

Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1

Penal Code, 1860

S. 302 & S. 201 r/w S. 120-B - Jessica Lal murder case - Conviction justified - Presence of accused M, AG, VY and AK at scene of occurrence established through ocular testimonies of PWs 1, 2, 6, 20, 23, 24 and 70 which was corroborated by contemporaneous documents - Testimony of PW 2 to effect that person in white T-shirt who was asking for whisky from J (the deceased) had taken out pistol from his trousers and fired a shot in the air; PW 20 who was standing only four feet from point from which shot was fired at J identifying M as the assailant and accosting him till gate of the nearby Qutub Colonnade and even telling PW 24 that this was the man who had shot deceased - PWs 1, 6, 20 and 24 identifying person in white T-shirt as M - M unable to explain whereabouts of his licensed P. Berretta pistol, and despite extensive efforts same could not be traced - Moreover, M giving either evasive or incorrect replies to questions put to him under S. 313 CrPC, and hence adverse inference drawn - Identity of accused M, AG, VY and AK proved by PWs 1, 6, 20 and 24 beyond reasonable doubt - Testimony of PW 30 proving presence of a black Tata Safari CH 01 W6535 at place of incident, which was corroborated by other PWs - Cogent evidence to effect that on 30-4-1999 at about 3.40-3.45 a.m. accused AG and VY came in white Tata Sierra and accused VY got down and drove away said black Tata Safari - PW 30 giving a danda-blow on right rear side of window of black Tata Safari - Tata Safari registered in name of Piccadilly Agro Industries of which M was Director - Hence, reasonable inference was that it was used by M for coming to Qutub Colonnade on fateful night - Held, conviction of M under Ss. 302, 201/120-B IPC and S. 27, Arms Act, and conviction of AG and VY under S. 201 r/w S. 102-B IPC calls for no interference, (2010) 6 SCC 1-A

Criminal Trial

Proof

Benefit of doubt - When warranted - Deliberate framing of M alleged, to conceal actual offender who was allegedly a tall Sikh gentleman - Testimony of PW 83 PCR-in-charge r/w Ext. PW 12/D-1 clearly proving case of prosecution that it was M who had fired at deceased and presence of other accused at place of occurrence - PW 83 had reached place of occurrence immediately i.e. even before local police had arrived and sent version available at spot - In absence of rebuttal evidence no reason to reject evidence of PW 83 or Ext. PW 12/D-1 - Besides, accused had merely denied their presence at place of occurrence without setting up plea of alibi to show their presence elsewhere, (2010) 6 SCC 1-B

Criminal Trial

Appreciation of evidence

Credibility of witness - Defence submission that testimonies of PWs 46 and 47 belied fact that PW 20 had witnessed occurrence i.e. PW 20 had only seen "fallen woman" and not "falling woman" - However, PW 20 neither contradicted nor confronted with her statement under S. 161 CrPC - Effect, (2010) 6 SCC 1-C

Criminal Trial

Identification

Identification of accused - Point at which PW 20 was standing was only four feet from point at which shot was fired at deceased - Hence, identification of accused M by PW 20 indubitable - Moreover, she had accosted M till gate of Qutub Colonnade where she told PW 24 that he was the man who had shot deceased and that PW 24 should see in which car he got into - Fact that PW 20 had chased M clearly indicating that she was more than certain that he was the culprit and therefore had not chased anybody else - Moreover, PW 20 had no enmity with M - Theory of planting witness at instance of police, false since no evidence was led to suggest that investigation was motivated by mala fides, (2010) 6 SCC 1-D

Criminal Trial

Witnesses

Hostile witness - Testimony - Reliability - PW 2 bartender who was serving liquor along with deceased, turning hostile - Discrepancy in his statement made to police and his deposition in court to effect that after M had fired in the air "another gentleman" had fired at deceased and not M - Held, even if PW 2's testimony was discarded prosecution case was

hardly affected - Besides, his evidence amply proved presence of M at scene of occurrence at time and date as pleaded by prosecution, (2010) 6 SCC 1-E

Criminal Procedure Code, 1973

Ss. 378 and 386 - Appeal against acquittal - Powers of appellate court - Scope - Restated - On facts held, High Court was justified in interfering with order of acquittal by giving cogent and adequate reasons therefor, (2010) 6 SCC 1-F

Criminal Procedure Code, 1973

Ss. 154 and 157 - FIR - What is - Cryptic telephonic messages - Investigation - When commences - Held, cryptic telephonic messages cannot be treated as FIR as their object is only to get police to scene of offence and not to register FIR - Further held, investigation commences when information relating to offence is given to an officer in charge of a police station and is recorded under S. 154 - Phone call made immediately after occurrence to police constitutes FIR only when it is not vague and cryptic - In instant case, object of persons sending telephonic messages (at around 2.25 a.m.) including PW 70 was only to bring police to scene of offence and not register FIR - FIR was properly lodged as per statement of PW 2 around 3.40 a.m. on basis whereof investigation commenced, (2010) 6 SCC 1-G

Criminal Procedure Code, 1973

S. 154 - Generally - Information about commission of cognizable offence given "in person" at police station and given "on telephone" - Differential treatment - Rationale for - Held, information given on telephone to police is not for purpose of lodging FIR but rather to request police to reach place of occurrence, whereas information given in person is for lodging FIR - Furthermore, merely because information given on phone is prior in time would not mean that same would be treated as FIR, (2010) 6 SCC 1-H

Criminal Trial

Examination

Delayed examination of witnesses - Effect - Held, does not necessarily discredit their testimonies - Court may rely on such testimonies if they are cogent and credible - In instant case, 100 or more persons were attending a party on the fateful night and as such, identification of all those persons taking substantial time - Consequently their interrogation also taking substantial time - Besides, no concomitant circumstances to suggest that investigator was deliberately causing delay with a view to give particular shape to the case - Rather, details of investigation conducted on each day were clearly brought out in evidence of witnesses - Furthermore, identity of appellant as a suspect was not the consequence of any delay - Hence, delay, if any, in recording evidence of witnesses cannot be considered as infirmity in prosecution case, (2010) 6 SCC 1-I

Evidence Act, 1872

S. 45 - Expert opinion - Ballistic reports - Reliability - Use of word "appear" in report - Failure of accused to cross-examine the expert - Effect - On facts held, the reports were vague and ambiguous and hence, could not be relied upon - Submissions, inter alia, by accused rejected that: (i) prosecution tried to suppress report of ballistic expert R Ext. PW 89-DB since it was not favourable to them; (ii) weapon of offence was not required to show whether two empties were fired from same gun; (iii) Ext. PW 89-DB supports PW 2; (iv) prosecution sought favourable expert opinion from PW 95; and (v) in spite of application under S. 391 CrPC, prosecution chose not to call R and cross-examine him, (2010) 6 SCC 1-J

Evidence Act, 1872

S. 45 - Expert opinion - Credibility - Held, an expert is an expert only if he follows well-accepted guidelines to arrive at a conclusion and supports same with logical reasoning, (2010) 6 SCC 1-K

Criminal Trial

Injuries, Wounds and Weapons

Firearm/Gunshot injuries/wounds/Ballistics/Ballistic expert - Ballistics - Empties if fired from same weapon - Determination of - Need for the particular weapon of offence - Held, while giving report the bullets, cartridge cases, cartridges recovered, and weapon of offence recovered are carefully examined and test firing is done at FSL by said weapon and thereafter specific opinion given - Finding given by trial court that PW 95 (ballistic expert) did not need firearm in order to determine whether two empties were fired from same gun was based on no expertise and resulted in grave miscarriage of justice, (2010) 6 SCC 1-L

Criminal Trial

Expert evidence

Handwriting expert - Need for admitted specimen handwriting, (2010) 6 SCC 1-M

Criminal Trial

Expert evidence

Fingerprint expert - Need for admitted specimen fingerprints, (2010) 6 SCC 1-N

Criminal Trial

Witnesses

Hostile witness - Extent to which testimony of, may be relied on - Need for corroboration, (2010) 6 SCC 1-O

Criminal Procedure Code, 1973

Ss. 293 and 294 - Documents sought to be relied upon must be originals - Photocopy of ballistic report - Admissibility in evidence - Effect of tampering - Evidence not produced to show that said photocopy had been compared and scrutinised with original and then placed on record - Held, assuming though not admitting that photocopy was admissible, but still the same loses credence in light of fact that perusal of forwarding letter and report show that there was some tampering with said documents since sequence of numbering of parcel as between forwarding letter and report was changed, which fact remained unexplained, casting doubt on genuineness of said report, (2010) 6 SCC 1-P

Criminal Procedure Code, 1973

S. 24 - Status and role of Public Prosecutor, (2010) 6 SCC 1-Q

Criminal Procedure Code, 1973

Ss. 173, 170 and 172 - Obligation of prosecution/police to disclose evidence to accused - Extent and scope of - Requirement of fair disclosure - Non-compliance - Effect - Held, constitutional mandate and statutory rights given to accused place an implied obligation on prosecution to make fair disclosure - Nevertheless, violation of this duty does not necessarily vitiate entire trial - Fair trial takes within its ambit furnishing of documents to accused which prosecution relies

upon, whether filed or not - However, accused cannot claim indefeasible right to every document on police file or even portions which are permitted to be excluded from documents annexed to report under S. 173(2) as per orders of court - It is not necessary that entire prosecution evidence should be disclosed to accused - Obligation of disclosure is limited to evidence on which prosecution proposes to rely - Even if an omission to bring an inculpatory material to notice of accused has occurred, that ipso facto does not vitiate proceedings unless non-disclosure amounts to material irregularity and causes irreversible prejudice to accused - In instant case, no prejudice was caused to accused, and non-furnishing of copy of one of the ballistic reports had not hampered ends of justice - Besides, prosecution had also doubted said document and not relied thereon - Moreover, such issue was not raised seriously by accused before trial court, (2010) 6 SCC 1-R

Criminal Procedure Code, 1973

Ss. 207, 208, 161, 162, 91 & 243 r/w S. 173 - Right of accused to receive documents/statements submitted before court - Scope - Held, said right is absolute - Liberty of accused cannot be interfered with except by "due process of law" which includes fairness in trial - Documents submitted before court should be disclosed giving accused fair chance of defence, particularly when non-production or non-disclosure of such document would affect administration of criminal justice and defence of accused prejudicially - Accused has a statutory right to confront witnesses with statements recorded under S. 161 - He can also move an application for production of any record or witness in support of his case, (2010) 6 SCC 1-S

Criminal Procedure Code, 1973

Ss. 173 and 207 - Furnishing of documents to accused by prosecution/police and by court - Comparative scope - Held, mandate under S. 207 is in contradistinction to S. 173, where legislature has used expression "documents on which prosecution relies", which words are not used in S. 207 - Hence, S. 207 needs to be given liberal and relevant meaning to achieve its object, (2010) 6 SCC 1-T

Criminal Procedure Code, 1973

Ss. 173(5) and 170(2) - Documents submitted under S. 173(5) - Scope - Held, documents submitted to Magistrate along with report under S. 173(5) would deem to include documents which have been sent to Magistrate during course of investigation as per S. 170(2), (2010) 6 SCC 1-U

Criminal Procedure Code, 1973

Ss. 173, 170, 172 and 24 - Role of Public Prosecutor - Disclosure of evidence/prosecution material to accused - Position under Indian law vis-à-vis English law - Held, role and obligation of Prosecutor under Indian law cannot be equated to that prevalent under English law - Under English law, subject to exceptions like sensitive information and public interest immunity, prosecution is required to disclose any material which might be exculpatory to defence, (2010) 6 SCC 1-V

Criminal Procedure Code, 1973

Ss. 207, 208 and 209 - Submission that evidence of each witness must be put to accused - Held, only circumstances need to be put to accused and not entire testimony, (2010) 6 SCC 1-W

Constitution of India

Arts. 21, 19 and 20 - Fair trial - Meaning and scope - Rights of accused - Fair and impartial investigation and prosecution as well as fair trial, emphasised - Right against self-incrimination and double jeopardy - Scope - Reiterated, (2010) 6 SCC 1-X

Criminal Procedure Code, 1973

Ss. 172 and 157 - Case diary - Purpose and object of - Extent to which accused may cross-examine police officer on case diary entries - Held, purpose and object of case diary is to maintain fairness in investigation, transparency and a record for ensuring proper investigation - Court has power to summon diary but can use it only as aid in inquiry or trial but not as evidence - Purpose is confined to utilising information therein as foundation for questions put to witnesses, particularly to police witnesses where police officer had used entries to refresh his memory or if court uses them for contradicting such police officer - Right of accused to cross-examine police officer with reference to entries in general diary is limited and even that limited scope arises only when court uses entries for aforesaid purposes - IO has right to refresh his memory and can refer to general diary, (2010) 6 SCC 1-Y

Judiciary

Judges vis-à-vis Judges

Adverse remarks against other Judges - Appellate court to correct error in judgment and refrain from commenting on Judge, (2010) 6 SCC 1-Z

Judiciary

Judicial process

Media influence - Fair trial - Need for restraint by media - Distinction between trial by media and informative media to be maintained - Trial by media to be avoided particularly at stage when suspect is entitled to constitutional protection - Reporting of sub judice matters to be subjected to checks and balances so as not to interfere with administration of justice, (2010) 6 SCC 1-ZA

Evidence Act, 1872

S. 9 - Test identification parade - Refusal to submit to - Effect - Adverse inference - Main accused M refusing TIP on ground that his photograph had appeared in newspapers, his photograph was shown to witnesses, and that he himself was physically shown to witnesses - M surrendering on 6-5-1999 and produced in muffled face before Metropolitan Magistrate - Held, all three contentions of M are incorrect and misconceived - Newspapers from 1-5-1999 to 6-5-1999 were duly exhibited vide Exts. 101/11 to 22 and in none of newspapers photo of M was appearing - Ext. No. PW 101/15 photograph dt. 6-5-1999 clearly showed that he was in muffled face - As far his photo being shown to witnesses is concerned, his photograph was taken by PW 87 to Chandigarh for purposes of identification and was with him till 6-5-1999 - As such his photo could not have been shown to any witnesses who were either in Delhi or Kolkata - Only witness who deposed with regard to photograph having been shown to her was PW 6, but her testimony was clearly wavering since she had immediately fainted after occurrence - Besides, since photo was not available in Delhi, there was no question of showing it to her - Hence, refusal to submit to TIP was unjustified and adverse inference needs to be drawn therefor, (2010) 6 SCC 1-ZB

Criminal Trial

Identification

Identification of accused - Accused M shown to PWs 6, 20 and 24 by IO on his refusal to submit to TIP - Held, said process of identification was necessary for IO to ascertain that he was same person who was involved in incident - As such, no adverse inference can be drawn therefrom, (2010) 6 SCC 1-ZC

Evidence Act, 1872

Ss. 9 and 8 - TI parade - Evidentiary value - Held, photo identification/TIP are all aids in investigation and do not form substantive evidence - Substantive evidence is evidence of witness in court on oath - To say that photo identification is hit by S. 162 CrPC is wrong - Even TIP before Magistrate would otherwise be hit by S. 162 CrPC - Logic behind TIP/photo identification is that where an accused is not known to witnesses, IO conducts TIP to ensure that he has got the right person as accused - Practice is not borne out of procedure, but out of prudence - At best TIP can be brought under S. 8, as evidence of conduct of witness in identifying accused in presence of IO or Magistrate during investigation, (2010) 6 SCC 1-ZD

Criminal Trial

Identification

Identification of accused - Dock identification in court without previous TIP - Admissibility/Evidentiary value - Held, even when there is no previous TIP, court may appreciate dock identification as being above board and more than conclusive - Dock identification is substantive piece of evidence and even in absence of TIP no prejudice is caused to prosecution case - Photo identification was resorted to vis-<@224>-vis PWs 1 to 4 - Hence held, no merit in contention of defence that dock identification was farce as it was done for first time in court, (2010) 6 SCC 1-ZE

Criminal Trial

Identification

Identification of accused - Subsequent refusal by PW 2 to identify accused M in court, when he had earlier photo identified M during investigation - Held, factum of photo identification by PW 2 as witnessed by officer concerned is relevant and admissible in evidence, (2010) 6 SCC 1-ZF

Criminal Procedure Code, 1973

S. 313 - Statement of accused recorded under - Evidentiary value - Held, answers given by accused to questions put under S. 313 are not per se evidence because they are not on oath, and prosecution does not get opportunity to cross-examine accused - Nevertheless, they are subject to consideration by court to limited extent of drawing an adverse inference against accused for any false answers voluntarily offered by him and to provide an additional/missing link in chain of circumstances to prove guilt of accused - In instant case, accused M had taken false pleas in reply to some of the questions put to him - Hence, adverse inference drawn against him, (2010) 6 SCC 1-ZG

Criminal Procedure Code, 1973

Ss. 313 and 315 - Submission that statement of accused recorded under S. 313 be treated as evidence and as such stand of appellant as regards his gun being taken away by police considered - Held, accused had right to appear as witness on his own behalf as envisaged under S. 315 - By declining to do so he failed to offer any evidence to show loss/removal of his gun - Thus, it cannot be urged merely to suit his convenience that his statement under S. 313 be treated as evidence and facts therein as true unless contradicted by prosecution, (2010) 6 SCC 1-ZH

Evidence Act, 1872

S. 27 - Disclosure statements made by accused - Admissibility in evidence, (2010) 6 SCC 1-ZI

Evidence Act, 1872

S. 114 III. (g) - Adverse inferences - Accused M: (i) taking false pleas and giving either evasive or incorrect answers in reply to some questions put to him under S. 313 CrPC; (ii) failing to explain whereabouts of his licensed .22" bore P. Berretta pistol which could not be traced despite extensive efforts; (iii) conduct of M in not taking any steps despite opportunity in reporting alleged taking away of Tata Safari on 30-4-1999 and his licensed pistol on 1-5-1999; (iv) PW 2 who was maker of FIR and complainant accompanied by lawyer of accused M: PW 2 not fully supporting prosecution case though admitting having made statement to police and signing same; thus, adverse inference for influencing witness; (v) as per disclosure made by M, pistol was given to RS who left the country on 4-5-1999, while M surrendered on 6-5-1999 after RS had left country - Held, adverse inference needs to be drawn for such incriminating circumstances, (2010) 6 SCC 1-ZJ

Evidence Act, 1872

S. 114 III. (g) and S. 106 - Adverse inference - M failing to explain whereabouts of his licensed .22" bore P. Berretta pistol which could not be traced despite extensive efforts - No complaint/ report lodged regarding its loss/theft - False plea that pistol and his arms licence were taken away by police from his farmhouse not supported by any positive evidence - It was established that pistol could not be recovered and that licence was surrendered on 6-5-1999 at time of his arrest - It was in defiance of all logic and ordinary course of conduct to allege that prosecution had withheld pistol after seizing it - Fact that M failed to produce pistol, presumption arises that if he had produced it, testing of same would have been to his prejudice - Thus, burden had shifted on him to explain whereabouts of his licensed gun, (2010) 6 SCC 1-ZK

Criminal Trial

Abscondence

Inference from - Held, criminal trial is not an enquiry into conduct of accused for any purpose other than to determine whether he was guilty of offence charged - Conduct can be held to be incriminatory when there is no reasonable explanation for the same except on hypothesis that accused is guilty - Conduct which destroys presumption of innocence can be considered material - Testimonies of PWs 20 and 24 prove beyond reasonable doubt that M after committing murder had fled from scene of occurrence - PWs 85 and 80 proving search for Tata Safari No. CH 01 W 6535 which was registered in name of Piccadilly Agro Industries of which M was Director - Even after seizure of vehicle on 2-5-1999 search for appellant continued and it was only on 6-5-1999 that he surrendered in presence of his advocates - Thus abscondence by M clearly proved, which was a pointer towards his guilt, (2010) 6 SCC 1-ZL

Criminal Trial

Examination

Non-examination/Failure to examine witness - Deliberate non-examination of S who was present at scene of offence alleged - S examined during course of investigation, his statement under S. 161 CrPC recorded, and he was even cited as PW - Moreover, during trial summons also issued to him which could not be served as he had left India - Police while filing charge-sheet naming him in list of witnesses - Held, clearly shows that prosecution had every intention of examining him - To contend that S was deliberately not examined by prosecution is absolutely baseless, (2010) 6 SCC 1-ZM

Evidence Act, 1872

Ss. 141, 142 and 143 - Effect of leading question by Public Prosecutor - Alleged that Public Prosecutor had put leading question to PW 6 regarding identification of accused - Held, it is not as if every single leading question would invalidate trial - Import of leading question, if any, has to be assessed on facts of each case - Question put by Public Prosecutor was at best clarificatory and could by no stretch of imagination be termed as leading question favouring/eliciting answer favouring prosecution - Besides, finding of guilt of accused M was not on account of any answers elicited by any such question, (2010) 6 SCC 1-ZN

Criminal Trial

Circumstantial evidence

Miscellaneous - Close association - Phone call details which were proved vide testimonies of PWs 16, 19, 17, 32, 15, 51 and Exts. PW 66-B, PW 66-C & PW 66-D, clearly showing that accused were in close touch with each other which resulted in destruction of evidence and harbouring - Finding of trial court that in absence of what they stated to each other it was of no help to prosecution, held, was incorrect appreciation of evidence on record - Close association is a very important piece of evidence in case of circumstantial evidence - Evidence of phone calls was relevant and admissible piece of evidence, (2010) 6 SCC 1-ZO

Evidence Act, 1872

S. 165 proviso 2 and S. 45 - Limitations on Judge's power to put questions - Recording a finding on the issue in question and then putting the same issue to witness - Propriety - Proper mode for questioning expert witness - Issue was whether two empties were fired from the same gun - Ballistic expert in no uncertain terms had stated that no expert opinion could be given without receipt of weapon of offence - In spite of this the Judge had put a finding of its own to said expert witness that he did not need firearm in order to reply as to whether two empties were fired from the same gun - Held, court exceeded its power by putting such question to expert witness after giving its own finding on the very same issue, (2010) 6 SCC 1-ZP

Criminal Trial

Appreciation of evidence

Credibility of witness - Defence seeking to discredit statement of PW 1 on grounds that: (i) his statement was recorded after 14 days; (ii) his name did not figure in guest list (of party where incident took place) prepared by PW 24; and (iii) various improvements were discernible in his statements - PW 1 explicitly stating that on 30-4-1999 (date of incident) he had told police at Apollo Hospital (where deceased had been brought after she had been shot dead by appellant) all that he knew - Held, that being the case it cannot be said that his testimony should be thrown out for delay in recording his statement - Any defect by delay in examination of witness in investigation cannot be ground to condemn witness - Moreover, guest list was not a conclusive list, and was prepared by PW 24 on basis of his memory - Besides, invited guests were also entitled to bring their own guests - Presence of PW 1 at place of occurrence was admitted by other PWs - Evidence of PW 1 is relevant for limited purpose of proving presence/identity of M and his desire for liquor, (2010) 6 SCC 1-ZQ

Criminal Procedure Code, 1973

Ss. 161 and 162 - Not mandatory for police to record every statement of every witness i.e. law contemplates situation where there might be witnesses who depose in court but whose previous statements have not been recorded, (2010) 6 SCC 1-ZR

Criminal Trial

Appreciation of evidence

Credibility of witness - PW 101 who had obtained superdari of seized Tata Safari (vehicle used by main accused M to commute to place of occurrence) from Noida Police stating that he took possession of the same vide Ext. PW 100-DB along with other articles including broken glass pieces which were duly sealed with seal of BD - Ext. PW-DA at Items 7 and 9 in letter sent to CFSL mentioning about seal of BD on sealed parcel containing broken glass pieces - Held, such convincing testimony of PW 101 duly corroborated by documents cannot be discarded simply because SI (Noida Police) who had originally seized the vehicle failed to mention seizure of broken glass pieces on 2-5-1999, (2010) 6 SCC 1-ZS

Criminal Trial

Search and seizure

Credibility - Submission that according to PW 100 Tata Safari (vehicle used by accused) was found in Karnal, hence

seizure of same at Noida unacceptable - Held, testimony of PW 100 shows that he was referring to Piccadilly Agro Industries of which M was the Director being located in Karnal and not the vehicle i.e. Tata Safari - Said vehicle and live cartridges including broken glass pieces were found on 2-5-1999 at Noida and were taken into possession by police vide seizure memo Ext. PW 74-A, which was proved by PWs 91 and 74, (2010) 6 SCC 1-ZT

Criminal Trial

Appreciation of evidence

Credibility of witness - Presence of PW 30 doubted at place of occurrence - PW 30 categorically stating that while he was on duty he saw white-coloured Tata Sierra coming from side of Qutub (nearby place of occurrence) at about 3.40/3.45 a.m. with two occupants which stopped near black Tata Safari (vehicle used by accused) and one of the occupants got down and opened Tata Safari with key; when asked not to do so he forcibly got into Tata Safari and drove away; that he gave a lathi-blow on windowpane of black Tata Safari which broke; and that he noted number of black Tata Safari as CH 01 W 6535 - PW 30 identifying both vehicles - His presence at spot corroborated by PWs 78, 83, 100 and 101 - It was a practice of Delhi Police that persons helping the investigating agency in solving crimes had been recruited in Delhi Police - PW 30 after incident was recruited to post of Constable though he was ineligible - This was also relevant - Thus, presence of PW 30 at place of occurrence established, (2010) 6 SCC 1-ZU

Criminal Procedure Code, 1973

Ss. 161 and 162 - Recording statement given in English, in Hindi - PW 2 making his statement in English which was recorded in Hindi - Held, in absence of any suggestion to contrary it must be presumed that his statement was correctly recorded, (2010) 6 SCC 1-ZV

Criminal Trial

Proof

Corroboration - Testimony corroborated in part - Held, even if a prosecution witness is challenged in cross-examination, that part of his testimony which is corroborated by other witnesses or from other evidence can clearly be relied upon to base conviction, (2010) 6 SCC 1-ZW

Criminal Trial

Motive

Held, testimony of PW 6 which was corroborated by PW 23 established that deceased was murdered over a row for a drink, (2010) 6 SCC 1-ZX

Criminal Trial

Appreciation of evidence

Credibility of witness - Presence of PW 24 at place of occurrence doubted by defence on grounds that PWs 46 and 47 had stated that they had not seen PW 24 after party concerned was over at 12.30 a.m. and that PW 24 reached police station at around 2.25 a.m. whereas if prosecution story is to be accepted he should have reached around 2.10 a.m. - Statement of PW 24 recorded on day of occurrence itself - Presence of PW 24 at time of incident supported by testimony of ASI PW 13, who deposed that a person bearing description of PW 24 had come to police station and reported firing incident - Said fact corroborating testimony of PW 24 that he went to police station - Thus, presence of PW 24 at place of occurrence established, (2010) 6 SCC 1-ZY

Criminal Trial

Appreciation of evidence

Credibility of witness - Allegations that: (i) PW 6 was not an eyewitness and prosecution had planted her into Ext. 2-A

i.e. "rukka" prepared at instance of PW 2; (ii) deposition of PW 6 that she entered the bar for a drink is improbable as she knew that serving of drinks was over; (iii) PW 6 did not say that she heard the gunshots since she was inebriated, which further supported the fact that she could not identify anybody else; (iv) her statement that there were four or five persons at the spot where the incident occurred was not corroborated by PW 1; (v) Prosecutor had put a leading question to her as to the identity of appellant and, therefore, said question and answer should be expunged from the record; (vi) police recorded a couple of her statements but defence was not supplied with all of them; and (vii) photo of the appellant was shown to her even prior to his refusal to undergo test identification parade, (2010) 6 SCC 1-ZZ

Criminal Trial

Witnesses

Planted witness - Allegations that key witnesses PWs 6, 20 and 24 were planted witnesses who deposed under pressure of false implication because case under Punjab Excise Act was registered against them and they were virtually pressurised to yield to prosecution case; that PW 20 was not made an accused under S. 201 IPC (for removing blood from place of occurrence), because they had agreed to toe line of prosecution; and PW 20 was not an eyewitness since both IOs PWs 100 and 101 admitted same - Held, a witness cannot be discredited without said piece of testimony having been put to her, (2010) 6 SCC 1-ZZ

Criminal Trial

Investigation

Documents, etc. relating to investigation - Site plan - Absence of PW 20 in site plan - Held, does not negate her presence or establish her having not witnessed the incident, specifically when she had given her statement to the police under S. 161 CrPC on day of occurrence itself, (2010) 6 SCC 1-ZZ

Evidence Act, 1872

S. 146 - Cross-examination - Failure to confront witness with testimony of other witness - PW 47 in his cross-examination stating that PW 20 had told him as to what had happened and, who had done it - Submission by defence that hence inference should be drawn that PW 20 had not witnessed occurrence - Held, said statement of PW 47 does not lead to inference that PW 20 had not witnessed occurrence, rather it further reinforces what she had witnessed the same - Moreover, in spite of PW 20 being available she was not recalled to confront her with testimony of PW 47 - Thus, defence not entitled to take advantage of that portion of statement of PW 47, (2010) 6 SCC 1-ZZ

Criminal Trial

Witnesses

Planted witness - Allegation that PW 1 was a planted witness since his name did not figure in list of invitees prepared by PW 3; PW 73 did not mention his presence at Apollo Hospital where deceased was taken, and his statement was recorded after fifteen days of occurrence - Held, there was no reason to suspect testimony of PW 1 or reject same as unacceptable - Rather, his evidence supported by other witnesses clearly proved presence of Accused 1 to 4 at place of occurrence - Though he was not an eyewitness to actual shooting incident but he stated that on hearing noise he had peeped in and noticed deceased lying on floor - No reason to believe that he was planted witness and High Court rightly believed and relied on his version, (2010) 6 SCC 1-ZZ

Criminal Procedure Code, 1973

Ss. 161 and 162 - Statement made/given by witness under S. 161 and signed by him, held, hit by bar under S. 162 - However, evidence deposed in court by said witness admissible, (2010) 6 SCC 1-ZZ