

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 649 of 2015

Manoj Shaw

-Vs-

The State of West Bengal

With

C.R.A. 654 of 2015

Bijay @ Santosh Gupta

-Vs-

The State of West Bengal

For the Appellant : Mr. Kallol Mondal, Adv.
[in CRA 649/2015] Mr. Subhendu Bhattacharya, Adv.
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Anamitra Banerjee, Adv.

For the Appellant : Mr. Kallol Mondal, Adv.
[in CRA 654/2015] Mr. Saryati Dutta, Adv.
Mr. Krishan Ray, Adv.

For the State : Mr. Binay Panda, Adv.
[in CRA 649/2015] Mrs. Puspita Saha, Adv.

For the State : Mr. Tapandeb Nandy, Adv.
[in CRA 654/2015] Mr. Antarikhya Basu, Adv.

Heard on : 11.05.2022

Judgment on : 11.05.2022

Joymalya Bagchi, J. :-

Appeals are directed against judgment and order dated 08.07.2015
and 10.07.2015 passed by the learned Additional Sessions Judge, 1st

Court, Barrackpore, 24-Parganas (North) in Sessions Trial No.1(4) 2005 arising out of Sessions Case No.3(2) 2005 convicting the appellants and one Md. Nisad for commission of offence punishable under Sections 302/34/120B of the Indian Penal Code and Sections 25(1)(a)/27(1)/35 of the Arms Act and sentencing them to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- each for the offence punishable under Sections 302/34 IPC; to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each for the offence punishable under Section 25(1)(a) of the Arms Act and to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each for the offence punishable under Section 27(1) of the Arms Act; all the sentences to run concurrently.

Prosecution case as alleged against the appellants is to the effect that on 10.08.2004 around 08:20 in the morning one M.S. Subramaniam @ Tamli (the deceased) had gone in a motorcycle to drop his younger daughter at Model School at Barrackpore near Mongal Pandey. Suresh Prasad Gupta (PW1), a friend of M.S. Subramaniam @ Tamli was his pillion rider. After dropping Tamli's daughter in school, they reached a traffic signal in front of a petrol pump at Chiriamore. At that time, three miscreants aged between 22-30 years, two of them of short statured and another tall, came near them. One of the short statured persons put a pipe gun on the chest of M.S. Subramaniam @ Tamli and shot him. Thereafter, other two persons also shot at the victim. Suresh panicked and started running towards Champa cinema.

The miscreants chased him and also fired at him. Fortunately, the bullet missed the target. On the written complaint by Suresh Prasad Gupta (PW1), Titagarh Police Station Case No.254 dated 10.08.2004 under Sections 302/34 IPC and Sections 25/27 of the Arms Act was registered against three unknown persons. Police came to the place of occurrence and seized two bullet heads from the place of occurrence. Body of Subramanium @ Tamli was sent to the hospital. Inquest and post-mortem were conducted over the body. A bullet head was also recovered from the body of Subramanium @ Tamli. In course of investigation, appellants and one Md. Nisad were arrested. They were put up for Test Identification Parade and identified by Suresh Prasad Gupta (PW1) and three other witnesses viz. Santosh Sarkar (PW2), Manish Sukla (PW3) and Syed Mustak Ali (PW4). In course of investigation, on the leading statements of the appellants and one Md. Nisad three improvised pipe guns and empty fire cartridges were recovered from a plastic bag concealed in a stack of hay. The fire arms and ammunitions were sent for examination by Arms expert. Upon receipt of opinion, post-mortem report and sanction under Arms Act, charge sheet was filed against the appellants, Md. Nisad and one Ranjit Singh, who had absconded and was declared a proclaimed offender. Charges were framed under Sections 302/34/120B of the Indian Penal Code and under Sections 25/27/35 of the Arms Act against the appellants. They pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 19 witnesses and exhibited a number of documents. Defence of the accused persons was

one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 08.07.2015 and 10.07.2015 convicted and sentenced the appellants and one Md. Nisad, as aforesaid. Appellants have assailed their conviction and sentence in these appeals. No appeal however, has been filed by Md. Nisad.

Mr. Kallol Mondal along with Mr. Krishan Ray, learned advocates for the appellants argues the prosecution case as developed through the evidence of PWs.1 to 4 is inconsistent and contradictory. There is wide variation in the versions of the aforesaid witnesses with regard to the manner and circumstances in which the incident occurred. While PW1 stated a short man fired at the deceased, PW2 claimed a tall person fired at him. PWs.1 to 3 spoke of presence of three miscreants at the time of occurrence but PW4 stated the third person came in a scooter after the occurrence and all of them left together. Manner and circumstances in which the incident occurred is, therefore, not proved beyond doubt. Investigating Officer (PW19) claimed all the accused persons made leading statements which led to recovery of improvised pipe guns and ammunitions from the same place. Similar statements by all accused persons leading to recovery is highly improbable and the recovery from the same place is not supported by independent witnesses. Identification of the appellants by PWs.1 to 4 before the Magistrate or in Court suffers from various infirmities. Hence, the prosecution case is riddled with contradictions and/or inconsistencies and the appeals ought to be allowed.

Mr. Antarikhya Basu, learned advocate for the State submits PW1, who was the pillion rider at the time of occurrence, is the star witness. He was on the motorcycle when the victim was fired repeatedly by the appellants. By grace of God he escaped unhurt. His presence at the place of occurrence is corroborated by other eyewitnesses viz. PWs.2, 3 & 4. They saw the incident from some distance and minor contradictions in their versions ought to be attributed to human frailty and imperfect recollective faculties of every individual. Crux of the prosecution case is fully established through the evidence of the aforesaid eyewitnesses. PWs.1 to 4 identified the appellants in course of T.I. Parade as well as in court. No serious challenge is thrown to such identification. In course of investigation, recovery of bullet heads from the body of the deceased as well as the place of occurrence was made. On the leading statements of the appellants, three improvised pipe guns and other ammunitions were also recovered. Opinion of the Arms expert (PW11) shows the bullet heads could have been fired from the recovered pipe guns which were in working condition. Post-mortem doctor (PW16) found gun shot injuries on the body of the deceased which corroborates the prosecution case. Hence, prosecution case is fully established and the appeals are liable to be dismissed.

PWs.1 to 4 are the eyewitnesses to the incident.

PW1 (Suresh Prasad Gupta) is the informant in the instant case. He had accompanied the deceased on his motorcycle when he had gone out to drop his daughter to school. After doing so, they proceeded in the

scooter and stopped at a traffic signal near a petrol pump at Chiriamore. At that time three persons surrounded them and one of them, who was of short stature, fired at the chest of Subramanium @ Tamli. M.S. Subramanium @ Tamli collapsed at the spot. Other two persons also fired at the victim. He started running towards Champa cinema. The first person who fired at M.S. Subramanium @ Tamli and identified as Md. Nisad in court fired at PW1 but missed. PW1 identified the appellants viz. Manoj Shaw and Bijoy @ Santosh Gupta as the persons who had also fired at M.S. Subramanium @ Tamli. He lodged FIR. He proved the FIR lodged by him with the police. He was extensively cross-examined but remained unshaken.

PW2 (Santosh Sarkar) carries on business in auto-rickshaws. He was having breakfast near the petrol pump. He saw a scooter proceeding towards Chiriamore. Another bike was following it. At the traffic signal a tall man fired at the deceased. The person sitting behind the deceased started running towards Champa cinema. There were three miscreants. He identified the miscreants as the appellants and one Md. Nisad. He stated he had identified the said miscreants in course of T.I. Parade. He was the signatory to the seizure of various articles including empty case of cartridge from the place of occurrence.

PW3 (Manish Sukla) was present at the petrol pump. He was filling petrol in his motorcycle. He heard sound of firing. Two persons fired at the victim who was sitting in a motorcycle. The pillion rider started running. Three miscreants chased him. He came to know of the identity

of the victim as Tamli. Police came to the spot. He was a signatory to the seizure of various articles including empty cartridge at the place of occurrence. He identified the miscreants in course of Test Identification Parade.

PW4 (Syed Mustak Ali) was having tea at the tea stall. He heard sound of firing and saw one person running away after another had sustained gunshot injury. He stated Md. Nisad and Bijoy @ Santosh Gupta had fired at the deceased. The pillion rider had run towards Champa cinema. Another person identified as appellant viz. Manoj Shaw came in a scooter to the place of occurrence. All of the miscreants left in the scooter. He identified the appellants in course of Test Identification Parade.

PW5 (Shambhunath Shaw) and PW6 (Kanhaiya Singh) are signatories to the inquest while M. S. Murti Kariappa (PW7) is the brother of the deceased viz. M.S. Subramanium @ Tamli. He corroborated PW1 with regard to the fact Subramanium @ Tamli had left his residence in the morning for dropping his daughter to school. PW7 heard the incident of murder.

Similarly, PW8 (Swapan Banerjee) is a post occurrence witness who heard about the murder near the petrol pump at Chiriamore.

PW16 (Dr. Palash Bhattacharya) is the post mortem doctor who conducted post mortem over the body of the deceased. He found the following injuries.

“i) one lacerated wound measuring 3 inch x 1 inch x chest cavity placed vertically over right shoulder just medial to its tip 54 inch above right heel and 10 inch below vault of the skull and 5 inch right from midline with irregular margin and extravasation of blood in and around.

ii) One gun shot wound of entry .7 inch x .5 inch oval in shape with blackened contused lacerated and inverted margin placed just above the lower end of that injury. On dissection and tracing the track it is seen to have pierced the skin, fascia, muscle, vessels and nuts of the corresponding level to enter into the thoracic cavity through right second inter costal space, after piercing the inter costal muscles, vessels, nuts at the corresponding level causing comminuted fracture of the second rib to pierce the layer of pleura over upper lobe of right lung and piercing through and through the upper middle and lower lobe of right lung and pleura it enters the upper surface of right lobe of liver, after piercing the right part of diaphragm, then it passes through and through the substance of liver and come out from the lower surface of liver, then piercing the coils of intestine and mesentery of corresponding level it finally lodge in the soft tissue of right paravertebral region at the level of third lumbar vertebrae just right to vertebrae column in the posterior abdominal wall from where a metallic brush looking bullet measuring 1.2 x .2 inch was recovered, the track of the wound was directed downward and backward from right to left.

iii) one gun shot wound of entry measuring .8 x 2.5 inch oval in shape with blackened contused lacerated and inverted margin placed over left shoulder 50 inch from left heel, 14 inch from vertex of skull and 4.5 inch from midline with lacerated wound measuring 5 inch x 4 inch x muscle. On dissection and tracing the track it is seen to pierce the skin fascia, muscle, vessel and nerve at the corresponding level to pass to the muscle tissue of lateral and posterior chest wall of left side towards the exit wound underneath the second and third rib of left side causing comminuted fracture of them.

iv) one gun shot wound of exit measuring .9 x .3 inch placed obliquely over gap of left chest wall 49 inch from left heel 15 inch from vertex of the skull and 3 inch left the midline with everted and lacerated margin. Extensive extravasation of blood was seen in the track of the wound

which is directed downward, backward and medialward. All the injuries showing evidence of vital reaction. Abdominal and thoracic cavities contained 1.5 liter approximately of blood. No other injuries have been detected either internal or external examination except those noted above even on careful dissection and examination under a magnifying hand lens."

He opined death was due to the effect of gun shot injuries, ante mortem and homicidal in nature.

PW17 (Atanu Ghoshal) a Police Officer seized the wearing apparels of the deceased which included a blood stained *ganjee* with a bullet hole and one bullet head recovered from his body.

PW18 (Patit Paban Dutta) is another Police Officer who came to the place of occurrence with the I.O. (PW19) after FIR was registered. He seized various articles from the place of occurrence including two bullet heads under a seizure list.

PW19 (Subhas Chandra Lahiri) is the Investigating officer. He stated he came to the place of occurrence with PW18. They seized various articles including a mobile phone, two bullet heads, chappal, blood stained earth and controlled earth. He instructed S.I. Arun Kumar Chakraborty to conduct inquest over the body of the deceased. He proved the inquest report. He examined witnesses. He seized the wearing apparels of the deceased and the bullet head recovered from the body of the deceased. He arrested the appellants. Appellants were placed on T.I. Parade in presence of Judicial Magistrate (PW12). They were identified by P.Ws.1 to 4 on various dates.

In course of interrogation, appellants and Md. Nisad made disclosure statements which were exhibited in court as Exts.17, 18 and 19 respectively. Accused persons led him to an abandoned quarter of Empire Jute Mill at Muchipara and on their showing three improvised pipe guns with empty cartridges were recovered from a plastic bag concealed in a stack of hay. Articles were seized under a seizure list in presence of witness. The seized fired arms and ammunitions as well as bullet heads recovered from the place of occurrence as well as from the body of the deceased were sent for forensic examination. He also seized money from the appellants which were stated to have been given to them for committing the murder by one Bablu Sharma @ Ajoy Sharma. He was transferred. Upon his transfer, charge sheet was filed in the instant case against the appellants and one Md. Nisad and Ranjit Singh. Ranjit Singh was declared an absconder.

PW11 (Ardhendu Sengupta) examined the fire arms and the ammunitions and opined the fire arms were in working condition and the ammunitions could have been fired from the seized fire arms.

Supplementary charge sheet was filed enclosing the report of the Arms expert and the sanction under the Arms Act.

Mr. Kallol Mondal vehemently argues PWs.1 to 4 have contradicted each other with regard to the manner and circumstances in which the incident occurred. PW1 stated three persons fired at the victim. A short statured man i.e. Md. Nisad fired first but others stated victim had been shot twice. PW2 claimed victim had been fired by a tall

man first. These contradictions go to the root of the prosecution case and improbabilises the depositions of the so called eye witnesses.

I have considered the aforesaid submissions in the light of the evidence on record. Analysis of the evidence of P.Ws.1 to 4 would show their versions are substantially consistent with one another. All the witnesses spoken in unison the incident occurred at the traffic light crossing near the petrol pump at Chiriamore. At the time of occurrence Subramanium @ Tamli was riding his motor cycle and Suresh Prasad Gupta (PW1) was his pillion rider. Appellants and their associate Md. Nisad confronted M.S. Subramanium @ Tamli. One of them shot at Subramanium @ Tamli and he fell down. PW1 was closest to the victim. He stated Md. Nisad, a short statured man, had fired first. Thereafter, other two persons fired at Subramanium @ Tamli. He started running and Md. Nisad chased and fired at him but missed. PWs.2 & 3 have substantially corroborated the version of PW1. These witnesses were standing at a distance from the place of occurrence. PW2 was having breakfast at the petrol pump while PW3 was filling petrol in his motor cycle at the pump. PW2 claimed a tall man fired at the victim and thereafter the other three started chasing PW1. As PW2 was at some distance from the place of occurrence and was engaged in having breakfast, it is possible he had missed the first shot fired at the victim. Only upon hearing the sound of such shot, he had seen another shot being fired at the victim by the tall man. He, however, noted the presence of all the appellants and Md. Nisad as the miscreants who after

firing at the deceased was seen chasing PW1. Similarly, PW3 had heard the firing of a shot and thereafter saw two persons firing at the deceased. PW4, however, upon hearing the sound of firing saw the victim lying on the ground and PW1 running away. He stated two persons viz., Bijay @ Santosh Gupta and Md. Nisad had fired and thereafter Manoj Shaw had come with a scooter and all of them had left on the scooter. It is possible PW4 had initially failed to notice the appellant viz. Manoj Shaw along with the miscreants but saw him when he brought the scooter to enable all of them to flee the spot. Evidence of other witnesses particularly, PW2 corroborate the fact that the miscreants had arrived at the spot in a scooter. Hence, participation of appellant viz., Manoj Shaw in course of firing and his conduct of bringing the scooter after the occurrence to flee away is not inconsistent with the depositions of other prosecution witnesses.

On the other hand, manner and circumstances in which the victim was murdered as narrated by PWs.1 to 4 is corroborated by the medical evidence of post mortem doctor (PW16) who, inter alia, found two bullet wounds on the body of the deceased.

It is argued three persons could not have fired at the deceased as two bullet wounds were found. Such argument is of little substance. Manner in which the appellants and Md. Nisad had actively participated in the firing of the victim is proved beyond doubt by the eyewitnesses. They came armed with fire arms in a scooter and repeatedly fired at the victim. It is possible one of the shots fired by the miscreants may have

missed the victim but it is undeniable that the appellants and Md. Nisad shared the common intention to murder the victim. Appellants have been called upon to answer a charge under Section 302 read with Section 34 IPC. To prove such charge, it is not necessary for the prosecution to establish that each of the appellants had fired and hit the victim resulting in his death. It is enough for the prosecution to show that the appellants and their associate viz., Md. Nisad had come to the place of occurrence and one or more of them had fired at the victim in pursuance to their common intention to murder the victim. PWs.1 to 4 have clearly established the ingredients of the offence. Their ocular versions also find support from the medical evidence on record which shows victim suffered gun shot injuries and died.

Identification of the appellants by PWs.1 to 4 is also beyond doubt. Incident occurred in broad daylight around 8.30 A.M. All the witnesses had ample opportunity to see the miscreants and identify them both in course of T.I. Parade as well as in Court. No infirmity has been pointed out with regard to holding of T I. Parade by PW12 in the present case.

Prosecution case is further bolstered by recovery of three improvised pipe guns and ammunitions on the leading statements of the appellants and Md. Nisad. It is argued simultaneous leading statements by the accused are improbable. Ordinarily similar leading statements of accused persons resulting in recovery requires to be examined with deeper scrutiny and circumspection. However, there is no proposition of

law that similar leading statements of more than one accuseds is inadmissible in law. The Apex Court in **State (NCT of Delhi) Vs. Navjot Sandhu**¹ held multiple disclosure statements by more than one accused is not inadmissible but requires to be tested with deeper scrutiny on the point of credibility and nexus with discovery. It held as follows:

“14. ... Joint disclosures- to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. ‘A person accused’ need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break - almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the stand point of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr. Gopal Subramaniam. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence.”

¹ AIR 2005 SC 3820

What is important is to examine the facts and circumstances under which such statements came to be recorded and whether the recoveries were effected pursuant to such statements or not. Appellants are facing a charge of common intention to murder. They had conjointly come to the spot and committed the murder. They left the spot together in a scooter. These facts have been proved beyond doubt. They give rise to the irresistible inference that being cohorts in the murder, the appellants had pursuant to their conjoint efforts had secreted their weapons at same place. When judged from the stand point of such collaborative criminal activities of the appellants similar disclosure statements leading to recovery from the same place do not strike as unlikely or improbable. Independent witness to the seizure (PW9) was examined but had turned hostile. He, however, admitted his signature on the seizure list and was cross-examined extensively with reference to his previous statement to police. Due to his prevaricating stance, I am unwilling to give much credence to the said witness and disbelieve the seizure merely on the score that he did not support the same but admitted his signature on the seizure list. Hence, recovery of fire arms pursuant to the leading statements of the appellants have been proved beyond doubt.

Finally, PW11, Arms expert examined the fire arms as well as the empty cartridges, bullet heads recovered from the place of occurrence and body of the deceased. He opined the arms were in working condition and had been used earlier. Empty bullet heads as well as the bullet head

recovered from the body of the deceased could have been fired from the fire arms. His opinion supports the prosecution case that the appellants had used the improvised fire arms to fire at the victim resulting in his death.

In the light of the aforesaid discussions, I uphold the conviction and sentence imposed upon the appellants.

Appeals are, accordingly, dismissed.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)