

(2006) 12 DEL CK 0129
In the Delhi High Court
Case No : Criminal Appeal No. 193 of 2006

State	Vs	APPELLANT
Sidhartha Vashisht and Others		RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 340, 340(2), 360, 428
Penal Code, 1860 (IPC) — Section 120B, 201, 302
Probation of Offenders Act, 1958 — Section 4

Citation : (2009) 93 DRJ 183 : (2007) 145 PLR 42 : (2007) 2 RCR(Criminal) 821

Hon'ble Judges : R.S. Sodhi, J;P.K. Bhasin, J

Bench : Division Bench

Advocate : Mukta Gupta, Ashwini Vaish and Rajat Katyal, for the Appellant; R.K. Naseem and Manu Sharma for Respondent No. 1 (Sidhartha Vashisht), K.N. Balagopal S.K. Sharma, G.K. Bharti for Respondent No. 2 (Vikas Yadav) and I.U. Khan R.D. Rana, Vikas Arora, Aman Khan and Om Pal for Respondent No. 3 (Amardeep Singh Gill), for the Respondent

Final Decision : Disposed Off

Judgement

R.S. Sodhi, J.—Vide our judgment dated 18th December, 2006 in CrI. A. 193/2006, we had held respondents Sidhartha Vashisht @ Manu Sharma guilty for an offence u/s 302 IPC, Section 201/120B IPC and u/s 27 of the Arms Act. We had also held respondents Amardeep Singh Gill and Vikas Yadav guilty for an offence u/s 201/120B IPC. All three of them are present in court today in custody.

2. We have today heard the parties on the question of sentence. It is argued on behalf of Sidharth Vashisht @ Manu Sharma that this was a murder which was in the heat of passion. It was not premeditated nor committed in a brutal manner. It is also argued that the convict is not a habitual criminal or incorrigible and that it cannot be said that he cannot be reformed. Counsel submits that law does not envisage vengeance but cares for reformation. He submits that the law would be satisfied if a sentence of imprisonment for life is inflicted upon this convict.

3. Counsel arguing on behalf of respondent No. 3, Amardeep Singh Gill, submits that Amardeep Singh Gill is a responsible officer in a multinational company serving as its General Manager. He submits that respondent No. 3 is 41 years of age and has clean antecedents. He has not been involved in any other offence and is a first offender and he is an educated man from a responsible family, married and has two school going children. He is also responsible for looking after his aged parents who are in advanced age. Counsel further submits that this Court would be pleased to take into consideration the protracted trial that has caused grave anguish and mental torture and has burdened him with exceptional expenses, besides the fact that the convict has already spent 16 days in jail before he was granted bail during which time he has shown exemplary behavior. He prays that he be dealt with under the provisions of Section 360 Cr.P.C. and/ or Section 4 of the Probation of Offenders Act, 1958.

3. Counsel appearing on behalf of respondent No. 2 Vikas Yadav contends that Vikas Yadav is a young man of 28 years of age. He has just stepped into the threshold of life and deserves to be dealt with in a manner so as to rehabilitate him in society. The crime committed by him was not intentional nor was of a nature that could amount to an offence of great magnitude. He also submits that he is a qualified Engineer and an MBA. Counsel goes on to submit that this highly qualified man's career should not be brought to an end by imposing sentence that would ruin him. He also submits that the convict has undergone more than 2 ? years of incarceration in this case.

4. Learned Counsel for the State, on the other hand, Ms. Mukta Gupta, submits that the crime committed by Sidhartha Vashisht @ Manu Sharma deserves no leniency. She submits that his crime has shocked the society and his actions belie any possibility of his getting reformed. She also submits that this convict has left no stone unturned to bury the criminal justice in this country and should be dealt with in an exemplary manner.

5. She further contends that Amardeep Singh Gill as also Vikas Yadav knew the nature of crime and went out of the way to remove evidence and shield the guilty. In their case also, counsel submits, that there is no sign of remorse which should entitle them to a lenient sentence.

6. We have heard counsel for the parties and very carefully examined the case before us. We are of the view that though this case is one that has shocked the confidence of the society in the criminal delivery system yet it cannot be said that there is material to suggest probability that the convict Sidhartha Vashisht @ Manu Sharma would continue to commit acts of violence that would constitute a threat to the society. There is also nothing on record to suggest that there is no probability that the convict can be reformed or rehabilitated. The murder though intentional having been committed without premeditation we feel justice would be satisfied if we award the sentence of imprisonment for life to Sidhartha Vashisht @ Manu Sharma. Consequently, we sentence Sidhartha Vashisht @ Manu Sharma for life imprisonment together with a fine of Rs. 50,000/- to be

paid to the family of the victim, if recovered, and in default of payment of fine he shall undergo further three years of imprisonment. We also sentence him to four years imprisonment and a fine of Rs. 2,000/- and in default three months imprisonment for the offence u/s 27 Arms Act. We also sentence him to imprisonment for four years together with a fine of Rs. 2,000/- and in default three months of imprisonment u/s 201/120B IPC.

7. As regards Vikas Yadav and Amardeep Singh Gill, we feel ends of justice would be met if they are sentenced to four years of rigorous imprisonment each and a fine of Rs. 2,000/- each and in default three months of imprisonment u/s 201/120B IPC.

8. We have consciously considered the case of Amardeep Singh Gill u/s 360 Cr.P.C. but find that knowing that a grave offence had been committed he continued to commit an act by which he intended to shield the guilty and remove the evidence. So, we do not think it expedient that this convict should be released on probation of good conduct. This prayer is, thus, rejected.

9. Substantive sentences of imprisonment in respect of Siddhartha Vashisht @ Manu Sharma shall run concurrently and all the three convicts would be given benefit of Section 428 Cr.P.C.

A copy of this order be given free of cost to all the three convicts.

COURT ON ITS OWN MOTION

Today we have disposed of Crl. A. No. 193/2006(State v. Siddharth Vashisht @ Manu Sharma etc. which was filed by the State against the judgment dated 21-02-96 passed by learned Additional Sessions Judge, New Delhi in SC No. 45/2000 whereby all the accused tried of different offences including that of murder and causing of disappearance of evidence of the crime were acquitted. Vide our judgment dated 18-12-2006 we have reversed the acquittal of accused Siddharth Vashisht @ Manu Sharma, who was tried for the commission of offences punishable under Sections 302 IPC, 201/120B IPC and Section 27 of the Arms Act. He has been held guilty in appeal for all these offences. The acquittal of accused Amardeep Singh Gill @ Tony Gill and Vikas Yadav, both of whom along with Siddharth Vashisht @ Manu Sharma were tried u/s 201/120B IPC has also been set aside by us and they stand convicted for this offence. They have been appropriately sentenced vide our separate order passed today in the appeal. While hearing the appeal we had the occasion to examine the trial Court proceedings. The prosecution in support of its case had examined 101 witnesses in all which included eye witnesses of the murder of Jessica Lal. To our utter surprise we found that during the trial as many as 32 witnesses including three eye witnesses of the murder and one ballistic expert had to be got declared hostile by the prosecution. That is definitely a sad state of affairs. Witnesses turning hostile appears to be the order of the day. The Courts must put an end to this kind of attitude of witnesses turning hostile in order to thwart the course of justice. In the facts and circumstances of the present case we are of the view

that it is expedient in the interest of justice to take recourse to Section 340 of the Code of Criminal Procedure, which this Court as an Appellate Court can do in exercise of the powers u/s 340(2) Cr.P.C since the trial Court has chosen not to invoke this provision of law despite taking note of the fact that a large number of witnesses had turned hostile. We, Therefore, direct that a show cause notice be issued to the following witnesses who had appeared during the trial and had turned hostile to show cause as to why action be not taken against them as per the provisions of Section 340 Cr.P.C.:

1. PW-2 Shyan Munshi
2. PW-3 Shiv Das Yadav
3. PW-4 Karan Rajput
4. PW-5 Parikshat Sagar
5. PW-19 Andleep Sehgal
6. PW-25 Manoj Kumar
7. PW-26 Balbir Singh
8. PW-31 Narain
9. PW-34 Tarsem Lal Thhapar
10. PW-35 Birbal
11. PW-44 Shankar Mukhia
12. PW-50 Harpal Singh
13. PW-52 Chander Parkash Chabra
14. PW-53 Abhijeet Ghosal
15. PW-54 Varun Shah
16. PW-55 Mukesh Saini
17. PW-56 Chetan Nanda
18. PW-57 Ashok Dutt
19. PW-60 Baldev Singh
20. PW-61 Ishdeep Sharma
21. PW-62 Ali Mohammad
22. PW-64 Ravinder Singh Gill
23. PW-65 Kulvinder Singh
24. PW-67 Niranjan Ram

- 25. PW-68 Mangal Singh
- 26. PW-69 Rakesh Kumar Atri
- 27. PW-71 Harminder Singh
- 28. PW-72 Lal Singh
- 29. PW-77 Gajender Singh
- 30. PW-87 Jagan Nath Jha
- 31. PW-95 Prem Sagar Manocha
- 32. PW-98 Babu Lal

The show cause notices be served on these witnesses through the SHO concerned who will ensure that they are served before the next date of hearing. These persons are required to be present in court in person on the next date of hearing.