

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

+ **Crl. Appeal No. 962/2009 & Crl. Appeal No. 963/2009**

% Decided on: 9th August, 2010

MOHD. KAMAR Appellant

Through: Mr. Deepak Vohra, Advocate

Versus

THE STATE OF NCT OF DELHI Respondent

Through: Mr. U.L. Watwani, Advocate

WITH

Crl. Appeal. No. 963/2009

MOHD. ASHRAF @ GOLU Appellant

Through: Mr. Deepak Vohra, Advocate

Versus

THE STATE OF NCT OF DELHI Respondent

Through: Mr. U.L. Watwani, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

- | | |
|--|---------------|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

A.K. PATHAK, J. (ORAL)

1. Both the above noted appeals, arise out of the same incident, FIR and judgment, thus, are being disposed of together.

2. Appellants have been convicted under Sections 186/353/308/34 IPC as also under Sections 25 and 27 of the Arms Act by the learned Additional Sessions Judge, New Delhi and sentenced to undergo rigorous imprisonment for three months under Section 186 IPC; rigorous imprisonment for one year under Section 353 IPC; rigorous imprisonment for one year under Section 308 IPC; rigorous imprisonment for one year under Section 25 Arms Act and rigorous imprisonment for three years under Section 27 Arms Act. Appellants have also been saddled with fine of Rs.3,000/- each and in default of payment of fine to undergo simple imprisonment for four months. All the sentences have been directed to run concurrently. Benefit of Section 428 Cr.P.C. has also been given to the appellants.

3. In brief, prosecution case is that SI Balbir Singh of Special Staff with ASI Gyanender Singh, Head Constable Rajesh, Head Constable Shyamveer, Head Constable Ramkishan, Head Constable Manoj, Constable Mukesh and Constable Rajbir were on patrolling duty in their official vehicle no. DL1 E 4065 driven

by Head Constable Premjeet on 11th May 2008 at about 10.30 a.m. When they reached near bus terminal Lado Sarai a secret informer approached SI Balbir Singh and informed that the Appellants, who were involved in a murder case, would be going from Badrapur to Mehrauli via M. B. Road on a stolen motorcycle at about 11 am. This information was passed on to the Inspector, Special Staff who instructed SI Balbir Singh to do the needful to apprehend the Appellants. SI Balbir Singh requested four or five passersby to join the investigation but they declined. Accordingly, raiding party of aforesaid police officials was constituted which took position at the T-point Lado Sarai. At about 11 AM Appellants were seen coming on a black colour motorcycle from the Badarpur side. On the pointing of secret informer, SI Balbir Singh gave signal to stop the motorcycle. Instead of stopping the motorcycle Appellants increased the speed of their motorcycle at which Head Constable Premjeet blocked their way by diagonally parking the official vehicle on the middle of the road. At this, Appellants stopped the motorcycle and started running towards the jungle. ASI Gyanender Singh and Constable Rajbir chased Appellant Mohd. Kamar who fired towards them twice. These police officials dodged themselves and

succeeded in apprehending Mohd. Kamar with a pistol in his hand. Live cartridges were also recovered from his possession. Ashraf was given a chase by the Head Constable Shyambeer Singh and SI Balbir Singh. He also fired at the police officials but was apprehended. From his possession one country made pistol with live cartridges was recovered. Appellants disclosed their names after they were apprehended.

4. Local police was informed. SI Dilip Kumar (I.O.) along with Head Constable Devender and Constable Vikram reached at the spot and took over the investigation. Both the appellants i.e. Ashraf and Kamar were handed over to SI Balbir Singh (I.O.) who arrested them after registration of the FIR. Statement of SI Balbir Singh was recorded pursuant thereof FIR No. 400/08 under Sections 307/353/186/34 IPC and 25/27 of the Arms Act was registered at the police station Malviya Nagar, New Delhi. Pistol, revolver and cartridges, recovered from the Appellants and the empty shells recovered from the spot were sealed in separate *Pulandas*. Later on the case property was deposited in the *Malkhana*. Subsequently, it was sent to Forensic Science Laboratory (FSL) and its report was obtained, according to which, pistol as well as revolver were found in working condition. The

empty shells recovered from the spot were found to had been fired from the aforesaid pistol and revolver.

5. Charges under Sections 186/353/307/34 IPC and 27 of the Arms Act were framed on 12th January, 2009 to which Appellants pleaded not guilty and claimed trial.

6. Prosecution has examined thirteen witnesses to prove its story. SI Balbir Singh, ASI Gyanender Singh, Constable Rajbir and Head Constable Premjeet, who were members of the raiding party, were examined as PW2, PW7, PW10 and PW11 respectively. SI Dilip Kumar (IO) was examined as PW13. Senior Scientific Assistant (Ballistic) namely Punit Puri was examined as PW9. Head constable Devender Singh and Constable Vikram, who were with the IO during the investigation, were examined as PW6 and PW8 respectively. Additional DCP Ms. Chhaya, who had granted the sanction under Section 39 of the Arms Act, was examined as PW3. Head Constable Charanjit Singh was examined as PW1. ACP K S Bhatnagar was examined as PW5 to prove the application under Section 195 of the Code of Criminal Procedure. Constable Dinesh, who had taken the two sealed parcels from the malkhana and deposited the same in the FSL, Rohini, was examined as PW12.

7. After prosecution closed evidence, statements of Appellants under Section 313 Cr.P.C. were recorded wherein entire incriminating material, which had come on record, was put to them. The case of Appellant was that of simple denial. Appellants also lead evidence in their defence. Mohd. Kamar examined his wife Nisha as DW1. Similarly, Mohd. Ashraf examined his wife Shashi as DW2. Both these witnesses deposed that on 10th August, 2008 they had come to India Gate along with their families when three police officials came there and picked up their husbands and had taken them to Police Station in a van. Subsequently, their husbands were falsely implicated in this case.

8. Learned Additional Sessions Judge appreciated the evidence adduced by the parties and came to the conclusion that prosecution had succeeded in proving its story. For arriving at this conclusion learned trial court found the depositions of the members of the raiding party namely SI Balbir Singh (PW2), ASI Gyanender Singh (PW10) with Rajbeer (PW7) and Head Constable Premjeet (PW11) to be trustworthy and reliable. It was concluded that these witnesses had supported each other on material points. No material discrepancy could be noticed in their

statements and from their statements prosecution had succeeded in proving that on receipt of secret information, raiding party was constituted by SI Balbir Singh on 11th August, 2008 comprising of ASI Gyanender Singh, Constable Rajbeer, Head Constable Premjeet and other police officials named in the FIR; the raiding party took position at the T-point near the bus terminal Lado Sarai when at about 11 pm Appellants were seen coming from Badarpur side on a motorcycle; on the pointing of secret informer SI Balbir Singh gave signal to the Appellants to stop the motorcycle but instead of stopping the motorcycle Appellants attempted to flee away; after Head Constable Premjeet blocked their way by parking the official vehicle diagonally on the middle of the road Appellants stopped the motorcycle and ran away towards the jungle; ASI Gyanender Singh and Constable Rajbir chased Appellant Kamar at which he fired towards them twice; undeterred by this Constable Rajbir apprehended him with the revolver in his hand. Similarly, Head Constable Shyambeer Singh chased Mohd. Ashraf, who also fired at him but by saving himself he apprehended the Appellant Ashraf with a pistol in his hand; live cartridges were also recovered from them. As per the Forensic Report, revolver as well as pistol was found in working

condition and it was found that the empty shells recovered from the spot were fired from the revolver and the pistol so recovered. Sanction under Section 39 of the Arms Act for prosecution of the Appellants under the relevant provisions of Arms Act was duly proved by the PW3. Thus, it was concluded that Appellants had committed offences punishable under Sections 307/353/186/34 IPC and 25/27 of Arms Act.

9. I have heard Mr. Deepak Vohra, Advocate for the Appellants, APP for the State and have perused the Trial Court record more particularly, the testimonies of material witnesses i.e. raiding party, Investigating Officer, Additional Deputy Commissioner of Police, Sanctioning Authority and Senior Scientific Assistant (Ballistic). I find their depositions to be trustworthy and reliable and in my view their version has been rightly accepted by the learned trial court. SI Balbir Singh was heading the raiding party. He has fully supported the prosecution case. He has deposed that on 11th May 2008 he was present near the Bus Terminal Lado Sarai at about 10.30 pm along with other police officials of the special staff when a secret informer informed him that two boys, who were involved in a murder case, would be going from Badarpur to Mehrauli. Raiding

party was constituted. At about 11 am Appellants were seen on a motorcycle coming from Badarpur side. On the pointing of secret informer he gave signal to the Appellants to stop the motorcycle. Instead of stopping the motorcycle they increased the speed. Head Constable Premjeet blocked their way by diagonally parking the official vehicle on the middle of the road. Finding that they had been cornered Appellants started running towards the jungle. Mohd. Kamar was chased by ASI Gyanender and Constable Rajbir at which he fired towards them by a revolver twice. But somehow these police officials could escape injuries. After great efforts Rajbir succeeded in apprehending Kamar with a revolver. Appellant Ashraf, who was driving the motorcycle, was chased by Head Constable Shyambir. He also fired from a country made pistol towards Head Constable Shyambir but was ultimately apprehended. He informed local police. PW13 ASI Dilip Kumar took over the investigation and recorded his statement and got the FIR registered. Thereafter, Appellants were arrested. Country made pistol, cartridges and revolver were sealed in separate *pulandas*. His this statement has been duly supported by the PW7 Constable Rajbeer, PW10 ASI Gyanender and PW11 Head Constable Premjeet. All these witnesses have corroborated

each other with regard to the incident. In my view, their testimony is sufficient enough to prove the incident and the culpability of the Appellants. As per PW9, Punit Puri, Senior Scientific Assistant (Ballistic), country made pistol and the revolver were found in working condition. Empty shells recovered from the spot were also found to have been fired from the country made pistol and the revolver. This fact corroborates the statements of PW2, PW10, PW7 and PW11, the manner in which incident took place. PW3 Ms. Chhaya has proved the sanction under Section 39 for prosecution of the appellant under the Arms Act.

10. Defence taken by the Appellants has rightly not been accepted. Firstly, because the same has not been corroborated by any independent witness. Secondly, DW1 and DW2 being interested witnesses cannot be preferred as against the prosecution witness against whom no malafide or bias has been alleged. That apart, DW1 and DW2 have not produced anything on record to show that immediately after the Appellants were so picked up by the police officials any protest was lodged before any authority.

11. I find no force in the contentions of the learned counsel for

the Appellants that the prosecution story is suspicious due to the material discrepancies in the testimonies of the members of the raiding party as regard to the place of incident. PW2 had deposed that all the documents were prepared at the spot while sitting in the official vehicle. As against this, as per the PW7 writing work was done while sitting on the pavement near the bus stand; while PW8 has deposed that it was done while sitting on the pavement near a *nala*, inasmuch as, no *nala* has been shown in the site plan. According to the learned counsel different versions given by these witnesses as to the place where writing work was done is sufficient enough to disbelieve them. Counsel for the Appellants next contended that as per PW2, he remained at the spot till 4/5 pm as against this PW11 has deposed that he drove back the vehicle along with other police officials at 2 pm i.e. soon after the Investigating Officer reached the spot, while PW7 has deposed that the police team remained at the spot for about 30 minutes; meaning thereby police party left at 11.30 am. He has contended that all these three witnesses have given different timings of their departure from the spot which by itself creates a serious doubt about their versions. Not only this, PW10 and PW11 have also failed to give correct number of the

official vehicle. As per the PW10, it was a Tata Mini Bus bearing no.DL1LE 4065; whereas according to PW11 it was a tempo traveller bearing no.DL1E 4065. I do not find above discrepancies, as pointed out by the learned counsel, to be material contradictions so as to discard their testimony with regard to the apprehension of the Appellants. So far as vehicle number is concerned PW10 and PW11 have correctly spelled out the same to be 4065. So far as the place of incident is concerned PW2, PW7 and PW8 have categorically deposed that it was near the bus stand Lado Sarai where nakabandi was done at T-point. Their deposition is consistent in this regard. Merely because PW2 has deposed that writing work was done while sitting in the vehicle; whereas PW7 and PW8 have deposed that writing work was done on sitting on the pavement will not be sufficient to disregard their testimony as a whole. There is every possibility of such minor discrepancies creeping in their statement more so when their statements in the Court were recorded after more than one year of the incident.

12. For the foregoing reasons, I do not find the view taken by the learned trial court to be perverse or suffering with material irregularity or being inconsistent with the evidence available on

record. I also do not find the sentence awarded by learned Additional Sessions Judge to be on higher side. Accordingly, both the Appeals are dismissed.

A.K. PATHAK, J.

August 09, 2010

vld