



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 7th September, 2022

Pronounced on: 27th September, 2022

CRL.A. 263/2021

STATE

..... Appellant

Represented by: Ms.Shubhi Gupta, APP for the
State with ACP J.S.Mehta, IO,
Sub Division Nand Nagri and
SI Abhishek, P.S.Khajuri Khas.

versus

IMRAN

..... Respondent

Represented by: Ms.Manika Tripathy, Advocate
with Mr.Shubham Hasija,
Mr.Manish Vashist and
Mr.Roshan Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T

ANISH DAYAL, J.

1. The present appeal assails the judgment and order of acquittal of the respondent dated 06th December, 2019 passed by the learned Trial Court in FIR No.266/2011 P.S. Khajuri Khas under Sections 302/201/34 IPC.

Incident :

2. As per the case of the prosecution, on 22nd August, 2011 on receipt of DD No.43A through PCR regarding firing of a shot at one



person at Gauri Shankar Mandir, Delhi, SI Amit Prakash along with Constable Vijay reached the spot i.e. D-1/145, Nehru Vihar, Delhi where they met Beat Officer Head Constable Girish. Blood stains were found at the main gate of the house and they came to know that the injured had been removed to GTB Hospital through a private vehicle and no eye witnesses were found at the spot. The police team went to GTB Hospital and in the meanwhile, also informed the crime team. On reaching the hospital, SI Amit Prakash collected the MLC No.A-9873/2011 dated 23rd August, 2011 of injured Sudhir Singh. Wife of the injured namely Smt. Baby also met police in the hospital whose statement was recorded. She mentioned that her husband, injured Sudhir, was a juice vendor and used to put his *rehri* in front of D-1 at Karawal Nagar Road. On the day of the incident after the day's work, her husband had come back home at about 9:30 p.m. and after taking his meals at about 11:30-11:45 p.m., he noticed two boys (aged about 20-25 years) standing in front of the gate of their house. She further stated that when her husband enquired from the boys, they replied "*hum yahin khade honge*" and made a phone call to their associates and thereafter two more persons reached there on a motorcycle. The pillion rider of the motorcycle was having a pistol like thing in his hand who fired a shot which hit the left side of stomach of her husband and all of them ran away from there. As per Smt. Baby, her husband tried to chase them but they succeeded in running away. Thereafter, the neighbours gathered there and someone called 100 number and the injured was taken to GTB Hospital on a private vehicle.

3. On the basis of her statement, PW-31 prepared *rukka* (EX. PW-31/A) which was sent to the police station. PW-31 also lifted blood



NEUTRAL CITATION NO: 2022/DHC/003939

sample, blood stained earth and earth control. Statement of crime team was recorded and FIR (Ex. PW-6/B) under Section 307/34 IPC and Section 27/25 (54/59) of the Arms Act was registered on 23rd August, 2011. PW-31 also prepared the site plan and statement of police team and persons who had taken the injured to the hospital was recorded on 24th August, 2011. PW-31 received DD No.32B regarding death of injured Sudhir during his treatment in the hospital and accordingly, Section 302 IPC was added to the FIR. On 25th August, 2011, PW-31 joined investigation with PW-34, the Investigating Officer (IO) Insp, J S Mehta. PW-34 conducted further investigation including exhibits, collected the *post mortem* report, photographs from the crime team, FSL inspection request etc. On 18th November, 2011 respondent Imran was arrested by PW-29, SI Yogesh in another case (FIR No. 390/2011 under Section 25 of Arms Act) registered in PS Khajuri Khas itself who according to PW-34, during the course of the interrogation, disclosed his involvement in the present case. His disclosure statement is exhibited as Ex. PW-34/E. On 26th November, 2011, judicial TIP of the respondent was conducted at Tihar Jail and witness Smt. Baby identified the respondent in the TIP proceedings.

4. Later the respondent led the police team to the house of the co-accused viz. at House No. 1680/17, Mustafabad, Delhi but he was not present there. On the next day i.e. on 30th November, 2011, respondent led the police team to village Bumheta, Ghaziabad, U.P. and pointed out the place in a field near the in-laws' house where he had buried the weapon of offence. However, nothing could be recovered despite the efforts in digging up the area. On 16th January, 2012 SI Chetan from PS Karawal Nagar gave information to PS Khajuri Khas regarding arrest of co-accused Gufran under Section 41 Cr.P.C., on 18th January,



2012. Accused Gufran was arrested by PW-34 in Central Jail No.8 after seeking permission from the Court, on 19th January, 2012. Gufran was produced before the Court for judicial TIP however Gufran refused to participate in the TIP proceedings. Gufran led the police party to the place of occurrence. At that time wife of the deceased was present there and identified accused Gufran and her statement was accordingly recorded.

5. PW-34 carried out the verification regarding ownership of motorcycle bearing registration no. DL13 SJ 0872 and it was revealed that the owner of the motorcycle was one Ismayel, son of Sh. Babuddin. A notice under Section 91 Cr.P.C. was served on Ismayel and he replied in writing wherein he mentioned that the elder brother of Imran namely Mahir had purchased the motorcycle in the name of Ismayel since Mahir was not having any ID proof at that time and the motorcycle was being used by Imran and Gufran. After completion of investigation, chargesheet was filed and charges for offences punishable under Sections 302/201/34 IPC were framed against Imran and Gufran and a separate charge under Section 27 Arms Act against respondent Imran was also framed to which they pleaded not guilty and claimed trial. In support of its case, the prosecution examined 34 witnesses, statements of the respondent Imran and Gufran were recorded under Section 313 Cr.P.C. and neither of them led any evidence in their defence.

6. The learned Trial Court, pursuant to the trial, held that the entire prosecution's story had been developed on the basis of disclosure statement of respondent Imran, allegedly obtained after his arrest on secret information in connection with some other case under Section



25 of the Arms Act of the same police station. The learned Trial Court held that on the basis of the findings detailed in the order, the prosecution's story was doubtful and highly unbelievable and thus the respondent Imran was to be acquitted of the charges leveled against him. Gufran, the other co-accused, expired during the trial and proceedings against him were duly abated.

Submissions by the Appellant-Prosecution

7. The prosecution, which is in appeal before this Court, contended that the respondent ought not to have been acquitted by the learned Trial Court since the ocular evidence of PW-9, Smt. Baby was clear and categorical and she had been consistent in her cross-examination. Moreover PW-13, the neighbour Sh. Kamal had also seen two persons quarreling with the deceased on 26th August, 2011 at about 11:30 p.m. and later when came back he saw the deceased was bleeding and two boys were running away and that the deceased told him that one of the persons running had fired shot at him. Minor discrepancies between the testimonies of PW-9 and PW-13 ought to be ignored in consonance with the law laid down in catena of judgments of the Hon'ble Supreme Court *inter alia* in **Mekala Sivaiah v. State of Andhra Pradesh** CRL.A. 2016/2013.

8. PW-9 had also identified the respondent in the TIP proceedings. Besides reliance was placed on the disclosure of the respondent-accused and the recovery of the motorcycle as well as *post mortem* report as per which the cause of death was shock as a result of *ante mortem* injury to the abdomen caused by firearm.



9. On behalf of the respondent, learned counsel submitted that there were serious discrepancies in the testimonies of PW-9 and PW-13, since on one hand while PW-9 stated that the shot was fired by the person who was on the motorcycle, on the other hand PW-13 had not seen any motorcycle but only two people running and the deceased informing him that it was one of those who had shot him. There were no other eye witnesses. There were also serious discrepancies in the testimony of wife of the deceased as per whom PCR arrived and took the deceased to the hospital whereas as per the police officials and PW-15, the deceased was taken to the hospital in a Maruti Van. Although, PW-9 identified the respondent accused in the judicial TIP, she had given no description whatsoever regarding the respondent or the co-accused Gufran during inquiry and investigation. The counsel for the respondent further contended that the circumstances in which the respondent was apprehended by the police was extremely suspicious since he was arrested in a different case under a relatively minor offence under the Arms Act but had been later implicated falsely for a major offence under Section 302 IPC in this matter.

10. Considering that the other case under the Arms Act was registered at the same police station and that the police had no clue of the respondent accused until three months later when he was arrested in the Arms Act case and that nothing had been disclosed regarding the respondent, it seems that he was falsely implicated in the present case. The respondent further asserted that in the MLC of the deceased he was shown as “*fit for statement*” but later the MLC had some over-writing with a different ink and read “*unfit for statement*”. The



NEUTRAL CITATION NO: 2022/DHC/003939
weapon of offence was initially not recovered and later on, it was recovered from the accused and the motorcycle which was recovered was not even registered in the name of the respondent or in the name of co-accused Gufran.

Evidence:

Relevant evidence, as gleaned from the records necessary for assessment of the facts and appreciation of contention of the parties, is *inter alia* as under:

11. PW-9 Smt. Baby, wife of the deceased, stated that on the day of the incident at about 11:30-11:45 p.m., two boys were standing in front of their house and when her husband enquired from them the reason for their standing the boys got annoyed and started quarrelling. In the meantime, two other boys came there on a motorcycle and out of those boys on motorcycle one boy fired shot at her husband and all four of them fled away, including the two who were quarreling with her husband. As per her testimony, the husband tried to chase them but they could not be caught, and when he came back he was bleeding since he was shot in the stomach. A person from the locality made a call to the PCR which took her injured husband to GTB Hospital. In her cross examination, she stated that she had identified the person in Tihar Jail who had fired the shot upon her husband and his name was revealed as 'Imran', whom she identified in the court as well. She also identified the other person who was brought to her house by the police whose name was revealed as Gufran, whom she identified in the court as well. According to her Gufran was driving the motorcycle while Imran was the pillion rider who had shot at her husband. She later



clarified that she had not seen the boys who were standing outside their house making a call to their associates. Further, she clarified that she was standing at the door of her house when the incident happened. She also stated that the boys who were standing in the front of their gate did not have any weapon with them nor had they fired the shot upon her husband.

12. PW-13, Mr. Kamal, neighbor of the deceased deposed that on 22nd August, 2011, it was the day of *Janamashtami* and many persons were celebrating in the temple. At about 11:30 p.m. he heard some noise outside his house and saw that quarrel was going on between the deceased and two persons but then he left for the temple. When he came back, he saw that two persons were running from there and the deceased was chasing them. When the deceased reached near him, he told that one of those boys running had shot him. Since he was bleeding from his stomach, he made attempts to call the PCR and he was removed to GTB Hospital by Raju in a Maruti van owned by Raju. PW-13 identified both Imran and Gufran in the Court as the persons who he had seen running on the fateful day being chased by the deceased. PW-13 did not know the names of the accused persons and as per the deceased, the persons who were running had inflicted the injury on Sudhir.

13. PW-15, Raj Kumar (Raju), stated that he was a driver by profession and on that date at about 11:30 p.m., PW-13 came to the temple and said that two persons were quarreling with Sudhir in front of his house. After informing, PW-13 went back and some people from *mohalla* followed him as well. By the time he reached he saw PW-13 and other people bringing the deceased, who was bleeding



from his stomach. They shifted him to GIB Hospital in his car (car of PW-15 Raj Kumar). He stated that he had not seen the assailants since he had arrived later at the spot.

14. PW-18, Head Constable Yashbir Singh deposed that on the intervening night of 17th and 18th November, 2011, he was posted at PS Khajuri Khas and at about 4:00 a.m. investigation of the case FIR No.390/2011 under Section 25 of the Arms Act was assigned to him. Thereafter, he went to the spot, main Pushta Road near PTS Wazirabad where SI Yogesh handed over the respondent Imran and the recovered *katta* and motorcycle. During interrogation PW-18 stated that as per disclosure of Imran, he was arrested in this case as well by PW-34. In his cross-examination, he stated that while recording the disclosure of the Imran in the present case, no other witnesses' statements were recorded.

15. In addition to what has been narrated in paragraph no. 3 above, which forms part of testimony of PW-34, the IO, in his cross examination deposed that PW-9, the complainant had not disclosed to him that she knew the accused persons by face or by name but did mention that she could identify the accused persons if confronted. He also stated that he had not collected any CDRs of any mobile number as the use of mobile phones by the assailants, post the time of the quarrelling with the deceased, was merely PW-9's speculation. He denied the suggestion that the complainant had identified the accused persons at his behest on 26th November, 2011.

16. PW-29, SI Yogesh deposed that he had arrested respondent Imran in the other case under the Arms Act and later upon his



disclosure, he had handed over all the documents and custody of the respondent to Head Constable Yashvir.

17. PW-22, Doctor P.K Phukan, CMO, GTB Hospital deposed that the MLC No. A-4873/11 of the deceased is in the handwriting of Dr. Amit Kumar Sharma. He could identify his handwriting and signature, since Dr. Amit Kumar Sharma had left the services of the hospital. As per the MLC, the patient was conscious when brought to the hospital and there was a wound present at sub costal area (below rib cage) in the size of 1.5 x 1.5 cm located 5 cm left to mid-line. After giving first aid, the patient was referred to surgery emergency. PW-23 Dr. Gola, Senior Resident at the hospital deposed that the deceased when referred to surgery unit was having firearm injuries on abdomen. Due to the nature of injuries, he was referred for surgery in view of perforation peritonitis. PW-24, Dr. Goel deposed that during treatment on 24th August, 2011 at about 2:00 p.m., the deceased had passed away in the I.C.U. and was declared dead.

18. PW-25, Dr. Vishwajeet Singh deposed regarding the *post mortem* report No.1166/11 that it was prepared by Dr. Meghali Kelker who had left the services of the hospital but could identify her signature. As per the *post mortem* report the following *ante mortem* injuries were found on the dead body:

1. *Surgically altered oval shaped wound measuring 4 x 2.3 cm obliquely placed on left lower chest, 4 cm from mid line and 24 cm below clavicle, stitched with three black colour stitches. Margins are clean cut surrounded by tattooing on the lateral end of the wound in an area of 10 x 6 cms.*
2. *A surgically altered oval shaped wound measuring 2.5 x 1.5 cm horizontally placed on right lateral wall of lower abdomen, 28 cm from midline and 45 cm below acromial tip,*



NEUTRAL CITATION NO: 2022/DHG/003989
stapled with three white colour metallic staples. Margins are clean cut.

3. A surgically created midline laparotomy wound measuring 27 x 0.1 cm vertically placed in the mid line of abdomen, 1 cm below xiphisternum stitched with 17 black coloured stitches. Margins are clean cut.

The cause of death, as per the *post mortem* report, was

“Shock as a result of ante mortem injury to abdomen produced by projectile of fire arm. Injury no. 1 is fire arm entry wound. Injury no. 2 is surgically altered, however, it lies in the diagonal plain of injury no. 1. Injury to abdomen is sufficient to cause death in ordinary course of nature. Injury no. 2 is likely to be fire arm exit wound. Time since death was around one day”.

Analysis:

19. This Court, having examined in detail the evidence on record and contentions of the respective parties, is of the considered view that the prosecution has been unable to prove the guilt of the respondent beyond reasonable doubt and the learned Trial Court has therefore, rightly acquitted him. The rationale behind this observation is based on the following points:

- 1) The death of the deceased, as per the *post mortem* report, was clearly due to gunshot injury and therefore, was homicidal in nature.
- 2) As per the testimony of PW-9, the wife of the deceased, incident of shooting happened outside her house on the night of 22nd August, 2011 at about 11:30 – 11:45 p.m. However, there is vast discrepancy of version of PW-9 and PW-13, the other eyewitness, the neighbor who had a fleeting glimpse of the



assailants while they were running away. In particular, PW-9 states that first there were two boys arguing with her husband in front of their house and later two more boys joined them who had come on motorcycle and further that the pillion rider of the motorcycle had fired shot at her husband. PW-13 however stated that he had seen two boys quarreling with the deceased while he was going to temple and when he returned, he noticed those two boys running away. As per PW-13, the deceased himself had told him that one of the boys running away had shot at him. Moreover, PW-13 identified respondent Imran in the Court as one of those boys who was running away after allegedly firing the deceased. It is therefore, unclear from a cumulative assessment of testimonies of both these eyewitnesses as to: (i) how many boys/persons in all were involved in the incident; (ii) whether there were 2 boys or 4 boys; (iii) who shot the deceased- the one who was running or the pillion rider; (iv) which of the boys were on foot and who were riding the motorcycle.

- 3) PW-9 could not give description of the person, who according to her, had fired the gun shot on her husband nor did she know the person who had fired the shot. However, she identified the respondent in the judicial TIP as the person who had fired the shot. It is however clear from the deposition of PW-9 that at best she could only have a fleeting glimpse of the assailants who had fired a shot on her husband. Moreover, in the fast moving circumstances, that too at 11:30 in night, and the fact that the assailants were on motorbike who would have easily sped off after injuring the deceased, it is difficult to accept that



she would be able to identify the assailants so easily. Besides she says that she was at the door of her house while this incident took place outside the gate on the street. Also she does not state as to the registration number of the motorcycle and therefore, there was no basis for the police to fix their accusation on the bike recovered from Imran.

- 4) It is again inexplicable as to how PW-13 could identify the respondent before the Court as the person who had fired the shot though he had only a cursory glance of the boys who were running away and were being chased by the deceased. As regards the credibility of witness identification of the accused on the basis of fleeting glimpse, reference may be made to decision of the Hon'ble Supreme Court in **Kanan & Ors. v. State of Kerala**, (1979) 3 SCC 39 wherein the Hon'ble Supreme Court held that :

“It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observation. The idea of holding T.I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court.”

In **Munshi Singh Gautam & Ors. v. State of M.P.** (2005) 9 SCC 631, the Hon'ble Supreme Court held that :

“It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court



NEUTRAL CITATION NO. 2022/DHC/003939
where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court.”.

Considering that PW-13 was not made to participate in the judicial TIP of the respondent Imran, for him to easily identify the respondent before the Court, having not known to him at all and having only a fleeting glimpse at best, of the assailants on the day of the incident, is not conceivable. As such, his testimony regarding identification of the respondent is not trustworthy.

- 5) It is noteworthy that the police had no idea that the respondent was the accused, until three months later he was arrested in an Arms Act case in the same police station, i.e. PS Khajuri Khas. It is thus clearly borne out from the deposition of the police personnel that disclosure had been made by the respondent pursuant to an interrogation in the other matter which creates a dent in prosecution story and accentuates the possibility of false implication of the respondent in the present proceedings. Admittedly, no recovery of the alleged weapon was made from the appellant pursuant to his disclosure. Hence, apart from his own disclosure statement, that too given during interrogation in another case, there is nothing incriminating against him which could connect him to the murder of the deceased.
- 6) So far as identification of the motorcycle, which was allegedly used during the commission of offence is concerned, as per prosecution version, as per alleged disclosure by the respondent, it was in the name of PW-19 Ismyle who stated that while he



NEUTRAL CITATION NO: 2022/DHC/003939
was the registered owner, the same had been purchased in his name but the payment had been given by one Mahir, brother of the respondent Imran and the co-accused Gufran. The said Mahir had not been examined by the prosecution. Moreover, this aspect of the motorcycle being owned by Mahir was not put to Imran and Gufran while recording their statements under Section 313 Cr.P. C. (plz check). Therefore, presence or use of said motorcycle during commission of offence is totally shrouded in mystery.

Conclusion:

20. From a conspectus of the evidence as stated above and perusal of the judgment and order impugned in the present appeal, in our view, the learned Trial Court has proceeded on the basis of a plausible view which cannot be faulted. The Hon'ble Supreme Court has held in ***Chandrappa & Ors vs State Of Karnataka***, (2007) 4 SCC 415 at para 42 that:

“An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court..... If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not



NEUTRAL CITATION NO: 2022/DHC/003939
disturb the finding of acquittal recorded by the trial court.’ ¹¹
para 44 the Hon’ble Supreme Court further states that “But it is well-established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court. “

The Hon’ble Supreme Court in another decision of **Tota Singh & Anr vs State Of Punjab** (1987) 2 SCC 549 at para 6 has held that:

“Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous.”

22. In view of the above analysis and discussion, appeal preferred by the prosecution against the acquittal of the respondent is hereby dismissed.

23. Copy of the same be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 27, 2022/sm