

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

% *Judgment Reserved on : May 16, 2016*

Judgment Delivered on : May 19, 2016

+ **CRL.A.878/2001**

RAHISUDDIN

.....Appellant

Represented by: Mr.Harsh Prabhakar, Amicus
Curiae (Advocate) with
Mr.Naseem Ahmed and
Mr.Anirudh Tanwar, Advocates
Appellant in person

versus

STATE

.....Respondent

Represented by: Mr.Varun Goswami, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. In terms of the impugned judgment dated September 26, 2001 passed in Sessions Case No.63/98 the learned Additional Sessions Judge Shahdara, Delhi has held the appellant guilty for the offence punishable under Section 302 IPC and consequently sentenced him to suffer imprisonment for life vide order on sentence dated September 27, 2001. Fine in sum of ₹5,000/- has also been imposed, in default of which the appellant would be liable to undergo simple imprisonment for a period of six months.

2. At the outset we may note that the co-accused Shahabuddin @ Shambu was acquitted by the learned Trial Judge and the State has not preferred an appeal against the said acquittal.

3. The facts germane to the adjudication of the present appeal lie within a narrow compass and may be taken note of pithily to avoid prolixity, while eschewing unnecessary reference to the circumstances/evidence emerging *qua* the acquitted co-accused.

4. On the night of December 13, 1997 at around 10:00 PM Nem Pal @ Khattal (hereinafter referred as the 'deceased') was in the company of six-seven boys near Secondary School, Dayalpur on the main Karawal Nagar Road. He was sitting on a black Yezdi motorcycle bearing registration No.DL-7SC-7954 Ex.P-4, whereas, the other boys were standing in front of him. The present appellant, who was amongst the group of boys, is stated to have suddenly fired a shot at the deceased using a '*katta*'. Upon suffering the gun shot, the deceased rushed towards the co-accused Shahabuddin @ Shambu; who was also part of the said group. The co-accused Shahabuddin @ Shambu is stated to have slapped the deceased and pushed him away. All the boys, including the appellant and the co-accused fled from the spot leaving behind Nem Pal in an injured condition.

5. The said incident is alleged to have been witnessed by Lalit Kumar @ Rinku PW-3 from a distance of ten-fifteen steps. Admittedly, the said witness did not interact with Nem Pal; who was lying in an injured condition and made no efforts to summon medical assistance or inform the police.

6. According to the said witness, one person named Bhikhari PW-22 fortuitously arrived at the spot of occurrence. He was in a drunk condition. The injured- Nem Pal requested Bhikhari to inform about the incident at his house. In furtherance thereof, Bhikhari is stated to have proceeded to the residence of Nem Pal. Admittedly according to the prosecution, the solitary eye witness to the incident, namely- Lalit Kumar

@ Rinku did not even interact with Bhikhari and stood at the spot passively, merely observing the events transpire. At this point of time, Lalit Kumar @ Rinku left the spot and went home. He did not inform anyone about the incident he had witnessed and stayed tight-lipped till the night of December 15, 1997 when the police made enquiries from him.

7. Sometime thereafter, another chance passer-by Sanjay Kumar PW-6 reached the spot of occurrence and found Nem Pal lying in an injured condition. He deposed that Nem Pal requested him to go to his house and inform that he had been shot. The said witness expressed his inability as he was not aware of the location of the house of the injured. According to the witness, Nem Pal revealed that either he had been shot by boys of Chand Bagh or at the Chand Bagh pulia. We cannot be impervious to the fact that Nem Pal had suffered a gun shot injury on a vital organ and was helplessly lying injured without medical assistance since some time. Naturally, he must have slurred and not communicated with clarity. Sanjay Kumar rushed to his tenement and returned to the spot with his land-lady. However, upon his return he observed that the injured- Nem Pal was being carried by two boys in a cycle rickshaw.

8. Devender cousin brother of Nem Pal has deposed that on the night in question Bhikhari came to the house of Nem Pal and informed that Nem Pal had been shot. Thereupon, he accompanied Bhikhari to the spot of occurrence and brought Nem Pal to his house in a rickshaw. Nem Pal revealed that '*someone*' had shot him and asked him to inform his brother. Nem Pal was taken to hospital by his *phoofa*, father of Nempal Jag Singh PW-2.

9. Nem Pal was admitted in Guru Teg Bahadur Hospital-Shahdara, Delhi at 11:30 PM by his father Jag Singh as evidenced by the perusal of the MLC Ex.PW-4/A. However, in deposition before the Court Jag Singh

has denied the fact that he accompanied his injured son to the hospital. The MLC records the fact that the patient was brought dead.

10. Criminal justice machinery was set into motion at around midnight upon telephonic information received by P.P Khajoori Khas from Ct.Devender Kumar PW-23 deputed at Guru Teg Bahadur Hospital that Nem Pal had been admitted in the said hospital by Devender in an injured condition and had been declared brought dead. The said information was reduced into writing and DD No.23 was recorded at P.P Khajoori Khas.

11. Inquiry pertaining to the said DD was assigned to SI Subhash Vats; who proceeded to Guru Teg Bahadur Hospital along with Ct. Mahavir Sharma PW-20. No eye-witness was found at the hospital. SI Subhash Vats collected a copy of the MLC of the deceased and visited the spot of occurrence. Upon reaching the spot of occurrence no eye-witness could be found by the investigating agency. At around 2:45 AM SI Subhash Vats made the endorsement/*tehrir* (Ex.PW-24/A upon the copy of DD No.23 and recommended registration of case under Section 302 IPC. Accordingly, *rukka* was sent to P.S. Gokal Puri through Ct.Mahavir Sharma.

12. Insp.Sukhvir Singh, Additional S.H.O. P.S.Gokal Puri PW-29 reached the spot of occurrence and the investigation was taken over by him. He summoned the Crime Team and got the spot photographed. In the meantime, Ct.Mahavir Sharma reached P.S.Gokal Puri. Upon receipt of the *rukka*, FIR No.802/1997 dated December 14, 1997 Ex.PW-26/A was registered at P.S.Gokal Puri at 3:10 AM by the Duty Officer HC Jagdish Prasad PW-26.

13. Thereafter, Ct.Mahavir Sharma returned to the spot of occurrence and handed over a copy of the FIR along with the original copy of the *rukka* to Insp.Sukhvir Singh who prepared a Visual Site Plan without

scale Ex.PW-29/A. He took into possession and seized a white cotton *khes* Ex.P-2, a black colour Yezdi motorcycle bearing registration No.DL-7SC-7954 Ex.P-4, blood stained earth, sample earth control, a greenish woolen shawl Ex.P-1 and one blood stained shirt with brown stripes Ex.P-3. Seizure Memo Ex.PW- 24/B to the said effect was prepared and SI Subhash Vats appended his signatures thereon in token of witnessing the proceedings.

14. At this juncture it would be convenient to note that the Visual Site Plan without scale Ex.PW-29/A brings to fore the fact that the blood stained shirt Ex.P-3 and the greenish woolen shawl Ex.P-1 were found lying at some distance from the motorcycle Ex.P-4, on the opposite side of the street.

15. In the morning Insp.Sukhvir Singh reached Guru Teg Bahadur Hospital along with SI Subhash Vats and Ct.Mahavir Sharma. Jag Singh father of the deceased and Sugreev Choudhary PW-1 uncle of the deceased, identified the body of the deceased vide statements Ex.PW-2/A and Ex.PW-1/A respectively.

16. At around 11:30 AM inquest papers were received and autopsy proceedings were commenced by Dr.Anil Kohli PW-5. The autopsy was concluded at 12:30 PM and the Post-Mortem report Ex.PW-5/A was prepared. Significantly, the Post-Mortem report revealed that a firearm entry wound measuring 2cm. x 1cm. surrounded by an abraded collar was found present over the left side back of the abdomen. No signs of blackening, tattooing or singeing of hair were observed near the entry wound. Upon dissecting the track of the wound it was found that the bullet had fractured the ninth rib posteriorly and lacerated the left kidney and renal vessels before exiting the body from the left front side of the abdomen. The direction of the wound was going downwards, anteriorly

and medially. Cause of death was opined to be hemorrhagic shock due to ante-mortem injuries to the kidney and renal vessels produced by projectile of a rifled firearm.

17. The investigation of this case of 'blind-murder' finally made some head-way on December 15, 1997 when at around 09:30 PM Insp.Sukhvir Singh recorded the statement of Lalit Kumar @ Rinku in terms of Section 161 Cr.P.C. At this juncture we may pause to note that Insp.Sukhvir Singh has deposed that he discovered this witness during course of making enquiries regarding the incident near the spot of occurrence. The shop of the said witness was located at a distance of two hundred meters from the spot of occurrence. However, Lalit Kumar @ Rinku has deposed that the police personnel recorded his statement for the first time at around 09:00/09:30 PM on December 14, 1997. He further deposed that the police did not make any enquiry in the neighbourhood when his statement was recorded.

18. The statement of Lalit Kumar @ Rinku revealed the involvement of an unknown assailant in the murder of Nem Pal. Search for the said unknown assailant did not bear any fruit and on January 24, 1998 the investigation of the present case was ultimately transferred to District Crime Cell-North East. On February 05, 1998 the investigation was assigned to Insp.Safdar Ali PW-31. On February 08, 1998 he examined Lalit Kumar @ Rinku and recorded his supplementary statement in terms of Section 161 Cr. P.C. Statement of Bhikhari in terms of Section 161 Cr. P.C was also recorded by him on the same date.

19. On February 17, 1998 the appellant was apprehended by SI Manoj Kumar PW-8 in the presence of HC Bharpur Singh PW-30 and Ct.Tejvir Singh (not examined during Trial) in connection with FIR No.22/98 dated January 15, 1998 registered at P.S.Ashok Vihar u/s 395/34/120B IPC. In

furtherance thereof, a confessional statement of the appellant Ex.PW-8/A was recorded by SI Manoj Kumar PW-8 in the presence of HC Bharpur Singh PW-30 and Ct.Tejvir Singh, wherein the appellant is stated to have revealed his involvement in the murder of Nem Pal. Record of the lower Court before us reveals that the appellant was subsequently discharged in the case emanating from FIR No.22/98 P.S Ashok Vihar vide order dated February 11, 2000.

20. On February 18, 1998 Insp.Safdar Ali received information that the appellant had been arrested in connection with FIR No.22/98 registered at P.S.Ashok Vihar. Insp.Safdar Ali obtained a copy of the confessional statement purported to have been made by the appellant.

21. Upon complying the necessary formalities, police custody of the appellant was obtained by Insp.Safdar Ali from the Court on February 20, 1998. An application was also preferred by Insp.Safdar Ali seeking conduct of Test Identification Proceedings Ex.PW-31/C. Vide Order passed on the same date, TIP was scheduled to be conducted on February 27, 1998 by Ms.Seema Maini PW-28 learned Metropolitan Magistrate.

22. The appellant was interrogated by Insp.Safdar Ali and a confessional statement Ex.PW-27/A was recorded in the presence of HC Permanand PW-27. We may highlight that no recoveries have been made at the instance of the appellant.

23. On February 27, 1998 TIP *qua* the appellant was conducted by Ms.Seema Maini PW-28 learned Metropolitan Magistrate. The TIP proceedings Ex.PW-3/A reveal that Lalit Kumar @ Rinku correctly identified the appellant.

24. On February 28, 1998 Insp.Safdar Ali conducted search at the residence of the appellant located at Gali No.161/2, New Mustafabad Delhi in the presence of respectable residents of the locality, namely

Afsar Ali PW-17 and Hafiz Usman PW-18 vide Search Memo Ex.PW-17/A. No incriminatory article was recovered.

25. According to the prosecution, the appellant is alleged to have led the police and pointed out the spot of occurrence. A Pointing Out Memo Ex.PW-9/C was prepared and ostensibly bears the signatures of Devender who is stated to have appended his signatures in token of witnessing the proceedings. It may be highlighted that Devender has not toed the line of the prosecution case on this aspect whilst deposing before the Court.

26. On March 22, 1998 co-accused Shahabuddin @ Shambu was arrested from Meerut and consequent thereto investigation was conducted *qua* him.

27. On April 17, 1998 SI Mukesh Kumar Jain PW-7 Draftsman visited the spot of occurrence and prepared notes upon the pointing out of Insp.Safdar Ali. Consequently, the Scaled Site Plan Ex.PW-7/A was prepared by him. As evidenced in the Visual Site Plan without scale Ex.PW-29/A, we find that the blood stained shirt Ex.P-3 and greenish shawl Ex.P-1 is depicted to have been found at a considerable distance from the spot where firing is alleged to have taken place near the motorcycle Ex.P-4. Furthermore, the said articles were found on the other side of the street.

28. Case property was sent to FSL Malviya Nagar for forensic analysis. Armed with the said material, Final-Report in terms of Section 173 Cr.P.C was submitted before the Competent Court. Vide Order dated October 12, 1998 charges were framed against the appellant and co-accused Shahabuddin @ Shambu for the offence punishable under Section 302/34 IPC.

29. The prosecution examined thirty one witnesses in support of charges. Upon being questioned by the Court in terms of Section 313

Cr.P.C the accused pleaded false implication. The appellant examined five witnesses in his defence to evince that he was arrested by police personnel of P.S Ashok Vihar on February 12, 1998 from the lottery counters located at Bhajanpura. It was further sought to be proved that the photograph of the appellant was taken during custody of P.S Ashok Vihar and handed over to press correspondents some time between February 17-19, 1998 for publication.

30. The learned Trial Court returned a finding of guilt by accepting the testimony of Lalit Kumar @ Rinku solitary eye-witness to the occurrence adduced by the prosecution. The Court also attached significant weight to the fact that at the stage of investigation the said witness had successfully identified the appellant in the TIP.

31. We have endowed careful consideration to the rival submissions advanced at the bar and perused the record.

32. A microscopic analysis of the evidence led by the prosecution in a holistic perspective poses serious doubts on the version of Lalit Kumar @ Rinku of having actually witnessed the occurrence.

33. As noticed by us earlier in our factual narrative, the said witness did not surface before the investigation agency till the night of December 15, 1997. The conduct of the said witness seems rather unnatural, in as much as he did not inform any one that he witnessed a dastardly murder much less the police. The manner in which the investigation agency discovered this witness is also shrouded in some doubt. Insp.Sukhvir Singh has deposed that he discovered this witness during course of making enquiries regarding the incident near the spot of occurrence. The shop of the said witness was located at a distance of two hundred meters from the spot of occurrence. However, Lalit Kumar @ Rinku has deposed that the police personnel recorded his statement for the first time at

around 09:00/09:30 PM on December 14, 1997. He further deposed that the police did not make any enquiry in the neighbourhood when his statement was recorded. Furthermore, it assumes significance that though Lalit Kumar @ Rinku claimed that he remained at the spot of occurrence when Bhikhari arrived, however, perusal of the statement of Bhikhari recorded in terms of Section 161 Cr.P.C Ex.PW-22/A does not reveal the presence of any by-stander. We may highlight that in Court Bhikhari turned complete *volte face* and has denied everything.

34. However, even more fundamental reasons emerge from the record that substantially discredit the testimony of this witness at its the core. A keen perusal of the Post-Mortem Report Ex.PW-5/A reveals that the bullet entered the body from the left side back of the abdomen and exit from the left front side of the abdomen. The said finding necessarily implies that the deceased was shot at from behind. Such a conclusion strikes a complete discordant note with the testimony of Lalit Kumar @ Rinku; who has categorically deposed that when he witnessed the incident, the deceased was facing him and back of the appellant was towards him. Thus, under such a scenario, as deposed by this witness, the bullet would enter the body of the deceased from the front, which fact is negated by the medical evidence led by the prosecution itself in the present case.

35. Further, a meticulous analysis of the testimony of Lalit Kumar @ Rinku evinces that he is conspicuously silent on the aspect that Nem Pal travelled on the said road in an injured condition. A perusal of the Visual Site Plan without scale Ex.PW-29/A and the Scaled Site Plan Ex.PW-7/A brings to the fore the fact that the blood stained shirt Ex.P-3 and greenish shawl Ex.P-1 is depicted to have been found at a considerable distance from the spot where the firing is alleged to have taken place near the

motorcycle Ex.P-4. Furthermore, the said articles were found on the other side of the street. Conjoint reading of testimonies of SI Subhash Vats and Insp.Sukhvir Singh reveals that the greenish shawl Ex.P-1 was found at a distance of forty five steps from the motorcycle Ex.P-4 and the blood stained shirt Ex.P-3 was found further eight steps ahead. The testimony of Lalit Kumar @ Rinku completely fails to account for the state of articles disinterred at the *locus in quo*/scene of crime.

36. In this connection it would also be pertinent to highlight that it has not emerged in evidence whether the blood stained shirt Ex.P-3 recovered at the spot had any tear marks owing to the passage of bullet. The description of articles received by the Forensic laboratory does not suggest such tear Ex.PW-31/F. The said shirt was also not produced before the doctor conducting autopsy to elicit his valuable opinion/observation if the tear marks, if any, were corresponding to the injuries found upon the body of the deceased. The photographs forming part of the record also fail to throw light upon this aspect as the shirt is seen to be bundled up in the relevant photograph.

37. The testimony of the solitary eye-witness, namely Lalit Kumar @ Rinku does not inspire confidence and it would not be safe to act upon it to fasten a finding of guilt. As highlighted by us, the conduct of the said witness is unnatural and the version of occurrence adduced by him is in teeth with the scientific/medical evidence produced by the prosecution. The fact that state of articles found lying at scene of crime is not explained by the testimony of this witness, raises more questions than answering the same.

38. Indeed, successful identification of the accused by an eye-witness in TIP does lend corroboration/assurance to the dock identification of such accused in Court. However, merely because a witness identified the

accused in TIP at the stage of investigation cannot cast aside the serious embellishments in his testimony before the Court and immune his evidence from judicial scrutiny. It is a settled proposition of law that the Test Identification Parade is merely an aid at the step of investigation and cannot attain the altar of substantive evidence.

39. The case of the prosecution hinges exclusively on the testimony of Lalit Kumar @ Rinku and there is no other evidence available on record to evince the involvement of the present appellant. We have expressed weighty reasons that impel us to jettison the evidence of Lalit Kumar @ Rinku from judicial consideration and *de hors* the said evidence, case of the prosecution does not survive.

40. The appeal is allowed. The judgment dated September 26, 2001 passed by learned Additional Sessions Judge-Shahdara, Delhi in Sessions Case No.63/98 and consequential Order on Sentence dated September 27, 2001 are hereby set aside. The appellant is acquitted.

41. Appellant is on on bail. Bail bonds and surety bonds are discharged.

42. TCR be returned.

43. Copy of this decision be sent to the Superintendent Central Jail Tihar for updating of the jail record.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 19, 2016
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