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

Date of decision: 24 November 2021

+ **CRL.A. 1269/2019**

ANIL PURI

..... Appellant

Through: Mr. Sunil K. Mittal, Mr. Kshitij Mittal, Mr. Anshul Mittal & Mr. Divyansh Arora, Advocates.

versus

STATE

..... Respondent

Through: Mr. Ashish Dutta, APP for the State along with Inspector Akshay, S.I. Mukesh Kumar, P.S.: Dwarka South.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present appeal, the appellant/Anil Puri impugns judgment dated 21.10.2019 and sentencing order dated 24.10.2019, whereby he has been convicted for offences under sections 302/201/34 of the Indian Penal Code, 1860 ('IPC') and sections 25/27 of the Arms Act, 1959 ('Arms Act'); and has been sentenced to rigorous imprisonment for life along with fine of Rs.20,000/- (Rupees Twenty Thousand Only) with a default sentence of 03 months for the offence under section 302 IPC; to

rigorous imprisonment for 02 years along with fine of Rs.5,000/- (Rupees Five Thousand Only) with a default sentence of 03 months for the offence under section 201 IPC; to rigorous imprisonment for 01 year and fine of Rs.2,000/- (Rupees Two Thousand Only) with a default sentence of 03 months for the offence under section 25 of the Arms Act; and to rigorous imprisonment for 03 years along with fine of Rs.2,000/- (Rupees Two Thousand Only) with a default sentence of 03 months for the offence under section 27 of the Arms Act. The case was registered as FIR No. 836/2014 dated 19.12.2014 registered at P.S.: Dwarka South. The benefit of section 428 of the Code of Criminal Procedure, 1973 ('CrPC') has also been given to the appellant.

2. For sake of completeness, it may be mentioned that there were two other accused persons in the trial, apart from the appellant. The second accused person, one Shahid Ali, was convicted only for the offence under section 174A IPC and was sentenced to simple imprisonment for the period already undergone; and the third accused person, one Sonu Peter, is stated to be absconding, and has since been declared 'proclaimed offender'. The present appeal however, has been preferred only by the appellant, Anil Puri.
3. The matter relates to the murder of one Rajesh Saini (victim/deceased), who is stated to have been engaged in the business of catering and arranging marriage functions; and is said to have been in a partnership business with the appellant. It is stated that the appellant had invested Rs. 2 lacs and the deceased had invested Rs. 8-10 lacs in that partnership business, whereby

they were running a banquet hall described as a '*vatika*' under the name and style of "Shri Shyam Kunj Vatika, Party and Lawn" in Kakrola, New Delhi.

4. The case of the prosecution before the trial court was that prior to the murder of Rajesh Saini, certain business disputes had arisen between the appellant and the deceased, by reason of which the appellant was removed from the partnership arrangement and a sum of Rs.2,05,000/- (Rupees Two Lacs Five Thousand Only) was paid by the deceased to the appellant. It is the case of the prosecution, that arising from their business disputes, the appellant had extended threats to the deceased many times; and on 18.12.2014 at about 07:00 p.m. the appellant, along with two other persons, had taken the victim from the *vatika* in the appellant's car. Thereafter, it was contended during trial, since the deceased did not return home, his wife Suman Saini tried to contact the deceased on his cellphone but without success; and finally, the brother-in-law of the deceased, Joginder Saini, lodged a complaint at P.S.: Dwarka (North) on 19.12.2014 about the deceased having gone missing.
5. Subsequently, on 19.12.2014 at about 11:00 a.m./12 noon, the dead body of the deceased is stated to have been found by one Satish Kumar, lying near the Shamshan Ghat, Village Bagdola; who then intimated it to the PCR. Thereupon, presumably on the information forwarded by the PCR on the police network, on 19.12.2014 at about 11:47 a.m., P.S.: Dwarka (South) was informed that a dead body was lying near Pani-Ki-Pulia near the railway track in front

of Shamshan Bhoomi, Village Bagdola within their territorial jurisdiction.

6. The body was recovered from the spot and was found to have two bullet injuries on the chest. This information was forwarded to P.S.: Dwarka (North), against the missing person's report registered by the brother-in-law of the deceased in that police station.
7. The body was thereafter identified as being that of the deceased by his father, Kishan Chand Saini.
8. A case was then registered *inter-alia* under section 302 IPC and the appellant was apprehended by P.S.: Dwarka (South) on 21.12.2014; and subsequently arrested on 22.12.2014.
9. We have heard Mr. Sunil Mittal, learned counsel for the appellant and Mr. Ashish Dutta, learned Additional Public Prosecutor appearing for the State. We have also perused the impugned judgment and have carefully gone through the evidence on record, assessing the merits and demerits of the evidence marshalled by both sides.
10. Shorn-off unnecessary detail, the appellant's conviction is based essentially on the following evidence adduced by the prosecution:
 - (i) Last seen evidence: The deceased is alleged to have been 'last seen' with the appellant on 18.12.2014, along with two other persons accompanying the appellant. The deposition of

the following persons, cited before the trial court, is relevant in the context of the 'last seen' theory, namely:

- (a) PW-5: Kishan Chand Saini, the father of the deceased;
- (b) PW-7: Manju, resident of the *vatika*, being the mother of one of the persons employed there;
- (c) PW-9: Suman Saini, the wife of the deceased; and
- (d) PW-11: Rahat Hussain, stated to have been a friend of the deceased.

(ii) Recoveries allegedly made upon the appellant's disclosure :

- (a) Recovery of a car, allegedly on the appellant's disclosure, in which the deceased is alleged to have been taken by the appellant; and
- (b) Recovery of a country-made pistol ('pistol'), allegedly on the appellant's disclosure, which is alleged to have been the weapon of offence.

In support of the recoveries made, the prosecution cited the following witnesses:

- (a) PW-21: Head Constable Basant Kumar;
- (b) PW-22: Sub-Inspector Rakesh Kumar;
- (c) PW-28: Inspector Sunil Gupta (the Investigating Officer); and
- (d) PW-29: Sub-Inspector Ashok Kumar.

(iii) Forensic evidence :

- (a) Evidence to show that the gunshot injuries, which were effectively the cause of death, were the result of two cartridges fired from the recovered pistol; and
- (b) The recovery of the used shells and unused cartridges, which were forensically connected to the pistol.

In support of this forensic evidence, the prosecution cited the following witnesses:

- (a) PW-13 : Constable Sandeep, who lifted chance prints for the car;
- (b) PW-23 : Dr. Anurag Thapar, the doctor who conducted the post-mortem; and
- (c) PW-24 : Dr S.S. Murthy, the Ballistics Expert.

(iv) Motive:

- (a) Mainly, that the business disputes between the appellant and the victim, impelled the appellant to murder the victim.

11. In support of their case, the prosecution cited 32 witnesses before the learned Trial Court, while the defence produced 04 witnesses.

Subsequently the prosecution dropped 02 witnesses; and the defence dropped 01 witness.

12. In our view, the decision of the case turns on the aspects as discussed hereinafter.

Last Seen Evidence

13. As part of the 'last seen' evidence marshalled against the appellant, the prosecution has relied upon the deposition of PW-5, who is alleged to have been present at the *vatika* at the time the victim was taken away *inter alia* by the appellant from there. On the basis of PW-5's deposition it is contended, that the victim was 'last seen' with the appellant, whereafter he never returned alive; and therefore, unless the appellant explains otherwise, the appellant must be held responsible for the murder. In this behalf, PW-5 has deposed as under :

PW-5

*"...On 18.12.2014, I was present at the Vatika of my son, accused Anil Puri had come there in the morning and talked with my son Rajesh and stated him that there was a client for him and after some time, he went from there. On the same day at about 1-2 p.m., accused Anil Puri came again with two other persons and after some time, he went from there. **At about 7 p.m., accused Anil Puri who is present in court today (correctly identified by the witness) came again with two other persons and talked with my son Rajesh and thereafter, Rajesh, accused Anil Puri and the said other two persons had gone from the Vatika of the accused...."***

(examination-in-chief dtd. 25.05.2017)

*“... It is wrong to suggest that on 18.12.2014, I had not visited the Vatika of my son Rajesh. It is correct that the police had recorded my statement under Section 161 Cr.P.C. It is wrong to suggest that I had not told to the police regarding my presence in Vatika on 18.12.2014. Vol. They night (sic) have not mentioned it. It is wrong to suggest that it was also not disclosed by me to the police that I had seen my son Rajesh Saini going with accused Anil Puri on 18.12.2014 as stated in my chief. The same is my answer with respect to statement regarding earlier visit of accused Anil Puri. The witness is confronted with portion from A to A1statement Ex.PW5/A, where the source of information of visits is shown of one helper Raju. **The witness has stated voluntarial(sic) that it was told by Raju but he was also present and he himself witness to the same.** I have read my whole statement Ex.PW5/A and I cannot say as to where and why my presence in Vatika is not mentioned. It is incorrect to suggest that I was not present in Vatika. It is wrong to suggest that I am changing my statement. I personally had not gone to the police on 18.12.2014 regarding the missing of my son”*

(cross-examination dtd. 25.05.2017)

14. Furthermore, towards ‘last seen’ evidence, the prosecution has also cited PW-9, who is the wife of the deceased; who however, contradicts PW-5 when she says in her deposition :

PW-9:

“... I had not seen my husband going with anybody on 18.12.2014. I have deposed whatever was told to me by other persons. I met lastly at about 1- 1.30 p.m. when he had come to home for lunch. No conversation of mine took place thereafter with him by any medium”

“... On dated 19.12.2014, I told to my in laws about that my husband was not traceable at about 6/7 a.m. Only my brother Sh. Joginder and Sh. Vijender visited the vatika on dated 19.12.2014 at about 3-4 p.m. Both Sh. Joginder and Sh. Virender are

*residing at village Hiranki. On 18.12.2014, they did not go to the vatika. **My in laws were also not visited Sh. Shyam Kunj Vatika on dated 18.12.2014....***

(cross-examination dtd. 12.04.2018)

15. Most importantly, PW-11, who is stated to have been a friend of the deceased, had this to say in the course of his deposition :

PW-11:

*“... I do not remember the date, however, in the month of December, 2014, at about 12/12.30 p.m., I received a telephonic call from accused Anil Puri and I went to his house at Sec.3 Dwarka. Accused Anil Puri met me there and since no other family member was present in his house, we started taking drinks. **Thereafter, in the evening, we both came to our house and where also we had taken some more drinks and he left my house at about 08.30 p.m....**”*

(examination-in-chief dtd. 02.08.2018)

“... It is correct that 18.12.2014 is the date on which I received a telephonic call from accused Anil Puri at around 12.30 p.m. and thereafter, at around 01.30 p.m., I alongwith him went to his flat. It is wrong to suggest that I was left by accused Anil Puri in vehicle at Sec. 12 Dwarka and thereafter, I hired an Auto and went to my home”

(cross-examination dtd. 02.08.2018 by APP)

*“On that day i.e. 18.12.2014, I met with accused Anil Puri at 1 p.m. **From 1 p.m. to 08.30 p.m. I remained with accused Anil Puri and he had not left me alone during this period.**”*

(cross-examination dtd. 02.08.2018)

16. What emerges from the foregoing depositions is that though PW-5 is cited as a witness to the ‘last seen’ theory propounded against

the appellant, his very presence at the *vatika* at the relevant time is in doubt since in her statement, the daughter-in-law PW-9 says that her in-laws, which would include her father-in-law PW-5, did not go to the *vatika* on 18.12.2014. Further, in his statement recorded under section 161 CrPC, PW-5 himself also says that information about the appellant having visited the *vatika* and having taken the victim along with him was given to PW-5 by one Raju, which makes PW-5's statement in that regard, mere hearsay.

17. Most importantly, the 'last seen' theory is controverted completely by the statement of PW-11, who says that on 18.12.2014 he went to the appellant's house in Dwarka and was with him from 01:00 p.m. to 08:30 p.m., thereby affording a complete *alibi* to the appellant.
18. The prosecution also relies upon the deposition of PW-9, who states that when she telephoned PW-7, the latter informed her that the victim had in fact gone with the appellant in the appellant's car and the learned Trial Court further relies on the latter's statement under section 161 CrPC to corroborate this. However, in her own deposition, PW-7 states that the deceased had only informed her that he had to go *somewhere* without disclosing *where or with whom*. In fact, in her cross-examination, PW-7 denies having either received such a phone-call from PW-9 or having made such a statement to the police. According to PW-7, the victim left the *vatika* at about 06:00 p.m. and did not return. Apart from that, PW-7 also says that she does not know anything about the case; and

denies that Raju had told her that the victim had gone with the appellant and two other persons from *vatika* in the appellant's car. The relevant part of PW-7's deposition in this behalf is as follows :

PW-7:

*"...On 18.12.2014, I was present in said Vatika and in the day time, Sh. Rajesh Saini had told me that he had to **go somewhere** in the evening but he **did not tell with whom and where**, he was going. He had gone outside at about 6 P. M. but did not return. I do not know anything about this case any more. Police had met me in connection with this matter but no statement of mine was recorded. **I had not given any statement to police**"*

(examination-in-chief dtd. 31.07.2017)

"It is wrong to suggest that on 18.12.2014, Raju had told to Sh. Rajesh Saini in my presence that Anil Puri was calling him outside. I know accused Anil Puri present in the Court today. It is wrong to suggest that on 18.12.2014, in the night at around 10.00 I received a call on my mobile phone from phone No. 9310774500 pertaining to Smt. Suman Saini W/o Sh. Rajesh Saini and I told her that at around 6 - 7 P. M on 18.12.2014, Sh. Rajesh Saini had gone with accused Anil Puri in his white colour car. It is wrong to suggest that Raju had told me that Rajesh Saini had gone with accused Anil Puri and two other persons from the Vatika in car of accused Anil Puri. It is wrong to suggest that my statement was recorded by police or that I had stated the aforesaid fact to the police confronted with statement mark A where the aforesaid facts are recorded and witness denied having made any such statement to police. It is wrong to suggest that I have been won over by accused person and concealing the true facts."

(cross-examination dtd. 31.07.2017 by APP)

19. It is therefore noticed, that apart from PW-5's deposition being contradicted by PW-9 as to the very presence of PW-5 at the *vatika* at the relevant time; PW-11 completely negates the 'last seen'

theory propounded by the prosecution through the agency of PW-5, affording the appellant an *alibi*; and PW-7 does not support PW-9's deposition.

20. Yet another aspect which we consider relevant is that though Raju, who was also supposed to have been a witness to the 'last seen' aspect, was sought to be summonsed by the prosecution during trial; it turned-out that *some other person, a namesake of Raju*, appeared in court against the summons issued. Mercifully, upon ascertaining his true identity, the deposition of this *other* Raju was not recorded by the learned Trial Court. We refrain from dwelling further on this aspect.

Recoveries

21. The prosecution further relies upon recoveries made allegedly on the disclosure statement and at the instance of the appellant, namely, recovery of the car, which is alleged to have been used in the commission of the crime; and recovery of the pistol along with cartridges, both used and unused, alleged to have been used for killing the victim.
22. It is the case of the prosecution that the car in question, which was a white color Maruti 'Swift', was recovered upon the appellant's disclosure statements dated 21.12.2014 and 22.12.2014 from outside House No. 222/4R, Sector-4, Faridabad, Haryana. The portions of the appellant's disclosure statements dated 21.12.2014 and 22.12.2014 cited in this behalf are the following :

[illegible]

Disclosure Statement dtd. 21.12.2014 of Anil Puri

1. क्या है पार्क
 2. क्या है ग्रीन से पार्क व डिपार्क
 3. क्या है डिपार्क व हम ग्रीन वॉश के एक विशेष
 4. क्या है डिपार्क व हम ग्रीन वॉश के एक विशेष
 5. क्या है डिपार्क व हम ग्रीन वॉश के एक विशेष
 6. क्या है डिपार्क व हम ग्रीन वॉश के एक विशेष
 7. क्या है डिपार्क व हम ग्रीन वॉश के एक विशेष
 8. क्या है डिपार्क व हम ग्रीन वॉश के एक विशेष
 9. क्या है डिपार्क व हम ग्रीन वॉश के एक विशेष
 10. क्या है डिपार्क व हम ग्रीन वॉश के एक विशेष

Disclosure Statement dtd. 22.12.2014 of Anil Puri

23. According to the prosecution, the car was recovered from the said spot in the evening of 22.12.2014; that it was found in 'unlocked' condition; that the key was found on the dashboard of the car; that the car was opened by PW-29, who then drove it to P.S.: Dwarka (South). This prosecution version is sought to be supported by the following depositions recorded in court :

PW-21:

*"...The car was opened by SI Ashok. The glasses of the car were not found broken. The car was found unlocked. The key of the car was found in the dashboard. It is correct that the place of recovery of car was not an isolated place. **Car was driven by SI Ashok while bringing it to the PS from Faridabad.** After the proceedings at sector 4 Faridabad, we did not go to any local PS and came straightway to PS Dwarka South"*

(cross-examination dtd. 06.05.2019)

PW-28:

"... Thereafter, accused Anil Puri lead us to a Parkingfront of House No. 222/4R in Sector-4, Faridabad, Haryana. One Maruti Swift Car bearing No. DL9CAG0673 was recovered at the instance of the accused. The car was found unlock and on inspection its key were found in the Car..."

"... After the completion of the proceedings at the spot at Sector-4, Faridabad, the recovered Maruti Swift Car was sent to PS Dwarka South through SI Ashok"

(examination-in-chief dtd. 09.07.2019)

"... At the time of alleged recovery, the doors of the car were closed but unlocked...."

"...The car was sent by me through SI Ashok to Police Station Dwarka South"

“...The car along with keys were deposited in the Malkhana after inspection on 22.12.2014 with copy of seizure memo. It is correct that car keys are not mentioned in the seizure memo. ...”

(cross-examination dtd. 19.07.2019)

PW-29:

“... Thereafter, accused Anil Puri lead us to a Parkingfront of House No.222/4R in Sector-4, Faridabad, Haryana. One Maruti Swift Car bearing No. DL9CAG0673 was recovered at the instance of the accused. The car was found unlock and on inspection its key were found in the Car....”

“... After the completion of the proceedings at the spot at Sector-4, Faridabad, the recovered Maruti Swift Car was brought by me to PS Dwarka South”

(examination-in-chief dtd. 09.07.2019)

“... It is correct that car bearing No. DL9CAG0673 is having central locking system. I do not know whether car having central locking system get automatic lock if not locked by owner with key.”

(cross-examination dtd. 19.07.2019)

“... I reached at PS at about 9.30 p.m. The vehicle was parked in the PS but it was not deposited in Malkhana. The key of the car was handed over to Inspector Sunil Gupta as he had also arrived at that time”

(cross-examination dtd. 26.07.2019)

24. Admittedly no site plan for recovery of the car was prepared, nor were any photographs of the car or the spot taken at the time of recovery. The deposition of PW-28, the Investigating Officer of the case, is that the crime team was called to take photographs of the car *after* it had already reached P.S.: Dwarka (South). It is further noteworthy that prosecution witnesses PW-21 and PW-29 deposed that they *do not recollect* visiting the local police station or police

post in Faridabad; which defence witnesses say, was at a distance of only about 200 meters from the spot from where the car is stated to have been recovered. The local police in Haryana was not joined in the proceedings conducted at the spot; nor were they even informed about it. The relevant part of PW-28's deposition in this regard is extracted below :

PW-21:

"...We left the court at around 4.00 p.m. It took around one and half hour to reach Sector-04, Faridabad. We directly reached at Sector-04 Faridabad..."

"...I do not remember whether me along with the IO went to any local police station at Faridabad or any other PS on the way. We reached at Sector-.4, Faridabad at around 6.00 p.m...."

"... I do not remember if there was any police post at a distance of about 200 meters approximately from the place of alleged recovery. No site plan was prepared of the place of recovery"

"... No police official of local police/Haryana Police were joined at the time of proceedings conducted at Sector-4 Faridabad or at the time of alleged recovery. I do not remember about having given any information to the local police...."

"... I do not remember if the photographs were taken at the time of the recovery of the car or not"

(cross-examination dtd. 06.05.2019)

PW-28:

"...At the police station I again inspected the aforesaid Maruti Swift car and found that one plastic bottle of Kinley and two plastic glass lying in the front portion of the car. Thereafter, I called the Crime Team which reached there and had taken the

photographs of the car and lifted two chance prints from the plastic bottle and one from rear view mirror of the car....”

(examination-in-chief dtd. 09.07.2019)

“...We reached at Faridabad at around 5.30 pm”

“...We did not go to the local police station at Faridabad. We remained on the spot for about 2 to 2 ½ hrs. **During this period neither I informed the local police nor had gone there.** I am not aware if there was any police post at a distance of about 300 meters from the spot...”

(cross-examination dtd. 19.07.2019)

PW-29:

“...We reached at Faridabad at around 5-5.15 pm”

“...We did not go to the local police station at Faridabad. We remained on the spot for about 2 to 2 ½ hrs. **During this period neither Inspector Sunil Gupta informed the local police nor had gone there.** I am not aware if there was any police post at a distance of about 300 meters from the spot....”

(cross-examination dtd. 19.07.2019)

25. Also, no written notice was given by the Investigating Officer to any nearby residents or public persons, calling upon them to join in the recovery proceedings, despite the car having been allegedly recovered from a populated, residential locality. This is borne-out from the following depositions cited by the prosecution itself :

PW-21:

“... I do not remember where we reached in Sector-4 Faridabad. It is correct that houses were present near the spot at sector 4, Faridabad. Peoples were also moving near the spot. **It is correct that no written notice was given by the IO to any of the nearby residents or any public person to join the proceedings at the time of the alleged recoveries....**”

(cross-examination dtd. 06.05.2019)

PW-28:

“... It is correct that the alleged spot is in a residential area and there are many houses and people are residing there. There were movements of public persons on the road at the spot. Public(sic) persons were requested to join but they did not incline to join. I did not note down the names of the said persons and no written notice was given to them. I did not go or sent any other police official to any of the residential house or calling the residents to join the proceeding”

(cross-examination dtd. 19.07.2019)

PW-29:

“... It is correct that the alleged spot is in a residential area and there are many houses and people are residing there. There were movements of public persons on the road at the spot. Public persons were requested to join but they did not incline to join. We did not note down the names of the said persons and no written notice was given to them. Inspector Sunil Gupta did not go or sent any other police official to any of the residential house or calling the residents to join the proceeding....”

(cross-examination dtd. 19.07.2019)

26. On the other hand, to dispute the prosecution's case as regards recovery of the car, the appellant has produced defence witness DW-1 : Manoj Kumar Giri, who is stated to be the uncle of the appellant's wife and who resides near the place from where the car was allegedly recovered. DW-1 has deposed that he was called to the police station on 19.12.2014; and on 20.12.2014 at around 08:00 a.m. he informed the police that he had seen the car in front of his house. DW-1 has further deposed that upon informing them, *he was directed by the police to get the car to the police station*, whereupon he engaged a crane which towed the car from Faridabad to P.S.: Dwarka (South) and delivered it there.

Therefore, according to DW-1, *the car had already been delivered to the police station on 20.12.2014 i.e., before the appellant allegedly made disclosure statements dated 21.12.2014 and 22.12.2014.* DW-1's deposition in this behalf runs as follows :

DW-1:

*"...I had seen the car standing in front of my house at Faridabad in the morning. Thereafter, one police official accompanied me in my car and other police official in official vehicle visited my house at Faridabad. **Then they told me to send the car of accused Anil Purl to Sector-9, Dwarka.** The said car is of white colour make of Maruti Swift. The said official had broken the right side window glass, **then on the asking of police official I brought a crane to tow away the said car to Police Station Sector-9 Dwarka. I had brought the crane and paid the charges of Rs.3,000/- to the Driver of the crane vide receipt already Ex.PW-28/D1, which bears my signature at point X and my mobile no. at point Y. I along with the said car came to Police Station Sector-9 Dwarka on dt. 20.12.2014,** then, I left the Police station at about 6 pm. **The car was taken into custody by the police official in police station Dwarka Sector-9 on dt. 20.12.2014....**"*

(examination-in-chief dtd. 17.08.2019)

27. DW-1 has also produced a receipt in evidence of having engaged the crane and having paid Rs.3,000/- for towing the car in question, which receipt is exhibited as Exb-PW-28/D1. This receipt correctly identifies the car by its registration number and records that it was towed from "Sec.4R to Dwarka Sec. 9 chowki". DW-4 : Varun, the helper engaged in the operation of the crane, has also testified to the transportation of the car from Faridabad to P.S.: Dwarka (South) on 20.12.2014 by the crane. Both DW-1 and DW-4 have testified to the receipt Exb-PW-28/D1. The depositions of DW-1 and DW-4 remain consistent, unshaken and creditworthy

even upon cross-examination. The receipt for engaging the crane reads thus :

Sai Crane Service Receipt dtd 20.12.2014

28. A conjoint reading of the foregoing depositions and the documentary evidence proves that the car had already been transported from Faridabad to the P.S.: Dwarka (South) on 20.12.2014, *before the appellant's alleged disclosure statements were recorded on 21.12.2014 and 22.12.2014.* We are accordingly, unable to accept that the car was recovered upon the appellant's disclosure statement.
29. Though there are also other contradictions as to whether the keys of the car were found inside the car; whether the car was found unlocked or whether the car window was broken to unlock it, we do not consider it necessary to delve into these minor

contradictions, since our decision of the appeal turns on more substantial evidentiary material.

30. Next, the pistol recovered was sought to be proved as the weapon of offence, connecting the gunshot wounds on the deceased with the used cartridges discharged from the pistol, as also some unused cartridges alleged to have been found in the magazine of the pistol. The pistol was stated to have been recovered from dickey of the car. In this behalf, PW-23, the doctor who conducted the post-mortem and PW-24, Assistant Director Ballistic, CFSL have deposed as under :

PW-23:.

“... My detailed PM Report is exhibit ExPW23/ A running into 5 pages each bearing my signatures at point A. In my opinion cause of death was due to cardiogenic Shock as a result of tearing of heart by the projectile from the fire arm, however viscera and blood of deceased were preserved to rule out any prior intoxication....”

(examination-in-chief dtd. 26.02.2019)

PW-24:

“... The seals on the parcels were found intact and tallied with the specimen seal impression. The parcels were opened and parcel No. 1 was found containing one fired bullet, parcel no. 2 was found another one fired bulled(sic), parcel no. 3 was found containing country made pistol and parcel no. 4 was found containing two live cartridges. I conducted the tests from 01.07.2016 to 15.07.2016. I prepared a detailed report of examination and the same is Ex.PW24/ A which bears my signature at point A on both pages with seal of office”

(examination-in-chief dtd. 08.03.2019)

The ballistics Examination Report dated 15.07.2016 reads thus :

“1. The two 7.65 mm caliber cartridges marked Ex.8(a) and Ex.8(b) were test fired through the country made pistol marked Ex.7 in the laboratory and their respective bullets were

recovered. On the basis of test firing, it is opined that the country made pistol marked Ex.7 is in working order and the cartridges marked Ex.8(a) and Ex.8(b) were live prior to test firing.

2. On thorough examination and comparison of individual characteristic marks present on the crime bullets marked Ex.4 & Ex.5 and test bullets of Ex.8(a) and Ex.8(b) under the comparison microscope, it is opined that crime bullets marked Ex.4 & Ex.5 have been fired through the country made pistol marked Ex.7 and it could have not been fired through any other firearm because every firearm has its own individual characteristic marks.”

31. However, it is noteworthy that there is no forensic evidence establishing that the pistol was *used by the appellant* since no fingerprints are stated to have been lifted from the pistol, as deposited by PW-13. The prosecution however has attempted to connect the pistol to the appellant on the allegation that the pistol was recovered from the dicky of the car on the appellant's disclosure. However, as discussed above, since we remain unconvinced as to the recovery of the car itself upon appellant's disclosure, we are also not convinced that the recovery of the pistol from the dicky of the car can be foisted upon the appellant.

Other evidentiary aspects

32. On the strength of deposition of PW-6 : Joginder Saini, who is the brother-in-law of the deceased, the prosecution has submitted that having taken the victim from the *vatika* along with him in the car, the appellant accompanied the victim in the car on 18.12.2014 (erroneously mentioned as 17.12.2014). The statement made by PW-6 is the following :

PW-6:

“... On 18.12.2014, I had gone to the Vatika of Sh. Rajesh Saini in the morning and came to know from Raju and Manju that Rajesh Saini had gone with accused Anil Puri on the evening of 17.12.2014 in a white colour car and at that time, three other persons were also with accused Anil Puri”

(examination-in-chief dtd. 25.05.2017)

33. However, despite their case that the appellant rode in the car along with the victim, no fingerprints matching those of the appellants were found in the car. PW-13, who is stated to have lifted three chance fingerprints from the car and PW-26 : Inspector Shivraj Singh, Finger Print Expert, have deposed that the fingerprints lifted from the car matched those of co-convict Shahid Ali, who was charged only under section 174A IPC and has since been released on the period of imprisonment undergone. Nowhere have any witnesses said that any of the fingerprints lifted from the car matched those of the appellant. Reference in this behalf may be made to the depositions of PW-13 and PW-26 extracted below :

PW-13

“On 22.12.2014, I was posted as fingure(sic) print proficient in Mobile Crime Team, South West District, New Delhi. On that day, on the requisition of IO Insp. Sunil Gutpa, I inspected car No. DL 9CAG 0673 at PS Dwarka South and lifted total three chance print out of the car, out of which one was lifted from rear view mirror of the car and two were lifted from mineral water bottle lying in the car. My detailed report is Ex.PW13/A....”

(examination-in-chief dtd. 27.08.2018)

“IO had not asked me to lift chance prints from any other articles or weapon.”

(cross-examination dtd. 27.08.2018)

PW-26

“On 22.07.2016, I was posted at Finger Print Bureau, Delhi as a Director. On that day this case was marked to me for comparison and experts opinion of the chance prints/marked Q-1 and Q-2 developed by Distt. Mobile Crime Team/SW with the specimen finger/Palm impression slips of co-accused persons named Shahid Ali S/o Banne Khan. After thoroughly compared the chance prints, it was found that the chance print marked Q-2 is identical with right middle finger impression marked S-1 on the finger print slips of above said accused”

(examination-in-chief dtd. 16.04.2019)

34. While still on the appellant's disclosure statement, we may also observe, as has been pointed-out by learned counsel for the appellant, that the obverse side of the last page of the appellant's disclosure statement dated 22.12.2014 (being the reverse of internal page No.05 of the said statement) is completely 'blank' except for an 'X' mark that appears on it, *but even this blank page has the appellant's signature appended to it.* It is urged on behalf of the appellant that this blank, signed sheet is testimony to the fact that the appellant was made to sign on several blank sheets of paper, and his purported disclosure statements were recorded by the Investigating Officer later-on, without the appellant having given any such statement. We are afraid that this *blank, signed page* of the purported disclosure statement dated 22.12.2014, creates a serious doubt in our mind as regards the credibility of the disclosure statements, thereby casting a further shadow on any remaining credibility that may attached to the alleged recovery of the car and the pistol at the appellant's instance.

Motive

35. It was further canvassed by the prosecution that appellant in fact had motive to eliminate the victim, since he owed a business debt to the latter; and that the appellant had in fact threatened the victim. This theory is however debunked by the statement of PW-9, who has deposed that the amount owed by the appellant to the deceased, which was Rs. 2.05 lacs, had already been repaid. PW-6 further says that the deceased took from him Rs. 2.05 lacs. The depositions of PW-5, PW-6 and PW-9 in this context are the following :

PW-5

“... After some time, some disputes had arosen(sic) between my son and accused Anil Puri and due to this, they had dissolved the said partnership and thereafter, my son had started a Vatika at Kakrola Mor. After the dispute between my son Rajesh Saini and accused Anil Puri, accused Anil Puri had extended threats to my son many times....”

(examination-in-chief dtd. 25.05.2017)

“... It is correct that no quarrel ever been taken place between my son Rajesh Saini and accused Anil Puri in my presence. It is correct that accused Anil Puri never extended any threat to my son Rajesh Saini in my presence”

(cross-examination dtd. 25.05.2017)

PW-6

“... Some dispute had arosen(sic) between the accused Anil Puri and Sh. Rajesh Saini and due to this, accused Anil Puri was rebut (sic) from the partnership and a sum of Rs. 2,00,000/- and Rs. 5,000/- was paid to accused Anil Puri by Sh. Rajesh Saini, which was the share of investment of accused Anil Puri....”

(examination-in-chief dtd. 25.05.2017)

“... The cash Rs. 2,05,000/ were taken by Sh. Rajesh Saini from me....”

(examination-in-chief dtd. 09.04.2018)

“... It is correct that no threat was ever extended by accused Anil Puri to deceased in my presence. It is wrong to suggest that my jija (deceased) never told me about the threat extended by accused Anil Puri. After going through his statement under Section 161 Cr.P.C., the witness states that it is correct that the amount of Rs. 2,05,000/- mentioned in my chief examination is not mentioned in my statement under Section 161 Cr.P.C. recorded by the police....”

(cross-examination dtd. 09.04.2018)

PW-9

*“... Accused Anil Puri also used to give threats to my husband saying that he had not done good by removing him from the partnership. Thereafter, my husband started working in the partnership of Sh. Sanjeev Jain. **My husband had returned Rs. 2,05,000/- to accused Anil Puri....**”*

(examination-in-chief dtd. 12.04.2018)

*“... My husband had not taken any action regarding dispute with accused Anil Puri with respect to partnership. No civil or criminal case was pending. Neither Anil Puri nor my husband had ever entered into any litigation. **My husband had returned Rs. 2,05,000/- after dissolution of partnership deed with accused Anil Puri and nothing was due qua each other.** The money was not returned in my presence but my husband had taken, the same....”*

*“... **It is correct that in my presence accused Anil Puri had never extended any threat to my husband...**”*

(cross-examination dtd.12.04.2018)

36. In light of the foregoing depositions, we are of the view, that the theory propounded by the prosecution that the appellant had extended threats to the deceased in relation to the debt owed or that the appellant harboured mal-intent towards the deceased due to his removal from the partnership, also appear to be far-fetched and untenable, since upon a plain reading, the depositions of PW-5, PW-6 and PW-9 in relation to the alleged threats and mal-intent are clearly hearsay.

Conclusion

37. Upon a conspectus and overall appreciation of the evidence marshalled by the prosecution, as discussed above, we are not persuaded to conclude that the prosecution has been able to bring home guilt against the appellant beyond the threshold of reasonable doubt. As narrated above, we entertain serious doubt, both as to the 'last seen' evidence cited against the appellant; as also the 'recoveries' alleged to have been made upon the appellant's disclosure.
38. The only one aspect of the matter, which in our view stands proved, is that the pistol recovered was the weapon of offence and that the deceased died of gunshots discharged from that pistol. However, the prosecution has failed to establish that the appellant wielded the pistol; or to connect the pistol to the appellant in any other way. Even the motive cited for the offence fails to ring true as against the appellant.
39. Accordingly, we set-aside and reverse judgment of conviction dated 21.10.2019 and sentencing order dated 24.10.2019 made by the learned Trial Court; and acquit appellant Anil Puri of all charges, giving him the benefit of doubt.
40. The appeal is disposed of in the above terms.
41. Pending applications, if any, also stand disposed of.
42. The appellant be released from prison *forthwith*, unless required in some other case.

43. A copy of the judgment be sent to the concerned Jail Superintendent for compliance.
44. A copy of this judgment be also given to learned counsel for the parties and be uploaded on the website of this court expeditiously.

SIDDHARTH MRIDUL, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 24, 2021

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