

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.A. 1349/2014

Judgment reserved on 04.02.2015

Judgment delivered on 16.03.2015

SANJEEV MAHAJAN

...Appellant

Through: Ms. Aishwarya Rao, Advocate

Versus

STATE

...Respondent

Through: Mr. Feroz Khan Ghazi, APP for the
state with Inspector Ajay Kumar,
PS-Jahangir Puri.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

1. Present appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure, is directed against the impugned judgment dated 19.12.2013 and order of sentence dated 24.05.2014 passed by the learned Additional Sessions Judge in Sessions Case No. 217/09 convicting the appellant under Section 302 of the Indian Penal Code and Sections 27/54/59 of Arms Act and sentenced to undergo imprisonment for life for the offence under Section 302 IPC with fine of Rs. 6,000/- and in default to further undergo simple imprisonment for six months. The appellant was also sentenced to undergo rigorous imprisonment for three years for the offences under Section 27/54/59 of Arms Act with fine of Rs.3,000/- and in default to further undergo simple imprisonment for three months.

2. Brief facts of the case, as noticed by the learned Trial Court, are as under:

“1. The case of the prosecution, in brief, is that on 22.02.2009 on receipt of DD no. 68B, SI Saheb Singh along with HC Rajesh reached at the spot i.e. Enkey India office, near KDR factory, GTK Road, Jahangirpuri where dead body of a lady was lying in a pool of blood and blood was also coming out from the head of that lady. There were four injury marks on the head and both cheeks of the dead body. One Surrender Jeet Singh, husband of deceased lady met SI Saheb Singh and gave his statement that he was doing electronics work in Jahangirpuri and he got married with deceased Pinki in the year 2004 and one daughter was born in the year 2005. Since last one year, complainant's wife was working at Kohinoor Beauty Parlour at B-39, West Patel Nagar, Delhi on 35 per cent profit basis and Sanjeev Kumar was owner of the said beauty parlour. Due to some dispute over money, complainant's wife was not going to the said Beauty Parlour from the last ten days and Sanjeev Kumar had telephoned to call his wife but his wife did not go there. On 22-02-2009 at about 10 pm, Sanjeev Kumar came to the house of complainant in black colour Santro car bearing no. DL3C AQ-7008 and asked them to talk. Complainant sit near the driver seat while his wife Pinki and daughter sit on the back seat of Sanjeev Kumar's car. Sanjeev Kumar drove the car towards Jahangirpuri Metro Station and then turned it towards GTK Depot and when the car reached near KDR factory, in front of factory no. B-3, Enky India office, Sanjeev stopped the car. Sanjeev Kumar asked complainant and his wife Pinki to get down from the car and to go back to their house. As soon as complainant and his wife Pinki got down from the car, Sanjeev Kumar fired two-three times from his pistol on Pinki due to

which she along with her daughter fell down on the road. Complainant got perturbed. On hearing the sound of firing, many people gathered at the spot. Sanjeev Kumar ran towards GTK Depot, Bypass in his car. Complainant lifted his daughter in his lap. Someone dialled to PCR. Due to bullet injury in the head, the complainant's wife Pinki died on the spot.

2. It is further the case of Prosecution that on this complaint, FIR u/s 302 IPC and investigation was carried out by the Inspector/SHO J. K. Sharma. During investigation, Crime Team inspected the spot and photographs were taken. Blood sample, earth control, three empty cartridges were lifted from the spot and taken into police possession. The dead body was shifted to mortuary. The IO prepared site plan at the instance of complainant and recorded statement of witnesses. During investigation, it was revealed that Santro car bearing no. DL3C-AQ-7008, in which Sanjeev Mahajan ran from the spot, was standing at Outer Ring Road, near Income Tax Colony. It was further revealed that said car was registered in the name of Ajay Kumar r/o Flat no. D-45, Gujranwala Apartments, J-Block, Vikaspuri, Delhi. Ajay Kumar disclosed that after getting financed, he had given the said car to Sanjeev Mahajan. Sanjeev Mahajan was not found despite search. Postmortem was got conducted on the dead body of deceased Pinki from BJRM hospital mortuary. The case property was deposited in the malkhana. During investigation, Inspector J. K. Sharma conducted investigation from the driver of Sanjeev mahajan namely Maninder Singh, partner of Kohinoor Beauty Parlour namely Karan Singh and some other people but he could not be found. The scaled site plan was got prepared from draftsman. In the meanwhile, information was received that wanted accused

Sanjeev Mahajan was arrested in case FIR no. 83/09 u/s 25 Arms Act by the Crime Branch SOS and the pistol by which he fired bullet at Pinki, was also recovered from him. On 05.06.2009, accused Sanjeev Mahajan was arrested from Patiala House Court and his one day PC remand was taken from the court. Accused Sanjeev Mahajan gave disclosure statement that due to financial disputes with Pinki, he fired at her from his licensed pistol whose license had expired. Accused led the police to the place of incident and the place where he left the Santro car. Accused disclosed that he threw the cloths in the water of Haridwar which he wore on that day of the incident. Exhibits were sent to FSL Rohini. After completion of investigation chargesheet was filed against the accused Sanjeev Mahajan u/s 302 IPC and 27/54/59 Arms Act.

3. After compliance of Section 207 Cr.P.C., the case was committed to Sessions Court. Charge under Section 302 IPC and 27/54/59 Arms Act was framed against the accused to which he pleaded not guilty and claimed trial.”

3. The prosecution, in the course of the trial, relied upon the testimonies of 35 witnesses and also placed on record several exhibits whereas one witness has been examined by the accused in his defence. Statement of accused was recorded under Section 323 of Code of Criminal Procedure.
4. The learned Trial Court, after scrutiny of the evidence, found that prosecution had been able to prove the case against the appellant and, accordingly convicted him for the offences and imposed the sentence as has been stated hereinabove.

5. While arguing the appeal, Ms. Aishwarya Rao, learned counsel for the appellant contended that the judgment and order of sentence passed by the learned Trial Court are wrong and illegal as the prosecution has failed to prove its case beyond reasonable doubt and the appellant has been falsely implicated in this case by filling in lacunas in the investigation.
6. Learned counsel for the appellant vehemently argued that the case of the prosecution rests only on the sole testimony of PW1 Surenderjeet Singh, whose presence at the spot is highly suspicious; that there are inconsistencies and material contradictions in the testimonies of the witnesses; that there are many loopholes in the investigation; that the santro car allegedly used by the appellant was identified by PW1 Surenderjeet Singh within 2 hours of the incident whereas the said car was seized by the officials of Police Station Maurya Enclave on 23.02.2009; that the alleged FIR is ante-dated and ante-timed; that prosecution has failed to bring on record the call record of the phone used for informing the police about the alleged incident; that the informer i.e. PW13 Surender Kumar Mishra was not cited as a witness to the memos and recoveries; that the weapon of offence i.e. Pistol could not be identified by PW1 Surenderjeet Singh, who is the sole eye witness of the incidence; that the bullets allegedly recovered from the body of the deceased were not produced before the learned Trial Court and were not exhibited and in this manner, the weapon of offence does not get connected with the offence; that the investigating agency has manipulated the case and the investigation

has not been conducted properly; that PW8 Maninder Singh and PW13 Surender Kumar Mishra are planted witnesses to implicate the appellant falsely in the present case.

7. On the other hand, Mr. Feroz Khan Ghazi, learned counsel for the State opposed the appeal filed by the appellant and argued that it is a case of direct evidence and the prosecution has been able to prove its case beyond any shadow of doubt; that PW1 Surenderjeet Singh, husband of the deceased, being the eyewitness, saw the appellant firing three rounds of bullets at his wife. PW13 Surender Kumar Mishra working as a security guard in the factory at B-3, Enky India, GTK Road heard the bang sounds and also voice of a person shouting 'bachao-bachao', on opening the gate found that the deceased was lying on the road and the blood was oozing from her mouth; that according to PW7 Karan Singh, the beauty parlour in the name and style of 'Kohinoor Beauty Parlour' was opened by the appellant for the deceased as she did not possess any requisite document to open the parlour which establishes the relation between the deceased and the appellant; that PW3 Ajay Kumar and PW 8 Maninder Singh have supported the case of the prosecution that the car was given to the appellant by PW3 Ajay Kumar on monthly rent and the possession of the same was with the appellant; that the pistol used in the crime was licensed in the name of the appellant which is evident from Ex.PW25/A; that though there are minor contradictions among the testimonies of the prosecution witnesses but these contradictions do not go to the root of this case; that generally independent public persons do not

become witness to the criminal proceedings or investigations and hence there are no public eye witnesses to the alleged crime and appellant cannot take benefit of faulty/defective investigation.

8. We have heard learned counsel for both the parties and considered their rival submissions.
9. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimony of the material witnesses and documents. Learned counsel for the appellant contended that the appellant has been falsely implicated by the prosecution on the testimony of sole eye witness of the alleged occurrence is PW1 Surenderjeet Singh, who is husband of the deceased and since he is a highly interested witness, therefore, no reliance should have been placed on his statement. In a case, where conviction is based on the sole testimony of an eye witness, it becomes necessary to evaluate the truthfulness and reliability of the said witness. In the present case also, it needs to be examined whether the testimony of PW1 Surenderjeet Singh, who is the single witness to the incident can be relied upon.
10. PW1 Surenderjeet Singh, deposed :

“I am working as an electrician in A Block Market, Jahangir Puri. I got married with Pinki in the year 2004. My daughter was born in the year 2005. Accused Sanjeev Mahajan, now present in the court, was running a beauty parlour by the name Kohinoor Beauty Parlour at West Patel Nagar. My wife was working in the beauty parlour for the last 1-1 ½ years before her death. She was working with accused on a 35% profit in the partnership. About 10-15 days before her murder,

she was not going to the parlour owing to the reason that our daughter was unwell. Accused made a telephone call to her to join her work in the parlour but my wife refused. On 22.02.2009 at about 9.30 pm, accused came at our house in a black colour Santro car bearing No. DL3C-AQ-7008. He took us in the car on the pretext that he wanted to talk to us. Our daughter was also with us. I was sitting besides the driver seat in the car while my wife and daughter were sitting on the rear seat. The accused took the car to Jahangir Puri and from there, to KDR factory at G.T. Road. Accused stopped the car near the KDR factory and asked us to get down and go back to our house. When we got down from the car, accused Sanjeev Mahajan also got down and fired on my wife Pinki thrice from his pistol. My wife along with the child fell down and started bleeding and died at the spot. Accused then fled away towards by-pass with his car. I lifted my daughter. I got scared and rushed towards to the house of my in-laws at I Block, Jahangir Puri which was nearby to the spot. But, my in-laws were not present at the house and therefore I telephonically informed my father in law and then again came back at the spot. The PCR van had reached at the spot. Police had recorded my statement Exbt. PW-1/A which bears my signatures at point A. After about one and a half hour – two hours, the police officials asked me to indentify one car standing near Sunday bazaar, Pitam Pura. I went there and identified the car. Police enquired the name of the owner of the car. The body of my wife was rushed to BJRM Hospital for post-mortem. The body after post-mortem was handed over to me vide receipt Exbt. PW-1/B. My statement was recorded by the police regarding the identification body of my deceased wife which is Exbt. PW-1/C. I had shown the place of occurrence to the police. Police had prepared the site plan of the spot of occurrence. I cannot

identify the pistol if shown but can identify the car...”

11. It is a settled law that court can and may act on the testimony of a single witness provided he is wholly reliable. But, if there are doubts about the testimony the courts will insist for corroboration. It is for the Court to act upon the testimony of witnesses. It is also a settled law that it is not the number, the quantity, but the quality that is material. The time honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.
12. In ***Jarnail Singh v. State of Punjab***, (2009) 3 SCC 391 at page 396, wherein it has been held :

*“26. It is no doubt true that conviction could be based on the sole testimony of a solitary eyewitness but in order to be the basis of conviction his presence at the place of occurrence has to be natural and his testimony should be strong and reliable and free from any blemish. In **Chuhar Singh v. State of Haryana** [(1976) 1 SCC 879 : 1976 SCC (Cri) 215] this Court held that: (SCC p. 881, para 4)*

“4. ... What is important is not how many witnesses have been examined by the prosecution but what is the nature and quality of evidence on which it relies. The evidence of a single witness may sustain a sentence of death whereas a host of vulnerable witnesses may fail to support a simple charge of hurt. Since the case must stand or fall by the evidence of [single witness], it is necessary to examine that evidence critically.”

13. In ***Takdir Samsuddin Sheikh v. State of Gujarat and Anr.*** (2011) 10 SCC 158, wherein the Apex Court observed:

“This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.”

14. In ***Gulam Sarbar Vs. State of Bihar, 2014 (1) ACR 24***, it has been held:

“In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been

provided by Section 134 of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye witness, if the same inspires confidence. (Vide: Vadivelu Thevar and Anr. v. State of Madras, AIR 1957 SC 614; Kunju @ Balachandran v. State of Tamil Nadu, AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal, AIR 2010 SC 3638; Mahesh and Anr. v. State of Madhya Pradesh, (2011) 9 SCC 626; Prithipal Singh and Ors. v. State of Punjab and Anr. (2012) 1 SCC 10; and Kishan Chand v. State of Haryana, JT 2013 (1) SC 222).”

15. In ***Veer Singh v. State of U.P.*, (2014) 2 SCC 455 : (2014) 1 SCC (Cri) 846 : 2013 SCC On Line SC 1085 at page 463**, it has been held that:

“21. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. The evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided under Section 134 of the Evidence Act. As a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable.”

16. Relying upon the principles discussed above and on careful examination of the testimony of PW1 Surenderjeet Singh, it

emerges that he witnessed the incident in which his wife lost her life. We do not find any reason to disbelieve the version of PW1 Surenderjeet Singh that the appellant fired three rounds of bullets at his wife after they alighted from the car which was being driven by him and he was travelling in the same along with his wife.

17. So far as the contention of learned counsel for the appellant that PW1 Surenderjeet Singh left the spot as soon as the bullets were fired at his wife without caring for her life and taking her to the hospital or summoning the police, only shows that PW1 Surenderjeet Singh cooked up the story to falsely implicate the appellant moreso than his sole testimony has failed to be corroborated by any other eye witnesses or independent witness. In this background, we would like to make a reference to the observations made by the Apex Court in ***Rana Partap & Ors. v. State of Haryana, (1983) 3 SCC 327***,:

“6...Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

and also in *State of U.P. v. Devender Singh, AIR 2004 SC 3690*, wherein it has been held :

“Human behaviour varies from person to person. Different people behave and react differently in different situations. How a person would react and behave in a particular situation can never be predicted.”

18. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to escape from a situation and the conduct of PW1 Surenderjeet Singh in leaving his injured wife at the spot, escaping after carrying his daughter from the scene of incident under fear of his life and that of his daughter was natural and casts no doubt and is in fact a reasonable reaction.
19. The testimony of PW1 Surenderjeet Singh is further corroborated from the statement of PW13 Surender Kumar Mishra, a Security Guard in KDR factory that he heard the noise of the firings and one person shouting “bachao-bachao” and on opening the gate of the factory, he saw the deceased lying on the ground few steps away from the gate with blood oozing from her mouth after which, he informed the Police Control Room. During cross examination, PW13 stated that shouts of ‘Bachao Bachao’ was in a gent’s voice which would also establish that PW1 was present at the spot and escaped after the gun shots.
20. During investigation, PW 5 SI M.D. Meena, who was part of the crime team stated that when he reached the place of incident he saw a body of a lady lying with blood scattered at the spot and

having bullet mark injuries on both sides of head ear and check and three empty shells with mark “KF 765” were lying there. PW6 SI Sahib Singh deposed that the spot was inspected by crime team and three empty shells were found at the spot were lifted and seized vide memo Ex.PW6/D. PW23 SI Ravinder had proved the arrest of appellant and the recovery of one loaded pistol with 6 live cartridges and a Arms Licence with bullets having marking “KF 765”.

21. PW25 Jasbir Singh, Clerk, DC Office, Tarantaran, Punjab in his examination in chief brought the original register of the year 20058 from serial No. 826 to 1104. As per the said register, at serial No. 914 Sanjeev Kumar S/o Sohan Lal, V& PO Bhikwind was issued license of 12 bore double barrel gun vide serial No. 14460 by the order of District Magistrate Amritsar. PW25 further stated that as per the said entry, the holder of the license can carry his weapon all over India and he proved relevant entry as Ex. PW25/A. PW25 also stated that aforesaid person was also issued one Addl. License of 32 bore pistol vide serial No. 129479 on 21.07.2007 and said license was valid upto 17.04.2009.
22. PW28 Sh. V. R. Anand, Asstt. Director, Ballistic Division, FSL, Rohini, Delhi stated in his examination in chief that on 25.08.2009 one sealed parcel was received in his office by messenger HC Joginder from P.S. Jahangirpuri and on 11.02.2011, one another sealed parcel was received through messenger Const. Rajender Singh. PW28 stated that all the seals on the parcel were intact and on opening the parcel No. 1, three 7.654 mm cartridges marked as EC-1 to EC-3 were taken out and on opening the second parcel,

one bullet and one deformed bullet marked as EB-1 & EB-2 respectively were taken out. PW28 examined the said exhibits and cartridges EC-1 to EC-3 were fired empty cartridges and bullets EB-1 & EB-2 corresponded to the bullet of 7.65 mm cartridges. PW28 further stated that individual characteristic of firing pin marks and breech face marks present on EC-1 to EC-3 and TC-1 to TC-5 in case FIR No. 104/09, P.S. Jahangirpur (FSL NO. 10/F-5254) were compared under comparison microscope and were found identical. PW28 also stated that mark EC-1 to EC-3 were fired through the pistol 7.65 mm calibre marked Ex. F-1 in case FIR No. 83/09, P.S. Crime Branch (FSL No. 2009/F-2386) deposited in case FIR No. 104/09, P.S. Jahangirpuri (FSL No. 10/F-5254). PW28 further stated that individual characteristic of rifling marks present on bullet marked as EB-1 and TB-5 in case FIR No. 104/09, P.S. Jahangirpuri (FSL NO. 10-F-5254) were compared under comparison microscope and were found identical. PW28 stated that EB-1 was fired through the pistol 7.65 mm calibre marked Ex.F-1 in case FIR No. 83/09, P.S. Crime Branch (FSL No. 2009/F-2386) deposited in case FIR NO. 104/09, P.S. Jahangirpuri (FSL No. 10/F-5254). PW28 also stated that individual characteristic of rifling marks present on bullet marked as EB-2 were insufficient for comparison and opinion whether it was fired through the pistol 7.65 mm calibre marked Ex.F-1 in case FIR No. 83/09, P.S. Crime Branch (FSL No. 2009/F-2386) deposited in case FIR No. 104/09, P.S. Jahangirpuri (FSL No. 10/F-5254). PW28 further stated that exhibits EC-1 to EC-3 and EB-1 to EB-2 were ammunition as defined in Arms Act, 1959. After

examination, report running into 3 pages Ex.PW28/A was prepared in his office on his dictation. PW28 further stated that on 29.11.2010, one sealed parcel was also received in his office and seals on the parcel were intact. On opening the parcel, one pistol 7.65 mm calibre bearing No. RP-129479, one test fire cartridge case and five 7.65 mm cartridges were taken out. These exhibits were already marked in case FIR No. 83/09, P.S. Crime Branch (FSL 2009/F-2386) as F-1 and A-1 to A-6 respectively. PW28 examined the exhibits and two 7.65 mm cartridges from laboratory stock were test fired through the pistol marked Ex.F-1 and test fire cartridges were marked as TC-1 & TC-2 and recovered bullets were marked as TB-1 & TB-2. PW28 also stated that three 7.65 mm cartridges marked Ex.A-2 to A-4 in case FIR No. 83/09, P.S. Crime Branch were marked as TC-2 to TC-5 and recovered bullets were marked as TB-3 to TB-5. PW28 also stated that the said report Ex.PW28/B was correct and may be read as part of his evidence.

23. PW25 and PW28, as discussed above, have also proved on record the licence of 12 bore double barrel gun as well as one additional licence of 32 bore pistol which was valid upto 17.04.2009. The parcels received in the FSL were intact. Individual characteristic of refilling marks present on bullet as stated above were found identical. PW28 proved his report as correct.
24. PW17 Dr. K. Goel proved the post-mortem (Ex. PW17/A) on the body of the deceased which was referred by PW34 Inspector J.K. Sharma with alleged history of gunshot injuries. PW17 Dr. K. Goel opined that the injuries were antemortem in nature and were

result of firearm which caused cranio-cerebral injuries which are sufficient in the ordinary course.

25. PW27 Sh. V. Shankaranarayanan proved his report Ex.PW27/A (FSL Report) and Ex.PW27/B (Serological Report) on the basis of Ex. 1, 4a, 4b, 4c, 4d (clothes of the deceased) and Ex. 5 (metallic pieces).
26. The ocular testimony of PW1 Surenderjeet Singh stands corroborated with the medical evidence led by the prosecution through PW17 Dr. K. Goel as well as scientific evidence led through PW27 Sh. V. Shankarnarayanan that appellant had committed murder by firing bullets from his licensed pistol on deceased as a result of which she died on the spot. The bullets recovered were compared and found to be identical.
27. The arguments by the learned counsel for the appellant that FIR was ante-dated and ante-timed and the number of the FIR was mentioned in the report of mobile crime team and further that though the Santro car in question was seized by Police Station Pitam Pura, no such DD was placed on record except DD No. 6A dated 23.02.2009 recorded at Police Station Maurya Enclave. It is true that there are some procedural minor faults in the investigation but the same are not fatal to the case of the prosecution. In this regard, reliance can be placed upon ***C. Muniappan v. State of T.N., (2010) 9 SCC 567***, wherein it has been held:

“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to

the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”

and in ***Sunil Kundu v. State of Jharkhand*, (2013) 4 SCC 422: (2013) 2 SCC (Cri) 427: 2013 SCC OnLine SC 316**, it has been held:

“29...It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter,

if they do not dislodge the substratum of the prosecution case, they can be ignored....”

and further in ***Hema v. State*, (2013) 10 SCC 192 : (2013) 4 SCC (Cri) 755 : 2013 SCC OnLine SC 20**, it has been held:

“18. It is clear that merely because of some defect in the investigation, lapse on the part of the investigating officer, it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions, etc. it is the obligation on the part of the court to scrutinise the prosecution evidence dehors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth.”

28. In view of aforesaid discussion, we uphold the conviction and sentence of appellant recorded by the learned Trial Court under Section 302 of Indian Penal Code and Section 27/54/59 of Arms Act. The appeal fails and is dismissed.
29. The appellant is reported to be on bail which is hereby cancelled. He be taken into custody forthwith to serve out the remaining period of sentence in accordance with law. The lower court record be returned along with a certified copy of the judgement.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MARCH 16, 2015