

Amit Alias Pandya Vs. State

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Court : Delhi

Decided On : Dec-23-2014

Judge : S. Muralidhar

Appellant : Amit Alias Pandya

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 1259 of 2014 Reserved on:

19. h December 2014 Decision on:

23. d December 2014 AMIT alias PANDYAAppellant Through: Mr. Vivek Aggarwal, Advocate. versus STATE Respondent Through: Ms. Isha Khanna, APP with S.I. Mukesh Kumar, P.S. Civil Lines. CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

2312.2014 1. This appeal is directed against the impugned judgment dated 25th July, 2014 passed by the learned Additional Sessions Judge in S.C. No.136/11 convicting the Appellant for the offences under Section 307 IPC and Section 27 of the Arms Act, 1959 (Arms Act) and the order on sentence dated 31st July 2014, sentencing him to undergo 5 years rigorous imprisonment (RI) and fine of Rs.10,000/- and in default to undergo six months simple imprisonment (SI) for the

offence under Section 27 of the Arms Act and 7 years RI and fine of Rs. 30,000/- and in default to undergo SI for six months for the offence under Section 307 IPC. Both the sentences were directed to run concurrently.

2. Virender Singh @ Binder (PW-2) had received some injuries in an incident at Sonapat and was undergoing treatment at the Sushrut Trauma Centre in Delhi. On 14th November 2010 at around 6:30 pm, his brother Ajeet (PW-1) had gone to fetch milk for PW-2. At that time PW-2 was lying on the bed. In his statement before the police on 17th November 2010 (Marked X), PW-2 stated that the Appellant had entered the room and enquired about his name to which PW-2 replied that his name is Binder. The Appellant then enquired about Ajeet (PW-1). This raised the suspicion of PW-2. He signaled towards the exit gate to indicate that Ajeet had gone out. As Amit moved towards the exit gate, PW-2 ran away from the ward. Amit chased PW-2 and fired upon him from the pistol which he was holding. Fortunately for PW-2 the said pistol did not fire. Amit then threw away the said pistol and continued chasing PW-2. Thereafter PW-2 entered a bathroom which was at the end of a corridor. There the Appellant fired four gun shots. As PW-2 entered the bathroom, the Appellant forcedly opened the door and fired two more shots. In the meanwhile PW-1 reached there and both he and PW-2 caught hold of the Appellant. PW-1 snatched the pistol from the hands of the Appellant.

3. In the meanwhile Inspector Rakesh Kumar (PW-5), who was posted at Police Station (PS) Civil Lines received information regarding the entry of a person with arms and ammunition into the Trauma Centre. When he entered the Trauma Centre at around 6:45 pm, PW-5 heard the noise of firing. He went to the bathroom, where the firing was taking place, and saw a person lying on the floor and two others in a scuffle, one of whom was with a pistol whom he later identified as the Appellant. PW-5 challenged the Appellant with his service revolver. The Appellant then surrendered. PW-5 snatched the pistol from the Appellants hands. The magazine of the pistol was lying on the floor.

4. In the meanwhile, Sub-Inspector (SI) Bhoopendra Kumar (PW-21) Investigating Officer (IO) also posted at PS Civil Lines reached the spot along with Inspector Veena Sharma. PW-5 handed over the custody of the Appellant to PW-21. Both

PWs 5 and 21 have stated that in the gallery on the first floor they found a loaded pistol with six live cartridges. These were seized. Blood stains were found in the bathroom and at different places in the area from the bathroom to the gallery. The injured PW-2 was removed to the casualty ward of the hospital. SI Dheeraj (PW7), in-charge of the mobile crime team, reached there with the photographer Constable Inder Pal (PW-8). Photographs of the scene of crime were taken (Ex. PW-8/A-1 to A-16). PW-21 then prepared a sketch of the pistol recovered from the Appellant, and all the magazines, three live cartridges and three empty cartridges recovered from the spot. These were converted into three separate parcels and affixed with the seal BKS and seized under seizure memos (Ex.PW1/G, H & J respectively). A similar exercise was performed as regards the other pistol which was recovered from the first floor at the instance of the Appellant including its six live cartridges. Three live cartridges were also recovered from the pocket of the pant of the Appellant.

5. Dr. Anshuman Kumar (PW-17) was posted as Chief Medical Officer at the Sushrut Trauma Centre. On 14th November 2010 at around 7 pm he examined PW-2. He stated that PW-2 had already been admitted in the department of surgery of that hospital under the unit of Dr. Viresh and while he was under treatment PW-2 was assaulted with fire arms inside the hospitals bathroom on the ground floor. PW-2 was brought to the casualty at around 7 pm. On examining PW-2, the following injuries were found on him by PW-17 and noted in the MLC (Ex.PW-17/A):

1. Bullet entry wound 4 cm lateral to spine on the right side back.

2. Entry wound 5 cm above wrist joint ulnar aspect.

3. Entry wound 10 cm above ankle joint right leg outer side.

4. Tattoo mark was observed over right little finger.

6. PW-17 referred PW-2 to surgery and orthopedic department for further treatment and management. Dr. Deepak Kumar (PW-6) heard the noise of firing at around 6.45 p.m. on 14th November 2010 at the Sushrut Trauma Centre. When

he reached the bathroom on the ground floor, PW6 came to know that one person had fired gun shots upon another. He then called the police.

7. The Appellant was arrested from the spot. In the course of investigation it transpired that FIR No.369/2010 had been registered at PS Gannaur, Sonapat District under Section 307/34 IPC and 25/54 of the Arms Act in which charges had been framed against the accused persons and trial was under progress. As a result of the said incident on 29 th October, 2010 SI Pradeep Rathi (PW-15) posted at PS Civil Lines had recorded D.D. No.35A regarding PW-2, who was injured by fire arms in the said incident, being admitted to the Sushrut Trauma Centre. This information was communicated to the SHO, PS Gannaur on his mobile number by PW-15.

8. Meanwhile on 17th November 2010, PW-21, the IO, received information from the Sushrut Trauma Centre that PW-2 had been operated upon and two bullets had been removed from his body. When he reached the hospital, Constable Adesh handed over to PW-21 some of the case property. PW-21 recorded the statement of PW-2 (Ex.PW21/B). The bullets taken out from PW-2s body during further operation were handed over to PW-21 on 3rd January, 2011. Pursuant to the arrest and disclosures made by A-2, PW-21 collected the documents pertaining to the case arising out of FIR No.369/2010 registered at PS Gannaur. The ballistic reports dated 25th October, 2011 (Ex.PW-21/D) and 11th January 2011 (Ex. PW21E) were received. The serological report (Ex.PW-21/F) was also received.

9. Later, upon completion of investigations, he and co-accused Sonu @ Sunil (A-2) were sent up for trial. While the Appellant was charged for the offences under Section 307 IPC, Section 27 of the Arms Act and Section 120 B read with 307 IPC, A-2 was charged for the offence under Section 307 read with 120B IPC. 10 The prosecution examined 21 witnesses. When the evidence was put to the Appellant under Section 313 Cr PC he denied it entirely. He even denied that any revolver was recovered from him. When asked, whether he had anything to say in this regard, he stated as under:

I am innocent and I have been falsely implicated in the present case. I had gone to meet Binder in Trauma Centre for knowing his well being as I knew him for the last 3-4 years before the date of incident. However, when I reached there, crowd was gathered and incident had already been happened. However, police had implicated me in this case.

11. Thus the Appellant sought to explain his presence at the spot claiming that he went to meet PW-2 as he knew him for the last 3-4 years prior to the date of the incident. Importantly, he claimed to have reached at a time when "the incident had already happened."

12. During the trial both the injured PW-2 and his brother Ajeet (PW-1) turned hostile. PW-2 claimed that the Appellant was not present at the time of the firing. He said that the Appellant was the person who took care after shot fired upon me by someone.

PW-2 completely resiled from his previous statement (Marked X) to the police. He denied that with a view to honouring the amicable settlement reached between the complainant and accused parties in the case arising out of FIR No.369/2010 at PS Gannaur and the present case, he was making a false statement.

13. As far as PW-1 is concerned, he stated that when he returned to the Trauma Centre on 14th November 2010 after purchasing milk, he noticed that Appellant was caring for PW-2. PW-2 stated:

I caught hold Amit in my arms from behind.

PW-1 claimed that on the next day when PW-2 regained consciousness he informed PW-1 that Amit had visited hospital to meet him and he was helping him after the incident.

PW-2 further stated that the person who had fired at him ran away from there after the incident.

PW-1 also completely resiled from his previous statement to the police.

14. In the above scenario, the trial court acquitted the co-accused A-2 for the offence under Section 307 read with 120B IPC and convicted the Appellant for the offences under Sections 307/120 B IPC and Section 27 of the Arms Act.

15. In the impugned judgment the trial court came to the following conclusions: (i) The prosecution had proved that the gun shot injuries suffered by PW-2 were murderous in nature and had been inflicted with a view to eliminate injured Binder. (ii) PW-1 had not denied that he apprehended from behind the Appellant who was having a pistol in his right hand. (iii) The accused were charge-sheeted in the incident for which FIR No.369/2010 at PS Gannaur was registered. In that background, if the testimonies of PW-5 and 21 were read together with the above admission of PW-1 about catching hold of the Appellant from behind, then it stood established that it was the Appellant who had fired upon PW-2 in order to kill him. (iv) There was no bar to relying upon the testimonies of PWs 1 and 2, even though they had turned hostile. To the extent that PW-1 confirmed that the Appellant had been apprehended with the pistol and PWs 5 and 21 deposed about the recovery of the pistol and magazines, the evidence of PW-1 could be relied upon. (v) The Appellant was not related to PW-2 in any manner. It was unlikely that he would come to meet PW-2 at a hospital in Delhi. (vi) The prosecution had proved the sanction order under Section 39 of the Arms Act (Ex.PW-21/G) and this was not challenged by the defence.

16. The trial Court accordingly convicted the Appellant for the offences under Section 307 IPC and Section 27 of the Arms Act. However, it found that there was nothing against A-2 to the effect that he had supplied a gun and live cartridges to the Appellant for killing PW-2. Therefore, A-2 was acquitted of the offence under Section 307 read with Section 120B IPC.

17. This Court has heard the submissions of Mr. Vivek Aggarwal, learned counsel for the Appellant and Ms. Isha Khanna, learned APP for the State.

18. Mr. Aggarwal submitted that the conclusion drawn by the trial court that the Appellant was charge-sheeted in FIR No.369/10, PS Gannaur was erroneous. Consequently, by an order dated 14th November 2014, this Court directed the production of a certified copy of the charge sheet filed in the said case arising out

of the FIR No.369/10 of PS Gannaur. The final report form filed in the said case was produced by the learned APP on the next date, i.e. 21st November 2014. The said FIR was registered on the statement of one Mr. Jagat Singh. The three accused named in the chargesheet were Sunil @Sheela @ Mogli, s/o Dalbir Singh, Sunil @ Seena, s/o Ramesh Chander and Sunil @ Sonu, son of Dalbir Singh, who incidentally was A-2 in the present case. The chargesheet was to the effect that the said three accused conspired to murder Binder (PW-2) on 29th October 2010 at around 7 pm. The said charge-sheet was filed on 8th December 2011. By that time the incident of firing for which the present FIR was registered had occurred on 14th November 2010. A perusal of the said charge sheet reveals that during the course of investigation of FIR3609of 2010 of PS Gannaur it transpired that after realizing that PW-2 survived the attack on him on 29th October 2010, A-2 had conspired with the Appellant and had given him the pistol to eliminate PW-2 at the Trauma Centre in Delhi. This provided the crucial link between the Appellant and the accused in FIR369of 2010 at PS Gannaur. Therefore, although it may not be correct to state that the Appellant was charge-sheeted in the above FIR, A-2 certainly was. Secondly, there is indeed a link between the events for which FIR No.369/10 was registered at PS Gannaur and the present incident of firing upon PW-2 on 14th November 2010.

19. As already noted, during the trial, both the injured PW-2 and his brother PW-1 failed to support the case of the prosecution. The question that then arises is to what extent the evidence of the hostile witnesses can be relied upon and whether the Appellant could be convicted for the aforementioned offences on the basis of the other prosecution evidence.

20. The trial court is right in its conclusion as far as PW-1 is concerned. Even in his examination-in-chief he stated that he caught hold of the Appellant from behind and that thereafter the police came there and arrested the Appellant from the spot. This belied the Appellant's version that he reached the Trauma Centre after the incident was over. In his previous statement to the police (Ex.PW-1/P) PW-1 stated that Rajpal, s/o Karan Singh had enmity with both PW-1 and 2. He was murdered as a result of which the police lodged a complaint against PW-2 in Sector14 Sonapat. He admitted that PW-2 had been arrested for the murder of

Rajpal. He also stated that the associates of the said Karan Singh had attacked PW-2 on 29th October 2010 as a result of which PW-2 was admitted to the Trauma Centre in Delhi. In his cross-examination by the APP he made the following statements:

I did not state to the police official that when I reached in the hospital and saw that Amit @ Pandya was running behind my brother and he was having a pistol in his hand and he fired near bathroom on ground floor from his pistol and my brother entered in to bath room but Amit had opened the gate of bath room and again fired on my brother with pistol. I immediately reached there and I caught hold the accused Amit behind and I caught hold his pistol, in the mean time police officer i.e. Inspector reached there and the said Inspector took out his pistol and warned Amit Pandya, after hearing the warning of the Inspector Amit Pandya ups his arms. In the mean time other persons reached there and Amit Pandya was apprehended. (confronted portion D to D of complaint Ex.PW1/P where it is so recorded.)

21. It is not that the evidence of PW-1 requires to be rejected completely because he turned hostile during trial. To the extent that he stated that he caught hold of the Appellant from behind and also caught hold of his pistol, not only is the presence of the Appellant with the pistol proved but also the fact that the Appellant was holding the pistol when he was caught from behind by PW-1.

22. The fact that the injured eye witness PW-2 turned hostile cannot prevent the Court from examining the other reliable evidence. As rightly noted by the trial Court, the evidence of PW-5 and PW-21 is cogent and consistent and inspires confidence. PW-5 reached the spot, and got the Appellant to surrender there itself along with his pistol. No serious discrepancies have been elicited in their respective cross-examination by counsel for the accused.

23. The forensic evidence also completely supports the case of the prosecution. The FSL report proves that the pistol carried by the Appellant, which was thrown by him on the first floor after it failed to fire, was in fact unable to be even test-fired. As far as the other pistol recovered from his person was concerned, the ballistics report showed that rounds recovered from the spot, were fired from it. The blood

on the clothes of the Appellant matched the blood group of PW-2. The above evidence established conclusively the involvement of the Appellant. The story put forth by the Appellant about his paying a friendly visit to PW-2 at the Trauma Centre to enquire about his well-being appears wholly unbelievable in the background of the previous incident for which FIR No.369/10 was registered at PS Gannaur. The medical evidence has clearly established that the gun shot injuries suffered by PW-2 were dangerous to his life.

24. Mr. Aggarwal placed reliance on the decisions in Prakash Chandra Yadav v. State of Bihar (2007) 13 SCC134 Lachman Singh v. State of Haryana AIR 2006 SC2763 Hari Mohan Mandal v. State of Jharkhand AIR 2004 SC3687 State of UP v. Preetam (2011) 11 SCC286 Jagdish Murav v. State of U.P. (2006) 12 SCC626 and Vipin Jaiswal v. State of A.P. AIR 2013 SC1567 to urge that the conviction of an accused under Section 307 IPC should be ordered only when there is evidence to prove his guilt beyond reasonable doubt. The above decisions explained the settled legal position regarding the charges against the accused having to be proved beyond reasonable doubt for sustaining a conviction under Section 307 IPC. There must be intent accompanied with an overt act in execution of such intent. It is not essential that a bodily injury capable of causing death should be inflicted. Although the nature of injury actually caused can provide considerable assistance to unearth the intention of the accused, the court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section.

25. In the present case both the intention to commit the murder of PW-2 and the actual act of causing a dangerous gunshot injury by firing, have been proved against the Appellant by the prosecution beyond reasonable doubt. While the settled position of law as explained in the aforesaid decisions cannot possibly be disputed, none of the said decisions are helpful to the Appellant as far as the facts of the present case are concerned. The evidence brought on record by the prosecution unerringly points to the guilt of the Appellant.

26. Mr. Aggarwal relied upon the decisions in Nisar Ahmed v. State of Bihar AIR 2001 SC2416 Bahal Singh v. State of Haryana AIR 1976 SC2032 Vidya Sagar v.

State of U.P. AIR 1977 SC1116 Prem Singh v. State of Punjab AIR 1997 SC221 and Atmaram v. State of Maharashtra (decision dated 8th February 2013 of the Supreme Court in CrI. Appeal No.985 of 2004) to urge that if there is any doubt as regards the guilt of the accused, the benefit of doubt thereof should accrue on him. Here again the court would like to observe that while the law explained in the above decisions is well settled, on the facts of the present case, they are of no assistance to the Appellant.

27. The Court is, therefore, unable to find any error having been committed by the trial court in holding the Appellant guilty of the offences under Section 307 IPC and Section 27 of the Arms Act and in sentencing him in the manner noted above.

28. The appeal is accordingly dismissed. The trial Court record be returned forthwith. S. MURALIDHAR, J.

December 23, 2014 Bisht

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