

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 6<sup>th</sup> March, 2014*

*Pronounced on: 31<sup>st</sup> March, 2014*

+ **CRL. A.597/2010**

RAJA RAM @ CHOTA RAJA ..... Appellant

Through Mr. Bankim Kulshrestha, Advocate

Versus

STATE (GOVT. OF NCT OF DELHI) ..... Respondent

Through Ms. Rajdipa Behura, APP for the  
State.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE G.P. MITTAL**

### **J U D G M E N T**

**G.P. MITTAL, J.**

1. Appellant Raja Ram @ Chota Raja impugns the judgment dated 01.10.2009 and the order on sentence dated 12.10.2009 passed in Sessions Case No.175/2009 (arising out of FIR No.254/2008 Police Station Mandawali) whereby the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC) and was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-. In default of payment of fine, the appellant was sentenced to further undergo simple imprisonment for one month.
2. DD No.44-A, dated 29.06.2008 was recorded in Police Station

Mandawali by E-59 operator (of PCR) who appeared in person in the Police Station at 23:10 hours (11:10 p.m.) and informed that as per the information received from phone number 9213315447, a boy has been shot in Gali No.3, House No.364. Inspector Keshav Kumar (PW-13) along with SI Pawan Kumar (PW-14) and other police officials proceeded to the spot and found Sanjeev @ Koki (the deceased), resident of House No.364, Gali No.3, Railway Colony lying in an injured condition at the corner of house of one Chhidda. CATS ambulance also reached the spot and immediately removed the deceased to the hospital. Vide MLC Ex.PW-8/A, the doctor declared the deceased as brought dead at 11:40 p.m. PW-13 found that Mangal Nagar (PW-3), who was an eye witness to the incident and brother of the deceased was also present in the hospital. PW-13 recorded his statement Ex.PW-3/A wherein PW-3 informed PW-13 that his elder brother Sanjeev @ Koki (the deceased) was residing with him in House No.364, Gali No.3. One boy Raja Ram @ Chota Raja (the appellant) was residing in the house of Chhidda. The appellant used to ask him and his brother (the deceased) to arrange liquor. On their refusal, he (the appellant) would threaten to beat them. He was a bad character (B.C.) of the area and due to fear, the deceased sometimes used to provide liquor to him. On 29.06.2008 at about 9:30 p.m., the appellant was asking his brother (the deceased) for liquor. He took the deceased with him to the liquor vend (*theka*). At about 10:45 p.m., he (PW-3) noticed that the deceased and the appellant were standing at the corner of house of Chhidda in Gali No.3. The appellant was hurling abuses on the deceased under the influence of liquor. All of a sudden, the appellant took out a country made pistol from his waist

and shot the deceased on his head. The deceased fell down swirling at the corner of the street. PW-3 ran behind the appellant but he disappeared in the darkness. PW-3 further informed that he returned to the spot and made a call to the PCR at number 100. Police and the ambulance arrived at the spot. Ambulance removed his brother to Lal Bahadur Shastri Hospital (LBS hospital). He also followed and reached LBS hospital where his brother was declared as brought dead. PW-13 made endorsement Ex.PW-13/A on the statement and transmitted it to the Police Station through Constable Chagan Lal (PW-6) for getting the case registered. The dead body was shifted to the mortuary. The crime team was summoned. The police photographer took photographs of the scene of incident from various angles. PW-13 lifted the blood and bloodstained earth and earth control and kept the same in small plastic jars which were sealed with the seal of 'KK'. The appellant was not found available at his rented room. On the basis of secret information, the appellant was arrested on 30.06.2008, while sitting near the railway track and a country made pistol Ex.P-1 was recovered from the left dub of his trouser. On opening the country made pistol, one fired cartridge was found in the chamber; the country made pistol was measured; its sketch was prepared; it was sealed and deposited in the *malkhana*. The country made pistol was subsequently sent to FSL and expert opinion Ex.PW-9/A, PW-10/A and PW-10/B were obtained.

3. On appellant pleading not guilty to the charge for the offence punishable under Section 302 IPC, the prosecution examined 16 witnesses. In his examination under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) the appellant denied the

incriminating evidence put to him and pleaded false implication. The appellant stated that he was sleeping at his rented room when the police came and broke open the door. He was told by the police that he had committed the murder of one *Gurjar* and he was taken to the Police Station and was implicated in the case falsely. On appreciation of evidence, the Trial Court found that PW-3's testimony as an eye witness was fully corroborated by Ex.PW-3/A, the DD entry, recovery of the country made pistol Ex.P-1 and the FSL report and thus, the Trial Court found that the prosecution case was proved against the appellant beyond shadow of all reasonable doubt and the appellant was accordingly convicted and sentenced as stated earlier.

4. It is urged by Mr. Bankim Kulshrestha, the learned counsel for the appellant that the prosecution case revolves around the testimony of Mangal Nagar (PW-3) who in his statement Ex.PW-3/A made to the police stated that the appellant being a BC of the area used to ask for liquor from him and his brother (the deceased) and that sometimes they would succumb to his (the appellant's) command and that on the date of the incident also, the appellant had allegedly taken the deceased with him to get liquor. The learned counsel argues that PW-3 has not given the dates when such demands were allegedly raised and also the details when the liquor was arranged by him or by his deceased brother which belies the prosecution version. The learned counsel for the appellant urges that in fact PW-3 was not an eye witness to the incident which is fortified from the MLC Ex.PW-8/A of the deceased wherein the name of PW-3 is not mentioned.
5. It is urged that had PW-3 been present at the spot at the time of incident and seen the incident, he would have accompanied his brother

(the deceased) in the ambulance to the hospital. Further, if PW-3 was present at the spot at the time of the incident, he should have been seen by the officials of PCR and CATS ambulance and these officials could have been examined to prove PW-3's presence at the time of incident. Their non-examination thus, goes against the prosecution. Referring to the MLC Ex.PW-8/A, the learned counsel for the appellant contends that the name of the assailant has also not been mentioned in the MLC which clearly reveals that till the time the deceased was medically examined, the name of the assailant was not known.

6. The learned counsel for the appellant urges that although the prosecution claims that the initial DD entry No.44-A, dated 29.06.2008 (Ex.PW-11/A) was got recorded by Mangal Nagar (PW-3) through mobile phone No.9213315447 which allegedly belonged to the father of PW-3, yet no evidence has been produced that this mobile phone really did belong to PW-3's father or that the same had been given by him to PW-3.
7. The learned counsel further contends that there are contradictions and discrepancies in the testimonies of PW-3 and of other important witnesses examined by the prosecution. Although the incident is alleged to have taken place near the house of Chhidda, however, the said house was not shown in the site plan prepared by the IO or by the draftsman. It is pointed out that taking totality of the circumstances, the Trial Court erred in relying on the testimony of PW-3 to base the appellant's conviction. It is stated that the incident occurred in a street dominantly inhabited by *Gurjar* community to which the deceased belonged and the appellant has been falsely implicated as he belongs

to a different community. It is urged that the prosecution case against the appellant is not established; rather there are grave doubts about appellant's involvement and thus, he is liable to be acquitted.

8. At this stage, it would be appropriate to advert to the testimony of PW-3. In his examination-in-chief he testified:-

*“.....He is a boy of bad character (badmash type ka) and he has been facing a number of litigations. Accused used to demand money from me and my brother on several occasions for purchasing liquor for him. He used to threaten us in case we declined to give money for fetching him liquor. Due to fear we used to give him money sometimes.....”*

9. When PW-3 was questioned on this aspect on behalf of the defence, he deposed that prior to the incident, the appellant had demanded money for liquor from them two-three times. On the appellant's demand, they had given him money for drinks once or twice. He went on to add that the appellant had also extended threats (to them) once or twice when they refused to provide him drinks. Thus, it may be noted that no specific date of demand of liquor/money for purchase of liquor was asked from PW-3. The statement of PW-3 was generally with regard to the demand of liquor, otherwise it had no relevance to the actual incident of inflicting a gunshot injury upon the deceased. Otherwise also, while stating that the demand for money for drinks was made twice/thrice, the witness was quite specific that it is not possible to take note of these demands precisely. Thus, simply because the specific dates of demands were not given in the examination-in-

chief or in the statement Ex. PW3/A by PW-3, it does not make the prosecution case doubtful.

10. Turning to the contention that PW-3 was not an eye witness to the incident for the reason that he had not accompanied the deceased to the hospital, we may say that the deceased was removed to LBS hospital in CATS ambulance. These are well equipped ambulances to remove a victim of an assault or a motor vehicle accident to the hospital without any loss of time so that the precious life of the injured may be saved. Normally, the persons employed on the CATS ambulance themselves carry the injured to the hospital. It is not a case where the injured (the deceased) was removed to a hospital in a private vehicle or a public hired vehicle where the person who has seen the incident, particularly a relation or a friend is expected to accompany the injured to the hospital. In fact, Inspector Keshav Kumar (PW-13) along with other police officials had reached the spot immediately after the incident. The deceased was still at the spot and immediately thereafter the CATS ambulance reached. PW-13 testified that while the injured was being taken to LBS hospital in CATS ambulance, he also proceeded to the hospital while leaving Head Constable Devender Kumar Arya (PW-12) at the spot. It is important to note that prime concern of the police and the doctors is first to provide all the necessary medical assistance to the injured and then quickly pursue investigation so as to bring the offender to book. The deceased was declared as brought dead. PW-3, the deceased's brother was found present in the hospital at that time and the statement of PW-3, Ex.PW-3/A was recorded before 12:40 a.m. (because the *rukka* was transmitted to the PS at 12:40 a.m. on 30.06.2008). This would make

it explicit that not only the injured was very quickly removed to the hospital, but the statement of the eye witness (PW-3) was also recorded promptly. *Rukka* was sent at 12:40 a.m. within two hours of the incident and the FIR was also started at 1:00 a.m. There was no possibility of any deliberation so as to falsely implicate any person. Similarly there was no opportunity to mention the name of the assailant in the MLC because the deceased was declared as 'brought dead' when he was examined by the doctor and the deceased was removed to the hospital in CATS ambulance by Ajab Singh, who was not a witness to the incident. Thus, non-recording of name of PW-3 or the name of assailant in the MLC is of no consequence.

11. It is true that the PCR officials and the CATS ambulance employee (Ajab Singh) have not been examined by the prosecution. Their testimonies however, were hardly of any significance. Admittedly, they had not witnessed the occurrence. The CATS ambulance and PCR officials are primarily concerned with the removal of the injured to the hospital. The aforesaid facts have been proved and established. The PCR officials are further expected to pass on the information to the local police so that the local police takes over the injured and the investigation of the case. Thus, CATS ambulance employee and PCR officials are not expected to depose about any minute details of the crime spot or events in the hospital before the court. Thus, examination of these officials was not required. The contention raised on appellant's behalf that their non-examination adversely affects the prosecution case is devoid of any merit and is, therefore, liable to be rejected.
12. It is a matter of record that DD No.44-A was recorded on an



information given through mobile phone number 9213315447. PW-3 testified that the appellant shot at his brother's head with a country made pistol and ran away in the darkness. He followed the appellant to capture him but since he disappeared in the darkness, he (the appellant) could not be apprehended and, therefore, PW-3 returned to the spot and made a telephone call at number 100. When PW-3 was questioned with regard to the telephone from which the call was made, he was quite specific that he made the call from mobile phone number 9213315447 which was in the name of his father. No further question was put to PW-3 in this regard. The prosecution was not expected to verify any details as to who was the holder of mobile phone number 9213315447. Moreover, PW-3's testimony that he made the call from this number and that this mobile phone belonged to his father was not even challenged in his cross-examination. In the circumstances, the prosecution was not under obligation to make investigation in respect of a totally unnecessary aspect. The contention raised is without any substance and is therefore rejected.

13. We have before us the rough site plan Ex.PW-13/B as also the scaled site plan Ex.PW-5/A. In the unscaled site plan Ex.PW-13/B, the place of incident has been shown at Point A, which is very close to house No.236. The scaled site plan Ex.PW-5/A shows the place at Point 'A' where the incident occurred and Point 'B', is the place from where PW-3 witnessed the occurrence. It has not been mentioned in either of the two site plans that Point 'A' was close to the house of Chhidda. Also, the house of Chhidda has not been shown in either of the two documents. At the same time, all the properties have been mentioned and described by their numbers, *i.e.* properties No.229, 236 and 220

which are close to the place of incident and the position of the electric pole (sodium light) has also been shown which is very close to the place of incident. Since PW-3 had testified in his examination-in-chief that the deceased was shot from a country made pistol while he (the deceased) was standing in the *gali* at the corner of house of Chhidda. Point 'A' is at the corner of two houses, the appellant could have required the witness/witnesses to either give the number of Chhidda's house or to point out the same in the rough sketch or in the scaled site plan. That question having not been put to the witnesses, the appellant cannot make any grievance that the house of Chhidda has not been shown in the site plan when the numbers of the houses which are close to the place of incident have been very much mentioned in the rough sketch as also in the scaled site plan Ex.PW-13/B and Ex.PW-5/A respectively.

14. It is true that House No. 364 has not been shown in the site plan. The same is also inconsequential as PW-3 and the deceased were residents of that house but as per the prosecution version, the incident did not take place close to that house. PW-3 categorically stated that at about 10:30/10:45 p.m. while he was returning home after taking a stroll, when he reached near his street, he saw his brother Koki @ Sanjeev and the appellant standing at the corner of house of Chhidda and the appellant was hurling abuses to his brother. Thus, House No. 364 may be at a little distance from the spot and therefore, the same might not have been shown by the IO in the site plan. In any case, PW-3 was not questioned as to the position or the distance of the spot from House No.364. Thus, non-showing of House No.364 in the rough sketch or in the scaled site plan is not at all relevant.

15. The eye witness account (PW-3's testimony) is corroborated by Manoj @ Lilu (PW-7) who deposed about the presence of PW-3 and the appellant at a roof near the place of incident where they all (appellant, PW-3 and PW-7) took liquor. He also deposed that there was an exchange of hot words between the deceased and the appellant and that he had pacified them and then had proceeded to his house. The prosecution version is further corroborated from the FSL Report Ex.PW-16/A which shows that the pellets marked Ex.P-1 to Ex.P-32 which were taken out from the dead body and sealed in a packet with the seal of 'LBSH-DFMT', corresponded to the size of the pellets of the shot gun cartridge (like 12 bore). The country made pistol of 12 bore Ex. P-1 was recovered from the possession of the appellant at the time of his arrest on 30.06.2008 at 5:00 a.m.
16. In our considered opinion, the prosecution has been able to establish its case against the appellant beyond the shadow of all reasonable doubt. The impugned judgment does not call for any interference. The contention raised on appellant's behalf that the appellant was implicated in the case falsely because he belonged to a different community is totally farfetched. No such suggestion was given to either PW-3 or to the IO. Moreover, it goes without saying that a shot was fired by someone which caused the deceased's death. There was no reason for PW-3 to have saved the real culprit and to falsely implicate the appellant. It is not the appellant's case that there was any caste divide in the street where the deceased and the appellant were residing or there was any specific cause for appellant's false implication because he belonged to a different caste. The contention raised is just make believe story, the same does not inspire any

confidence or create any doubt in the prosecution version by proving it on the test of even preponderance of probabilities.

17. The Appeal is therefore, bound to fail. We accordingly affirm and uphold the judgment of conviction and order on sentence passed by the Trial Court. Consequently, the Appeal is dismissed being devoid of any merit.

**(G.P. MITTAL)**  
**JUDGE**

**(SANJIV KHANNA)**  
**JUDGE**

**MARCH 31, 2014**

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