

Mohd. Anwar

Vs

State of Delhi

Tasleem

Vs

State of NCT Delhi

Criminal Appeals No. 1045 of 1999 with No. 1175 of 1999

(G. B. Pattanaik, M. B. Shah JJ)

17.12.1999

JUDGMENT

SHAH J.:-

1. The appellants were convicted for the offence punishable under Sections 302, 307 read with Section 34 IPC and Section 5 TADA Act, 1987 by the Designated Court, Delhi vide its judgment and order dated 6-8-199/13-8-1999 in Sessions Case No. 7 of 1997 and FIR No. 279 of 1992. It is alleged that in broad daylight, in the presence of the police party, Khalil Ahmed, informer of the police, was murdered by Mohd. Anwar by firing of shot from the revolver. It is the prosecution version that there was information about activities of dacoits in Delhi, which was conveyed to SI Pankaj Singh. On 19-9-1992, SI Pankaj Singh along with the deceased informer Khalil, SI Shiv Lal (PW 3), ASI Raghbir Singh (PW 1), Constable Devender (PW 16), Constable Ramesh, Constable Satbir Singh (PW 13) and Constable Jagpal (PW 10) went for patrolling near Naulakha Niwas, Model Basti, Delhi. At about 1.50 p.m., three boys were seen coming to Model Basti from Rani Jhansi Road. On seeing the police party, they turned back and started running, At that time, informer Khalil pointed out towards them. The police party chased those three boys in their vehicles by taking the same to the wrong side of the road. When the police party reached quite near those boys near police quarters at Ahata Kedara, the third boy succeeded in running away while the present appellants took out their weapons i.e. Anwar took out his revolver and Tasleem took out this pistol. As soon as SI Pankaj alighted from the vehicle in order to apprehend the accused, Tasleem asked his companion "maro salon ko". At this, accused Anwar who was holding a revolver in his hand fire therefrom. The bullet hit at the left-side chest of Khalil, who was just alighting from the police vehicle. SI Shiv Lal immediately made Khalil sit in the vehicle. At that stage, SI Pankaj Singh and ASI Raghbir Singh fired two rounds each in reply. Both the accused also continued to fire and retreat. They were apprehended at the main gate of police colony, Ahata Kedara. ASI Raghbir Singh apprehended accused Tasleem and SI Pankaj Singh apprehended accused Anwar with the help of Constable Satbir and other Staff. AT that time, because of commotion, a crowd collected and some persons out of the crowd also started beating the accused persons due to anger but the police rescued them. Injured Khalil was sent to the hospital along with SI Shiv Lal. From accused Anwar, an English made revolver of .31 bore, which was in his hands, was seized and on checking its chamber four cartridge cases and two live cartridge were found. On further search, six more live cartridge

were recovered from the right-side pocket of his pants. It is also contended that from accused Tasleem a country-made 315 pistol, which was in his hands, was seized. On checking the said pistol, one cartridge case was found in the chamber and on further search five more live cartridges were recovered from the right – side pocket of the pants of the accused. On interrogation, the accused disclosed the name of their third accomplice as Salim alias Pinny, who was also arrested.

2. It has been contended that at the initial stage, the police registered a case under Section 302 IPC was added. After completion of the inquiry, charge-sheet was submitted against the appellants, Salim and the other three persons. As there was no evidence against Salim and the other three persons, they were discharged. It is the defence of the accused that the entire police version is false and that they were lifted from their houses and were roped in this case. After considering the evidence, which was led by the prosecution, the appellants have been convicted by the Designated Court.

3. Against the said judgment and order both the accused have filed separate appeals. Mohd. Anwar has filed Criminal Appeal No. 1045 of 1999 and Tasleem has filed Criminal Appeal No. 1175 of 1999 and Tasleem has filed Criminal Appeal No. 1175 of 1999 against their conviction and sentence.

4. The learned Senior Counsel, Mr. Jaspal Singh appearing on behalf of appellant Mohd. Anwar submitted that the impugned judgment and order passed by the learned judge is illegal and erroneous and that the entire prosecution version is false and the accused are roped in a fabricated case. He submitted that admittedly a number of persons had collected at the scene of offence yet no independent witness was examined by prosecution. He further pointed out that SI Pankaj Singh was not examined by the prosecution and, therefore, the prosecution version becomes doubtful that the incident occurred at the alleged place. He further submitted that there is no positive evidence to establish that the deceased had not expired because of the firing by SI Pankaj Singh and ASI Raghbir Singh, who, as per the prosecution story, fired in retaliation.

5. The learned Senior counsel, Mr. Sushil Kumar appearing on behalf of Tasleem, in addition, submitted that the role assigned to the accused Tasleem is that he exhorted "maro salon ko" at the time of incident and for that he is that convicted for the offence under Sections 302/34 IPC. The prosecution version cannot be relied upon in view of the fact that in the present case apart from the two accused, the police has roped in four more other persons, who were discharged by the learned Judge by order dated 9-1-1996. He submitted that both the accused were seriously beaten up by the police after picking them from their residence. The prosecution has intentionally not produced on record the medical reports indicating the injuries caused to the accused as well as SI Pankaj Singh. He submitted that there is no reliable evidence on record to establish that the pistol was seized from the possession of Tasleem.

6. As against this, learned Senior Counsel for the State, Mr. Shukla submitted that the judgment and order passed by the learned Judge is based on the evidence on record. There is no reason to disbelieve the evidence of prosecution witnesses. He submitted that the said evidence is corroborated by seizure of the revolver from the hands of Anwar and seizure of the pistol from the hands of Tasleem and also recovery of bullets from the body of the deceased Khalil, which was fired from the revolver of Anwar.

7. We would first deal with Criminal Appeal No. 1045 of 1999 filed by Anwar. It is to be stated at the outset that the prosecution has proved that accused Anwar fired from his revolver which caused the

death of informer Khalil. For that purpose, the prosecution has relied upon the evidence of PW 1 Raghbir Singh, who has stated that the police party took the vehicle and chased the accused near the gate of police quarters, Ahata Kedara. At that time, one of the body escap4d from the sport and out of the remaining two, Anwar took out a revolver and Tasleem took our a country-made pistol on seeing the police party. Anwar fire from his revolver which caused injury tot he informer. He ahs also stated that SI Pankaj Singh Overpowered the accused Anwar and took into possession a .32 bore revolver with six rolls, out of which four rolls were found empty as having been fired and the remaining two rolls were found lying in the chamber. He has also stated that SI Pankaj Singh requested many persons who were on the spot to join the investigation but none agreed. He has identified the revolver seized from the accused Anwar. The evidence of this witness with regard to the role played by Anwar is fully corroborated by PW 3 SI Shiv Lal, PW 10 HC Jagpal, PW 13 HC Satbir Singh and PW 16 Constable Devender. Apart from this ocular version of the witnesses, from the possession of Anwar a .32 bore English-made revolver was seized along with four cartridge cases and two live cartridges and six more cartridges were recovered from his possession. These were examined by PW 6 Dey, Senior Scientific Officer-cum-Assistant Chemical Examiner, CFSL, CBI, New Delhi ands according to his report the English revolver was in working order. Further, he has given an opinion with regard to .32" lead deformed bullet which was found from the body of the deceased and has stated that it was fired from the .32 bore revolver, Ex. P-1. That a lead bullet was taken out from the dead body of the deceased by Dr. L. K. Barua (PW 18) during post-mortem. As per the post-mortem report, the deceased was having one rounded punctured wound on the left side of the front of chest.

8. The aforesaid evidence, in our view, conclusively connects the accused Anwar With the crime. However, learned counsel, Mr. Jaspal submitted that the prosecution has failed to examine any independent witness. In our view, there is no reason to disbelieve the say of PW 1 that SI Pankaj Singh tried to record the statement of some persons who collected at the spot but none agreed to be a witness. For such situation, the prosecution cannot be blamed. For the non-examination of Investigating Officer, SI Pankaj Singh, it was pointed out that he was out of the country when the evidence was recorded and therefore this also would be hardly a ground for disbelieving the other witnesses who were present on the post. Learned counsel has further pointed out that the investigating officer ought not to have used the vehicle wherein deceased Khalil was asked to sit after receiving the bullet injury, In our view, this submission is without any substance because for giving immediate treatment the deceased was required to be removed to the hospital and, therefore, at that point of time the act of the investigating officer of using that vehicle for removing him to the hospital, would not in any way affect the prosecution version. It is to be stated that the said vehicle was not used for the commission of offence. Similarly, the contention of the learned counsel for the appellant that the bullet recovered from the body of the deceased was not compared by the ballistic expert to find out whether it was a bullet fired from the revolver of SI Pankaj Singh of PW 1 ASI Raghbir Singh requires to be rejected, in view of the definite evidence on record which establishes that he .32" lead deformed bullet, which was seized from Anwar.

9. Hence, in our view, there is no substance in this appeal and the learned Designated Court has rightly convicted the appellant Anwar for the offence for which he was charged.

*Criminal Appeal No. 1175 of 1999*

10. Now we would deal with Criminal Appeal No. 1175 of 1999 filed by Tasleem. He has been convicted for the offence punishable under Section 302 read with Section 34 IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs 500. He is also convicted for the offence under

Section 307 read with Section 34 IPC and sentenced to suffer RI for 5 years and to pay a fine of Rs 500 and under Section 5 TADA (P) Act, 1987 to undergo RI for 5 years and to pay a fine of Rs 500. The learned counsel pointed out that the appellant is in jail since the day of offence i.e. 19-9-1992 and he has already undergone the sentence for the offence punishable under Section 307 IPC and Section 5 of the TADA (P) Act. He, therefore, submitted that the said conviction is valid yet there was no reason for convicting the accused for the offence punishable under Section 302 read with Section 34 IPC solely on the alleged ground that Tasleem had exhorted as alleged, particularly when the police had falsely involved for other persons, who were required to be discharged. For this purpose, we are also taken through the evidence of all the witnesses. From the evidence on record, the role assigned to Tasleem is that he was accompanying Anwar and that he was having a pistol in his pocket. When they were chased and cornered, both took out their firearms and it is alleged that Tasleem uttered the words "*maro salon ko*". Question is, whether the prosecution has established the said part of its version beyond reasonable doubt. For this purpose, it can be noted that PW 1 ASI Raghbir Singh had not specifically stated that Tasleem exhorted Anwar by using the words "*maro salon ko*". He has only stated that Mohd. Anwar took out a revolver and Mohd. Tasleem took out a country-made pistol on seeing the police party and fired at them. Thereafter, he has improved and stated that Anwar fired at the instance of Tasleem. The Court while recording the evidence has noted that the witness has identified Tasleem as Anwar and Anwar as Tasleem. It is true that PW 10 HC Jagpal Singh, PW 13 SI Shiv Lal, PW 13 Constable Satbir Singh and PW 16 Constable Devender have deposed to the effect that Tasleem has exhorted the other boys by uttering "*maro salon ko*" ASI Raghbir Singh has specifically not deposed that Tasleem has exhorted and thereafter Anwar fired from his revolver, which caused injuries to the deceased. PW 10 Jagpal Singh has in his examination-in-chief merely stated that after chasing the accused when they stopped the vehicle, Tasleem told his companions to shoot them. He has not specifically used the words "*maro salon ko*". He was contradicted with his Section 161 statement, but as the investigating officer is not examined, nothing can be stated about that part of the evidence. Further, the prosecution version is that both the appellants along with other persons had gone near Naulakha House for allegedly committing dacoity. However, that would not mean that after being chased by the police party the accused were having any common intention to kill the chasing party. There is nothing on the record to establish that by the alleged firing by Tasleem injury was caused to anyone. Hence we do not discuss the other contention raised by learned counsel, Mr. Sushil Kumar that from Tasleem a tamancha was not recovered or, in any case, the said recovery is not proved. Further, it is to be noted that at the initial stage, six persons were charge-sheeted for the alleged offences. The learned Judge discharged four of them. In this set of circumstances, it would be unsafe to rely upon the evidence of prosecution witnesses that Tasleem exhorted or uttered the words "*maro salon ko*" as alleged and therefore, Anwar fired from his revolver which caused injury to the deceased Khalil. From the facts and circumstances it would be difficult to infer that Tasleem was having any common intention to commit the crime of which Anwar is convicted. Hence, the conviction of Tasleem for the offence punishable under Section 302 read with Section 34 IPC requires to be set aside.

11. As submitted by learned Senior counsel, Mr. Sushil Kumar, for the other role played by Tasleem, for which he is convicted and has undergone the sentence, the evidence is not required to be reappraised.

12. In the result, Criminal Appeal No. 1175 of 1999 filed by Tasleem is partly allowed. He is acquitted of the offence punishable under Section 302 read with Section 34 IPC. Rest of the order passed by the learned Judge is confirmed. If he has already undergone the sentence for those offences, he be set at liberty immediately if not required in any other case.

13. Criminal Appeal No. 1045 of 1999 filed by Anwar is dismissed.