

\$~R-39 & 40

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

+ **CRL.A.924/2002**

MOHD. SOHAIB

..... Petitioner

Through: Mr. M.L. Yadav and Mr. Narsingh
Narain Rai, Advocates.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State.

+ **CRL.A.2/2003**

ANNAS

..... Petitioner

Through: Mr. M.L. Yadav and Mr. Narsingh
Narain Rai, Advocates.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

JUDGMENT
05.04.2018

%

Dr. S. Muralidhar, J.:

1. These appeals by Mohd. Sohaib (A-1) and Annas (A-2) are directed against the impugned judgment dated 11th October 2002 passed by the

learned Additional Sessions Judge, Delhi ('ASJ') in Sessions Case No. 56 of 1999 arising out of FIR No. 70 of 1999 registered at Police Station ('PS') Timarpur, convicting both the Appellants for the offences punishable under Sections 302 and 392 read with Section 34 Indian Penal Code ('IPC') and Section 394 IPC. Additionally, A-2 was held guilty and convicted for an offence punishable under Section 392 read with Section 397 IPC and A-1 was convicted for an offence punishable under Section 25 Arms Act.

2. These appeals are also directed against an order on sentence dated 22nd October 2002 whereby, for the offence punishable under Section 302 IPC, both A-1 and A-2 were sentenced to undergo imprisonment for life and pay a fine of Rs. 5,000/- each and in default of payment of fine, to undergo rigorous imprisonment for two years each. For the offence punishable under Section 392 IPC, they were sentenced to undergo rigorous imprisonment for three years each and to pay a fine of Rs. 2,000/- and in default of payment of fine, to undergo rigorous imprisonment for nine months each. Further, for the offence under Section 394 IPC, they were sentenced to undergo rigorous imprisonment for five years each and to pay a fine of Rs. 2,000/- each and in default of payment of fine, to undergo rigorous imprisonment for nine months each. A-2 was sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 397 IPC. A-1 was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- for the offence punishable under Section 25 Arms Act and in default of payment of fine, to undergo rigorous imprisonment for three months. The sentences were directed to run concurrently.

Background

3. Information was received from the Wireless Operator at the Police Post Burari at around 8.15 am on 10th February 1999 that one person Javed Ahmed (PW-15) had been robbed of his Yamaha motorcycle bearing registration DL-1S-3711 and Rs. 50,000/- at Pepsi Road, Harit Vihar, Delhi. This was noted down as DD No. 3 and assigned to Head Constable ('HC') Ranbir Singh for appropriate action.

4. HC Ranbir Singh then left for the spot along with Assistant Sub Inspector ('ASI') Suresh Ram, Constable Amar Singh (PW-5) and Sub Inspector ('SI') D.S. Dagar (PW-16). As PW-16 along with his staff reached near the *ganda nala* near the office of Himalaya Properties at Harit Vihar, Sandeep Bayala (PW-17), the then Additional Station House Officer ('SHO') of PS Timarpur, also reached the spot along with his staff.

5. They found PW-15 there in an injured condition and bleeding from his head. PW-15 was taken to Sant Hospital by Ct. Amar Singh (PW-5) for medical examination. The MLC of PW-15 issued by the Sant Hospital (Ex.PW-1/A) shows that there was a cut injury on the left temporal region and abrasion injury on the left cheek and below the left eye. The wound was stitched up. The nature of the injury was simple, as noted on the MLC by Dr. Varinder Kumar Sehdev (PW-1).

Narration of events by PW-15

6. After PW-15 returned from the medical examination, his statement was recorded by PW-17, the Investigating Officer ('IO'). In his statement (Ex.PW-15/A), PW-15 stated that he was a property dealer and also running

a shop of building materials at Harit Vihar under the name and style of Himalaya Properties. His aunt's (*bua's*) son, Inteqab Ali @ Pappu (deceased), was also staying in the office premises and did work relating to building materials. Mujhibur Rehman (PW-7), who also belonged to the same village as Inteqab Ali, was running a tractor. He too slept in the office at night.

7. PW-15 stated that on 9th February 1999, at around 2 pm, received a payment of Rs. 50,000/- in his office. Soon thereafter, A-1 and A-2, who were previously acquainted with Inteqab Ali came to the office. At around 7 to 7:30 pm in the evening, PW-7 joined them. At around 8:00 pm, A-2 asked PW-15 and PW-7 to take him to a doctor as he was suffering due to a pain in his stomach. They told him that there would be no doctor available at that time. Thereafter, both A-1 and A-2 asked Inteqab Ali to take A-2 to the doctor. They then left with Inteqab Ali towards Sant Nagar to get some medicine.

8. At 10 pm, A-1 and A-2 returned to the office without Inteqab Ali. When PW-15 asked them about him, both A-1 and A-2 informed him that Inteqab Ali left for Sona (Haryana) to purchase building materials and that he might return only next morning. A-1 and A-2 then insisted that PW-15 should again take A-2 to a doctor since he was unwell. However, PW-15 declined to do so since it was already late at night. He then lay down on the double bed in the office while PW-7 lay down on the office table. At around 5:00 am on 10th February 1999, PW-15 heard the sounds of a tractor and he woke up. He saw that PW-7 had left for work on his tractor. Around this

time, A-2 was also sleeping in the office. A-1 also lay down on the double bed alongside PW-15.

9. Shortly after PW-7 had left, A-1 and A-2 woke PW-15 up. A-2 pointed a country made *katta* at PW-15 and asked him to take out the money. When he refused, they attacked him. A-1 threw a flower pot at his head. In order to save himself, PW-15 took out the Rs. 50,000/- from his bag that was in four bundles of Rs. 10,000/- each and two bundles of Rs. 5,000/- each and handed it over to A-1 and asked them to leave. While A-2 kept his firearm trained on PW-15, A-1 started cleaning the blood stains on the floor of the office with water. At around 7 am, while leaving the office, A-1 and A-2 took away the Yamaha motorcycle which belonged to PW-15. While A-1 took away the motorcycle of PW-15, A-2 proceeded on A-1's motorcycle. While leaving, both of them threatened PW-15 not to make a complaint to the police.

10. Soon after the two accused left, PW-15 called the police. They searched in the neighbourhood for A-1 and A-2. He then learnt that in the nearby field Inteqab Ali @ Pappu was lying dead. He stated that A-1 and A-2 had, with a view to robbing him of money, killed Inteqab Ali by taking him along with them.

11. On the basis of the above statement a *rukka* was drawn up by PW-15 and sent to the PS for registration of the FIR. The crime team was called to the spot and photographs were taken of the place of occurrence. The dog squad was also called. The dead body of Inteqab Ali was identified by PW-15 and

his brother, Gulfam Ahmed (PW-6). A rough site plan (Ex.PW-17/C) was prepared by PW-17.

Post mortem

12. The post-mortem examination of the deceased was performed on 11th February 1999 by Dr. Komal Singh (PW-4). She noticed the following external injuries:

“One external ligature mark encircling almost whole of the neck circumference (except at posterior side of the neck) about 30 cm x 5 mm size. Present at lower part of the larynx directed laterally and backward in more or less transverse fashion across the neck on right lateral side it is 3.5 cm below right pinna. It was brown and dry.

2. Abrasion on the left side of chest 8 cm x 2 cm at 2nd ICS.

3. Bruise present on left side of upper chest spreading in area 18 cm x 8 cm.

4. Bruise on the back of right ear 3 cm x 5 mm

5. Abrasion on post side of the ear 5 mm in size.

6. Abrasion left frontal area of skull 1 cm x 5 mm and another abrasion on the same place 4 cm x 5 mm. Separated from each other by 2 cm. 7 nail mark on the left side of the chest.”

13. The internal examination revealed the presence of clotted blood on the left side of the skull at left frontal parietal region. Right temporal region also contained blood. There was subdural haematoma on the occipital region. There was bruising below the ligature of connective and muscular tissue of the neck. Clotted blood was present on the upper part of the chest. The lungs were congested and oedematous. Right side of the heart contained blood.

14. The cause of death was coma asphyxia in combination caused by the head injury subsequent to the blunt impact on the head. Further, asphyxia was caused by ligature strangulation over the neck. The death was certified to be homicidal. The time of death was stated to be approximately 38 hours prior.

Arrest and recoveries

15. According to PW-17, on the evening of 11th February 1999, he received a telephonic message from ASI Ram Murti from Joya in Uttar Pradesh that the accused would be present at the house of their relative at D-851, Jahangirpuri. PW-17 proceeded along with his staff in the company of PW-6. They noticed A-1 coming down from the staircase of that house and he was identified by PW-6.

16. After his arrest, A-1 made a disclosure statement (Ex.PW-6/B) and led them to a room on the first floor of the same house and pointed out the Rexene bag and stated that it contained his share of the booty, i.e. cash of Rs. 30,000 and one *katta* and three live cartridges. These were recovered in his presence and recovery memo was signed by PW-6. These were converted into parcels and sealed. A-1 also got recovered a bloodstained sweater under the *palang*. This was also taken into possession and sealed. Thereafter, A-2 came down and pointed out the motorcycle parked in the street. This was the motorcycle with registration number ending with 3711 which belonged to PW-15. It was also seized.

17. A-1 then led the police to the B-Block of Jahangirpuri where the other

motorcycle which was used by them in the commission of offence was also pointed out and subsequently seized. A-2 was formally arrested on 17th February 1999. On 18th February 1999, A-2 led the police along with A-1 to the vacant place near Himalaya Properties and pointed out the place from where he got recovered a piece of nylon rope (Ex.P-6) and one copy diary (Ex.P-15/X) which was in the name of the deceased. All of these were taken into possession.

18. A-2 led the police to a room at the back of the house of Jahangirpuri from where he got recovered a bag of black colour from under the bed and from that bag, he got recovered one bloodstained shirt, one muffler, t-shirt of blue colour, one pant and sweater. All these articles were seized.

19. After collecting all the remaining case properties and the sanction order for the prosecution under the Arms Act, the charge sheet was filed against both the Appellants. By the order dated 9th August 1999 the charges were framed against the two accused persons for the offences mentioned hereinbefore.

The trial

20. Eighteen witnesses were examined by the prosecution. The stand of both the Appellants in their statements under Section 313 CrPC was to deny each of the incriminating circumstances. Each of them claimed to have been falsely implicated. No defence evidence has been led.

21. In the impugned judgment, the learned trial Court came to the conclusion that the prosecution was able to conclusively prove each link in

the chain of circumstances. It was held that the evidence of PW-15, who was an injured witness, although related to the deceased, was both truthful and reliable and therefore, could safely form the basis of conclusion that the evidence of 'last seen' viz., that the deceased was last seen alive in the company of the accused was proved. The medical evidence proved that the death of Inteqab Ali was, in fact, homicidal.

22. The trial Court held that the attempts by the defence to discredit PW-15 by suggesting that he may have, sensing a growing business rivalry from the deceased, himself murdered the deceased was without merit; nothing was produced by either of the Appellants to substantiate such a plea. It was further held that although PW-7 had failed to support the case of the prosecution, a collective reading of depositions of PW-15 and PW-6 proved the guilt of the accused beyond reasonable doubt.

23. This Court has heard the submissions of Mr. M.L. Yadav, learned counsel for the Appellants and Mr. Kewal Singh Ahuja, learned APP for the State.

Arguments on behalf of the Appellants

24. The attempt by Mr. Yadav, learned counsel for the Appellants, was to demonstrate before the Court that PW-15 was an unreliable witness. According to him, although he was an injured witness, PW-15 had every reason to falsely implicate the accused so as to avoid the finger of suspicion pointing to him as it was PW-15 who had actually committed the murder of the deceased sensing business rivalry from the deceased. Mr. Yadav also

sought to place considerable reliance on the deposition of PW-7 who turned hostile and declined to support the case of the prosecution. It was submitted that recoveries in this case were all false and planted and that the prosecution has miserably failed to prove the circumstances that should have formed a continuous chain.

25. It is submitted by Mr. Yadav that it was highly improbable that merely for committing a robbery of Rs. 50,000/- and a motorcycle, the accused would go to the extent of committing the murder of one person and then causing simple injury to the other and thereafter walk away with money and motorcycle. According to the learned counsel for the Appellants, the story of the prosecution was unbelievable and the trial Court erred in accepting the version of the prosecution.

Submissions of learned APP for the State

26. Mr. K.S. Ahuja, learned APP, on the other hand, supported the impugned judgment of the trial Court and submitted that attempts in discrediting the natural and probable testimony of the injured eye witness (PW-15) had miserably failed. It is pointed out that there was no credible evidence led by the Appellants to substantiate their plea that it was PW-15 who had murdered the deceased.

27. Learned APP pointed out that the recoveries in the present case were in the presence of PW-6, who although a brother of PW-15, was a natural witness. There was no need for him to falsely implicate either of the Appellants.

Law relating to interested witnesses

28. The Court has carefully perused the evidence of PW-15 who was an injured witness and also related to the deceased and therefore, an interested witness as well. It would therefore be pertinent to recapitulate the law in relation to the deposition of interested witnesses. In ***Dalip Singh v. State of Punjab 1954 SCR 145***, the Supreme Court explained:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

29. In ***State of Bihar v. Basawan Singh AIR 1958 SC 500***, the Constitution Bench of the Supreme Court held:

“The correct Rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of

diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person.”

30. In *Darya Singh v. State of Punjab (1964) 3 SCR 397*, it was observed by the Supreme Court as under:

“There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. **But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it... [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice.** The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. **On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.**”
(emphasis supplied)

31. In *Sarwan Singh v. State of Punjab (1976) 4 SCC 369*, the Supreme Court explained:

“The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth such evidence could be relied upon even without corroboration.”

32. In *Jayabalan v. UT of Pondicherry (2010) 1 SCC 199*, the Supreme Court held as under:

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. **The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency.**” (emphasis supplied)

33. In *Waman v. State of Maharashtra (2011) 7 SCC 295*, the law was summarized thus:

“It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

34. The law in relation to interested witnesses, as explained in the above decisions, is that their evidence is not to be looked upon with suspicion only

because of their relationship with the deceased. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. Their evidence must be scrutinised carefully to ascertain if it has a ring of truth. It must also be examined for consistency.

35. It must be recalled here that the crime in this case took place in two parts. In the first part, the two accused separated the deceased from the remaining persons and committed his murder by strangulation. The second part was when they returned to the office of PW-15 with a view to commit robbery. As far as murder of the deceased is concerned, PW-15 is an important witness for proving the circumstance of 'last seen'. As regards the robbery itself, he is an injured eye witness whose testimony is natural and believable.

36. Although PW-15 was subjected to extensive cross-examination on behalf of the accused, he stood firm in his narration of the essential facts and sequence of events. It is very significant that there was hardly any contradiction in his deposition when read with his previous statement made to the police. One contradiction that the learned counsel for the accused managed to elicit from PW-15 was that during his deposition in the trial Court he stated that he had told the police that the payment of Rs. 50,000/- had been received when the accused persons were present, whereas he had, in fact, stated to the police that the accused persons came to the office sometime after the receipt of the payment. This can hardly be a material contradiction when one considers the evidence of PW-15 as a whole. The second contradiction pointed out is that in his deposition in Court, PW-15

stated that the accused persons had trapped him after the departure of PW-7 but he did not make any statement to this effect in his statement to the police under Section 161 CrPC (Ex.PW-15/A). Once again, this can hardly be considered a material contradiction.

37. No doubt a suggestion was given to PW-15 that he had, in fact, committed the murder of the deceased as he was resentful about the deceased wanting to separate himself from the business and start his own business. However, no attempt was made by either of the Appellants to substantiate this suggestion which, in any event, was denied by PW-15. It must be recalled that PW-15 and the deceased were cousins and if indeed the deceased was not murdered by either of the Appellants but by PW-15, the family of the deceased ought to have been summoned as witnesses to substantiate the plea of the Appellants. They do not appear to have made any such effort.

38. The Court is, therefore, inclined to accept the analysis of the deposition of PW-15 by the trial Court and the conclusion reached by it that he is a truthful witness whose testimony is reliable on various aspects of the crime.

Unreliable deposition of PW-7

39. The Court has also carefully perused the evidence of PW-7 who was also present in the office of PW-15 at some point of time. There is no doubt that he did not support the prosecution's case but he did confirm that the accused were from the same village as the deceased. In his cross-examination by the learned Additional PP (APP), he could only concede that PW-15 was

present along with the deceased and PW-7 in his office at 8 pm on 9th February 1999. He also appeared to support the stand of the accused that the deceased wanted to set up a separate business. However, no suggestion was given to this witness that the murder of the deceased could have been committed by PW-15.

40. The question, therefore, is whether the Court should accept the version of PW-7 as being correct as opposed to that of PW-15. When the evidence is seen as a whole, particularly in the context of the recoveries effected pursuant to the disclosures made by the Appellants, the deposition of PW-7 does not come across as being truthful and reliable. On the contrary, his evidence comes across as that of a witness who has been won over by the accused.

41. The Court is, therefore, unable to agree with learned counsel for the Appellant that the trial Court erred in concluding that the evidence of PW-15 was believable and should be preferred over the evidence of PW-7 who turned hostile.

Presence of public witness of recoveries

42. Turning now to the evidence of PW-6, he was a witness to the recoveries effected from both the accused of the firearm, the cash and the nylon rope used to strangle the deceased. Unlike so many other cases where the police do not associate any member of the public in the recoveries of key pieces of evidence, in the present case, PW-6 has been present throughout. Although the criticism is that he is the brother of PW-15 that, by itself, does not discredit him. When his evidence is read as a whole, it is clear that there

is no need for him to falsely implicate the two accused and his evidence comes across as truthful and natural.

43. The Court concurs with the findings of the trial Court that the recoveries effected in this case at the instance of both the accused are proved beyond reasonable doubt and that it is the accused who were involved in the commission of the crime, i.e. the murder of Inteqab Ali and the robbery in the office of PW-15.

Condition of the firearm irrelevant

44. It is pointed out that the firearms were not found to be in working condition by the FSL. That can hardly matter since it is the brandishing of the firearms at the time of robbery which attracts the offence under Section 397 IPC.

Conclusion

45. For all of the aforementioned reasons, the Court finds no error having been committed by the trial Court in convicting the Appellants for the offences with which they were charged and in sentencing them in the manner indicated hereinabove. Consequently, the impugned judgment of the trial Court convicting the Appellants and the order on sentence are hereby affirmed.

46. The surety bonds and bail bonds furnished by A-1 and A-2 are cancelled. They will surrender on or before 20th April 2018 failing which, the SHO of the concerned PS Timarpur will take the requisite steps to apprehend them and send them to jail in order to serve out their remaining sentence.

47. The appeals are accordingly dismissed and the pending applications are disposed. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 05, 2018

Rm

