

PRAMOD KUMAR
v.
STATE (GNCT) OF DELHI
(Criminal Appeal No. 562-563 of 2010)

JULY 1, 2013

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Penal Code, 1860 – ss. 302 & 186/332 – Murder – Prosecution version that country-made pistol was fired by the accused that caused injuries to the deceased – Tenability – Held: Tenable – Deceased and the accused were grappling with each other – Country-made pistol seized from accused, which was in working order – Prosecution version that all of a sudden, the accused brought out his country-made pistol and fired from close range clearly established by evidence – Defence plea that while grappling, the position changed and bullet fired from the service revolver of PW-8 hit deceased not acceptable – No material to prove that gun shot was fired from the weapon of PW-8 – Evidently, the shot was fired from the country-made pistol seized from the custody of accused-appellant – Arms Act, 1959 – ss.25 and 27.

Evidence – Witness – Official witnesses – Testimony of police official – Appreciation – Held: Witnesses from the department of police cannot per se be said to be untruthful or unreliable – It would depend upon the veracity, credibility and unimpeachability of their testimony – It cannot be said that the whole case should be thrown overboard because of non-examination of independent witness and reliance on the official witnesses – On facts, the official witnesses examined in support of the prosecution, stood embedded in their version – Despite searching cross-examination, none of the witnesses gave way to any tergiversation, thus, no reason to discard them.

A On the instructions of SI PW-9, the Head Constable
 PW-8 and Constable 'M' went to the house of 'C' where
 appellant, a proclaimed offender was hiding. The
 appellant was asked to surrender, but, he allegedly took
 out a knife and tried to assault but was caught hold of
 B by 'M' from the rear and both of them grappled with each
 other for some time. PW-8 thereafter snatched away the
 knife from the hands of appellant but, at that juncture, the
 appellant allegedly took out a country-made pistol (*desi*
katta) and fired at 'M' and the bullet hit him in the stomach
 C area. 'M' was taken to the hospital where he died due to
 the bullet injury.

The appellant was convicted by the courts below. He
 challenged his conviction before this Court, contending
 that 1) apart from the police officials, no other
 D independent witness had been examined; and that 2) the
 appellant was not responsible for causing injury on the
 deceased 'M'; on the contrary, it was PW-8 who intended
 to fire at the appellant when the deceased and the
 accused were grappling, but the bullet hit the deceased.

E Dismissing the appeals, the Court

HELD: 1.1. In the plea advanced under Section 313
 CrPC, it has been stated by the accused-appellant that
 as the public became angry due to the conduct of PW-8,
 F they assaulted him and in order to save him, the
 investigating agency chose not to cite any independent
 witness though many witnesses were present who had
 seen the occurrence. There is no denial of the fact that
 the occurrence had taken place in the house of 'C' who
 G has turned hostile. His turning hostile does not affect the
 case of the prosecution. The witnesses from the
 department of police cannot per se be said to be
 untruthful or unreliable. It would depend upon the
 veracity, credibility and unimpeachability of their
 H testimony. There is no absolute command of law that the

police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [Para 10] [322-C-D, F-G; 333-A-B]

1.2. It cannot be said that the whole case should be thrown overboard because of non-examination of independent witness and reliance on the official witnesses. The trial Judge and the High Court, after x-ray of the evidence of the witnesses, have come to the conclusion that appellant was a proclaimed offender; that information was received by the competent authority that he was hiding in the house of 'C'; that a team had gone to apprehend him; that SI PW-9 along with other members of the team waited at a distance of 100 yards and 'M' went to the house of 'C'; that the accused was found on the verandah of the house and was asked to surrender but he immediately took out a knife from his shirt pocket; that before he could inflict a knife blow, he was overpowered by 'M' and there was a grapple between the two; and 'M', receiving a bullet injury, fell down and eventually succumbed to the injuries in the hospital. Appellant has received some injuries, but that would not be a ground for discarding the prosecution version and acceptance of the plea of the defence. The evidence on record is required to be scrutinized and appreciated. The witnesses, namely, PW-6, PW-8, PW-9,

- A PW-11 and PW-16, who have been examined in support of the prosecution, have stood embedded in their version. PW-8 has vividly described the occurrence and the graphic description has not been, in any manner, dented in spite of the roving cross-examination. Despite**
- B searching cross-examination, none of the witnesses has given way to any tergiversation. When their testimony has not been varied from any spectrum, there is no reason to discard them. Thus, the contention that there should have been examination of independent witnesses to**
- C corroborate the evidence of the police officials has to be treated as mercurial. [Para 11] [333-C-H; 334-A-B]**

Kashmiri Lal v. State of Haryana 2013 AIR SCW 3102 – relied on.

- D *State of U.P. v. Anil Singh* 1988 Supp SCC 686: 1988 Suppl. SCR 611; *State, Govt. of NCT of Delhi v. Sunil and another* (2001) 1 SCC 652: 2000 (5) Suppl. SCR 144 and *Ramjee Rai and others v. State of Bihar* (2006) 13 SCC 229: 2006 (5) Suppl. SCR 240 – referred to.**

- E 2.1. On a perusal of the evidence and the FSL report relating to the country-made pistol, Ext. F-1, seized from the accused, it is manifest that the fire arm country-made pistol .303 bore was designed to fire a standard .303 cartridge and that the pistol was in working order. Its test**
- F fire was also successfully conducted and the empty cartridge of .303 bore, Ext. C-1, found in the chamber of the country-made pistol was the empty cartridge fired from the country made pistol. Therefore, to say that no shot was fired from the country-made pistol is belied and**
- G the prosecution version that it was the country-made pistol which was fired by the accused that caused injuries to the deceased deserves acceptance. [Para 12] [334-D-F]**

- H 2.2. From the post-mortem report, it is clear that the bullet injury was from front to back. It is not in dispute that**

the deceased and the accused were grappling. The version of the prosecution in that all of a sudden, the accused brought out his desi katta and fired from a close range. This has been clearly established by the evidence. The submission that while grappling the position changed and the bullet fired from the service revolver of PW-8 hit the deceased, cannot be given any acceptance as the desi katta was seized from the accused and the weapon, as opined in the FSL report, is the desi katta and further there is no material to prove that gun shot was fired from the weapon of PW-8. Thus, it is clear as crystal that the shot was fired from the country-made pistol seized from the custody of the accused-appellant. [Para 13] [334-F-H; 335-A-B]

Case Law Reference:

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|-------------------------|-------------|---------|
| 1988 Suppl. SCR 611 | referred to | Para 10 |
| 2000 (5) Suppl. SCR 144 | referred to | Para 10 |
| 2006 (5) Suppl. SCR 240 | referred to | Para 10 |
| 2013 AIR SCW 3102 | relied on | Para 10 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 562-563 of 2010.

From the Judgment and Order dated 16.03.2007 of the High Court of Delhi at New Delhi in CrI. A. No. 828 of 2003 and CrI. MB No. 1756 of 2005.

Dr. V.P. Appan for the Appellant.

R. Nedumaran, Sadhana Sandhu, D.S. Mahra, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. On 19.3.1999, SI Prahlad Singh along Ct. Baljit Singh went to Village Gittorni where Inspector Mohd. Iqbal, PW-16, had reached along with his staff. After some time, ACP, Delhi Cantt., arrived at the spot. On enquiry,

A they came to know that one constable of P.S. Hauz Khas,
namely, Maharaj Singh, having suffered a gun shot injury, had
been taken to the hospital. The Head Constable Samar Singh
narrated the occurrence to the effect that he along with other
B officials had received information about the presence of
Pramod Kumar, a proclaimed offender of PS Hauz Khas, was
hiding in the house of Chander Pal and about 4.30 p.m., they
reached Village Gittorni and as per the instruction of SI
C Jaswinder Singh, he and Ct. Maharaj Singh went to the place
to obtain information about the presence of Pramod Kumar and
SI Jaswinder Singh waited along with the staff at a distance of
100 meters from the house of Chander Pal. When he and
Maharaj Singh reached near the house of Chander Pal,
D accused Pramod Kumar was standing outside the room.
Maharaj Singh disclosed his identity to him and asked him to
surrender, but, Pramod Kumar, instead of surrendering, took
out a knife from his shirt pocket with his left hand and tried to
assault. However, immediately he was caught hold of by
Maharaj Singh from the rear and both of them grappled with
E each other for some time. The Head Constable, Samar Singh,
tried to snatch the knife from the hands of Pramod Kumar and
ultimately he was successful in snatching away the knife from
his hands but, at that juncture, Pramod Kumar took out a desi
F katta and fired at Maharaj Singh and the bullet hit in the
stomach area. Hearing the sound, the villagers surrounded and
assaulted Pramod Kumar. During that time, SI Jaswinder
Singh came to the spot along with his staff and injured Maharaj
G Singh was taken to the hospital. Desi katta and knife which
were seized from the accused were given to the IO by Samar
Singh. As further revealed, accused Pramod Kumar was
apprehended and five cartridges were recovered and on the
basis of the statement of Samar Singh, an FIR was registered
H under Section 307 of the Indian Penal Code (for short "IPC").
When Maharaj Singh succumbed to his injuries, the case was
converted to one under Section 302 IPC. The bullet that had
hit the stomach of the deceased was kept in a sealed cover
and the same was sent to F.S.L. Malviya Nagar and ultimately,

on completion of the investigation, charge-sheet was filed in the competent court which, in turn, committed the matter to the Court of Session. Be it noted, after hearing the accused, charges under Sections 186/332 and 302 IPC were framed and separate charges under Sections 25 and 27 of the Arms Act, 1959 were also framed against the accused-appellant.

2. The accused pleaded not guilty and claimed to be tried.

3. The prosecution, in order to establish its case; examined 19 witnesses and got number of documents exhibited.

4. The accused, in his statement under Section 313 of the Code of Criminal Procedure, 1973 (herein after CrPC), denied the entire allegations and pleaded that he was absolutely innocent. It was his further plea that one person caught hold of him and pushed him and started assaulting him. At that stage, he got up and grappled with that person who twisted his hand. The other person accompanying the first person gave him a kick and took out some weapon and fired at him, but he saved himself. The bullet hit the person who had caught hold of him and receiving the bullet injury, he fell down and later on, he learnt that he was Maharaj Singh and the person who had fired was Samar Singh. The neighbours, who had collected, started assaulting Samar Singh. Thereafter, many other police officials entered his room and beat him as a result of which his right leg was severely fractured and the plaster remained for eight months. That apart, 23 stitches were put on his head due to the beatings given by the police. He had become unconscious on the spot after receiving injuries. When he regained consciousness, he found himself in Safdarjung Hospital. It was his further plea that to save the police official Samar Singh, the investigating agency had falsely implicated him. He had also taken the plea that they had got his signatures on blank papers at the Police Station. Sanjay, who was brought by the police, had witnessed the entire episode. The police deliberately did

A not cite any one from the public as witness as they gave beating to Samar Singh. Chander Pal was not present at his house on that day as he had gone out with his van. He came to know later on that the house of Maharaj Singh was at a distance of 50 yards from the place of occurrence, i.e., house of Chander Pal.

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5. The defence, in order to substantiate its plea, examined one witness, namely, Sanjay.

C 6. We have heard Dr. V.P. Appan, learned counsel for the appellant and Mr. R. Nedumaran, learned counsel for the respondent.

D 7. Two fundamental points that have been urged before us are that apart from the police officials, no other independent witness has been examined and that the appellant was not responsible for causing injury on the deceased. On the contrary, it was the Head Constable Samar Singh who intended to fire at the accused when the deceased and the accused were grappling, but the bullet hit the deceased. Elaborating the said contention, it is canvassed by the learned counsel that to hide the atrocities of the police, the case has been foisted, but the learned trial Judge as well as the High Court failed to appreciate the same in proper perspective which makes the judgments absolutely faulted.

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F 8. Per contra, the learned counsel for the respondent would contend that the post mortem report and the weapons seized would clearly show that the bullet was not fired from the pistol of Samar Singh but from the desi katta which was seized from the custody of the accused. It is also contended that the plea taken under Section 313 CrPC is fundamentally incredible and it only shows a figment of fertile imagination of the accused as such a situation could never have occurred.

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H 9. To appreciate the aforesaid submissions, it is necessary to reproduce the autopsy report brought on record and proven

by Dr. O.P. Murli, PW-3, which is as follows: -

"One linear crescentic abrasion measuring 3 x 8 cms, 2 x 7 cms. and 1 x 3 cms with bruising in and around.

Gun shot entry wound of 2.5 x 1 cms. Over front of right side abdomen 5 cms. above the umbilicus 1 cm from mid line, 21 cms. from right nipple and 45 cms above right sole. Margines were inverted blackened and surrounding hairs showed singeing, abdominal fat (omentum) protruded with effusion of blood in and around underneath the tissues. Omentum and small intestine were lacerated and showing cavitation consequent upon the fire arm injury with full of abdominal cavity blood bruising was also also seen in other parts of intestine. Fire arm exit wound of 1 x 1.5 cm. over the back side of right side abdomen 6.5 cms. from midline 3 cms. from waist line 20 cms. From right back bone angle margines everted and protruded wound communicating with the entry and all intervention structure were lacerated and injury effect. All organs were pale. Rest was NAD.

Clothing examination : One shirt was having a tear of 2.5 x 2.3 cms. soaked in blood showing fire arm effect and the bullet entry had also fractured one button and half was present. The hole of the shirt was 28 cms. from lower margine on right side. The back part of the shirt shows corresponding to the exit wound of size 1 x 7 cms on the right lower part 18 cms from the margine. The direction of wound was from front to back and slight above to down.

The underneath banian showed tear of 1 x 7 cm on the back front tear was cut in the casualty.

Blood soaked pants and underwear

Opinion :

Death in this case was due to haemorrhage shock as

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A result of gun shot injury which was sufficient to cause death in the ordinary course of nature and was fired from a close range showing powder and heat effect.”

B From the aforesaid report, it is quite clear that the death was due to bullet injury and the direction of the wound was from front to back and slight above to down. We shall dwell upon this aspect when we deal with the said point.

C 10. We shall deal with the first contention first. In the plea advanced under Section 313 CrPC, it has been stated by the accused-appellant that as the public became angry due to the conduct of Samar Singh, they assaulted him and in order to save him, the investigating agency chose not to cite any independent witness though many witnesses were present who had seen the occurrence. There is no denial of the fact that D the occurrence had taken place in the house of Chander Pal who has turned hostile. However, from his testimony and other evidence brought on record, it is evident that the occurrence took place in his house. His turning hostile does not affect the case of the prosecution. The witnesses from the department E of police cannot per se be said to be untruthful or unreliable. It would depend upon the veracity, credibility and unimpeachability of their testimony. This Court, after referring to *State of U.P. v. Anil Singh*¹, *State, Govt. of NCT of Delhi v. Sunil and Another*² and *Ramjee Rai and Others v. State of Bihar*³, has laid down recently in *Kashmiri Lal v. State of Haryana*⁴ that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become G witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the

1. 1988 SUPP. SCC 686.

2. (2001) 1 SCC 652.

3. (2006) 13 SCC 229.

H 4. 2013 AIR SCW 3102.

same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

11. Thus, the submission that the whole case should be thrown overboard because of non-examination of independent witness and reliance on the official witnesses cannot be accepted. Presently, we shall proceed to deal with the veracity and acceptability of the testimony of the witnesses. The learned trial Judge and the High Court, after x-ray of the evidence of the witnesses, have come to the conclusion that Pramod Kumar was a proclaimed offender; that information was received by the competent authority that he was hiding in the house of Chander Pal; that a team had gone to apprehend him; that SI Jaswinder Singh along with other members of the team waited at a distance of 100 yards and Maharaj Singh went to the house of Chander Pal; that the accused was found on the verandah of the house and was asked to surrender but he immediately took out a knife from his shirt pocket; that before he could inflict a knife blow, he was overpowered by Maharaj Singh and there was a grapple between the two; and Maharaj Singh, receiving a bullet injury, fell down and eventually succumbed to the injuries in the hospital. It is not in dispute that Pramod Kumar has received some injuries, but that would not be a ground for discarding the prosecution version and acceptance of the plea of the defence. The evidence on record is required to be scrutinized and appreciated. The witnesses, namely, Baljit Singh, PW-6, Samar Singh, PW-8, Jaswinder Singh, PW-9, Rajbir Singh, PW-11 and Md. Iqbal, PW-16, who have been examined in support of the prosecution, have stood embedded in their version. The witness, Samar Singh, PW-8, has vividly described the occurrence and the graphic description has not been, in any manner, dented in spite of the

A roving cross-examination. It is apt to note that despite
searching cross-examination, none of the witnesses has given
way to any tergiversation. When their testimony has not been
varied from any spectrum, there is no reason to discard them.
Thus, the contention that there should have been examination
B of independent witnesses to corroborate the evidence of the
police officials has to be treated as mercurial. Therefore, we
unhesitatingly repel the said submission.

12. The next limb of argument pertains to the nature of
C weapon that has caused the injury on the deceased and the
circumstances and the position in which the injury was caused.
The first plank of this argument of the learned counsel for the
appellant is that the deceased has been fired at by Samar
Singh from his service revolver. On a perusal of the evidence
D and the FSL report relating to the country-made pistol, Ext. F-
1, seized from the accused, it is manifest that the fire arm
country-made pistol .303 bore was designed to fire a standard
.303 cartridge and that the pistol was in working order. Its test
fire was also successfully conducted and the empty cartridge
E of .303 bore, Ext. C-1, found in the chamber of the country-made
pistol was the empty cartridge fired from the country made pistol.
Therefore, to say that no shot was fired from the country-made
pistol is belied and the prosecution version that it was the
country-made pistol which was fired by the accused that caused
injuries to the deceased deserves acceptance.

F 13. The second plank of this limb of proponement is that
the accused-appellant could not have fired at the stomach
region of the deceased. From the post-mortem report, it is clear
that the bullet injury was from front to back. It is not in dispute
G that the deceased and the accused were grappling. The
version of the prosecution in that all of a sudden, the accused
brought out his desi katta and fired from a close range. This
has been clearly established by the evidence. Learned counsel
would submit that while grappling the position changed and the
bullet fired from the service revolver of Samar Singh hit the
H

deceased. In our considered opinion, such a submission cannot be given any acceptance as the desi katta was seized from the accused and the weapon, as opined in the FSL report, is the desi katta and further there is no material to prove that gun shot was fired from the weapon of Samar Singh. Thus, from the aforesaid, it is clear as crystal that the shot was fired from the country-made pistol seized from the custody of the accused-appellant. Hence, the plea that there was a gun shot from the revolver of Samar Singh while the accused-appellant was grappling with the deceased being absolutely mercurial in nature is rejected.

14. In view of the aforesaid premised reasons, the appeals, being sans substance, stand dismissed.

B.B.B.

Appeals dismissed.