

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1547 OF 2010

SURENDER @ BABLI

Appellant (s)

VERSUS

STATE(GNCT)OF DELHI

Respondent(s)

(With office report)

Date: 28/07/2011

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s)

Mr. Naresh K. Daksh, Adv.
Mr. Anupam Lal Das, Adv.

For Respondent(s)

Mr. P.P. Malhotra, ASG.
Mr. P.K. Dey, Adv.
Mr. Shailendra Sharma, Adv.
Ms. Gargi Khanna, Adv.
Ms. Anil Katiyar, Adv.

UPON hearing counsel the Court made the following
O R D E R

We have heard the learned counsel for the parties.

Leave granted.

Vide our separate brief order, while setting

aside the judgment of the High Court insofar as the
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appellant is concerned and allowing the appeal we had directed that the appellant shall be released forthwith

if not wanted in connection with any other case.

The reasons thereof are in terms of the detailed

signed order.

[KALYANI GUPTA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

[SIGNED DETAILED ORDER IS PLACED ON THE FILE.]

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1547 OF 2010

SURENDER @ BABLI	APPELLANT
VERSUS		
STATE (NCT) OF DELHI	RESPONDENT

O R D E R

1. On the 8th February, 2001 at about 12:45p.m., Sanjeev Kumar deceased came to the premises of M/s Manoharlal Laxman Dass, Old Anaj Mandi, Narela and asked for payments due to him from the owner. The Head Muneem, Shyam Lal, asked P.W. 6 Anil Sharma, another Muneem, to go to the State Bank of Indore, Narela where they had an account to withdraw Rs. 4 lakhs so that the same could be paid off to Sanjiv Kumar. Anil Sharma, accordingly, accompanied by Sanjiv Sharma P.W. 10 left on a two wheeler for the State Bank of Indore and withdrew Rs. 4 lakhs and after putting the currency in a bag left for their own shop. As they were passing through Dahiya X-ray Wali Gali, a motor cycle came from

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the rear with three persons riding on it.

The motor

cycle came to the right side of the scooter and one of the three persons tried to snatch the bag containing the money from the hands of P.W. 10 with the result that P.W. 6 lost balance and the scooter fell on its side.

One of the three persons again tried to snatch the bag from Sanjiv Kumar and when he resisted he fired a shot at Sanjiv Kumar which struck him in his chest killing him instantaneously.

The third person also

took out a pistol but it fell on the ground.

The three

assailants then got on to the motor cycle and made good

their escape. On the basis of the information

conveyed to the police station a First Information

Report against unidentified persons was recorded in

Police Station Narela by ASI Jagir Singh, P.W. 1. He

also recorded the statement of Sanjiv Sharma, P.W. 10,

who voluntarily came to the police station to give a

statement as he claimed to be an eye-witness. The

three accused who had been arrested during the course

of the investigation, were brought to trial for

offences punishable under Sections 393,398 and 302/34

of the Indian Penal Code and under Section 27 of the

Arms Act against accused Mukesh and under Section 25 of

the Arms Act against Surrender @ Babli and Manjit Singh

accused.

The trial court relied on the evidence of

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P.W. 6 Anil Sharma and P.W. 10 Sanjiv Sharma, only

partly, as they had been declared hostile and further

observing that the post mortem report indicated the

presence of a fire arm injury and the pistol which had

been recovered at the instance of the app

ellant

Surrender @ Babli which matched the spent

bullet

recovered from the dead body on the 8 th of February,
2001 were circumstances which involved all the three
accused in the incident.

The trial court, accordingly,

convicted and sentenced them to various ter

imprisonment under the aforesaid provisions.

The matter was thereafter taken in appeal before the High
Court.

The High Court observed that both P.W. 6 and

P.W. 10 had not identified any of the assa

whereas P.W. 10 had also been declared hostile. The

High Court, accordingly, acquitted Mukesh and Manjit on

the ground that there was a complete lac

identification in their case. The High

nevertheless held that in the light of the fact that

the murder weapon which had been recovered

instance of appellant Surrender @ Babli prove

involvement in the incident and having held as above

dismissed his appeal.

It is in this situation that the

matter is before us

after the grant of special leave.

2. It will be seen from the record tha

t the
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evidence with regard to the identification of the three

assailants i.e. Mukesh and Manjit and appellant

Surrender was virtually identical.

The High Court has

found that the evidence of identification could not be

believed but has convicted the appellant solely on the

ground that the murder weapon which had been recovered

at his instance had been matched with the bullet

recovered from the dead body.

We have, however, gone

through the evidence on the record

which has been

brought to our notice by the learned counsel for the parties. The incident happened on the 8 th of February, 2011 and the post mortem examination was conducted on the same day and the spent bullet recovered from the dead body of the deceased. It is also clear that the

said bullet had been deposited in the police malkhana soon after its removal from the dead body. The weapon was allegedly recovered at the instance of the appellant on the 28th of February, 2001 as per the prosecution story, but curiously enough the bullet as well as the weapon were despatched to the laboratory together on the 3rd of April, 2001. We are unable to

fathom as to why the investigating agency did not deem it proper to send the bullet to the laboratory soon after its recovery and the fact that they chose to wait for the weapon of offence to be recovered, casts a

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clear doubt as to the sanctity of the recovery. There is yet another circumstance which creates a serious doubt as to the recovery of the weapon. P.W. 7 Constable Rishi Raj testified that the document Exhibit P.W. 9/H regarding the recovery of the pistol was in the handwriting of Sub-Inspector Praveen Kumar. This

was reiterated by P.W. 9 Head Constable Ram Chand in his testimony. Sub Inspector Praveen Kumar appearing as P.W. 22, however, denied that he had prepared the said document and further stated that it had been prepared on the dictation of one S.K. Meena. We, therefore, feel that the very recovery of the weapon is in serious doubt. In this background, we are of the opinion that the case of the appellant Surrender is no different from that of the other accused. We, accordingly, set aside the judgment of the High Court

insofar as the appellant is concerned and allow the appeal accordingly. The appellant is in custody; he shall be released forthwith if not wanted in connection with any other case.

.....J
[HARJIT SINGH BEDI]

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.....J
[GYAN SUDHA MISRA]

NEW DELHI
JULY 28, 2011.

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ITEM NO.104[PART-I]

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
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Ms. Gargi Khanna, Adv.
Ms. Anil Katiyar, Adv.

UPON hearing counsel the Court made the following
O R D E R

We have heard the learned counsel for the parties.

Leave granted.

Vide our separate reasoned order, we have set

aside the judgment of the High Court insofar as the
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appellant is concerned and allowed the appeal.

It is stated that the appellant is in custody. He shall be released forth with if not wanted in connection with any other case.

The reasoned order shall be separately placed on record.

[KALYANI GUPTA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

[SIGNED BRIEF ORDER IS PLACED ON THE FILE.]

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1547 OF 2010

SURENDER @ BABLI	APPELLANT
VERSUS		
STATE (NCT) OF DELHI	RESPONDENT

O R D E R

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have set

aside the judgment of the High court insofar as the
appellant is concerned and allow the appeal
accordingly.

It is stated that appellant is in custody. He
shall be released forth with if not wanted in
connection with any other case.

The reasoned order shall be separately placed on
record.

.....J
[HARJIT SINGH BEDI]

.....J

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[GYAN SUDHA MISRA]

NEW DELHI
JULY 28, 2011.