

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1547 OF 2010**

**SURENDER @ BABLI**

**.....**

**APPELLANT**

**VERSUS**

**STATE (NCT) OF DELHI**

**.....**

**RESPONDENT**

**O R D E R**

1. On the 8<sup>th</sup> February, 2001 at about 12:45p.m., Sanjeev Kumar deceased came to the premises of M/s Manoharlal Laxman Dass, Old Anaj Mandi, Narela and asked for payments due to him from the owner. The Head Muneem, Shyam Lal, asked P.W. 6 Anil Sharma, another Muneem, to go to the State Bank of Indore, Narela where they had an account to withdraw Rs. 4 lakhs so that the same could be paid off to Sanjiv Kumar. Anil Sharma, accordingly, accompanied by Sanjiv Sharma P.W. 10 left on a two wheeler for the State Bank of Indore and withdrew Rs. 4 lakhs and after putting the currency in a bag left for their own shop. As they were passing through Dahiya X-ray Wali Gali, a motor cycle came from the rear with three persons riding on it. The motor

cycle came to the right side of the scooter and one of the three persons tried to snatch the bag containing the money from the hands of P.W. 10 with the result that P.W. 6 lost balance and the scooter fell on its side. One of the three persons again tried to snatch the bag from Sanjiv Kumar and when he resisted he fired a shot at Sanjiv Kumar which struck him in his chest killing him instantaneously. The third person also took out a pistol but it fell on the ground. The three assailants then got on to the motor cycle and made good their escape. On the basis of the information conveyed to the police station a First Information Report against unidentified persons was recorded in Police Station Narela by ASI Jagir Singh, P.W. 1. He also recorded the statement of Sanjiv Sharma, P.W. 10, who voluntarily came to the police station to give a statement as he claimed to be an eye-witness. The three accused who had been arrested during the course of the investigation, were brought to trial for offences punishable under Sections 393, 398 and 302/34 of the Indian Penal Code and under Section 27 of the Arms Act against accused Mukesh and under Section 25 of the Arms Act against Surender @ Babli and Manjit Singh accused. The trial court relied on the evidence of P.W. 6 Anil Sharma and P.W. 10 Sanjiv Sharma, only

partly, as they had been declared hostile and further observing that the post mortem report indicated the presence of a fire arm injury and the pistol which had been recovered at the instance of the appellant Surender @ Babli which matched the spent bullet recovered from the dead body on the 8<sup>th</sup> of February, 2001 were circumstances which involved all the three accused in the incident. The trial court, accordingly, convicted and sentenced them to various terms of imprisonment under the aforesaid provisions. The matter was thereafter taken in appeal before the High Court. The High Court observed that both P.W. 6 and P.W. 10 had not identified any of the assailants whereas P.W. 10 had also been declared hostile. The High Court, accordingly, acquitted Mukesh and Manjit on the ground that there was a complete lack of identification in their case. The High Court nevertheless held that in the light of the fact that the murder weapon which had been recovered at the instance of appellant Surender @ Babli proved his involvement in the incident and having held as above dismissed his appeal. It is in this situation that the matter is before us after the grant of special leave.

2. It will be seen from the record that the evidence with regard to the identification of the three

assailants i.e. Mukesh and Manjit and appellant Surender was virtually identical. The High Court has found that the evidence of identification could not be believed but has convicted the appellant solely on the ground that the murder weapon which had been recovered at his instance had been matched with the bullet recovered from the dead body. We have, however, gone through the evidence on the record which has been brought to our notice by the learned counsel for the parties. The incident happened on the 8<sup>th</sup> of February, 2011 and the post mortem examination was conducted on the same day and the spent bullet recovered from the dead body of the deceased. It is also clear that the said bullet had been deposited in the police malkhana soon after its removal from the dead body. The weapon was allegedly recovered at the instance of the appellant on the 28<sup>th</sup> of February, 2001 as per the prosecution story, but curiously enough the bullet as well as the weapon were despatched to the laboratory together on the 3<sup>rd</sup> of April, 2001. We are unable to fathom as to why the investigating agency did not deem it proper to send the bullet to the laboratory soon after its recovery and the fact that they chose to wait for the weapon of offence to be recovered, casts a clear doubt as to the sanctity of the recovery. There

is yet another circumstance which creates a serious doubt as to the recovery of the weapon. P.W. 7 Constable Rishi Raj testified that the document Exhibit P.W. 9/H regarding the recovery of the pistol was in the handwriting of Sub-Inspector Praveen Kumar. This was reiterated by P.W. 9 Head Constable Ram Chand in his testimony. Sub Inspector Praveen Kumar appearing as P.W. 22, however, denied that he had prepared the said document and further stated that it had been prepared on the dictation of one S.K. Meena. We, therefore, feel that the very recovery of the weapon is in serious doubt. In this background, we are of the opinion that the case of the appellant Surender is no different from that of the other accused. We, accordingly, set aside the judgment of the High Court insofar as the appellant is concerned and allow the appeal accordingly. The appellant is in custody; he shall be released forthwith if not wanted in connection with any other case.

.....J  
[HARJIT SINGH BEDI]

.....J  
[GYAN SUDHA MISRA]

**NEW DELHI  
JULY 28, 2011.**



**CRIMINAL APPEAL NO. 1547 OF 2010**

STATE (NCT) OF DELHI . . . . . RESPONDENT

.....J  
[GYAN SUDHA MISRA]

**NEW DELHI  
JULY 28, 2011.**

