

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: March 29, 2016

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Judgment Delivered on: April 05, 2016

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CRL.A. 181/2016

PAWAN @ RAM SALA @ CHANDA Appellant
Represented by: Mr.Naveen Gaur, Advocate.

versus

STATE (GOVT OF NCT) Respondent
Represented by: Mr.Varun Goswami, APP for
the State with Inspector
Surender Kumar, ATO Civil
Lines.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Pawan @ Ram Sala @ Chanda has been convicted for the offence punishable under Section 302 IPC for murdering Govind Sarin @ Shanky vide impugned judgment dated November 24, 2015 and directed to undergo imprisonment for life vide order on sentence dated November 30, 2015 on the strength of the testimony of the two eye witnesses Tarun Arya @ Ginni, PW-1 and Sumit, PW-2.

2. Police machinery was set into motion on receipt of DD No.38A at Police Station Subzi Mandi on November 03, 2013 at 11.15 PM informing that a quarrel had taken place in Gali Mitra Wali, Roshanara Road, House No.4780, near Mata ka Mandir. DD No.38A was sent to SI Manish Kumar, PW-7 who was already in the area through Constable Rakesh PW-15 who reached the spot and found blood in front of House No.4783, Gali

Mitranwali, Roshanara Road. The injured had been removed to Hindu Rao Hospital. So SI Mukesh Kumar reached Hindu Rao Hospital and collected MLC No.8626 on which the doctor endorsed '*brought dead*'. The MLC noted two wounds on the chest and abdomen of the deceased. Eye witness Tarun Arya @ Ginni was found present in the hospital whose statement Ex.PW-7/A was recorded and sent for registration of FIR.

3. Tarun Arya @ Ginni PW-1 stated that he was residing at House No.8102, Khariya Mohalla, Roshanara Road and was selling garments. To celebrate Diwali he along with his brother Kaushal @ Rozar's friend Govind Sarin @ Shanky s/o Ramesh Sarin, r/o House No.B-200, Gali No.2, Majlis Park, Adarsh Nagar, Delhi, who was his friend also, went to the house of Sumit s/o Ashok Kumar, r/o House No.4783, Gali Mitra Wali, Roshanara Road, Delhi. They reached the house of Sumit at around 9.30 PM where they drank and ate. Around 11.20 PM they heard noise in the gali of people who were gambling. On this Sumit, Tarun and Govind Sarin came down. Govind Sarin scolded all those people and asked them to run away from there. On this those people abused Sumit and Shanky. After sometime Pawan @ Ram Sala @ Chanda s/o Chaman Lal, r/o House No.4786, Gali Mitra Wali, Roshanara Road, Delhi suddenly came with a knife in his hand and attacked Govind Sarin @ Shanky stating to Govind Sarin that he had dishonoured him in the gali by making them run away and he would take his life. Pawan gave two stab blows to Govind Sarin on his chest and stomach whereafter Govind Sarin @ Shanky fell down in front of the gate in the gali. Blood was oozing out from his chest. Tarun took Govind Sarin @ Shanky to Hindu Rao Hospital in a TSR. In the process his jeans pants also got blood stained. At the Hindu Rao Hospital doctor declared Govind Sarin @

Shanky as 'brought dead'. He demanded legal action against Pawan @ Ram Sala @ Chanda for having stabbed Govind Sarin @ Shanky in his chest and stomach by knife.

4. Pursuant to registration of the FIR statement of Sumit, PW-2, the other eye witness, in front of whose house the entire incident took place, was also recorded under Section 161 Cr.P.C.

5. Inspector Surender Kumar, PW-22 who took over the investigation thereafter, got inspected the spot through Crime Team and prepared a rough site plan. He also seized the blood stained road concrete and blood stained jeans worn by the complainant Tarun @ Ginni vide Ex.PW-1/C. While the investigation was going on November 04, 2013 Tarun @ Ginni pointed out towards a person coming from eastern side as Pawan @ Ram Sala @ Chanda who stabbed Govind Sarin. Thus Pawan @ Ram Sala @ Chanda was apprehended. Pursuant to his arrest, Pawan pointed out towards the place where he threw the knife and at his instance knife was recovered from a pile of garbage.

6. Dr.Mohit Gupta, who conducted the post-mortem on the body of Govind Sarin @ Shanky found the following external injuries:

"1) Stab wound 1.6 cm x 1 cm obliquely placed over the front of left side of chest, 6.6 cm below left nipple, 24 cms below middle of clavicle (left), 3.4 cms away from midclavicular line, inner edge placed 10 cms from mid line and 125 cms above left heel. The upper pole of the wound was blunt and lower pole of wound was sharp. The track of the wound goes upwards and backwards and medially, piercing the skin, subcutaneous tissues muscles through the 5th and 6th inter costal space, piercing the pericardium, the apex of the heart and entering the cavity of the heart. The

length of the track measures approximately 7 cms.

- 2) *The stab wound 1.7 cms x 1 cm obliquely placed over front of left side of abdomen, 15 cms below and inner to injury No.1, 41 cms below middle of left clavicle, 23 cms below left nipple and 108 cms above left heel. The upper pole of the wound was blunt and lower pole was sharp. Tailing of wound present at lower pole. The track of the wound goes upwards, backwards and medially, piercing the skin, subcutaneous tissues muscles, peritoneum, greater curvature of stomach and enters into stomach cavity. In the stomach wall, it produced a wound of size 1.6 cms x 0.5 cm. The length of the track measures approximately 8 cms.*
- 3) *Reddish contusion 3 cm x 3 cms present over left parietal region, 3 cms from mid line.*

7. Dr.Mohit Gupta opined the cause of death as shock and haemorrhage due to injury caused to internal organs by forceful thrust of sharp object or weapon. All injuries were ante mortem in nature. Injury No.1 and 2 were caused by sharp object or weapon and were individually and collectively sufficient to cause death in the ordinary course of nature. Injury No.3 could be caused by blunt object/surface impact. Time since death was opined to be about 12-14 hours.

8. Before the Court Tarun Arya, PW-1 and Sumit, PW-2 deposed in sync with their statements made before the police. Considering the evidence on record the learned Trial Court convicted the appellant as above.

9. Learned counsel for the appellant contends that though Tarun claims to know the deceased Shanky and had taken him to the hospital however, in the MLC name of the patient, his parentage and address is written as

‘Unknown’. As per the father of the deceased Ramesh Sarin, PW-3, Pawan and his son Shanky were present in the hospital. PW-3 has not deposed about the presence of Tarun @ Ginni in the hospital. The conduct of PW-2 shows that he was not an eye witness as he neither made the PCR call nor removed the injured to the hospital and as per his deposition he went home to sleep and got to know about the death of Shanky on the next day at 3.00 PM. The presence of Tarun at the time of arrest is also further doubtful as he neither signed the personal search memo nor the disclosure statement nor the pointing out memo cum seizure memo of knife nor the sketch of the knife by Pawan. There are contradictions in the statements of the witnesses with regard to the recovery of knife and thus the same cannot be used as incriminating against the appellant.

10. As noted above Tarun Arya, PW-1 and Sumit, PW-2 stood by their version before the learned Trial Court. Tarun stated that while stabbing Pawan @ Ram Sala @ Chanda stated “*aaj tumne meri gali me meri bezzati kar di, aaj main tumhe jaan se maar dunga*”. In the cross-examination nothing material could be elicited from the two witnesses. The only omission pointed out by the learned counsel qua Tarun Arya is that in cross-examination Tarun could not tell as to who brought the TSR. In a panic after stabbing, it is not necessary for the witness to remember who brought the TSR. The version of Tarun Arya is corroborated by the version of Sumit, PW-2 to whose house Tarun and Govind had gone.

11. No doubt Sumit PW-2 does not support the case of the prosecution subsequent to the receiving of the injuries by Govind at the hands of Pawan and states that after Govind fell at the spot he became nervous and due to fear of his family members, he went to his home while Tarun tried to lift

Govind. However, as regards the incident he has fully supported the case of the prosecution. Even in the cross-examination nothing could be elicited contradicting the fact that Tarun and Govind had come to the house of Sumit on the evening of Diwali at around 9.30 PM where they wined and dined till 11.30 PM, when the unfortunate incident took place. He also reiterated in his cross-examination about 7 to 10 people making noise and playing cards in the gali in front of his house. When all three of them, that is, Shanky, Tarun and he went hot exchange took place between the two group. Further that all three knew Pawan as he was residing in the same gali being neighbour. He also reiterated Pawan exhorting and stabbing the deceased. It is well settled that different persons react differently in a given situation and if after the incident out of fear Sumit went to his house and did not disclose about the incident to his family members it cannot be said to be unnatural or that he was deposing falsely

12. Version of Tarun Arya is also corroborated by the MLC Ex.PW-20/A which notes the deceased having been brought by his friend Ginni, also noting his phone number as 9999950680. The MLC noting the name of the patient, his parentage and address as unknown, is a clear case of callousness on the part of the concerned doctor and the same cannot lead to the inference that Tarun @ Ginni did not take Govind @ Shanky to the hospital.

13. The oral evidence of Tarun Arya, PW-1 is further corroborated by his jeans pants having got stained with the blood of the deceased which fact is proved by Ex.PW-22/PX according to which jeans pant of Tarun Arya was stained with blood of human origin of 'A' group which was that of the deceased.

14. Vide his subsequent opinion Ex.PW-23/B Dr.Mohit Gupta also

opined that the cuts corresponding to injury No.1 on the body of deceased were present on the shirt and baniyan and the injury Nos.1 and 2 on the body of the deceased and cuts in the clothing could be caused by same weapon of offence, that is, the knife recovered. He also stated that the deceased had consumed alcohol prior to death which corroborates the statement of Tarun Arya and Sumit that they were drinking and eating at the house of Sumit when they heard the noise of people in the gali playing cards.

15. Ramesh Sarin, father of the deceased Govind @ Shanky deposed about having received a call about 11.45 PM on November 03, 2013 from Kaushal @ Rozar informing about his son having received injuries by accused who was present in the Court whereafter he again stated that Pawan and his son were in the hospital. He immediately rushed to the hospital where he found his son dead. Ramesh Sarin is only a witness to identify the dead body of the deceased and whatever information he received was on the basis of a telephonic conversation. A perusal of his testimony clearly shows that after having stated that he got to know that accused had stabbed his son, he stated that Pawan was in the hospital. The later portion seems to be a confusion which ought to have been got corrected by the learned APP in the re-examination however, the same is not material as Ramesh Sarin is not an eye witness of the incident and is only an eye witness to identify the body of the deceased.

16. Merely because Tarun Arya did not sign the personal search memo, the disclosure statement, the pointing out memo cum seizure memo of knife and the sketch of the knife, that is, Ex.PW-7/C to Ex.PW-7/E it cannot be said that he was not a witness to the arrest or recovery. Police witnesses had duly identified the three memos and the arrest memo Ex.PW-1/D is also

signed by Tarun Arya @ Ginni. From the cross-examination nothing has been elicited to show that Tarun did not witness the arrest or the recovery.

17. In view of the evidence on record we find no infirmity in the impugned judgment of conviction and order on sentence.

18. The appeal is dismissed.

19. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

20. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

APRIL 05, 2016

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