

PETITIONER:
MANJEE SINGH

Vs.

RESPONDENT:
V.State of NCT of Delhi

DATE OF JUDGMENT: 15/02/2000

BENCH:
(G.T. Nanavati)(S.N. Phukan)

JUDGMENT:

PHUKL-VN, J.

This appeal is filed against the judgment dated 14.05.99 passed by the learned Additional Sessions Judge, Designated Court-11, Delhi in Sessions Case No. 3/97. Three accused namely appellant - Manjeet Singh @ Kukku, Ajay Kumar and Georn Innis @ 'Jerry' were booked for trial before the designated court. By the impugned judgment the designated court acquitted accused-appellant and Ajay Kumar of the charge under Section 120B IPC. The court also acquitted Georn Innis @ Jerry of the charge under Section 201 IPC. The designated court, however, found the accused appellant-Manjeet Singh guilty under Section 302 IPC and under Section 5 of Terrorist Activities and Disruptive (Prevention) Act, 1987 and convicted him accordingly. Hence the present appeal.

According to prosecution at about 08.45 p.m on 6th June, 91 deceased Baba Gurcharan Singh a lawyer was murdered in his chamber by the appellant and Brij Mohan, Shri K.K. Tyagi - PW6 junior counsel attached to the chamber of the deceased. J.S. Obroi, Steno of the deceased and Shri Brijendra Singh -PWI I - a suspended head constable of Delhi police who was a client of the deceased, were present at the time of the occurrence. At that time the deceased was giving dictation to his steno for filing a petition before this Court and a young boy peeped through the door-glass of the chamber and on being signaled by the deceased he walked inside. He pushed PW-6 and at the same time another person aged about 30 years also went inside the chamber. Both the persons started firing shots from their revolver. According to prosecution the second person who entered subsequently was the appellant. On seeing accused persons firing shots at the deceased. PW-6 rushed to the adjacent house and informed the police over phone. Mrs N. Shrivastava - PW-2 sister of deceased and Mrs P.O.S. Bawa - PW-3 wife of deceased who were in the bedroom of PW-3 came out on hearing the sound of gun fire. Shri Babu Ram Thapa - PW1 cook of the deceased, who was in the kitchen, heard sound of gun fire coming from the

chamber of the deceased and ran towards the office and he saw PW-2 and PW-3 were also rushing towards the chamber of the deceased. When he reached near the chamber, he saw the young boy and the appellant coming out with revolvers in their hands and abusing the deceased. He could not stop them as they were armed.

Immediately son-in-law of the deceased Dr. M.L. Khatri -PW7 and his wife Mrs. Rashmi Khatri -PW8 on being informed reached the house of deceased and lifted the deceased with the assistance of PW-1 and PW-6 and put him in the car and thereafter he was taken to nursing home of PW-7 where he was declared dead.

Brij Mohan was stated to have died in police encounter at Mathura. During investigation it was revealed that the accused - Ajay Kumar

who was an accused in another criminal case. wanted to eliminate the deceased who was appointed as Special Public Prosecutor in that case,
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therefore, he conspired with deceased Brij Mohan during his stay in Tihar Jail to eliminate the deceased. The police after getting information arrested the appellant on 5th July. 1998 at Jabalpur and after investigation submitted the charge sheet.

We have heard Shri R.K. Maheswari. learned counsel for the appellant and Shri A.S. Nambiar. learned senior counsel for the respondent.

At the time of incident PW-6. J.S. Obroi and PW-11 were present in the chamber of deceased. J.S. Obroi was not examined and PW-11 was declared hostile.. PW-6 was the main witness of the occurrence and he identified the appellant. PWs 1, 2 and 3 who rushed to the chamber of deceased also identified the appellant.

PW --6. Junior counsel of the deceased was the eye witness and had described the manner in which deceased was murdered in his chamber. According to him the deceased came from outside. sat in his office and called for suspended constable- PW-11 whose petition was to be filed in this Court and started giving dictation to his stenographer Shri J. S. Obroi. At that time- a young boy peeped from the door of his office and deceased called the boy. The boy entered the office but did not sit and called his companion who came with a revolver in his hand. The first boy took out a revolver from his bag pushed PW-6 and at that time second boy started firing. According to PW-6 both the assailants fired from their revolvers four - five shots. This witness identified the appellant as the second boy who came inside the office with a revolver in his hand. PW-6 ran away from the office and called police control room from adjoining house. When he returned he found the deceased profusely bleeding with his face down-ward on his table.

PWs 1, 2 and 3 have also deposed that they heard the sound of gun fire coming from the office of the deceased and it was about 08.45 p.m. PW-11 was in the kitchen. PWs -2 and 3 were in the bedroom of PW-3. These witnesses ran towards the office room of the deceased. They saw both the persons and deposed that they would be able to identify the persons. They identified the appellant.

It has been urged on behalf of the appellant that all the above witnesses are interested witnesses and no reliance could be placed on their evidence. PW-6 being the junior counsel to the deceased was expected to be in the chamber of deceased at that time and so also the cook PW-11 to be present in the house. It was natural for PW-2 and PW-3 to be present in the house. Therefore, their presence at the place of occurrence is quite natural. There is nothing on record for coming to the conclusion that the above witnesses had any grudge against the appellant. Therefore, the submission is not tenable.

It has been urged on behalf of the appellant that PW-6 was a planted witness and he was not present at the time of occurrence. In this regard our attention has been drawn to the evidence of PWs 2, 5 and 11. PW-2, the sister of the deceased, was an aged lady and it was quite natural that she was

under shock when she found that her brother was murdered. It is merely because she did not mention PW-6 was present. His presence cannot be ruled out. PW 5 and PW 11 turned hostile.

PW-6 informed the police and it was recorded in DD Entry No. 18A. at P.S. Model Town. This was exhibited as PW 4'A. It was recorded that at 09.00 p.m PW-6 informed about the incident of the death of the deceased.

PW-4. Head Constable Naram Singh has proved this entry.

From the evidence of the Investigating Officer - PW35 we find that at about 09.00 p.m. on 6.6.91 he received the information about the incident through wireless and immediately proceeded to the house of the deceased. On finding that the deceased was removed to the nursing home he went there. PW-6 met him at the nursing home and Investigating Officer recorded his statement. PW-6 also witnessed the seizure of various articles and signed memos Ex. PW 3/A-F. These materials would support the presence of PW-6 at the time of occurrence.

Five cartridge cases were recovered from the place of occurrence as per recovery memo Ex. P-3. 'A - three were of 9 m.m and two were of 45 m.m. This recovery also supports the presence of PW6 as he deposed that two assailants fired from their revolvers.

While lifting the body of the deceased the shirt of PW-6 stained with blood of the deceased. The deceased had blood of 'O' group but on the shirt of PW6 a blood stain was found of 'B' group. On behalf of the appellant it has been urged that this fact establishes the contention of the appellant that PW-6 was not present at the place of occurrence. This aspect has been dealt with by the learned trial court who noted that the incident took place on 6.6.91 and the shirt of PW-6 along with other exhibits lifted from the place of occurrence was received by C.F.S.L on 24.07.91 and in view of this inordinate delay, detection of "B" blood group on the shirt of PW-6 cannot destroy the other evidence available to support the contention of the prosecution that PW-6 was present and saw the occurrence. We agree with the trial court, in view of oral and other supporting evidence, presence of P.W.6 at the time of occurrence cannot be doubted.

Our attention has been drawn regarding over-writing in serial numbers of daily diary recorded on 6.6.91. We find from the impugned judgment that this aspect was duly dealt with by the trial court who recorded the finding that over-writing was due to mistake in numbering and that there was no over-writing or manipulation. We accept the finding of the trial court.

Five cartridges were recovered from the spot and those were fired from pistol. It has been contended before us that PW-6 deposed that assailants were having revolvers and he being an advocate would know the difference between pistol and revolver, therefore, his evidence is not reliable. We cannot accept the submission as PW-6 is an advocate but not an expert in arms.

We, therefore, reject the contention of the learned counsel for the appellant that PW-6 was not present at the time of occurrence. We have already stated that being a junior counsel of the deceased, his presence was quite natural in the chamber of the deceased at the relevant time.

After the occurrence, P.W.I., P.W.3 and P.W.6 gave description of the assailants to the Investigating Officer - P.W.35, who could suspect that the appellant was one of the culprits as he had previous police records and was involved in other criminal cases. On the basis of this description police moved and apprehended the appellant at Jabalpur. This fact would support that the above eye witnesses could identify the appellant at the time of occurrence.

PW-j stated that he rushed to the chamber of the deceased on hearing gun shot. From his evidence we find that he was rushed to the chamber through corridor and saw two assailants coming out by the door from the

chamber of the deceased through which they went inside. Considering the distance as per sketch map and the layout of the place statement of P.W.I. that he saw the assailants cannot be doubted.

When the appellant was brought to the house of the deceased on 8.7.91. P.Ws 1,2,3 and 6 identified the appellant. From the above discussion we hold that there was proper identification.

The learned counsel for the appellant has raised serious objection for non-examination of Ashok Talwar from whose statement appellant was arrested. PW-35 has stated on oath that in spite of best efforts he could not locate till this. Non-examination has been duly explained by the prosecution.

From the evidence of PW-1 we find that the appellant first came to the chamber of the deceased when PW-1 was present and inquired about the deceased from PW-1 and on convincing to know that the deceased would be returning after some time the appellant asked for a glass of water which was given by PW-1. According to PW-1 till this glass was kept on the table and was also seized by the police but not produced at the time of trial. According to the learned counsel for the appellant the prosecution did not produce the glass as there was no finger prints of the appellant. Immediately after the occurrence number of persons came to the chamber of the deceased and it

was quite natural that finger prints on the glass might have wiped out or superimposed by the finger prints of others. For this, the prosecution cannot be faulted.

We have also perused the entire evidence on record and hold that the learned trial court rightly convicted the appellant.

For the reasons stated above the appeal has no merit and accordingly dismissed.