

A STATE (GOVERNMENT OF NCT OF DELHI)

v.

NITIN GUNWANT SHAH

Criminal Appeal No. 951 OF 2007

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SEPTEMBER 16, 2015

[PINAKI CHANDRA GHOSE AND R. K. AGRAWAL, JJ.]

Penal Code, 1860: ss. 302/34 and s. 120-B – Conviction by trial court set aside by High Court – State’s appeal against acquittal – Prosecution case was that the victim-deceased was employee of accused-NS and that there was some dispute between them over money – Accused-NS hired the accused-OP to eliminate the deceased – Deceased was shot dead – Trial court convicted both the accused u/s. 302 r/w s. 120-B on the basis of prosecution story revolving around the complaint which was filed by the victim-deceased complaining about the life threat received by him by the accused – High Court reversed the finding of the trial court on the ground that prosecution failed to prove the handwriting of the deceased in the said complaint and that the wife of the deceased also denied the signature on the same as that of her deceased-husband – Held: Prosecution failed to prove that the complaint was lodged by the deceased – Wife of the deceased denied the signature on the said complaint as that of her husband – Seizure of the complaint by the investigating officer was highly doubtful as courts below had concurrent finding as to tampering in the police records – There was no evidence to prove threat to the deceased by the accused persons – Prosecution merely proved that all the accused were present in Delhi on the date of occurrence, and that the alleged motor-bike and the car used in incident belonged to accused-OP – High Court rightly dismissed this argument, as the involvement of the said vehicles in commission of the

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crime were never proved – Neither any prior meeting of mind of the accused was proved, nor any action, individually or in concert, was proved against any of the accused – No interference with the order of acquittal.

Dismissing the appeals, the Court

HELD: 1. The High Court pointed out various discrepancies in the said complaint. Neither any expert evidence was examined nor any acquaintance was called to establish that the complaint was written by deceased. PW1, wife of deceased also denied the signature on the said complaint as that of her deceased husband. The handwriting also could not be proved as PW1 deposed that she never saw her husband writing. The prosecution also failed to prove the signature by forensic evidence. Apart from that, the said complaint was shown as Entry No.605/2 in Register No.12 dated 23.7.1992. On examination, the High Court rightly pointed out that there was overwriting which was visible to the naked eye and apparently the original entry was changed in insert the complaint. This entry was also commented by the trial court as being manipulated and fabricated. The High Court pointed out one another fact discrediting the prosecution story, whereby the prosecution alleged that the Investigating Officer (PW20) was provided with a photocopy of the complaint by PW15. However, in reality there was no such copy in existence in the Police File. The assertion that the said complaint was handed over to the Police Station remained uncorroborated due to lack of contemporaneous Police record. There existed no receipt of the said complaint. Hence the seizure by PW20 was highly doubtful as the trial court and so did the High Court had concurrent finding as to tampering with Register No.12. The prosecution story suffered

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A another grave lacunae and that is it outrightly failed to
 prove the surrounding circumstances. To establish the
 threat of being killed, no corroborative evidence was
 produced nor any statement of account was placed on
 record to prove any outstanding amount to be paid by
 B deceased to respondent NS. On the contrary, the
 deposition of PW1 wife of deceased is important, who
 stated that she had never heard of any business
 relationship between her husband and respondent NS,
 nor she was aware of any hostility between the
 C two.[Paras 9 to 11] [54-F-H; 55-A-G]

2. The Court for the purpose of arriving at a finding
 as to whether the said offence was committed or not may
 take into consideration the circumstantial evidence.
 D However, while doing so, it must be borne in mind that
 meeting of mind is essential; mere knowledge or
 discussion would not be sufficient. Yet, the prosecution
 has failed to prove the evidence which establishes any
 prior meeting of mind of the accused. The prosecution
 E merely proved that all the accused were present in Delhi
 on the date of occurrence, and that the alleged motor-
 bike and the car used in incident belonged to respondent
 No.2. Neither any prior meeting of mind of the accused
 F was proved, nor any action, individually or in concert,
 was proved against any of the accused. [Para 16] [59-D-
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Atbir v. Government of NCT of Delhi (2010) 9 SCC
 1: 2010 (9) SCR 993 – relied on.

Case Law Reference

2010 (9) SCR 993

relied on.

Para 15

CRIMINAL APPELLATE JURISDICTION : Criminal
 H Appeal No. 951 of 2007

STATE (GOVERNMENT OF NCT OF DELHI) v. NITIN
GUNWANT SHAH

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From the Judgment and Order dated 22.02.2007 of the
High Court of Delhi at New Delhi in Criminal Appeal No. 519
of 2006.

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WITH

Crl. A. No. 952 of 2007

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R. S. Suri, Nikhil Nayyar, T.V.S.R. Sreyas, Pallavi Loyal
for the Appellant.

Harish N. Salve, Shekhar Naphade, Satish Mane Shinde,
Arunabh Chowdhury, Ankur Chawla, Amanpreet Singh Rathi,
Vaibhav Tomar, prashant Kumar, Karan Lahiri, Sahil Garg, D.B.
Goswami, Dr. Sanjay Gupta, Dr. Sushil Balwada for the
Respondent.

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The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. These appeals, by
special leave, have been directed against the judgment and
order dated February 22, 2007 passed by the High Court of
Delhi at New Delhi in Criminal Appeal Nos. 519/2006 and
527/2006, whereby the High Court allowed the criminal
appeals filed by the respondents herein and acquitted both of
them.

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2. The facts giving rise to these appeals, briefly stated,
are that in the morning of August 2, 1992, when one Lalit Suneja
was returning to his house after offering prayers to God, he
was shot dead by two unknown persons near to his house. A
neighbour, namely Nerendra Pal Naresh, who happened to
pass through that street, set the law into motion by informing
the police. FIR No.258/1992 was registered by the said
Nerendra Pal Naresh at P.S. Shakarpur, East Delhi, about
the incident. During investigation, the Investigating Officer came
across a complaint Ext. PW15/A1 lodged in the name of Lalit

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A Suneja at P.S. Nizamuddin, New Delhi. Investigation was thrown into the case and the following story was disclosed by the prosecution:

3. Accused Nitin Shah was carrying on his business through a proprietary concern M/s. Simnit Enterprises and he had employed Lalit Suneja (deceased) as its distributor in the Northern Region. Both the employer and the employee were at loggerhead for sometime on account of some payment. When the matter could not be settled, accused Nitin Shah requested his friend Om Prakash Srivastava @ Babloo to eliminate Lalit Suneja and assured him to provide cash likely to be spent in doing the act. Accused Om Prakash Srivastava intrigued with co-accused persons to bring the design to fruition and accordingly accused Manish Dixit was hired to execute the task for Rs.1,00,000/-. On 2nd August, 1992, accused Virender Pant @ Chhoto (since deceased) took accused Manish Dixit on a motor-bike Yamaha bearing No.DL-1SD-4680, to the spot. Accused Manish Dixit shot dead Lalit Suneja and fled away from the spot on the same motor-bike described above being driven by accused Virender Pant and reached to co-accused Manjeet Singh who was waiting for them in a car bearing No.DL-1CB-7874, at Yamuna Pusta near Bank Enclave. They exchanged their vehicles and rushed to accused Om Prakash Srivastava and returned him the motor bike and pistol used in the crime. Accused Om Prakash Srivastava paid Rs.50,000/- to each of the accused Virender Pant and Manjeet Singh for driving aforesaid motor-bike and car, in order to facilitate accused Manish Dixit in killing the deceased.

4. Police filed challan against accused Manish Dixit and Manjeet Singh on 27th October, 1992. The names of accused Virender Pant, Om Prakash Srivastava and Nitin Shah found place in column No.2. Separate charge-sheets were filed against accused Nitin Shah, Virender Pant and Om Prakash

Srivastava on 23.1.1993, 15.03.1995 and 03.01.1996, respectively. A

5. After considering the material on record and hearing the counsel for the accused persons, the Trial Court by its order dated 6th January, 2003 framed charges against Om Prakash Srivastava, Nitin Shah and Manjeet Singh for offences punishable under Sections 302/34 and 120B of the Indian Penal Code, 1860 ("IPC" for short). The charges were read over and explained to the accused persons, they pleaded not guilty and claimed trial. Accused Virender Pant and Manish Dixit were reported to have died during trial. B C

6. The Trial Court by its judgment and order dated 3rd July, 2006 convicted the respondents Nitin Shah and Om Prakash Srivastava @ Babloo, for the offence punishable under Section 302 IPC read with Section 120B IPC and sentenced them to undergo rigorous imprisonment for life and a fine of Rs.20,000/- each, and in default of payment of fine, further imprisonment for six months was awarded. However, Manjeet Singh was acquitted by the Trial Court. Being aggrieved by the aforesaid judgment and order of the Trial Court, the accused respondents filed two separate appeals before the High Court of Delhi, being Criminal Appeal Nos.519 of 2006 and 527 of 2006. The High Court by the impugned judgment and order allowed these appeals on the ground that there was nothing on the record to show that any of the two respondents had anything to do with the murder of Lalit Suneja and, consequently, both the respondents were set at liberty. D E F

7. The Appellant - State has challenged before us the judgment of acquittal passed by the High Court of Delhi. Learned Counsel for the appellant has inter alia raised the following ground in these appeals. Whether a complaint disclosing that the complainant was threatened to be killed in case the matter was not settled and thus demanding action G H

A and security, is not a clear manifestation of criminal
conspiracy? Learned counsel appearing for the appellant has
time and again based his contention in and around the alleged
complaint Ext.PW15/A1. Also, since the whole case deals with
the alleged hatched up conspiracy to eliminate Lalit Suneja,
B any alleged complaint by Lalit Suneja is of prime importance.

8. The Trial Court convicted the accused respondents
on the basis of the prosecution story revolving around the
aforesaid complaint Ext.PW15/A1. The High Court also dealt
C with the issue and held that the Trial Court itself raised question
on the tampering of the said complaint as is apparent from the
overwriting done in numbering the said complaint in the Police
records, yet the Trial Court went on to rely on the said complaint.
The High Court has examined at length the said complaint and
D reversed the finding of the Trial Court.

9. We shall at the very onset examine the said contention.
The Complaint Ext.PW15/A1 is alleged to have been filed by
the deceased Lalit Suneja in his own handwriting in Hindi and
E signed in English, addressed to the SHO, Police Station
Nizamuddin, New Delhi. According to the prosecution, the said
complaint forms the basis of the case, whereby the entire
events are the apprehensions made out in the said complaint,
turned out to be true. The High Court pointed out various
F discrepancies in the said complaint which are worth
considering. As has been held by the High Court, the
prosecution outrightly failed to prove the handwriting of the said
complaint. Neither any expert evidence was examined nor any
acquaintance was called to establish that the complaint was
G written by deceased Lalit Suneja. In this light, the deposition
of Veena (PW1) wife of deceased Lalit Suneja, is also
perused. She denied the signature on the said complaint as
that of her deceased husband. The handwriting also could not
be proved as PW1 deposed that she never saw her husband
H writing. The prosecution also failed to prove the signature by

forensic evidence. Apart from the above, the said complaint is shown as Entry No.605/2 in Register No.12 dated 23.7.1992. On examination, the High Court rightly pointed out that there is overwriting which is visible to the naked eye and apparently the original Entry 605 was changed to Entry 604A to insert the document Ext. PW15/A1 in Register No.12. This entry has also been commented by the Trial Court as being manipulated and fabricated.

10. The High Court pointed out one another fact discrediting the prosecution story, whereby the prosecution alleged that the Investigating Officer (PW20) was provided with a photocopy of Ext.PW15/A1 by PW15. However, in reality there was no such copy in existence in the Police File. The assertion that the said complaint was handed over to the Police Station on 23.7.1992 remains uncorroborated due to lack of contemporaneous Police record. There exists no receipt of the said complaint on 23.7.1992 or on 2.8.1992. Hence the seizure by PW20 on 4.7.1992 is highly doubtful as the Trial Court and so did the High Court had concurrent finding as to tampering with Register No.12.

11. The prosecution story suffers another grave lacunae and that is it outrightly failed to prove the surrounding circumstances. To establish the threat of being killed, no corroborative evidence was produced nor any statement of account was placed on record to prove any outstanding amount to be paid by deceased Lalit Suneja to respondent Nitin Shah. On the contrary, the deposition of Veena (PW1) wife of deceased Lalit Suneja is important, who stated that she had never heard of any business relationship between her husband and respondent Nitin Shah, nor she was aware of any hostility between the two.

12. The learned counsel for the appellant placed reliance on the testimony of the Police Officer Hanuman Dan (PW15)

A who alleged that the complaint Ext.PW15/A1 was endorsed by the SHO Nizammudin to inquire into the matter. PW15 also alleged to have accompanied the deceased to a meeting at Jukasso Inn at 8.00 P.M. on 23.7.1992 and had also deputed two Constables Bir Singh and Joginder. However, on
B perusal of the *Roznamcha* Register on 23.7.1992, no departure entry of PW15 is made. Instead, a departure entry at 1.30 P.M. and return of 10.00 P.M. is entered. Thus, doubt is cast on the event whether any complaint as Ext.PW15/A1 could have been handed over to PW15 since on that day i.e.
C 23.7.1992, he was not in the Police Station between 1.30 P.M. and 10.00 P.M.

13. Another view which excludes the prosecution story is the testimony of Veena (PW1) wife of deceased Lalit Suneja.
D She not only deposed that the signature on the complaint Ext. PW15/A1 was not of the deceased, but she further deposed that there never existed any enmity between Nitin Shah and her husband, or that any complaint apprehending threat was filed by her husband. PW1 further deposed that her husband
E was having his business but the employer-employee relationship never existed between her deceased husband and Nitin Shah.

14. The Trial Court relied on the two applications filed by
F accused Nitin Shah, one under Section 340 read with Section 195 of Cr.P.C., and the other under Section 317(2) of Cr.P.C., in reaching its judgment. The High Court rightly rejected the aforesaid two applications on the ground that the same were not proved by the prosecution. The prosecution was already
G suffering a weak case, over and above the non-proving of Ext. PW15/A1. The prosecution failed to prove other corroborative circumstances which included non-recovery of the weapon used in the offence and the alleged involvement of the car and motor-bike. The prosecution could not have shored its boat by merely
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proving that the accused were present in Delhi when the offence occurred. The vital links in the prosecution story being already missing, the prosecution could not prove a chain of events leading to a sole conclusion that the accused were guilty beyond reasonable doubt. A

15. The learned counsel for the appellant has pleaded various questions of law which are already settled by this Court. However, in the present case, the prosecution failed to make its base. Therefore, we find no point in dealing with those issues. B
The prosecution should first and foremost establish the complaint to be made by the deceased Lalit Suneja himself. C
In light of this argument, Section 32(1) of the Indian Evidence Act, 1872 is reproduced below:

“Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. — D
Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves E
relevant facts in the following cases:—

(1) when it relates to cause of death.— When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question. Such statements are relevant whether the person who made G
them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.” F

A On bare perusal of Section 32(1) of the Evidence Act, it is clear that the statement as to death must be made by the person himself and if any discrepancy arises, the same cannot be relied upon. This Court in *Atbir v. Government of NCT of Delhi*¹ has summarized the principles laid down earlier, as
B under:

“(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

C (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

D (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

E (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

F (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

G (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

H ¹ (2010) 9 SCC 1

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail. A

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration." B

This Court has in a catena of judgments laid down the parameters to gauge the veracity of a dying declaration and in the present case, the complaint Ext. PW15/A1 thus fails to adhere to these guidelines. C

16. The prosecution relies upon the existence of criminal conspiracy, which resulted into the death of Lalit Suneja. This Court has time and again laid down the ingredients to be made out by the prosecution to prove criminal conspiracy. It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The Court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. However, while doing so, it must be borne in mind that meeting of mind is essential; mere knowledge or discussion would not be sufficient. Yet, the prosecution has failed to prove the evidence which establishes any prior meeting of mind of the accused. F
The prosecution merely proved that all the accused were present in Delhi on the date of occurrence, and that the alleged motor-bike and the car used in incident belonged to respondent No.2, Om Prakash Srivastava @ Babloo. The High Court G
rightly dismissed this argument, as the involvement of the said vehicles in commission of the crime were never proved. Neither any prior meeting of mind of the accused was proved, nor any action, individually or in concert, was proved against any of H

A the accused. Needless to say that the entire foundation of the prosecution story was never established.

17. Thus, in the light of the above discussion, we are of the view that the present appeals are devoid of merits, and we
B find no grounds to interfere with the judgment delivered by the High Court. The appeals are, accordingly, dismissed.

Devika Gujral

Appeals dismissed.