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

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CRL.A. 658/2007

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Date of Decision: 6th January, 2010

SATPAL SINGH Appellant
Through: Mr.Naveen Chawla, Advocate

versus

STATE NCT OF DELHI Respondent
Through: Ms.Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 16.8.2007 the appellant has been convicted for the offence punishable under Section 302 IPC. The person murdered was Satbir Singh @ Tejpal, the younger brother of the appellant. The appellant has also been convicted for the offence punishable under Section 307 IPC. The said offence is related to the injury caused to Pankaj Tomar PW-4 who is the son of the appellant.

2. In sustaining the conviction for the two offences, the learned Trial Judge has relied upon the testimony of Bimla PW-5, the wife of the deceased; Nitin PW-9, the son of the deceased; Sanjiv PW-8 and Rajiv PW-11, both sons of the appellant; and Pankaj PW-4.

3. With reference to the report Ex.PW-26/A of the ballistic expert and with further reference to a bullet recovered from the body of deceased Satbir after the post-mortem, as recorded in the seizure memo Ex.PW-17/A, and another bullet recovered from the left side chest of Pankaj PW-4 as recorded in the seizure memo Ex.PW-7/A and the seizure of a revolver reflected in the memo Ex.PW-5/C; since the ballistic report was that the two bullets aforementioned were fired from the firearm (revolver) recovered from the appellant at the time of his arrest, it has been held that it stands proved that the two bullets were fired from the licensed firearm belonging to the appellant.

4. To put it pithily, the conviction of the appellant has been sustained with reference to the testimony of 5 eye witnesses; 3 of whom are the sons of the appellant as also the recovery of the weapon of offence.

5. It is apparent that the fate of the appellant would depend whether there are blemishes in the testimony of the

eye witnesses and whether there is any blemish in the recovery of the firearm or in the two bullets which were linked to the firearm or the report of the ballistic expert.

6. With reference to the firearm used, we may note that the firearm is a licensed revolver and in reference to question No.18 when the incriminating circumstances were put to the appellant, he admitted that the firearm in question was recovered from his person at the time he was arrested and that the said firearm was a licensed firearm in his name.

7. We may note that the report Ex.PW-26/A of the ballistic expert has been proved through the testimony of Sh.K.C.Varshney Senior Scientific Officer (Ballistic) FSL Rohini who appeared as PW-26.

8. In his testimony and as also the report Ex.PW-26/A, Sh.K.C.Varshney has held that the two bullets EB-1 and EB-2 recovered from the body of Pankaj PW-4 and the deceased respectively were fired from the revolver sent for opinion (recovered from the person of the appellant) with reference to the striation marks on the two bullets in comparison with the test fired bullets from the revolver in question. It may be noted that the solitary question put to the witness in cross examination is: *"Have you noted any mark/point on the revolver in question about the prior firing before your*

examination?” The answer is ‘No’.

9. It is apparent that no serious cross examination has been conducted with reference to the striation marks on the suspect bullets and the test fired bullets.

10. Thus, we may safely conclude that it stands established that Satbir as also Pankaj were fired upon through the licensed revolver of the appellant.

11. Being the license holder of the firearm in question, it was the duty of the appellant to have explained as to under what circumstances the licensed firearm belonging to him was used. He having not done so, the conclusion is obvious. The appellant must suffer the consequences of the use of the licensed firearm.

12. With reference to the testimony of Sanjeev and Rajiv, the two sons of the appellant, we note that both of them have deposed that the deceased, their uncle, was residing on the ground floor of House No.33, Gali No.1B, Durga Puri Extension, Shahdara, Delhi and they were residing on the first floor. At about 10:45 PM they heard a cracker sound which attracted them to look down and they saw their father leaving the ground floor of the house. Whereas Sanjeev has deposed that their father was carrying a revolver in his hand, Rajiv has simply deposed of seeing his father leave the ground floor of

the house. Rajiv has further deposed that he asked his father as to where he had been, to which the response was "*Maar Aaya*".

13. It thus stand established through the testimony of the two sons of the appellant that the appellant was seen with a firearm coming out of the house of the deceased soon after the fatal shot was fired.

14. Pankaj PW-4, the third son of the appellant has deposed that at around 10:45 PM he received a telephonic call from his brother Sanjeev who told him that their father had fired a shot at their uncle Satbir Singh. He deposed that when he returned home he saw his father sitting on the first floor of the house and the moment his father saw him his father fired a shot at him hitting him on the left side of the chest.

15. Bimla PW-5, the wife of the deceased at whose instance the complaint Ex.PW-5/A was registered resulting in the registration of the FIR, has deposed as PW-5. She has deposed that there was a dispute between the two brothers with reference to the joint property to be partitioned and that at 10:45 PM on the day of the incident the appellant fired at her husband. Nitin PW-9, son of Bimla has also deposed *pari materia* with his mother Bimla PW-5.

16. Having perused the testimony of 5 eye witnesses

we find no blemish in their testimony. It has to be noted that 3 eye witnesses are none else other than the sons of the appellant.

17. It is apparent that the appellant fired a fatal shot at his brother and also took a shot at his son Pankaj PW-4; killing the former and grievously injuring the later.

18. The post-mortem report Ex.PW-6/M of the deceased establishes that the deceased died as the result of firearm injury. The MLC Ex.PW-1/B of Pankaj establishes that Pankaj was grievously injured with a firearm shot.

19. Why did the appellant commit the acts in question? The answer has emerged through the testimony of Bimla who has stated that the appellant and his brother i.e. the deceased had a fight with respect to division of joint property.

20. Before concluding we may note that the appellant was apprehended from the first floor of his house as recorded in the arrest memo Ex.PW-12/C. He made no attempt to flee. The reason why he probably made no attempt to flee is the fact that he was intoxicated to such an extent that he had lost all senses of rationality. In response to question No.30 when examined under Section 313 Cr.P.C. he stated that at the time of the incident he was sleeping after consuming a large quantity of alcohol and that he did not know what had

happened in his house.

21. It is apparent that the appellant after consuming excessive alcohol, lost sense of balance and rationality resulting in the acts of indiscriminate firing on his brother and on his own son.

22. Section 86 of the Indian Penal Code reads as under:-

“86. Offence requiring a particular intent or knowledge committed by one who is intoxicated

– In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.”

23. The appellant having admitted being self-intoxicated has to be attributed with the same knowledge as he would have had if he had not been intoxicated.

24. We concur with the finding of guilt returned by the learned Trial Judge pertaining to the two offences of which the appellant was charged of i.e. the offence of murdering his younger brother and the offence of attempting to murder his own son Pankaj PW-4.

25. We find no merit in the appeal.

26. The appeal is dismissed.

27. Since the appellant is in jail, a copy of this order be sent to the Superintendent Central Jail Tihar for being made available to the appellant.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

JANUARY 06, 2010
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