proved and exhibited vide Ex.PW17/A. R.K. Singh (PW11), Nodal Officer of Bharti Airtel Limited, had proved the call records Ex.PW11/A going into 48 pages which had the seal of the company and the initials of PW11. He had also stated that the mobile number 9818961436 was

allotted to the appellant Jeetu Saini r/o B-106. Raghbir Nagar, New Delhi. He was not cross-examined inspite of opportunity given. Similarly, Pawan Singh, PW17 has stated that he was working as a Nodal Officer in Idea Cellular Limited and telephone number 9891009732 was allotted to Surjeet Singh r/o RZ near Tent Wala School, Gali no.5. West Sagar Pur. He had proved the details of these numbers vide EX.PW17/A, which was initialled by him at point A. He had also proved the call records of 9891009732 marked Ex.PW17/D. The deceased Sonu Rana was also known as Surjeet Singh as deposed by Vinay Sharma (PW18). At this stage, it would be necessary to record that the counsel for the appellant has submitted that they had no objection to the call records being exhibited and read in evidence and they would rather rely upon the same. This discredits the assertion that a call was made to the deceased Sony Rana at his land-line number. The call records have been referred to by us only to show that the appellant Jeetu Saini was known to Shivani Wasan and Shivani Wasan knew the deceased Sonu Rana @ Surjeet Singh. This aspect is important and relevant as it also affects the *alibi* that due to fortuitous circumstances, the appellant has been falsely implicated, for he was

coincidentally present at the PVR Cinema. The aforesaid evidence is revealing and confirms that the appellant Jeetu Saini knew the deceased Sonu Rana and the deceased was not an unknown person. The motive of the crime can be inferred and palpable from the facts noticed above.

20. Learned counsel for the appellant did not dispute the factum that the deceased Sonu Rana has died a homicidal death. However, for the purpose of clarity, we would like to refer to the MLC Ex.PW6/DA, testimony of Dr. Vimal Sharma PW14 and testimony of Dr. Komal Singh (PW10) who had conducted the post mortem and proved his report as Ex.PW10/A. The MLC records that the patient was brought dead to the hospital and the said fact has been affirmed by Dr.Vimal Sharma (PW14). The post-mortem report (Ex.PW10/A) refers to 11 injuries on the body of the deceased which included clear lacerated and incised wounds. PW10 has opined that injury nos.5, 6 & 7 were sufficient to cause death in the normal course individually as well as jointly. PW10 has also stated that all injuries i.e. injuries nos.1 to 10 were possible by a sharp edged weapon and were ante mortem and were caused at one time. Injury nos.5 & 6 had penetrated the

chest and heart respectively. Injury No.7 was over the kidney. The medical evidence thus corroborates the eye-witness version given by Ct. Subhash (PW4) and HC Satpal (PW7).

21. Learned counsel for the appellant has relied upon the judgment dated 21.03.2011 passed in Criminal Appeal No.296/1997 titled *Rajinder v. State of Delhi and others*. We have examined the said judgment which proceeds at its own facts. In the said case, the deposition of the eye-witnesses was not accepted for the reasons set out therein. In the present case, we notice that the appellant was apprehended and caught at the spot itself when the crime took place. This fact has been proved beyond the doubt and debate. The appellant was apprehended by Ct. Subhash (PW4) and HC Satpal (PW7). Their presence is also corroborated by the fact that HC Satpal (PW7) had taken the deceased to the hospital. Both of them are on duty near Police post at PVR Cinema Vikas Puri on 26.08.2008 at about 9 P.M., i.e. when the occurrence had taken place. Their presence at the spot was not by chance but normal and natural. No doubt the prosecution had initially relied upon the statement of Bhanu (PW14A) and also claimed that Vinay Sharma (PW15) was an eye witness but this would

not be a good and sufficient ground to reject the unquestionable and positive depositions of Subhash (PW4) and HC Satpal (PW7) as detailed above. Their depositions are duly corroborated by surrounding facts and other incriminating evidence brought on record. In fact, the appellant did not in the trial, dispute his presence at the spot but had claimed that he was an innocent and unknown bystander who has been falsely implicated without any reason or cause. We have in the aforesaid paragraphs referred to the fact that the appellant knew Shivani Wasan who has been acquitted by the Trial Court and also knew the deceased Sonu Rana @ Surjeet Singh. Motive and reason for the crime are apparent and not difficult to decipher and encrypt.

22. In view of the aforesaid discussion, we do not find any merit in the present appeal. The conviction and sentence of the appellant Surjeet @ Jeetu Saini is upheld and maintained. The appeal is dismissed. Trial Court record will be sent back.

(SANJIV KHANNA)
Judge

(ASHUTOSH KUMAR)
Judge

MAY 20, 2015
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