
(2012) 08 DEL CK 0106

Delhi High Court

Case No: Criminal A. No. 417 of 2000

Dinesh Tiwari @ Raju

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 17, 2012

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 173, 311, 313
- Evidence Act, 1872 - Section 134
- Penal Code, 1860 (IPC) - Section 302, 34, 392, 394, 397

Citation: (2012) 08 DEL CK 0106

Hon'ble Judges: Veena Birbal, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Simon Benjamin, for the Appellant; Richa Kapoor, APP, for the Respondent

Final Decision: Dismissed

Judgement

Veena Birbal, J.

The present appeal is filed against the impugned judgment dated 3rd June, 2000 passed in Sessions Case Nos. 97/98, 95/98 and 96/98 by the learned Addl. Sessions Judge, Shahdara arising out of FIR No. 580/95 P.S Seelam Pur u/s 394/397/302/34 IPC and FIR Nos. 382 & 383/1995 P.S Mandir Marg u/s 25 of the Arms Act against the present appellant i.e., Dinesh Tiwari and two other accused persons Dharmender Kumar Yadav and Beer Singh wherein the present appellant and two co-accused persons have been convicted for the offence punishable u/s 392 read with section 34 IPC. The appellant Dinesh Tiwari has also been convicted for the offence punishable u/s 397 and 302 of IPC. The appeal is also directed against the order of sentence dated 12th June, 2000 whereby appellant Dinesh Tiwari has been sentenced to imprisonment for life and to pay a fine of Rs. 1000/- u/s 302 IPC and in default of payment of fine to further undergo RI for three months. For committing the offence u/s 392 read with section 397 IPC, appellant Dinesh

Tiwari has been sentenced to undergo RI for seven years with fine of Rs. 1000/- and in default of payment of fine to undergo RI for a period of three months. It has been further ordered that both the sentences awarded to the appellant shall run concurrently. For committing the offence u/s 392 read with section 397 IPC, accused Beer Singh and Dharamender Kumar Yadav have been sentenced to undergo RI for five years with fine of Rs. 1000/- each and in default of fine to undergo RI for a period of three months each. The present appeal is preferred only by appellant Dinesh Tiwari. The prosecution case is based on statement Ex.PW 3/A which was made by Vikas Gupta PW-3 to ASI Mahavir Singh, PW-31 on 6.9.1995 at St. Stephens Hospital on the basis of which FIR Ex.PW 8/A was registered. It is alleged that on the relevant date Vikas Gupta, PW-3 was working with his uncle Ashok Gupta, PW-12 who was having a factory at Gorakh Park, Shahdara. The deceased Sanjeev Kumar Sharma was Supervisor in the said factory. On 6th September, 1995, on the instruction of Ashok Gupta, PW-12 he had gone with deceased Sanjeev Kumar Sharma to M/s Bajrang Traders at Basti Harphool Singh, Sadar Bazar, Delhi on a two wheeler scooter No. DL2S B 2406 Ex. P4 to collect a sum of Rs. 3 lacs. A sum of Rs. 20000/- was already with them, which they had taken to purchase goods for the factory. They had collected money from Vijay Golcha (PW 5) and had put the same in a cloth bag which was then kept in the dicky of the scooter Ex.P4. At that time a procession was going through the market, due to which they could not purchase goods for their factory. At about 5.30 pm, they had left for West Gorakh Park, Shahdara on their scooter. At about 6.30 pm, when they had reached ISBT bridge via Filmistan, three boys came on a two wheeler scooter and directed them to stop their scooter Ex.P4. Those boys also stopped their scooter in front of their scooter Ex.P4. One boy was driving the said scooter and the other two boys were on the pillion seat. The pillion riders alighted from the scooter and came near their scooter Ex.P4. One of them asked deceased Sanjeev Kumar Sharma to leave his scooter Ex.P4. When he refused, one of them took out a country made pistol and fired at him. As a result thereof, he fell down from the scooter Ex.P4. Thereupon one who had fired at the deceased took control of his scooter Ex.P4 having the money bag in the dicky and ran away from the spot. The other two boys also ran away from the spot.

2. Thereafter Vikas Gupta (PW3) had removed injured Sanjeev Sharma to St. Stephen Hospital with the help of a passerby scooterist and got him admitted there. Police also reached the hospital whereupon Vikas Gupta PW-3 had made aforesaid statement to ASI Mahavir Singh, PW-31. On the said statement, ASI Mahavir Singh, PW-31 had put his endorsement Ex.PW 29/A and got FIR Ex.PW8/A registered u/s 394/397 read with section 34 IPC.

3. On that very day, Sanjeev Kumar Sharma had expired in the hospital. Inquest proceedings were conducted and the postmortem examination of the deceased was got done at GTB Hospital. Offence punishable u/s 302 IPC was also added in the FIR Ex.PW 8/A. Investigation of the case was handed over to the Special Investigation Unit of North East District of police. Lastly, it was assigned to Inspector Ishwar Singh PW-34 Crime

Branch, Delhi. During the course of investigation, he visited Bajrang Traders and also contacted its Manager Mr.Vijay Golcha PW5 who had shown him the relevant entry regarding the handing over of Rs. 3 lacs to Vikas Gupta PW 3 for and on behalf of Ashok Kumar PW 12 The photocopy of cash book was obtained and he also recorded the statement of Mr.Vijay Golcha, PW-5.

4. On 12.10.1995, a secret information was received by Insp. Iswar Singh (PW 34) concerning the robbery at Sadar Bazar. Thereupon he organized a raiding party comprising of himself (PW 34), SI K.L.Yadav (PW14), SI Vidhya Dhar (PW 22) and SI Karan and reached the informed place i.e. at R.K. Ashram marg. At about 5.40 pm on the pointing out by the secret informer, they had stopped one scooter DL 7S 7841 which was driven by appellant Dinesh Tiwari and co-accused Beer Singh and one Hoshiar Singh were pillion riders. On their search, a loaded country made pistol was recovered from each of them. Three cartridges of.315 bore were recovered from the appellant as well as Beer Singh. Two were recovered from Hoshiar Singh. The said scooter was seized vide seizure memo Ex. PW22/C. The proceedings in this regard were conducted by SI K.L.Yadav (PW 14), SI Vidhya Dhar (PW 22) and SI Karan respectively. At that very time, an urgent message was received and Inspector Ishwar Singh (PW 34) had left the spot.

5. On 13.10.1995, SI K.L.Yadav (PW 14) had produced disclosure statements i.e. Ex.PW16/A and Ex.PW13/A of appellant Dinesh Tiwari and co-accused Beer Singh to him. IO PW34 interrogated them and thereafter they had pointed out the place of occurrence at ISBT Road, Yamuna khader in the area of Seelam Pur vide memo Ex.PW 14/C and 14/B respectively. Thereafter, appellant Dinesh Tiwari and co-accused Beer Singh had led the IO PW34 and other police officials to House No. 119, Arthale Colony, Mohan Nagar. Appellant Dinesh had entered the said house by taking out a key from a hole in the wall and opened the door of the room with the said key and took out a cloth bag of khaki color from one "attachi" which was lying beneath a cot. The bag Ex. P1 contained Indian currency of Rs. 10,000/- in the denomination of Rs. 100/- Ex.P2 (collectively). On one side of the bag Ex.P1 "Super Enamel Copper Wire Genus Insulating varnish" was printed and on the other side, the name of Ashok Kumar (PW.12) with telephone number was printed. The same were seized vide memo Ex.PW 13/B. Thereafter, they were taken in muffled faces to the Karkardooma courts for fixing the date of TIP. Accordingly, the TIP was fixed for 17.10.1995. However, the appellant and co-accused Beer Singh had refused the TIP. On 18.10.1995 Vikas Gupta PW 3 had identified the appellant and co-accused Beer Singh.

6. On 19.10.1995 both the appellant and co-accused Beer Singh pointed out the place at Bhadurghat Road at Sadar Bazar where they had left the scooter DL 8S B 0286 Ex.P4 which number they had converted into DI 8S B 6266. The pointing out memos Ex.34/A and 34/B to that effect were prepared. During investigation, it was also revealed that the aforesaid scooter Ex. P4 was a stolen one from the area of P.S. Mukherjee Nagar on 02.01.1995. The scooter was not found there. Record of Police Station Bara Hindu Rao was checked and the said scooter was found in the "malkhana" of the police station. The

relevant entry in this regard was made. The scooter DL 2S B 2406 Ex. P4 was also seized during the investigation which was alleged to have been snatched by the appellant from deceased Sanjeev Kumar Sharma. A bullet recovered from the body of deceased was also seized during investigation by ASI Mahavir Singh PW 31 from the concerned doctor of St. Stephen Hospital vide memo Ex.PW 31/C. The same was seized after completing necessary formalities. The pistol recovered from the appellant as well as the bullet recovered from the body of deceased were sent to CFSL.

7. After completion of necessary formalities, a report u/s 173 Cr.P.C was prepared and filed in the concerned court against the appellant and co-accused Beer Singh.

8. The co-accused Azad Singh and Dharamender Yadav were declared proclaimed offenders by the concerned court. However, in December, 1996, co-accused Dharamender Kumar was also arrested. Investigation qua him was completed and supplementary challan was also filed against him.

9. The charge for the offence punishable u/s 397/302 read with section 34 IPC was framed against the appellant Dinesh Tiwari and co-accused Beer Singh by the learned Addl. Sessions Judge on 20.7.1996. A separate charge u/s 25 of the Arms Act was also framed against the appellant Dinesh Tiwari as well as co-accused Beer Singh. A separate Charge for the offences committed by co-accused Dharamender Yadav was also framed against him after filing of supplementary charge sheet against him.

10. The prosecution in all had examined 34 witnesses. Out of which Vikas Gupta, PW-3 is the star witness. The other public witnesses are Vijay Golcha, PW-5 is the partner of Bajrang Trading, Ashok Kumar (PW12) is the owner of Genus Traders India where the deceased, at the relevant time, was working. Radhey Shyam verma (PW 1) and Pramod Sharma (PW2) are the relatives of deceased and had identified his dead body. Ravinder Kumar (PW15) is the father of Vikas Gupta (PW3). Remaining testimony relates to police and medical/scientific evidence.

11. The incriminating evidence was put to the appellant as well as to the other co-accused person and their respective statements u/s 313 Cr.P.C were recorded wherein they had denied the incriminating evidence and had stated that they were innocent and were falsely implicated. However, no evidence was led by them in defence.

12. Relying on the solitary testimony of eye witness Vikas Gupta, PW-3 and other supporting evidence including the medical evidence produced by the prosecution, the learned Addl. Sessions Judge convicted the appellant for the offence punishable u/s 397/302 IPC. The other co-accused were convicted for the offence punishable u/s 392/34 IPC. However, the appellant and co-accused Beer Singh were acquitted of the offence punishable u/s 25 of the Arms Act.

13. Aggrieved with the judgment of conviction and order of the learned Addl. Sessions Judge, the appellant has filed the present appeal. Learned APP submitted that the

co-accused persons have undergone the sentence and they have not challenged the conviction and sentence.

14. Learned counsel for the appellant has contended that the entire case of the prosecution is based on the statement of alleged eye witness Vikas Gupta, PW-3. It is contended that Vikas Gupta PW 3 has made improvements in his evidence. It is contended that the said witness was examined on different dates by the prosecution and every time he had given a different version of the alleged occurrence as such it cannot be said that he is an eye witness. It is contended that his testimony cannot be taken to convict the appellant. It is further contended that the learned trial court has ignored the improvements made by him in his evidence. It is further contended that as per the evidence of Vikas Gupta, PW-3 he had taken the clothes of the deceased i.e., pant Ex.P1, underwear Ex.P2, belt Ex.P3 respectively from the hospital to his house in an unsealed parcel. Thereafter, ASI Mahavir Singh, PW-31 had seized the same from him vide Memo Ex.PW 3/13. The said clothes Ex.P1 to Ex.P3 are identified by Vikas Gupta, PW-3 in the court. It is stated that the said piece of evidence is not a reliable piece of evidence and cannot be taken into consideration. It is further contended that the recovery of the bag Ex.P1 and currency notes Ex.P2 (Collectively) are also not proved beyond doubt. It is contended that the evidence of recovery witnesses i.e., HC Rajender Singh, PW-13, SI K.L.Yadav, PW 14 and IO Ishwar Singh, PW 34 is also not believable as all have made different statements in this regard. It is contended that all have given a different color of the bag Ex.P1. It is contended that as per evidence on record the money which was allegedly collected by the deceased and Vikas Gupta, PW-3 from Vijay Golcha, PW 5 of Bajrang Traders was of Marudher Industries. However, no one has been produced on behalf of the said industry to substantiate the same. It is contended that the same creates doubt in the prosecution case.

15. On the other hand, learned APP has argued that Vikas Gupta, PW-3 is a reliable witness. There is no reason why he would falsely implicate the appellant. His material evidence is in consonance with the statement Ex.PW3/A to IO PW 4 on the basis of which FIR Ex.8/A was registered. It is contended that his evidence finds support from the evidence of Ashok Kumar, PW-12, Vijay Golcha, PW-5. It is contended that Ashok Kumar, PW-12 has deposed that on the day of occurrence he had sent his manager i.e., deceased Sanjeev Kumar along with his nephew Vikas Gupta PW-3 for taking money from Bajrang Traders Company, Basti Harphool, Sadar Bazaar and had given the bag Ex.P1 for keeping the money. Vijay Golcha, PW5 is a partner of Bajrang Trading Company who has proved the relevant entry in the cash book showing that money was given to the deceased and Vikas Gupta, PW-3. It is further contended that evidence of Vikas Gupta, PW-3 establishes that he had seen the occurrence. He has identified the appellant in court. There is a refusal by the appellant for TIP, as such, adverse inference has been rightly drawn against the appellant by the learned trial court. It is submitted that the statement of Vikas Gupta PW-3 was recorded on different dates. But the same does not make him an unbelievable witness as is contended. It is contended that he has not

made improvement in his evidence as is alleged. It is submitted that, firstly, recalling of Vikas Gupta, PW-3 was allowed vide order dated 15.2.2000 of Ld.trial court, at the request of State as due to inadvertence question regarding the scooter Ex.P4 and bag Ex.P1 containing currency notes Ex.P2 (collectively) were not put to him. Accordingly, his further evidence was recorded on 22.2.2000 and appellant was given opportunity to cross-examine him. It is further submitted that Vikas Gupta, PW-3 was summoned again for further examination on the application of the State u/s 311 Cr.P.C. as co-accused Dharmender was arrested on a subsequent date and the witness was re-examined in his presence. It is contended that Vikas Gupta, PW-3 was recalled by the speaking orders of the court. These orders were never challenged by the appellant. It is further contended that as per CFSL report Ex. PW34/E, the bullet recovered from the body of deceased, seized vide memo Ex.31/C during investigation had been fired from the pistol Ex.P1 recovered from appellant. It is further contended that the post mortem report/opinion about cause of death i.e. Ex. PW4/A as well as the recovery of bag Ex.P1 containing Rs. 10,000/- Ex.P2 (collectively) recovered at the instance of the appellant, all support the prosecution case. It is submitted that prosecution has proved its case beyond all reasonable doubt.

16. We have heard learned counsel for the appellant as well as learned APP for the State.

17. The material eye-witness to the occurrence is PW-3 Vikas Gupta. He is a solitary eye-witness to the occurrence. The law relating to evidence of solitary eye witness has been discussed by the Supreme Court in a number of cases. It has been consistently held that as a general rule the court can and may act on the testimony of single witness provided his evidence has a ring of truth and the same is cogent, credible and trustworthy. In [Vithal Pundalik Zedghe Vs. State of Maharashtra](#), the Supreme court while dealing with a murder case where the prosecution had relied upon the solitary testimony of an eye witness, observed as under:-

6. On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, 1872 (in short the 'Evidence Act') the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

7. Therefore, there is no hesitation in holding that the contention that in a murder case the court should insist upon plurality of witnesses, is much too broadly stated.

In the aforesaid judgment, the Supreme Court also referred to the judgment in [Vadivelu Thevar Vs. The State of Madras](#), . The relevant portion is quoted as under:

11.... Hence, in our opinion, it is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way -- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses.

18. In [Jagdish Prasad and others Vs. State of Madhya Pradesh](#), , the Supreme Court has observed as under:-

There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

19. Coming to the evidence of Vikas Gupta PW-3, he has categorically described the incident in detail. He has deposed that on 06.09.1995 he had gone to the premises of Bajrang Traders, Basti Harphool, Sadar Bazaar, with deceased Sanjeev Kumar to collect the payment. He has also stated that at that time he was working in a factory with his uncle Ashok Kumar PW-12 and deceased was the supervisor in the factory. He has further deposed that they had gone to collect Rs. 3 lakhs from Bajrang Traders and had gone on a two wheeler scooter bearing No. DL2S B 2406 Ex.P4. They had reached Bajrang Traders at about 4.30 pm or 4.45 pm where Rs. 3 lakhs were given to them by Sh.Vijay Golcha, PW-5. They had put that money in a green coloured cloth bag Ex.P1. A sum of Rs. 20,000/- was already with them as the said money was taken from the factory for purchasing some goods from Sadar Bazaar. The bag Ex.P1 containing Rs. 3,20,000/- was put in the dicky of the scooter Ex.P4. The deceased Sanjeev Kumar was driving the scooter and he was on the pillion seat. At about 6.30 p.m., they had reached ISBT bridge. After crossing the bridge when they were ahead of the police booth, three boys came on a scooter from behind. The accused Beer Singh was driving the scooter and two others were on the pillion seat. The boys who were on the pillion seat alighted from the scooter and came near them. One of the boys asked Sanjeev Kumar Sharma to leave the scooter. When he refused to comply, that boy took a revolver and fired at a point blank range on Sanjeev. He has identified the appellant Dinesh as the person who fired at Sanjeev Kumar Sharma. After firing the appellant Dinesh escaped on their scooter Ex. P4 while the remaining two co-accused persons escaped on their own scooter. He had removed the injured to the hospital in a two wheeler scooter after taking a lift from someone and got him admitted there. He also deposed that he had lodged a report with the police which is Ex.PW-3/A.

20. His material deposition is in consonance with the statement to the police Ex.PW3/A. He had been cross-examined at length but his material deposition is not shaken in cross-examination. Perusal of the record shows that though the statement of aforesaid witness was recorded on different dates, yet no contradiction of a material nature has been pointed out by the Id. counsel for appellant which makes him an unbelievable witness. His part examination-in-chief was recorded on 07.11.1996. On the said date, further statement was deferred for want of case property i.e. original cash book and records. Perusal of record shows that few dates were thereafter taken by the appellant due to non-availability of his counsel. Ultimately, his further statement and cross-examination was completed on 11.11.1997. Thereafter, evidence of other witnesses was recorded. On 09.02.2000, an application was moved on behalf of the State for recalling of Vikas Gupta PW-3. Reply thereto was filed by the appellant. Thereafter, the said application was allowed by the Id. Addl. Sessions Judge vide order dated 15.02.2000 as the other case property seized during investigation was not put to the witness for identification i.e. bag (Ex.P1) containing currency notes (Ex.P2 (collectively)). Accordingly, further evidence of Vikas Gupta, PW-3 was recorded on 22.02.2000 and the appellant was given full opportunity to cross examine him. Again, Vikas Gupta, PW-3 was re-examined on 11.5.2000. The reason for re-examination was that the co-accused

Dharmender was arrested on a subsequent date and supplementary challan was filed against him. The charge was framed against him on 5.4.1997 and it was clubbed with the main case. As the evidence of Vikas Gupta PW-3 was not recorded in the presence of accused Dharmender, a speaking order was passed on 29.04.2000 on the application of State u/s 311 Cr.P.C. and an opportunity was granted to it for re-examination in respect of co-accused Dharmender. The said order was not challenged by the appellant. Further full opportunity was given to appellant to cross-examine him. The evidence on record on different dates has been seen. No improvement of a major nature has been pointed out by the Id. counsel for appellant which makes the said witness unbelievable. The witness has categorically described the incident on oath. His evidence establishes that he had seen the occurrence. His evidence is reliable, trustworthy and cogent.

21. As per the evidence of Vikas Gupta PW-3, the money, after collecting it from Vijay Golcha PW-5, was kept in green bag in the dicky of the scooter Ex. P4 which was being driven by the deceased at the time of incident. The evidence on record also establishes that pursuant to disclosure statement Ex.PW 16/A of appellant, he had led the police party i.e. IO PW 34 and SI K.L. Yadav PW 14 and HC Rajinder Singh PW 13 to his house at H. No. 119, Arthala Colony, Mohan Nagar and got recovered a green bag Ex.P1 containing Rs. 10,000 Ex. P2 (collectively) from his house. Inspector Ishwar Singh IO PW-34 has deposed that appellant Dinesh Tiwari had led them to his house on 13th October, 1995 at H. No. 119, Arthla Colony, Mohan Nagar along with co-accused Beer Singh. There the appellant had taken out a key from a hole in the wall near the door and had opened the door of the room with that key and took out a cotton bag of `Khaki" color from an attachi (suit case) which was lying beneath a cot. On the said bag "Super Enamel Copper Wire" was printed on one side whereas the name of Ashok Kumar along with T. No. was printed on the other side. The said bag was containing currency notes of Rs. 10000/- of Rs. 100/- denomination. The same were seized by him vide memo Ex.PW13/B. IO PW-34 has proved his signatures on the said memo. He has also identified the cloth bag Ex.P-1 and currency notes Ex.P-2 in court. SI K.L.Yadav, PW-14 has also deposed in the same manner as has been deposed by the IO about the manner in which recovery of cloth bag Ex. P-1 containing Rs. 10,000/- of Rs. 100/- denomination at the instance of appellant was made. He had deposed that color of the bag was green (fauzi). He has proved his signature on the seizure memo Ex.13/B. Constable Rajinder Singh PW 13 has also deposed about the aforesaid recoveries.

22. All the aforesaid witnesses were cross-examined at length and their depositions as regards recovery of cotton bag Ex.P1 at the instance of appellant Dinesh Tiwari containing currency notes of Rs. 10000/- of Rs. 100/- denomination, Ex.P2 (collectively) has not been demolished in cross-examination. There is slight discrepancy about the color of the bag. Inspector Ishwar Singh, IO, PW-34 has stated that bag was of Khaki color whereas SI K.L.Yadav, PW-14 has stated that it was of green (fauzi) color. The discrepancy may be due to lapse of time and is not fatal to the case of the prosecution. The recovery of bag Ex.P1 containing currency notes Ex.P2 at the instance of appellant

Dinesh Tiwari is also established beyond doubt. The same also supports the case of the prosecution.

23. The deposition of Vikas Gupta PW-3 that he along with the deceased had gone to collect Rs. 3 lakhs from Bajrang Traders finds support from the evidence of Ashok Gupta PW-12, the owner of Genus Trading Co., who has deposed that on 06.09.95 he had sent the manager i.e., deceased and his nephew Vikas Gupta PW-3 and gave them Rs. 20,000/- for purchasing certain articles. He also gave them his visiting card and a green coloured bag bearing his name and telephone number on it. They had proceeded at 4.00 p.m. On the same day at about 6.30/6.45 p.m. Vikas Gupta PW-3 had told him about the incident on telephone and thereafter he had rushed to the hospital. It has also come in the evidence that he had business dealings with a company at Ahmedabad viz. Marudhar Industries Ltd and Rs. 3 lakhs were due on the said industry. On the instructions of said company he had sent the deceased as well as Vikas Gupta PW-3 for collecting the money from Bajrang Traders. His material deposition is not shaken in cross-examination.

24. It is not the case of the defence that Vikas Gupta PW-3 was having any animosity with the appellant or the co-accused persons. No suggestion in this regard has been given in the evidence despite lengthy cross-examination on behalf of the appellant. The learned Addl. Sessions Judge has also noticed in the impugned judgment that the demeanor of the witness was not found abnormal or unsatisfactory while facing the cross-examination.

25. Vijay Golcha PW-5 is a partner of Bajrang Trading Company. He has deposed that they are the consignment agents of M/s Marudhar Industries, Ahmedabad, Gujarat. On 04.09.1995 he had received a message from M/s Marudhar Industries for making payment of Rs. 3 lakhs to Ashok Gupta PW-12 on their behalf. Thereafter, he had received a telephone message on 06.09.1995 from Ashok Gupta PW-12 that he was sending Vikas Gupta PW-3 and the deceased along with his visiting card for collecting the money. He has also deposed that deceased as well as Vikas Gupta, PW-3 had come to his shop on 06.09.1995 at 4.30 pm and he had given them a payment of Rs. 3 lakhs. After collecting the money they had put it in a green coloured bag Ex.P1. He had further deposed that he had made the relevant entry of Rs. 3 lakhs in the cash book and handed over the photocopy of said entry dated 06.09.1995 Ex.PW5/A to the IO PW34 who had taken it into possession vide memo Ex.PW5/B. He had also produced the original cash book showing the relevant entry. Nothing contrary has come out in his cross-examination. The above evidence shows that on 6.9.1995, at about 4.30 p.m., Rs. 3 lakhs were collected from Vijay Golcha PW-5 on the instructions of Ashok Gupta PW-12 by Vikas Gupta PW-3 and the deceased.

26. Further, the appellant had also refused to participate in the proposed TIP during the investigation. Refusal to participate in the TIP during investigation is also detrimental to the appellant. Vikas Gupta, PW-3 has also identified the appellant in court. The identity of appellant stands established beyond doubt from the evidence of Vikas Gupta PW-3. The

evidence on record also establishes that appellant along with co-accused persons had committed robbery of two wheeler Ex.P4 and a sum of Rs. 3,20,000/- from the possession of Vikas Gupta, PW-3 and deceased Sanjiv Sharma. The evidence of Vikas Gupta PW-3 clearly established the role of appellant i.e., he was the one who had fired on the deceased and thereafter had run away from the spot with scooter Ex.P4 having money in its dicky.

27. The medical evidence i.e., MLC Ex.PW 32/A of deceased is proved on record by Sapan Ghose PW-32 which shows that deceased had sustained gun shot penetrating injury (RT lumbar). He was admitted in hospital on 06.09.1995 at 6.45 pm by Vikas Gupta PW-3. The other medical papers Ex.25/A are proved on record by Dr.Yoal Paljor, PW-25. The same shows that deceased had expired on 07.09.1995 at 12.10 midnight. The document Ex.PW 25/A gives the details of treatment given to deceased at the hospital. He had identified the signatures and handwriting on the abovesaid papers.

28. Dr. Anil Kohli, PW-4 has proved on record the postmortem report Ex.PW.4/A. The relevant portion of the same is as under:-

Alleged history of receiving gun shot injury on 6.9.95 at about 6.30 pm. He was rushed to St. Stephens Hospital where he was examined on 6.9.95 at 6.45 pm. He was operated upon and the bullet recovered by the surgeon. He died in hospital at 12.10 am on 7.9.95.

XX

Ante-mortem Injury:-

1. xxx

2. xxx

3. xxx

4. xxx

5. xxx

6. Fire arm entry wound seen over the back of right side of abdomen, placed 14 cm to the right of mid-line and 12 cm above the top of hip bone. Irregular lacerated wound with debridement done at places (as is combined with laparotomy wound) measuring 3 cm x 1.2 cm x cavity deep. Blackening seen around wound at places, tattooing seen around wound in area of 8 cm x 6 cm. On dissection the track of the wound is passing through and through the right lobe of liver, duodenum and Jegunum, stomach mesentry and pancreas (all these organs had lacerations due to fire arm projectile which had been stitched. The track direction was going anteriorily, medially and downward. Depth of track was 16 cm x haemorrhage and extravasation of blood present along with track of the

wound.

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Time since death: about half a day.

Cause of death: Haemorrhagic shock due to multiple ante-mortem injuries to the internal organs caused by the projectile of a fire arm, injury No. 6 was sufficient to cause death in the ordinary course of nature, both individually and collectively with the other injury.

29. The cause of death stated in Ex.PW4/A is on account of haemorrhagic shock due to multiple ante mortem injuries to the internal organs caused by the projectile of fire arm i.e. injury No. 6. The same also supports the deposition of Vikas Gupta, PW-3 that the appellant Dinesh Tiwari had fired a shot at the deceased.

30. The memo Ex.PW31/C is proved on record by ASI Mahavir Singh, PW-31 which shows that the bullet recovered from the body of deceased was handed over to him by Dr.Avdesb Kumar of St. Stephens Hospital. The CFSL report Ex.PW34/E shows that bullet recovered from the body of deceased was fired from the country made pistol Ex.P1. The relevant part of report is reproduced as under:-

The.315/8 mm bullet (marked bc/1) of parcel No. 2 had been fired from the.315/8 mm country made pistol (marked W/1) of parcel No. 1 in question.

The evidence pertaining to clothes of deceased i.e., Ex.P1 to P3 is not taken into consideration while analyzing the evidence against the appellant as the same were not seized properly during the investigation. The prosecution witness Ashok Gupta, PW-12 has also explained as to how name of Marudhar Industries had come. In these circumstances even if no one is examined from Marudhar Industries, the same does not demolish the case of prosecution in any manner. The appellant was acquitted u/s 25 of the Arms Act by the Ld.trial court on the ground that requisite sanction to prosecute the appellant, as contemplated u/s 34 of Arms Act was not proved by prosecution. Even the acquittal of appellant u/s 25 of the Arms Act, would not cause any dent in the prosecution case as there is direct evidence against the appellant connecting him with the crime.

In view of the above evidence discussed above, the conviction and sentence as recorded by Ld. Addl. Sessions Judge of appellant are upheld. The appeal is dismissed.