

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 366/2003**
SUDESH KUMAR Petitioner
Through: Mr. Vikas Arora and Ms.
Radhika Arora, Advocates.
versus

GOVT. OF N.C.T. OF DELHI Respondent
Through: Mr. Kewal Singh Ahuja, APP
with Inspector Rajesh Kumar
PS Nangloi, Delhi.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL
ORDER
% **01.10.2018**

1. This appeal is directed against the judgment dated 4th April, 2003 passed by learned Additional Sessions Judge, Delhi in SC No.81/2000 arising out in FIR No.416/2000 registered at Police Station (PS) Nangloi convicting the appellant for the offences under Sections 302/34 IPC & 25/27 of the Arms Act and the order on sentence dated 7th April, 2003 whereby for the offence u/s 302/34 IPC, the appellant was sentenced for Rigorous Imprisonment (RI) for life along with fine of Rs.10,000/- and in default of payment of fine to undergo further RI for 10 months and for the offence under Section 25 of the Arms Act to undergo RI for one year and fine of Rs.1000/- and in default of payment of fine to undergo further RI for one month and for the offence under Section 27 of the Arms Act to undergo RI for two years

and fine of Rs.2000/- and in default of payment of fine to undergo further RI for two months.

2. The charge against the appellant was that he along with the co-accused Neeraj, who subsequently was held by this Court to be a juvenile in conflict with law (JCL), at around 3.30 pm at the Laghu Udhyog Nagar Railway Crossing, Mundka, Delhi murdered Ajit Singh (deceased). The second charge was that the present Appellant possessed a country made pistol which was recovered from his possession along with one cartridge and thereby, he committed the offences punishable under Section 25/27/54/59 of Arms Act.

3. At the outset, it requires to be noticed that as far as the co-accused Neeraj is concerned he has filed a separate Criminal Appeal No. 364 of 2003 which was heard and decided by this Court by a judgment dated 10th August, 2018. In that judgment, without going into the merits of the case, it was noticed that Neeraj was below 18 years of age on the date of commission of the offence i.e. 4th April, 2003. This Court, therefore, extended to him the benefit of the Juvenile Justice (Care and Protection) Act, 2000 (JJ Act) relying on the decisions of the Supreme Court. After noting that he had already undergone over 4 years and 10 months of incarceration which is beyond the maximum sentence that could be awarded to him under the JJ Act, this Court was of the view that no purpose would be served in sending the case of Neeraj before the Juvenile Justice Board for fresh adjudication.

Consequently, maintaining his conviction and confining his sentence to the period already undergone, Neeraj's appeal was disposed of.

4. At the outset, it is clarified that since the appeal of Neeraj was not decided on merits, that decision would not come influence the decision in the present appeal which has to be on merits and on the basis of the evidence on record.

5. The case of the prosecution is that the present Appellant had threatened the deceased since the latter had teased the Appellant's sister. It is alleged that on 20th May, 2000 the Appellant again threatened the deceased that he would be killed. According to the prosecution that the Appellant had also given the deceased Rs.5,000/- to start his business and the said amount was not returned by the deceased.

6. According to the prosecution, both the Appellant and the co-accused came on a scooter which was driven by the co-accused. The scooter stopped outside the *khokha* in which the deceased resided at around 3.30 pm on 24th May, 2000. The Appellant got down and fired simultaneously two rounds from his pistol. This was witnessed by the father (PW4) and brother (PW12) of the deceased and they cried for help. The then returned to the scooter which is driven away by the co-accused.

7. In the impugned judgment, the Trial Court has come to the following conclusion:

(i) The evidence of PW4 was truthful and reliable. Nothing was elicited in his cross-examination to impeach his credibility.

(ii) The position was like-wise with respect to PW12 as well. Consequently, the evidence of PW4 and PW12 could not be rejected on the ground that they were closed relations with the deceased.

(iii) The presence of PW4 at the Hospital is evident from the MLC (Ex.PW5/A) which noted that HMT watch of the deceased was handed over to PW4.

(iv) Merely because the police did not ask for the blood stained clothes of PW4 and PW12 did not mean that they were not present at the spot.

(v) The medical evidence also corroborated the ocular evidence. Dr. Komal Singh (PW14) who conducted the post mortem of the deceased found two wounds on his person, both of which were gunshot. She also found two bullets which he handed over to the police. From the evidence of Mr. K.C. Varshney (PW23) the Ballistics Expert, it was clear that pistol used by the appellant was in working order and the bullets recovered were fire arm.

8. Consequently, it was held that the appellant was guilty of the offences with which he was charged. By a separate order on sentence, the Appellant was sentenced in the manner indicated hereinbefore.

9. This Court has heard the submissions of Mr. Vikas Arora, learned counsel appearing for the appellant and Mr. Kewal Singh Ahuja, learned APP for the State.

10. With the help of learned counsel for the parties, the Court has again perused the entire record. The case is based on direct evidence. The two witnesses who have spoken to the occurrence are the father (PW4) and brother (PW12) of the deceased. The *rukka* (Ex.PW2/A) states that when the police reached the spot they found no eye witness present. If either PW4 or PW12 were present at the spot it is unlikely that the police would not have noticed them.

11. The second factor that becomes apparent is that according to the police the firing took place at 3.30 pm, the MLC of the deceased (Ex.PW5/A) indicates the time of arrival at the Hospital as 4.15 pm on 24th May, 2000 i.e. 45 minutes after the occurrence. The appellant was in a busy locality and there is no reason why it should have taken 45 minutes to reach the deceased to the Hospital. What is strangest still is that in the column titled 'name of relative or friend', it is written that HC Rehman Khan, PCR. In other words, the deceased was not accompanied either by PW4 or PW12 to the Hospital. It is impossible to believe that either of them was present at the time of the incident for

if they were, one of them at least would have accompanied the deceased to the Hospital.

12. Merely because there is an endorsement on MLC that an HMT watch worn by the deceased was handed to PW4, it does not mean that he was in fact present at the very moment when the deceased was fired upon or even later when he was brought to the Hospital. The time of making his endorsement is not clear. It appears to be an addition subsequently made and cannot be said to be contemporaneous with the bringing of the deceased to the Hospital.

13. The third factor, which is significant, is the absence of blood stained clothes of either of PW4 or PW12. If indeed they were present there and helped carrying the deceased to the Hospital, given the nature of his injuries, their clothes would certainly be blood stained. It is too facile on the part of the prosecution to contend that since the police did not ask for the clothes, PW4 and PW12 did not think it necessary to hand them over. The fact of the matter is that no blood stained clothes of either PW4 or PW12 had been seized by the police. There is no reason to presume the existence of such blood stained clothes. This also makes it also highly improbable that either PW4 or PW12 was present at the scene.

14. The trial Court has overlooked the fact that the ballistic expert was not able to confirm that bullets recovered from the body of the deceased matched with the pistol purportedly recovered at the instance

of the Appellant. The Court has also perused the FSL report (Ex.PW20/E and Ex.PW20/G) which shows that the bullets recovered from the body of the deceased were not sent to the FSL for examination.

15. Even the arrest of the Appellant is not very convincing, he supposed to have surrendered to the police on his own.

16. The Court is, therefore, not satisfied that PW4 and PW12, both of whom are related witnesses, and interested in the guilt of the present Appellant, are truthful or reliable. Their evidence cannot safely be relied upon to return a finding of guilt against the present Appellant.

17. Consequently, the Court sets aside the impugned judgment of the trial Court and consequent order on sentence *qua* the present Appellant and acquits him of the offences for which he has been convicted and sentenced.

18. The appeal is accordingly allowed. The bail bonds and surety bonds filed by the Appellant stands discharged. The Appellant will fulfill the requirement of Section 437A of Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 01, 2018

"sandeep"