

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRIMINAL APPEAL NO. 161 OF 2004

Reserved on : August 28, 2006

Date of Decision: August 30th, 2006

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Abdul Majid

Through Appellant
Mr. Kunwar C.M. Khan, Adv.
with Mr. Imran K. Burney,
Advocate

versus

\$ State (Govt. of NCT, Delhi)

Through Respondent
Mr. Ravinder Chadha, APP,
with Mr. Jagdish Prasad,
Advocate.

CORAM:

* HON'BLE MR.JUSTICE R.S.SODHI
HON'BLE MR.JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether the judgment should be reported in the digest? *yes*

J U D G M E N T

R.S.SODHI, J:

1. Criminal Appeal No. 161 of 2004 seeks to challenge the judgment and order dated 7.2.2004 and 11.2.2004 of the Additional Sessions Judge in Sessions Case No. 13 of 2002, arising out of FIR No. 3/1998, Police Station

[Crl.A.161/2004]

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Sangam Vihar, under Section 307 IPC holding the accused-appellant guilty of offence punishable under Section 307 IPC and sentencing him to life imprisonment with a fine of Rs.2,000/- and in default of payment of fine, further simple imprisonment for one year. Benefit of Section 428 Cr.P.C. was also granted to the accused-appellant.

2. The Prosecution case, as has been noted in the impugned judgment, is as follows :

"that on 22.12.1998, S.I. Kuwar Sahab Singh received DD No.8-A and he reached at Gali No.2 near House No.173, Sangam Vihar where he found Head Constable Suresh Tomer and Constable Vinod Kumar. He also found blood stains and one empty cartridge of .315 at the spot. He however did not find any eye witness at the spot and he came to know that injured had been removed to AIIMS. He left with Constable Vinod Kumar to the hospital leaving H.C. Suresh Tomer to secure the spot. He found Sumit admitted in the hospital. He moved an application before the doctor for recording the statement of injured Sumit and he was declared unfit for statement and in the MLC it was reported that Sumit had received bullet injuries. He met Suresh Kumar, uncle of Sumit Kumar in the hospital. He recorded the statement of Suresh Kumar. In his statement Suresh Kumar has stated that he was working as a Government servant at Bus Adda Sarai Kale Khan and on that day in the evening he reached home after completing his duty. After sometime his neighbour Abdul Majid and his wife reached there and started fighting with him on account of the fight between the children. He and his nephew Sumit tried to stop them. Upon that Abdul Majid went to his house and brought a katta and the time was around 7.30 p.m. and he fired gun-shot on Sumit. Sumit received the bullet injury on his head. He felt unconscious and started bleeding. Thereafter, Abdul Majid ran away from the spot. PCR van came there and took Sumit to hospital. Upon that rukka was prepared and

FIR under Section 307 IPC was registered against the accused. On the pointing out of the complainant, Suresh Kumar, site plan was prepared and the statement of the witnesses under Section 161 Cr.P.C. was also recorded. The blood was lifted from the spot. The cartridge was also seized and was sealed in separate parcels. On the cap of the empty cartridge works O.K. 9272 was engraved. When the injured was declared fit for statement, his statement under Section 161 Cr.P.C. was recorded. Accused and his wife ran away from their house. On 5.1.99 on the information of an informer accused Abdul Majid was arrested from outside his house. His disclosure statement was recorded. He also admitted his guilt. His police remand was sought and thereafter the accused took the police party to Tuglakabad Extension and from there he dug out the Katta of .315 bore. The memo was prepared and it was also converted into a parcel and was seized. CFSL form was also filled up. MLC and the X-ray report of the injured was collected. The parcels were sent to FSL Malviya Nagar and the report of the Ballistics Expert was also collected and after completing the investigation, challan has been filed.

On these allegations, charge for the offence under Section 307 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. The Prosecution, in order to prove its case, examined as many as 12 witnesses. Of these, PW-3, Sumit Kumar, is the injured witness. He states that PW-4, Suresh Kumar, is his real uncle whose house is in front of the house of this witness. Suresh Kumar has three sons and one daughter. The accused is known to this witness. He goes on to depose that a quarrel had ensued between Bhanu, son of Suresh Kumar, and daughter of the accused on 22.12.1998 at about 7.30 a.m. Those present at the spot had reprimanded Bhanu and brought him back to the house. At that time, wife

of the accused showered abuses at them. She had also tried to assault wife of Suresh Kumar at which PW-3, Sumit Kumar, intervened and had asked the wife of the accused to go away. In the evening on that day when the accused came home, he along with his wife, came to the house of Sumit Kumar and began abusing Suresh Kumar. This witness tried to pacify them. However, the accused then came out of his room with a Deshi Katta and fired at Sumit Kumar aiming at his head. This witness sustained injuries on the head and fell down unconscious but regained consciousness shortly thereafter. The Police arrived at the scene and removed the injured witness to the hospital. Then this witness goes on to state that Suresh was also present in front of his house when the accused fired at this witness. The Police made inquiries from him and recorded the facts. The witness states that he remained admitted in the hospital for about eight days and due to the injuries has become incapacitated in the right arm.

4. In cross-examination, it is elicited from this witness that the occurrence in which he sustained injuries had taken place at about 7.30 p.m. in presence of his uncle, aunt and the wife of the accused. It was also elicited from him that after having quarreled with this witness in the evening, the accused had gone to his house and brought a Deshi Katta and that the accused was standing on the chabutara in front of his house when he fired at the witness. He denied the suggestion that the Deshi Katta was

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with his uncle, Suresh Kumar, or that Suresh Kumar had fired at the accused but accidentally hit the witness. PW-4 is Suresh Kumar who fully corroborates the version of PW-3. The injuries on Sumit Kumar are corroborated by the medical evidence.

5. The accused persons set up a defence and examined DW-1, Shehnaz, who is the wife of the accused. She has stated that Suresh fired a shot from the Deshi Katta which was aimed at her husband but the accused ducked the shot as a result of which it hit Sumit. The accused also examined DW-2, Fazley Khan, who also supports DW-1. However, from an analysis of the testimonies of DW-1 and DW-2 we find that DW-1 says that the gun shot was fired by Suresh when Sumit was talking with her husband while DW-2 states that the gun shot was fired when the accused and Sumit were grappling with each other. Obviously, there is material contradiction. The fact that the accused took aim and fired at Sumit, has been elicited by the defence from Sumit in his cross-examination. Further, there is no reason why Sumit should implicate the accused when there is no enmity shown between the two.

6. It was argued by counsel for the accused-appellant that the trial court was unnecessarily impressed by the so called permanent injury of Sumit. Counsel submitted that the injury is not of a nature that can cause

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permanent disability. Counsel also submitted that the statement of Sumit has been recorded after a long delay which has resulted in his making a false statement. Counsel also attacked the recovery of the Deshi Katta, Ex.P-1.

7. On carefully examining the record of the case, we find from the material on record that there is nothing to suggest that PW-3, the injured witness, is not telling the truth. As a matter of fact, in his cross-examination, this witness has been made to re-state his case which he had stated in examination-in-chief. Further, his statement finds corroboration from the statement of PW-4, Suresh, as also from the medical evidence. The delay part has not even been put to PW-4. Counsel also challenged the recovery of the fire-arm. He submitted that no independent witness has been associated. We find that the trial court has dealt with this argument adequately with reference to Mahadeo vs. State, 1990 CrL.L.J. 858 as also Appabhai & Another vs. State of Gujarat, AIR 1988 SC 696. We find no infirmity in the same.


8. From the statement of PW-3, the injured witness, which is corroborated by PW-4 as also from the medical evidence, we hold that the Prosecution has been able to prove its case beyond doubt. While upholding the judgment of conviction, we are, however, of the opinion that ends of

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justice would be met if the sentence imposed is reduced to seven years R.I. together with a fine of Rs.10,000/- (Rupees ten thousand), and in default of payment of fine the appellant shall undergo further simple imprisonment of one year. The fine, if recovered, be paid as compensation to the injured PW-3, Sumit Kumar. The appeal is disposed of accordingly.


[R.S.SODHI]
JUDGE


[P.K.BHASIN]
JUDGE


August 30th, 2006
jt.