

Jawahar Singh Vs. State and Anr

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Court : Delhi

Decided On : Dec-17-2014

Judge : Mukta Gupta

Appellant : Jawahar Singh

Respondent : State and Anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: December 11, 2014 Judgment Delivered on: December17, 2014 % + CRL.A. 585/2014 JAWAHAR SINGH Represented by: Appellant Mr.R.P.Luthra, Mr.Shivansh and Mr.Sourabh, Advocates. versus STATE & ANR Represented by: + Respondents Ms.Aashaa Tiwari, APP with SHO Vijay Shrotriya, Inspector S.P.Singh, PS Karawal Nagar Mr.Krishan Kumar and Ms.Sunita Arora, Advocates for R-2. CRL.A. 1611/2014 STATE Represented by: Appellant Mr.Lovkesh Sawhney, APP. versus RAVI SHARMA Represented by: Respondent Mr.Krishan Kumar and Ms.Sunita Arora, Advocates. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. By the impugned judgment dated March 22, 2014 Ravi Sharma, has been acquitted for the offence punishable under Section 302 IPC and Sections 25/27 Arms Act which is challenged by both State after having sought leave to appeal and Jawahar Singh, the father of the deceased Rajesh. The reasons for acquittal

by the learned Trial Court are that the last seen evidence cannot be relied upon as the said theory has been introduced only on the basis of suspicion and that the recovery of the firearm was in the absence of an independent witness and it would not have been a prudent human conduct of Ravi Sharma to have kept and concealed the firearm in his house.

2. Process of law was set into motion on receipt of DD No.46A Ex.PW- 4/A recorded at PS Karawal Nagar on May 30, 2011 at 6.40 AM informing that a dead body was lying in E-Block, Gali No.1, Aman Vihar, Karawal Nagar, Delhi. SI Chetan Singh, PW-8 along with other staff reached the spot and found dead body of a male aged around 22 years lying on an open plot bearing No.C-15, with a blue colour baniyan and light brown colour half pants/Capri. There was a hole mark on the left parietal region from where blood had oozed out and was lying on the ground. On the search of the body four live cartridges of 8 mm were found in the pocket, which were seized. A piece of wood was also lying near the body which appeared to be broken piece of a butt of firearm. On the basis of the information recorded vide DD No.46A an endorsement was made noting these facts on the rukka. While the proceedings were on and before the rukka could be sent, one person named Ashok s/o Jawahar Singh, R/o A-195, Gali No.5, Prem Vihar, Karawal Nagar, Delhi reached the spot and identified the dead body to be of his brother Rajesh. Crime team and photographer were called and the scene was got inspected and photographed. During further investigation statements of Jawahar Singh, PW-1 father of the deceased Rajesh and Ashok, PW-2 brother of the deceased were recorded. Jawahar Singh stated to the police that on the previous night i.e. May 29, 2011 he had seen Ravi Sharma with his son Rajesh at around 11.30 PM. Ravi Sharma had taken Rajesh along with him. Thereafter, Rajesh did not come back home and in the morning they were searching Rajesh when they got an information regarding a dead body being found.

3. Ashok stated that Rajesh had borrowed a sum of `15,000/- from Ravi Sharma sometime before the incident and an altercation had taken place between Ravi Sharma and Rajesh on two occasions when Ravi Sharma demanded his money from the deceased and threatened him of dire consequences. Ashok also stated that on May 30, 2011 in the morning at about 7.30 AM Ravi Sharma had come to

him and asked about Rajesh when he said that Rajesh had not come home at night. Thereafter he along with Ravi Sharma went searching for Rajesh when Ravi Sharma stated that one dead body has been found in Amar Vihar and they should go and see there. When they reached the spot, they found lot of people and he identified the dead body to be that of his brother Rajesh. Ashok informed his parents and in the meantime, Ravi Sharma escaped from the said place. He expressed his suspicion on Ravi Sharma. Efforts were made to trace Ravi Sharma and on May 31, 2011 Ravi Sharma was apprehended in the presence of Ashok at around 3.00/3.30 PM pursuant to a secret information. His disclosure statement was recorded and he led the police to his house where he had concealed the firearm. The police party led by Inspector Vijay Shrotriya, PW-14 and Ashok reached house No.C-96, Gali No.8, Prem Vihar, Karawal Nagar, Delhi where Ravi Sharma took out a double barrel country made pistol from behind the iron box from the slab (taand) in his room. The pistol contained one live cartridge and one fired cartridge of 8mm each in the right and left side barrels respectively. On examination it was found that a part of the butt of the double barrelled pistol was broken.

4. The post-mortem of the deceased Rajesh was conducted by Dr.Vivek Shrivastava who had left the service of the hospital and thus the postmortem report Ex.PW-12/A was exhibited by Dr.Mahesh Kumar, PW-12. Dr.Mahesh Kumar opined that the cause of death was shock as a result of ante mortem injury to the head produced by projectile of a firearm and was sufficient to cause death in the ordinary course of nature. Time since death was about eight hours. The report noted the following external injuries:

EXTERNAL ANTEMORTEM INJURIES: (1) Firearm entry wound measuring 2.8 cm x 2 cm oval in shape present obliquely over left side of forehead, 10 cm above left angle of mandible and 10.2 cm from midline. The margins of the wound are contused and abraded. The track of the wound goes downwards, backwards and towards right fracturing left frontal bone resulting in an oval bony defect in the bone from where linear fissured fracture extending towards bilateral middle cranial fossa and bilateral anterior cranial fossa. There is underlying laceration of left frontal lobe, base of left temporal lobe, laceration of left cerebellar hemisphere and

then right cerebellar hemisphere and right occipital lobe. A bullet measuring 2.5 cm x 0.7 cm with its anterior end deformed is lodged in the right occipital lobe with anterior end lying just below the fractured right. Occipital bone as shown in figure. Bevelling of the outer table of the skull at entry wound present. The proximal part of the track shows bleeding of the soft tissues and muscles and left frontal lobe. X-mark is made over the base of the bullet sealed with the seal of VS in a bottle and handed over to investigating officer. Blackening, singeing and tattooing not present over the skin, however, track of the wound shows contusion with extravasation of blood throughout its track.

5. The bullet recovered from the body of the deceased, the double barrel gun, one fired and one live cartridges found from the double barrel gun recovered at the instance of Ravi Sharma and the wooden piece of the butt and four live cartridges found from the pocket of the deceased were sent to FSL for examination. Dr.N.P.Waghmare, PW-16 vide his report Ex.PW16/A opined as under:

(1) The exhibit marked F1 is firearm as defined in Arms Act. It is a double barrel country made pistol, capable of chambering and firing standard 8mm/.315ammunition. (2) The exhibit 8mm/.315cartridges marked A1 to A5 were chambered and successfully test fired through exhibit double barrel country made pistol marked F1. Hence, it is opined that exhibit double barrel country made pistol F1is in normal working order and exhibit 8mm/.315 cartridges marked A1 to A5 were live ammunition before they were test fired in the laboratory. Recovered cartridge cases and bullets were used for examination and comparison purpose. (3) The individual characteristic marks of double barrel country made pistol marked exhibit F1 present on the crime cartridge case marked exhibit EC1 were compared with test cartridge cases fired through double barrel country made pistol marked exhibit F1 under a comparison microscope. After thorough examination and comparison, firing pin marks present on exhibit EC1 were similar with firing pin marks present on test cartridge cases. Hence, it is opined that crime cartridge case marked exhibit EC1 had been fired through the double barrel country made pistol marked exhibit F1. (4) The individual characteristic striation marks present on evidence bullet marked EB1 are insufficient for comparison and opinion, whether it has been discharged through double barrel country made pistol marked

exhibit F1 or not.

6. (5) The cotton swabs with warm distilled water were taken from both the barrel swab of double barrel country made pistol marked F1. After chemical examination, firearm discharge residue could be detected in the double barrel country made pistol F1. Hence, it is opined that exhibit double barrel country made pistol F1 was fired some time before it was received in the laboratory. (6) The exhibit 8mm/.315 cartridges marked A1 to A5 are ammunition as defined in Arms Act, 1959.

Dr.S.S.Badwal, PW-13 examined the firearm recovered and the broken wooden piece of the butt and vide Ex.PW-13/A opined:

The broken wooden piece marked Exhibit-2 was examined physically and compared with the another wooden piece attached with country made pistol grip and found similar in shape and size. The wooden piece marked Exhibit-2 was placed over the left portion grip of country made pistol marked Exhibit-4a and it was found to be physically fixed. On the basis of three observations it is opined that the broken wooden piece marked Exhibit-2 could have been the part of country made pistol marked Exhibit-4a.

7. The legal position with regard to interference against a judgment of acquittal is well settled that the appellate court can interfere only if the findings are illegal or perverse. The principles to be kept in mind by the Appellate Court while dealing with the appeals against the order of acquittal have been laid down by the Supreme Court in the decision reported as (2010) 6 SCC 1 Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) as under:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded. (ii) The appellate court in an appeal against acquittal can review the entire evidence and come to its own conclusions. (iii) The appellate court can also review the trial court's conclusion with respect to both facts and law. (iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal. (v) An order of acquittal is to be interfered with only when there are compelling and

substantial reasons for doing so. If the order is clearly unreasonable, it is a compelling reason for interference. (vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion. (vii) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed.

8. On the touchstone of the law laid down by the Supreme Court it has now to be seen whether the prosecution has been able to prove the evidence of last seen, motive, recovery of firearm at the instance of the appellant, recovery of the piece of the firearm from the spot and four live cartridges and their connection with the firearm recovered at the instance of Ravi Sharma and the conduct of absconsion of Ravi Sharma.

9. The prosecution has proved the last seen evidence from the deposition of Jawahar Singh PW-1 father of the deceased Rajesh. Jawahar Singh deposed that his house was under construction and on the night of May 29, 2011 a truck load of earth was to reach at the site. At about 11.30 PM he and his son Rajesh were together and talking while sitting on a wooden bench outside their house. Ravi Sharma arrived at the place, meanwhile the truck with the earth also reached. When Jawahar Singh was busy talking to the truck driver and getting it unloaded Ravi Sharma took his son Rajesh to another corner and started talking to him. Ravi Sharma asked his son to accompany him for a walk. Despite Jawahar Singh denying the permission as it was too late, both Ravi Sharma and Rajesh informed him that they were going for a walk and would arrive soon. He went inside his house and slept. In the morning at 6.00 O'clock when he got up he found that his son Rajesh was not present in the house and had not come during the night. This witness did not support the prosecution case to the extent of money being

demanding by Ravi Sharma and to that extent he was cross-examined by the learned APP. Nothing material has been elicited from the cross-examination of this witness.

10. Ashok PW-2 the brother of the deceased who reached the spot after the Police has reached deposed that he was working as an electrician and Ravi Sharma had worked with him when he was doing stitching job work. Ravi and Rajesh were good friends. About 3 and a half months prior to the incident Rajesh had borrowed a sum of `15,000/- on two occasions from Ravi Sharma. About a month prior to the incident exchange of words took place between Rajesh and Ravi when Ravi pressed for the return of his money and Rajesh was unable to pay that in time. Ashok requested Ravi that on completion of their house his money will be repaid as they expected part of their house to be let out. Ravi accepted the settlement and thus relations became normal. About 3-4 days prior to the incident Ravi Sharma again came to Ashok and asked him to see that his brother repaid the loan within 3-4 days otherwise the consequences would be serious. He stated that his family used to sleep nearby and Rajesh used to sleep at their house A-195 which was under construction. On the morning of May 30, 2011 he did not find his brother in bed on the construction site and at about 7.00 AM Ravi Sharma came to him and asked him to accompany him for searching Rajesh. Ravi took him to the house of two of the friends of Rajesh and thereafter told that a dead body was lying in an open plot in Amar Vihar. When they reached the spot they found a crowd and he identified the dead body to be that of his brother Rajesh. He then called his family members and in the meantime Ravi Sharma slipped away.

11. In cross-examination Ashok Kumar deposed and we note the same as is relevant:

On the next day of recovery of the body of my brother that we calculated and came to a strong suspicion that accused Ravi could be the murderer of my brother. We the all family members then conveyed our said opinion to the Police on 31.05.2011. Police arrested accused on 31.05.2011 itself. Police had apprehended accused on its own information and we had identified accused from my house and it was five minutes walk from where Police apprehended accused.

On the spot where accused was apprehended police had inquired from accused but there accused told police that he was a close friend of deceased Rajesh.

12. It is from this cross-examination the learned Trial Court concludes that the last seen evidence as deposed by Jawahar Singh is an after-thought and in fact in retrospect when the family of the deceased had strong suspicion that Ravi was the accused, statement dated May 30, 2011 was introduced by the Police claiming him to be the last seen witness. A perusal of the cross-examination of Ashok can reasonably lead to the inference as has been drawn by the learned Trial Court.

13. Inspector Vijay Sirotiya PW-14 the investigating officer in his cross-examination has stated that the father and brother of the deceased had arrived at the spot at around 7.30/7.45 AM, however at that point of time they did not disclose the name of any person whom they could suspect as the perpetrator of the murder as they were crying and were in a bad condition. He stated that statement of Ashok and Jawahar Singh were recorded on the same day i.e. May 30, 2011 somewhere in the afternoon after the body had been subjected to post-mortem. In cross-examination he stated that the name of the suspect had come in the statement without any further address of the suspect and thus his house could not be visited at that point of time, though the witnesses mentioned some Gali number as well as the house number but since it was a Katcha colony it was difficult to locate the said address, unless the address was specifically ascertained with the help of witness or other sources.

14. In view of this cross-examination of Ashok Kumar and Vijay Sirotiya we cannot held that the finding of the learned Trial Court on the point that the last seen evidence is not reliable is perverse. Though both views are possible, however the view taken by the learned Trial Judge is also a plausible view.

15. Learned Trial Court has rejected the evidence of motive on the ground that the victim deceased and accused were friends for the last 6-7 years and Ashok admitted in his cross-examination that transaction of loan did not take place in his presence and even if there was an altercation the same was settled on an understanding that the amount will be repaid once construction of the house of the deceased was complete. Thus there appears no strong motive for the accused to

have killed the deceased only because that loan amount had not been repaid by the deceased and further the deposition of PW-2 qua motive was not supported by PW-1. This finding of the learned Trial Court to our mind is perverse. PW-2 Ashok has deposed that on his and Rajesh's request that money would be paid on the completion of construction of their house, though the settlement was arrived at however 34 days prior to the incident Ravi Sharma again demanded money and threatened of consequences. There would be no corroborative evidence in such transactions with regard to the issue whether money has been given on loan or not and there is nothing on record to disbelieve the version of Ashok in this regard.

16. The prosecution has also proved the conduct of Ravi Sharma of having absconded from the spot which has not been considered by the learned Trial Court. Ashok deposed that when he went with Ravi to search Rajesh after some time he told about a dead-body lying in an open plot in Amar Vihar and when they reached the spot and identified the dead body to be that of his brother Rajesh, Ravi Sharma slipped from the spot.

17. Though the recovery of the broken piece of butt of the firearm from the spot has not been disbelieved by the learned Trial Court, however on account of the fact that no public person was associated with the recovery of firearm at the instance of Ravi Sharma nor the recovery of firearm was got photographed the learned Trial Court discarded the said evidence. This finding of the learned Trial Court is not rationale and we would not subscribe to the same. Inspector Vijay Sirotiya PW-14, SI Chetan Singh PW-8 and HC Vinay PW-11 have all supported the prosecution case on the point of recovery. The bullet recovered from the body of the deceased had insufficient characteristics for comparison and thus no opinion could be given that the same was discharged from the double barrel country made gun recovered from Ravi Sharma. However recovery of the wooden part of the butt from the spot and the same being a part of the double barrel gun recovered at the instance of Ravi Sharma as opined by PW-13 vide his report Ex.PW-13/A is strongly incriminating qua Ravi Sharma. In (2000) 6 SCC 269 State of Maharashtra Vs. Damu S/o Gopinath Shinde & Ors. while dealing with Section 27 of the Evidence Act it was held that as the recovery of the dead body of the deceased from the canal was antecedent to the information which the investigating

officer obtained, if nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from the spot and that piece was found to be part of the tail lamp of the motorcycle of the co-accused it can safely be held that the investigating officer discovered the fact that the coaccused had carried the dead body on that particular motorcycle up to the spot. In the present case wooden portion of the butt was recovered from the spot and pursuant to the disclosure statement of Ravi Sharma the double barrel gun was recovered in which the wooden portion of the butt recovered from the spot fitted exactly and thus the same was discovery of a fact pursuant to the disclosure of accused and hence admissible.

18. As regards the non-association of public witnesses at the time of recovery of firearm in the decision reported as (2001) 1 SCC652State, Govt. of NCT of Delhi Vs. Sunil & Anr. the Supreme Court held:

19. In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person and signed by such witnesses. It must be remembered that a search is made to find out a thing or document about which the searching officer has no prior idea as to where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality

is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in the *Transport Commr., A.P., Hyderabad v.S. Sardar Ali* [(1983) 4 SCC245:

1983. SCC (Cri) 827 : AIR 1983 SC1225 . Following observations of Chinnappa Reddy, J.

can be used to support the said legal proposition: (SCC p. 254, para

8) Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself.

20. Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

19. In view of the evidence of motive, conduct of absconsion and recovery of the weapon of offence to which the part of the butt recovered from the spot exactly fitted, we are of the opinion that the prosecution has proved its case beyond reasonable doubt against Ravi Sharma and consequently the impugned judgment of acquittal is set aside. We convict Ravi Sharma for offence punishable under Section 302 IPC and Section 25/27 Arms Act.

20. Consequently, Crl.A.No.585/2014 filed by Jawahar Singh is disposed of.

21. List Crl.A.No.1611/2014 for hearing on sentence on December 19, 2014 when Ravi Sharma will be present in Court. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE DECEMBER17 2014 vn

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