

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

% *Date of Decision :18th March, 2010*

+ **CRL. APPEAL NO.202/2008**

SURENDER SINGH Appellant
Through: None.

versus

STATE OF DELHI Respondent
Through: Mr.M.N.Dudeja and
Ms.Richa Kapoor, APP

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?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. The appeal has reached for hearing today but none appears for the appellant.

2. This court finds itself pushed to the wall for the reason 99% of the decisions being rendered by this Court show that a considerable time is spent to get hold of learned counsel for the appellants, who for some unexplainable reason refuse to

appear in the matters.

3. Order sheet in each and every case shows that the accused is first summoned. His statement that he would ensure that his lawyer would appear on the next date is recorded. Finding no lawyer on the next date, notices are issued to the lawyers concerned. In spite of service effected the lawyer does not appear. The Court is then compelled to appoint an Amicus Curie and then proceed to hear the appeal. As a result of non-cooperation afore-noted, not only judicial time is wasted but the disposal of the appeals is seriously affected. With nearly 2000 criminal appeals to be heard and decided by the Division Bench, it is just not possible to continue procedural compliances as afore-note to secure the presence of the counsel. It may be noted that the cause list is circulated to the members of the Bar well in advance.

4. Keeping in view the civil liberties of the convicts a conscious decision was taken by this Court to fast track hearing of all appeals in which the accused were not granted bail. In such live matters, it was expected that the members of the Bar would rise to the occasion and argue the appeals so that such appeals which succeed would result in the civil liberty of the accused being protected and upheld.

5. Instant appeal relates to the year 2008 and in spite of the cause list being circulated to the members of the Bar about

a month ago, it is unfortunate that appearance has not been made.

6. Accordingly, with the help of the learned Public Prosecutor we have gone through the record and have perused the impugned decision.

7. Vide impugned judgment and order dated 28.01.2008 the appellant has been convicted for the offence punishable under Section 302 IPC relating to the death of one Satish. Appellant has also been convicted for the offence punishable under Section 307 IPC pertaining to the grievous injuries inflicted upon HC Paanwati PW-2.

8. 30.6.2002 was a day of event at PS Mayur Vihar. Appellant, a constable deputed at the police station was on guard at the gate of the police station and was armed with a SAF carbine and a magazine containing bullets. HC Panwati PW-2 was to report for duty at the duty office from 9:00 AM but due to unavoidable circumstances reached the police station only at 11:35 AM and was in the process of taking charge from ASI Ompal PW-1 when the deceased, smeared in blood and being chased by the appellant, ran towards the reporting room. The appellant was firing at the deceased with the SAF carbine. HC Panwati, ASI Ompal along with two other constables, namely, Const.Jai Singh and Const.Vinod took shelter behind the furniture. The appellant continued to fire, resulting in the death

of Satish and HC Panwati receiving bullet injuries on her shoulder. Appellant was overpowered and was disarmed. ASI Ompal PW-1 immediately recorded the happening in the daily diary vide DD No.12A Ex.PW-1/A.

9. What had the accused i.e. the appellant to explain with reference to the incriminating evidence brought against him; which needless to state was the testimony of the afore-noted persons and proof of the fact that the SAF carbine was issued to him as also the ammunition being issued with further proof that the various empty cartridges lifted from the spot pertained to the magazine which was issued to the appellant?

The appellant had to say as follows:-

“Q. 48. Do you want to say anything about this case?

Ans.: I was doing my duty as a santari. At about 11.40 AM Satish (deceased) who was my relative came there. I had half closed the doors of PS as per directions of SHO. He opened the doors by hitting car against these. He parked his car inside the PS. He started shouting at me. I took him towards near police quarters. He pounced at me. I forbade him from doing so. I took him towards duty officer's room. I tried to snatch my carbine from his hands. In that process firing took place. Magazine fell down. I tried to pick it up and fit in the carbine. In that process it fired four – five times in air. Satish tried to snatch said carbine from me and in that process was hit by bullets. The carbine fired in rapid action from gate of PS up to police quarters. When we were near duty officer's room the carbine was set at automatic mode. It fired which hit deceased Satish as well as walls, tube lights and windows of duty officer's room.”

10. Suffice would it be to state that no such version was

put to the witnesses of the prosecution who deposed as eye-witnesses and thus we note no further save and except to hold that the prosecution has successfully established that the ammunition which was issued to the appellant was used by the appellant through the SAF carbine. The appellant chased the deceased into the police station and shot him. While so doing, the appellant remained unmindful of the presence of the other police officers, one of whom was shot. It is apparent that the appellant is guilty of the offence of having murdered Satish. As regards the offence committed by the appellant in relation to the injuries sustained by HC Panwati, suffice would it be to state that when a person fires indiscriminately from a firearm and is aware of the fact that there are persons in the room towards which the firing is directed, knowledge would be imputed to the person concerned that by his act, in all probability, death may result.

11. Thus, conviction of the appellant for the offence punishable under Section 307 IPC is also fully justified.

12. We note that the appellant has been visited with the least penalty i.e. to undergo imprisonment for life for the offence punishable under Section 302 IPC. For the offence punishable under Section 307 IPC he has been sentenced to undergo rigorous imprisonment for seven years.

13. The appeal is dismissed.

14. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail, Tihar to be made available to the appellant.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

MARCH 18, 2010
'mr/dk'