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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 10th December, 2025

+ CRL.A. 814/2015

THE STATE (NCT OF DELHI)

.....Appellant

Through: Mr. Yudhvir Singh Chauhan, APP
with Insp. Ravi Kumar, PS Baba
Haridas Nagar, District Dwarka

versus

SANJAY @ TOTA

.....Respondent

Through: Mr. Prince Balyan, Advocate with
Respondent-in-person

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

1. The challenge in the present appeal is to order dated 24.11.2024, whereby respondent herein has been acquitted of charges under Section 302 Indian Penal Code, 1860, and Section 25 Arms Act, 1959.
2. Let us take note of the facts, germane for disposal of the present appeal.
3. Incident is of 05.10.2011.
4. Manoj Kadyan (PW3), his brother Vijay Kumar Kadyan (PW6) and their mother Smt. Krishna Devi (PW9) were present at their house situated at 140-A, Naveen Place, Najafgarh, Delhi. Ajit Singh (father of PW3 and PW6 and husband of PW9) was away to work. He was conductor in Delhi Transport Corporation (DTC) and used to return by about 10:00 – 11:00 PM.
5. On 05.10.2011, somebody knocked at the main door of their house and when PW3 asked his brother PW6 to open the door, a sound of gunshot was heard. The moment PW6 opened the door, he screamed as



he saw his father lying in a pool of blood. PW3, on hearing his screams, came out. He, immediately, informed their neighbour Ved Prakash (PW10) about the incident, who arranged his Maruti car for rushing his injured Ajit Singh to CRPF hospital.

6. Fact, however, remains that injured Ajit Singh succumbed to his injuries *en route* to the hospital and was, therefore, declared *brought dead*.

7. On the basis of statement made by PW3 Manoj Kadyan, subject FIR was registered and investigation was carried out.

8. It will be worthwhile to mention that in his said statement, PW3 had claimed that '*some unknown person*' had shot dead his father. He was not an eyewitness, even otherwise, as did not notice any assailant when he had come out.

9. Police made inquiries from PW6 Vijay Kumar Kadyan also and though he claimed that he knew one Sanjay (accused/respondent herein) with whom he had some altercations previously, however, he also did not see the face of assailant. He stated that when he came out to open the door, he saw his father lying on the ground, bleeding profusely. He also stated that he had seen '*one young man in the age group of 20-22*', running. Fact, however, remains that he did not give any further details, concerning about the identity of the aforesaid person.

10. Police carried out investigation and recorded statements of wife of deceased PW 9 Krishna Devi and her brother PW12 Naresh. It, eventually, arrested the accused on 07.10.2011. His disclosure statement was recorded in which he admitted his complicity in the murder in question. He was produced before the Court and during police remand,



he got recovered a firearm, which was used in committing murder of Ajit Singh.

11. Accused was charged under Section 302 IPC and under Section 25 Arms Act. He pleaded not guilty and claimed trial.

12. Prosecution was directed to adduce evidence and examined 36 witnesses.

13. Accused, in his statement under Section 313 Criminal Procedure Code, 1973 pleaded innocence and claimed that he had been falsely implicated by the police in order to demonstrate that the murder had been solved. He, however, did not lead any evidence in defence.

14. Learned Trial Court, while granting benefit of doubt to the accused, acquitted him of all the charges. It came to the conclusion that neither PW6 and nor anyone else was witness of the murder in question and the recovery of firearm was of no significance, *inter alia*, for not joining public witnesses.

15. Learned Addl. P.P. for the State has assailed the aforesaid findings.

16. It has been argued that testimony of PW6 Vijay Kumar Kadyan is very categorical and specific and he identified the accused during the trial and there was no reason, whatsoever, to have discarded his testimony. It is argued that testimony of PW3, PW6 and PW9 clearly indicates that accused used to threaten PW6 as there was monetary dispute between them and since motive was duly proved by the prosecution, thus, there was no reason, whatsoever, to have disbelieved the case of prosecution. It is also argued that *country-made pistol* recovered at the instance of accused was sent for analysis and the report of the forensic expert clearly



indicated that the bullet recovered from the body of the deceased was fired from the aforesaid firearm and such aspect could not have been brushed aside. In these circumstances, he prays, the present appeal be allowed and the respondent herein be convicted for murder of deceased Ajit Singh.

17. Learned counsel for respondent has, whereas, prayed for dismissal of the appeal.

18. He contends that accused has been falsely implicated on the basis of previous animosity. He has argued that PW6 was never aware about the identity of the assailant and has tried to falsely implicate accused by coming up with huge improvement.

19. We have gone through the Trial Court Record and perused the testimony of prosecution witnesses, in particular of PW3 Manoj Kadyan, PW6 Vijay Kumar Kadyan, PW9 Smt. Krishna Devi, PW10 Ved Prakash and PW12 Naresh.

20. As noticed already, at the time of alleged incident, complainant PW3 Manoj Kadyan, his brother PW6 Vijay Kumar Kadyan and their mother were present in the house. If prosecution case is to be believed, then, on hearing some knock at the door, the door was opened by PW6 Vijay Kumar Kadyan who saw his father lying on the ground. Thereafter, the injured was taken to hospital by PW3 Manoj Kadyan and PW10 Ved Prakash.

21. We have seen the statement which PW3 Manoj Kadyan had given to the police. In such statement (Ex. PW3/A), he, categorically, claimed that “*some unknown person*” had killed his father (*kisi namalaum shaksh ne mere pitaji ki goli maar kar hatya kar di*). The aforesaid fact stands



corroborated from the information which was received by Police Control Room (PCR) and also from the facts noted in MLC.

22. Information recorded in PCR has been proved as Ex. PW27/A and it also does not contain name of the assailant. As per the narration given by the caller, Ajit Singh was working in DTC and returned from duty. He knocked at the door and *when his wife opened the door, she saw her husband in an injured condition.* It also records that there was no previous enmity with anyone. Thus, even as per the earliest information received by PCR, the identity of the assailant was not known.

23. Admission slip/MLC of deceased Ajit Singh has been proved as Ex. PW4/A, which shows that he was *brought dead* by his son PW3 Manoj Kadyan. MLC records history of being hit by bullet outside home. There is nothing mentioned therein which may suggest that name of assailant was known to PW3 Manoj Kadyan.

24. As per DD No. 38A (Ex PW1/A) also, the assailant was unknown as it is to the effect that *papa ko kisi ne goli maar di hai.*

25. Thus, PW3 Manoj Kadyan had no knowledge of assailant. His stand remained the same in witness box as well.

26. Testimony of PW9 Smt. Krishna Devi is also of no avail to the prosecution.

27. She deposed that on 05.10.2011 at about 10.45 PM, she was present in her house with her two sons and on hearing doorbell, she and her son PW6 Vijay Kumar Kadyan moved towards the main door to open the same. However, her son PW6 reached before she could reach the main door. She deposed about hearing a gunshot sound. As per her further deposition, when PW6 opened the door, he shouted and when she



and her son PW3 Manoj Kadyan came out, she saw her husband lying in a pool of blood. Her deposition also clearly indicates that she had not seen the assailant at the spot.

28. Similarly, PW10 Ved Prakash, who is neighbour and who had provided his vehicle to take the injured to hospital, is ignorant about the identity of the assailant. In his cross-examination, he deposed that he was called by PW3 Manoj Kadyan and it took them 10-15 minutes to shift injured to the hospital. They remained in the hospital for about half an hour when police also reached there. Thereafter, they returned to the spot at about 12:00-12:30 night and at that time, 3-4 police officials besides PW6 Vijay Kumar Kadyan and his mother PW9 Krishna Devi were present at the spot. PW10 Ved Prakash claimed that, throughout i.e. right from the time he learnt about the incident and reached at the spot till his return at the spot from the hospital, neither he learnt nor anyone told him as to who was the assailant. He, categorically, deposed that nobody disclosed or made any statement about the assailant.

29. PW11 Manish is another neighbour and his testimony also does not advance the case of prosecution, in context of identification of the assailant.

30. PW12 Naresh is brother-in-law of deceased and according to him, on the fateful evening, he was taking stroll in a street near his house when 2-3 persons told him that someone had fired gunshot near the house of his brother-in-law Ajit Singh. He immediately rushed there. *En route*, he saw Sanjay coming from the opposite direction. He revealed the same during investigation also, but, at the same time, he never raised any suspicion about his complicity. Fact remains that his testimony does not



inspire any confidence. Distance between his house and the house of deceased is about 700-800 metres and if he is to be believed then he took 15 minutes in covering such distance. He must not have heard the news, instantly. Therefore, it is hard to imagine that he would get any real chance of noticing the accused. Interestingly, during cross-examination, PW12 Naresh failed to reveal the names of those two-three persons who had informed him about the incident. He does not even know whether those persons were of his locality or of some other locality. So much so, according to him, those two-three persons were talking amongst themselves only and they did not, even, converse with him. This makes his testimony highly doubtful and it is difficult to believe that he had seen Sanjay, that night.

31. Thus, during the investigation, except for the disclosure statement of the accused and the alleged recovery pursuant to above, there was no other material which could have pinpointed, with some precision, about the complicity of the accused.

32. PW6 Vijay Kumar Kadyan had, merely, stated to the police that he had seen *one young man running*. Nothing further than that. He did not even claim that he could identify such person if shown to him.

33. However, when PW6 Vijay Kumar Kadyan entered into witness box, he made huge improvement.

34. He deposed that when he opened the door and saw his father lying on the ground, he had seen accused at a distance of 4-5 feet, who was wearing a red colour half t-shirt and blue colour jeans and was carrying some weapon in his hand.

35. If at all PW6 Vijay Kumar Kadyan had seen the accused from such



short distance, he would have shared such vital information with his brother, mother, neighbours and most importantly, with the police. Of course, he was around 17 years of age at the relevant time but there was nothing to fear about, as his elder brother PW3 Manoj Kadyan was working in Security Unit of Delhi Police only and his mother PW9 Krishna Devi was Assistant Sub Inspector in CRPF. The prosecution has, thus, failed to elucidate as to why PW6 held back such a vital piece of information.

36. As noted already, PW10 Ved Prakash, too, never learnt about the name of the assailant at any point of time. He, categorically, deposed that after he returned from the hospital, several persons were present at the spot besides PW6 Vijay Kumar Kadyan and two-three police officials also. If that was really so, there was no one to have prevented PW6 Vijay Kumar Kadyan from telling the police that it was Sanjay who had committed the murder. His revelation, as we note above, came for the first time when he entered into witness box and, therefore, such belated disclosure is nothing but a deliberate introduction of fact to provide unwarranted boost to the case of prosecution and, therefore, testimony of PW6 Vijay Kumar Kadyan does not inspire any confidence.

37. There was, thus, no definite clue about the identity of the assailant.

38. PW3 Manoj Kadyan, his mother PW9 Krishna Devi and their neighbours PW10 Ved Prakash and PW11 Manish had not seen anyone after the alleged incident and, therefore, they are in no position to comment about the identity of the assailant. As far as PW6 Vijay Kumar Kadyan is concerned, he merely stated to the police that he had seen one boy running. He, nowhere, claimed that he could identify such person or



that such person was none other than his friend Sanjay. However, in witness box, he made huge improvement, which renders his testimony unreliable.

39. Testimony of PW12 Naresh does not inspire any confidence. He had simply seen Sanjay coming from opposite direction and during investigation, he never suspected about his involvement in the murder.

40. Thus, it is really mystifying and puzzling as to how police started searching for the accused who had not been named as assailant by any of the prosecution witnesses. As per investigating officer PW13 Insp. R.K. Meena, they started searching accused on the basis of suspicion expressed by PW3 Manoj Kadyan. However, since there is no supplementary statement to said effect, such story is not palatable.

41. If we keep aside the testimony of the aforesaid witnesses, we are, merely, left with the fact regarding recovery of firearm at instance of accused. Such fact alone is not sufficient to prove the murder. Moreover, there is no explanation coming from the side of prosecution as to why independent witnesses were not joined. Such search is, allegedly, from '*roof of one room*' but there are no details as to who is owner or occupant thereof. Interestingly, in the disclosure statement, accused had claimed that weapon was thrown by him in an '*open plot*' but as noted above, recovery is from a rooftop which also makes the recovery highly doubtful.

42. According to prosecution, a bullet had been recovered from the body of the deceased and such bullet matched with the firearm recovered at the instance of the accused.

43. Fact, however, remains that there is no recovery of any bullet from



the body of the deceased. This would become evident from post-mortem report Ex. PW7/A. PW7 Dr. Parvinder Singh, the post-mortem surgeon noted *firearm entry wound* and also *firearm exit wound* and, therefore, there was no question of recovering any bullet from the body. There is nothing before us which may indicate that any such bullet, after exit, was recovered from the spot.

44. A cartridge case was, though, allegedly, found from the place of incident and when such cartridge case was sent to forensic laboratory for comparison with the aforesaid firearm, forensic expert reported that the cartridge case had been fired from the same pistol. This fact alone does not serve the requisite purpose, particularly when recovery of firearm is not free from doubts. Moreover, it is not made clear as to why no marks of firing pin, breech face, extractor etc, were noted and reflected in the report Ex. PW34/A.

45. Thus, we find that the evidence has been appropriately analyzed by the learned Trial Court and there is no perversity in any of the findings, necessitating any interference. We do not find any reason for coming to any different conclusion. Quite evidently, there is a big question mark about the identity of the assailant and, therefore, accused was, rightly, given benefit of doubt.

46. Resultantly, present appeal is dismissed.

(VIVEK CHAUDHARY)
JUDGE

(MANOJ JAIN)
JUDGE

DECEMBER 10, 2025/dr/nc/kp

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