A PREM SINGH

v.

STATE (N.C.T) DELHI

(Criminal Appeal No. 589 of 2002)

APRIL 24, 2009

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[DR. ARIJIT PASAYAT, V.S. SIRPURKAR AND ASOK KUMAR GANGULY, JJ.]

Penal Code, 1860: s.307 – Conviction under – Affirmed C *by High Court on ground that scientific evidence connected the weapon of appellant with the crime – Held: The injured did not identify the appellant to be the assailant – Merely because he was owner of the weapon would not be ground to convict him under s.307 – Further no question was put to the* D *appellant in his examination under s.313 Cr.P.C regarding his purported role – Conviction set aside – Arms Act, 1950 – s.27.*

Prosecution case was that the appellant fired a shot at deceased which resulted in his death. Another fire was E **shot at son of deceased. Trial court convicted appellant under section 307 IPC and section 27 of Arms Act, 1959. High Court affirmed the conviction holding that since pistol was recovered from the appellant and since the scientific evidence connected his weapon with the crime,** F **his conviction was in order. Hence the present appeal.**

Allowing the appeal, the Court

HELD: The injured did not identify the appellant to G **be the person who had fired the shot. Merely because the appellant was the owner of the weapon cannot be a ground to convict him in terms of Section 307 IPC. Further, no question was put to the appellant in his examination under section 313 Cr.PC regarding his**

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purported role. The judgment of the High Court is clearly unsustainable and is set aside. The appellant is acquitted of the charges. [Para 6] [963-E-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 589 of 2002.

From the Judgment & Order dated 13.12.2001 of the High Court of Delhi at New Delhi in Criminal Appeal No. 233 of 1997.

Harinder Mohan Singh, Jasneet Kaur, Kaushal Yadav, Manav Bajaj, Praveen Kumar Singh and Durgesh Yadav for the Appellant.

SWA Qadri, Varuna Bhandari, Anil Katiyar, Vanita and D.S. Mahra for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a learned Single Judge of the Delhi High Court in Criminal Appeal No. 233 of 1997 which dismissed the revision petition filed by the appellant. The appellant, who had faced trial for alleged commission of offences punishable under Section 307 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 27 of the Arms Act, 1959 (in short the 'Arms Act').

2. Learned Additional Sessions Judge found the appellant guilty and convicted him to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- with default stipulation. Similarly for the offence punishable under Section 27 of the Arms Act, custodial sentence of three years and a fine of Rs.1,000/- with default stipulation was filed.

3. Background facts in a nutshell are as follows:

Preetam Pyare had agreed to purchase a plot from Prem

A Singh and Sunder Lal and had paid Rs.2000/- as earnest money to them. They, after accepting this earnest money, did not sell the plot to Preetam Pyare and had sold it to someone else and when Preetam Pyare demanded back his earnest money, they refused to return it. On 25.12.1992 at about 10.30 B p.m. Prem Singh, Sunder Lal and Kakoo, came to the house of Preetam Pyare and took him away saying that they will return his earnest money. Preetam Pyare and his two sons Bhusan Lal and Kamal Kishore came along with them for having talks on the return of money and they reached in front of H.No.407- C D, while talking. The wife of Preetam Pyare, Smt. Shanti Devi also followed them and while they were talking, the talks became uncordial and abuses were hurled. Sunder Lal and Kakoo were having lathis in their hands and Sunder Lal exhorted them to beat them. On this Prem Singh took out a revolver and shot him in his chest. He also shot at Bhushan Lal D S/o Preetam Pyare, in his chest saying that, this is the way to return the money. Kakoo and Sunder Lal had beaten Kamal Kishore, the younger son of Preetam Pyare as a result of which he received injuries on his head. When Smt. Shanti Devi complainant, W/o Sh. Preetam Pyare raised an alarm, the E accused persons ran away from the spot. The Mohalla people took the injured to the hospital. She then lodged a complaint with the police on the basis of which, rukka was sent and on the basis of which case under Section 307/34 IPC r/w of Arms Act 1959 was registered against the accused persons. The F MLC for the injured was obtained and the accused persons were arrested. The revolver and the recovered bullet was seized and was sent for analysis to the CFSL and after completion of the formalities, the challan was filed in the court.

G As accused abjured guilt, trial was held, accused was convicted and sentence was imposed.

Questioning correctness of the conviction and sentence as imposed the appellant filed an appeal. The primary stand of the appellant was that there was no evidence worth a name and H

even the so called injured witnesses refused to identify the assailant. The only evidence against the appellant was the alleged recovery of the pistol which was tested by the CFSL. It was found by CFSL that the bullet recovered from the body of the injured matched those test fired through the same pistol. The caliber also was the same. The High Court held that since pistol has been recovered from the appellant, he can be convicted under Section 307 IPC. The High Court found that the appellant who was a non-political leader belonging to a National Political Party was a man of great means and he appeared to have terrorized witnesses. The High Court held but he could not tamper with scientific evidence. The scientific evidence connects his weapon with the crime. That being so the High Court held that the conviction was in order.

4. In support of the appeal learned counsel for the appellant submitted that the conclusions of the High Court had clearly unsustainable. Merely because the appellant was the owner of the weapon that did not bring out a case under Section 307 IPC so far as he is concerned, and in any event Section 27 has no application.

5. Learned counsel for the respondent-State on the other hand supported the judgment.

6. We find that this is a case where even the injured did not identify the appellant to be the person who had fired the short. Merely because he is the owner of the weapon that cannot be a ground to convict him in terms of Section 307 IPC. Further, no question was put to the appellant in his examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') regarding his purported role. The judgment of the High Court is clearly unsustainable and is set aside. The appellant is acquitted of the charges. The bail bonds executed to give effect to the order of bail passed by this Court on 15.2.2002 shall stand discharged. The appeal is allowed.

D.G. Appeal allowed.