



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

NEUTRAL CITATION NO.: 2022/DHC/008097

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Reserved on : 18<sup>th</sup> July, 2022

Pronounced on : 03<sup>rd</sup> August, 2022

**CRL.A. 1314/2019**

SUBHASH AGGARWAL

..... Appellant

Represented by: Mr. Biswajit Kumar Patra with  
Ms. Khushboo Gupta,  
Advocates

versus

STATE

..... Respondent

Represented by: Mr. Tarang Shrivastava, APP  
for the State with SI Prateek  
Sarana, PS- SP Badli.

**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. This appeal assails the judgment dated 31<sup>st</sup> July, 2019 whereby the appellant has been convicted for offence punishable under section 302 IPC read with Section 25/27 Arms Act and has been awarded life imprisonment for offence punishable under section 302 IPC; RI for one year for offence punishable under section 25 Arms Act and RI for 7 years for offence punishable under section 27 Arms Act vide order on sentence dated 1<sup>st</sup> August, 2019. Besides, a fine of Rs.1,000/- was also imposed for each conviction and in default of payment of fine, to



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further undergo SI for one month. All the sentences were to run concurrently.

**The Incident:**

2. As per the prosecution case, on the intervening night of 14<sup>th</sup> and 15<sup>th</sup> December, 2012, the son of appellant Shubham (since deceased) was studying in a room of their home in Sector 18, Rohini, Delhi. The appellant was sleeping in the drawing room with other family members viz. Saroj (appellant's wife), Poonam and Swati (appellant's daughters). At about 12:45 AM, the wife and daughters of the appellant heard the appellant screaming from outside the room where they were sleeping. They rushed out of the room to check and the appellant told them that Shubham had died. The wife and daughters rushed to the room where Shubham was studying and saw that blood was spread on the bed where Shubham was lying and had a gunshot injury. One double barrel gun was lying near the leg of the dead body, one fired and one live cartridge were also found lying there.

3. Police was accordingly informed and investigation ensued leading to charges against the appellant for committing murder of his son. The case was committed to the Sessions Court for trial where the prosecution examined 21 witnesses, statement of appellant was recorded under Section 313 Cr.P.C. wherein he denied the guilt and did not lead any evidence in his defence.

**Submissions by the appellant:**

4. The appellant through his appeal and arguments on his behalf by his counsel contended that the impugned judgment was not substantiated in law and had not taken into account the relevant materials on record. The appellant contended that he had been



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wrongly implicated by PW-11, Madan Lal Sharma because he had refused the marriage proposal of PW-11's son with one of his daughters and thus, PW-11 used to nurture an accusatory stance against him. It was also pleaded that there was no eyewitness to the incident and it was appellant himself who had raised the alarm that the deceased had killed himself. It was also contended that the wife of appellant had herself admitted that the appellant never bothered their son at any point of time and therefore, had no motive. Further, the appellant was found holding a screw driver stating that the deceased had killed himself using that screw driver because he had not seen the gun at the first glance and also because he was totally unaware as to what had actually happened.

5. Contradictions in the statements of PW-12, the constable on one hand, who had stated that there was no quilt over the body of the deceased and the statements of PW-1, PW-2 and PW- 11 on the other hand who had deposed that the body was covered with a quilt, dilutes the veracity of PW-1, PW-2 and PW- 11 as trustworthy witnesses. Further, no gun powder residue was found on the hand of appellant which ought to have been there, had he used the gun to shoot the deceased. It was also contended that swab was taken only from the left hand whereas PW-18, the inspector stated that the swabs were taken from both the hands of the appellant, a contradiction that ought to give benefit of doubt to the appellant. The swabs from the body of the deceased were seized in a sealed condition and handed over to the IO but were not sent to FSL for forensic examination for comparative study with the gun powder residue on the hands of the deceased.



6. The doctor who had conducted the Post Mortem, opined that the cause of death was a result of fire arm injury which was fired from close range due to the blackening present around the margin of the wound but it could not be stated whether the injury was caused by self infliction or not and no definitive opinion could be given on that issue. Besides, there were various contradictions in the testimonies of wife PW-3 and daughters PW-1 and PW-4 which would create reasonable doubt not to convict the appellant for the crime.

**Submissions by the Prosecution:**

7. Learned APP vehemently countered the contentions of the appellant and submitted *inter alia* that not only were the testimonies of the wife, the daughters PW-1, PW-3 and PW-4 consistent in what they witnessed when they saw the appellant holding a screw driver and alleging that Shubham had killed himself, but also the testimony of PW-11 Madan Lal Sharma, the neighbour who had been called by the family when they witnessed the dead body. PW-11 had also testified that there was a covering on the body of the deceased and the screw driver did not have any blood stains.

8. PW-10, the Ballistic Expert, testified that the double barrel breech loading gun found next to the body was designed to fire 12 bore cartridges and the left barrel was in working order while the right barrel mechanism was not. On the basis of his analysis, the range of firing was within 3 feet from the distance of the muzzle. It was contended by the learned APP that no specific question was asked from PW-10 regarding the gunshot residue on the body of deceased and therefore, the appellant's contention in that regard would not stand substantiated. As regards the swabs from the hands of the deceased



having not been examined, PW-18, from the Police Provisioning and Logistics Unit had testified that the swabs were sent to the Forensic Science Laboratory (FSL) but they did not accept the swabs of the deceased for examination since control swabs had not been taken by the doctor.

9. Learned APP also relied on testimony of PW-7, another daughter of the appellant who used to stay elsewhere, who stated that the appellant was habitual in taking liquor and stealing and used to quarrel with everyone and beat the neighbours. She further stated that the appellant was fully dependent on his wife and daughters and did not earn anything and never contributed towards the expenses of the family. He was quarrelsome and used to steal money from the neighbours and relatives.

### **Evidence:**

The following relevant aspects are gleaned from a perusal of the record.

10. PW-1, Poonam, one of the daughters of the appellant testified that the appellant was habitual in taking liquor, used to stealing, quarrelsome and was good for nothing. She stated that at the night of incident when she and her mother and sister were sleeping in the adjacent room, her brother Shubham was studying in another room. She mentioned that their father, the appellant used to roam even in the night inside the house premises. At about 12:45 AM they heard the appellant screaming “*bhai mar gaya hai, bhai mar gaya hai*”. When the screams became louder, they came out of the room and rushed to witness blood all over the place where the deceased was lying, his mouth and eyes open and the appellant standing nearby with a screw



driver in hand alleging that ~~Shubham~~ <sup>NEUTRAL CITATION NO: 2022/DHC/003097</sup> had killed himself with the screw driver. Thereupon, she rushed to inform the neighbours and PW-11 Madan Lal Sharam came down who later called the police. She confirmed that the appellant owned a licence for '*dunali bandook*' and he knew how to operate it and that she had never seen the weapon in the hands of his deceased brother. There was no one else present in the house at the time of incident. She confirmed that the gun was found at the right side of the leg of the deceased when the quilt was removed from his body. PW-1 stood by her testimony in her cross examination and also stated that the deceased was in his first semester B. Tech and was a student of HRM College, Alipur, Delhi. The financial decisions for the family were taken by the sisters in consultation with their mother.

11. PW-3, the mother of the deceased and appellant's wife, gave substantially the same narrative in her testimony and denied that her son used to have any issue with her daughters. She stated that the appellant used to abuse the deceased as well as other family members. The other daughter Swati who was at home, testified as PW-4 that she and her sister used to financially support their family. She also confirmed that there was a quilt on the body of the deceased at the time when they arrived at the scene of crime.

12. PW-14, the first police officer to reach the spot along with PW-16 and PW-18 found that the body of the deceased had a hole in the stomach which seemed to be a gunshot injury and a double barrel gun lying towards the legs of the deceased whereupon they called the crime team who arrived and took the samples. *Rukka* was prepared by PW-18 and FIR was subsequently registered. PW-18 was assigned as



IO for investigation of the case who seized the double barrel gun, the cartridges, blood specimen of the deceased, blood-stained upholstery, the screw driver and hand washes of the appellant, all of which were sent for forensic examination. PW-18 corroborated this sequence of events and added that the body was sent for post mortem and that the appellant was interrogated at length, arrested and personal search was carried out.

13. The appellant in his statement under Section 313 Cr.P.C. stated that when he woke up for washroom that night, he checked on his son and found him in a pool of blood and then called for help. He denied that he was standing with a screw driver in his hand, but admitted that he had a licence for the gun which according to him, all his family members, except his wife, knew how to operate. He alleged that the police had smeared his hands with gun powder residue to implicate him in this false case.

**Analysis:**

14. From a careful appreciation of the evidence, documents on record and contentions of the parties this Court is of the opinion that the prosecution has successfully proved its case beyond reasonable doubt, for *inter alia*, the following reasons:

- i. There is no denial to the fact, either from testimonies of PWs or the appellant himself, that no one else except the five family members i.e. the appellant, his wife, son and two daughters, was present in their home at the time of the alleged incident.
- ii. There is no evidence that the deceased was mentally disturbed in any manner whatsoever or had a difficult past or that he was



going through any current situation that could compel him to take his own life.

- iii. The deceased was reported as studying in his room when the appellant went to sleep in the drawing room and that fact is also corroborated by the statement of the appellant in his response to Question no.2 of his statement recorded under Section 313 Cr.P.C.
- iv. The background of the appellant, his conduct, his misdemeanours, his quarrelsome personality, his propensity to steal and inability to take care of his family, is well corroborated by the testimonies of the family members and the neighbour, though it is not a determinative circumstance for proof of guilt. However, the conduct of the appellant post event in holding up a screwdriver (which was not the weapon) provides another link in the chain of circumstances to prove his guilt.
- v. The fatal injury was undoubtedly from the gunshot wound and not the screw driver, as corroborated by the police witnesses, family members and the post mortem reports.
- vi. The appellant suggesting that the deceased had killed himself with a screw driver was not proved since neither the screw driver was blood stained nor there was any evidence that the fatal injury was from a screw driver as also it was only the appellant who was holding it up, which the family and the neighbour testified too.



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- vii. As per the post mortem report, injury No.1 was a firearm entry wound with irregular margin present from central line of chest 2cms between 5<sup>th</sup> and 6<sup>th</sup> rib of left side of chest, surrounding area of wound show abrasion collar, blackening present and margin of wound is inverted, wound is round in shape, and size of wound is 2 x2 cms. It was 14cms away from the left nipple and 16 cms from the right nipple and 20 cms away from centre of clavical and 21 cms away from umblicus and depth .of the wound was about 15 cms. No other external injury was noted. After post-mortem examination, PW-20 opined the cause of death as hemorrhagic shock as a result of huge blood loss consequent upon fire arm injury (injury no. 1) that was *ante mortem* in nature caused by bullet fired from close range which was sufficient to cause death in ordinary course of nature.
- viii. The weapon in question, i.e., the double barrel gun, '*dunali bandook*' was admittedly licensed to the appellant and he knew how to operate it. It was confirmed by the Examination Report of the Ballistics Division that one empty fired cartridge and two misfired cartridges had been found.
- ix. It was corroborated by the family and the police witnesses that there was a quilt covering the body of the deceased with a gun lying near the leg and it was quite impossible that the deceased would have covered himself up after killing himself.
- x. The Examination Report of the Ballistics Division also confirmed that the swab taken from the right hand of the accused had been detected with the gunshot residue particles which were also detected on the shirt and undershirt of the dead



body. It further confirmed that with reference to the hole in the shirt of the deceased, the range of firing was within 3 feet from the muzzle end of the barrel, which in this Court's opinion would logically lead to inference of murder rather than a suicide.

- xi. The swabs from the hands of the deceased not having been forensically examined for gunshot residue are, therefore, not relevant in light of the above evidence. There was a plausible reason which was given by the forensic department for not having examined it i.e. that there was no control swab of the deceased taken and available for comparative examination.
- xii. The appellant had not discharged his burden of proving the fact which was in his knowledge as to how his licensed gun reached near the body of the deceased son.

### **Conclusion:**

15. In light of the above discussion and analysis, this Court is of the considered view that the case of prosecution is duly supported by ocular evidence, medical and scientific reports and chain of circumstances proves beyond reasonable doubt that the offence was committed by the appellant. Consequently, this Court finds no error in the impugned judgment of conviction and order of sentence. Thus, this Court deems it fit not to interfere with the sentence awarded by the learned Trial Court.

16. Appeal is accordingly dismissed.

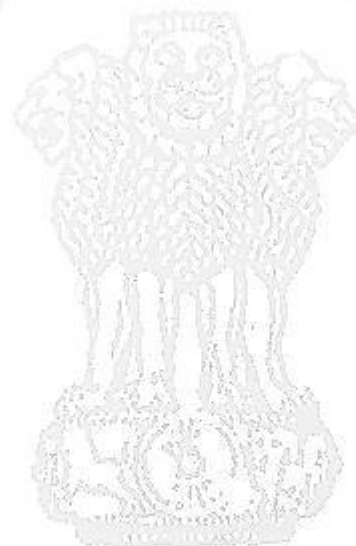


17. Copy of this order be uploaded on the website of this Court and be also sent to Superintendent, Jail for intimation to the appellant and updation of records.

**(ANISH DAYAL)**  
**JUDGE**

**(MUKTA GUPTA)**  
**JUDGE**

**AUGUST 03, 2022**  
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