

(2014) 09 DEL CK 0173
In the Delhi High Court
Case No : Criminal L.P. No. 760 of 2013

State of NCT of Delhi

APPELLANT

Vs

Parveen Kumar

RESPONDENT

Date of Decision : 08-09-2014

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2014) 4 JCC 2505

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Aashaa Tiwari, A.P.P. and Anil Kumar, Inspector, Advocate for the Appellant; Bhupinder Methani, Saurbh Kansal, Azhar, B.S. Mathur and Rajat Mathur, Advocate for the Respondent

Judgement

1. State seeks leave to appeal against the judgment dated November 09, 2012 whereby the respondents Praveen Kumar @ Sonu, Shiv Kumar @ Tony and Kulwant Singh have been acquitted of the charge for offence punishable under Section 302/ 120B IPC. Praveen Kumar has been convicted for offence under Section 25 Arms Act challenging which he has filed a separate appeal being Crl. Appeal No. 354/2013. The case of the prosecutions rests on the circumstantial evidence. An information was received at PS Bawana regarding a dead body lying in the fields of Village Nangal Thakran, Kanjhawala-Nangal Road, Delhi on March 27, 2010. ASI Surender Singh and Constable Nirmal reached the spot where a farmer Mahavir took them to the field where a dead body was lying head downwards and blood was lying on the ground. Besides the dead body were lying empty Royal Stag Whisky bottle and two plastic glasses. Crime Team was summoned to take photographs and finger prints. There was a deep wound on the back of the neck of the dead body. In the meantime Mahavir Singh s/o. Maman Singh identified the body to be of his nephew Manish. On the basis of statement of Mahavir Singh rukka was sent on which F.I.R. No. 74/2010 was

registered under Sections 302/ 34 IPC.

2. Mahavir Singh stated that his other nephew Sandeep told him that the deceased Manish had gone with accused Praveen and Shiv Kumar in their Santro Car on March 26, 2010. The Investigating Officer recorded the statement of Sandeep as well who stated that he along with his friend Mahesh @ Jony had gone to Dada Dev Akhara in the village on March 26, 2010 at 7.00 PM. From there, they along with Manish went to Auchandi Boarder for drinking. After taking drinks Manish called accused Shiv Kumar on his phone at Auchandi border. Accused Shiv Kumar and Praveen came there in Santro Car No. HR-29H-0777 and Manish accompanied them. After some time when he made a call to Manish to return home, he replied that he will come in the night. Sandeep alleged that there was a quarrel between Praveen and Shiv Kumar with Manish a few days ago.

3. The prosecution also examined other witness Raghubir Singh who had seen the deceased in the company of Praveen Kumar and Shiv Kumar on March 26, 2010 at 11.30 PM near the fields of his brother Mahavir. On the basis of these statements, Praveen Kumar and Shiv Kumar were arrested on April 20, 2010. They pointed out the place where they had parked Santro Car and got recovered the same. Praveen got recovered the loaded pistol from a place near Shri Krishan Gaushala at Kanjhawala Road. Mahavir the person who got located the dead body got his statement recorded on May 10, 2010 stating that the accused made an extra judicial confession before him. In the meantime Kulwant Singh was arrested in the Arms Act and then in the present case.

4. During the course of trial, though Sandeep PW-1 brother of the deceased who had last seen Manish with Praveen Kumar and Shiv Kumar at 7.00 PM on March 26, 2010, has deposed in sync with his statement recorded under Section 161 Cr.P.C., however, Raghubir Singh PW-8, who had stated to have seen the deceased with Praveen and Shiv Kumar on March 26, 2010 at 11.30 PM near the fields of his brother Mahavir, turned hostile.

5. PW-23 Dr. V.K. Jha who conducted the post-mortem report found lacerated penetrated wound of size 1 cm x 1 cm on left occipital region and lacerated wound 3 cm x 2 cm on left frontal region, which were entry and exist wounds of firearm. He opined the cause of death as cranio cerebral damage consequent to ante mortem firearm injury. The post-mortem was conducted on March 29, 2010 at 1.00 PM and he opined that the time since death was approximately 27 hours. Thus according to the doctor the time was roughly 10.00 AM on March 28, 2010 when the dead body was found and the information of the dead body was also received at around 10.30 AM.

6. Sandeep had seen the deceased in the company of Praveen Kumar and Shiv Kumar at around 7.00 PM on March 26, 2010 and thus there was lot of time gap between the last seen and the death. The post-mortem report also noted absence of food and alcohol in the body of the deceased thereby indicating that

sufficient time had elapsed between the deceased consuming liquor with Sandeep PW-1 and his death.

7. Further the prosecution has also not been able to recover the weapon of offence at the instance of the respondents as the fire arm recovered at the instance of Praveen Kumar was sent to ballistic expert. As per the Ballistic Division report Ex. PX-1 the individual characteristics of firing pin marks and breech face marks present on fired cartridge case marked Ex. "EC1" and on test fired cartridge cases marked as "TC1" and "TC2" were examined and compared under the comparison microscope and were not found to be identical. Thus the weapon of offence recovered from Shiv Kumar and Praveen Kumar was not the one which was used for commission of offence.

8. Mere recovery of Santro car at the instance of the deceased would be insufficient to hold that the respondents committed the criminal conspiracy to commit the murder of Manish. Consequently, we find no infirmity in the impugned judgment acquitting the respondents. Hence the leave to appeal petition is dismissed. TCR be tagged with Crl. Appeal No. 354/2013.