

IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 05.12.2011

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CRL.L.P. No. 460/2011
CrI.M.A.11402-11403/2011

STATE

..... Petitioner

Through : Mr. Sanjay Lao, APP

Versus

SHAILENDER KADYAN

..... Respondent

Through : None

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The State seeks leave to appeal against a judgment and order of the learned Additional Sessions Judge dated 01.02.2011 in SC No.134/2009; by the impugned judgment the respondent Shailender Kadyan was acquitted of the charges for having committed offence punishable under Sections 307/353/186/34 IPC.

2. The prosecution alleged that SI Satinder Vashisht, (deployed with the Special cell and who deposed during the trial as PW-14) received secret information in the morning of 28.08.2004 that four robbers i.e. Anoop Singh, Yogesh, Shailender and Deepu would be passing Najafgarh from Kapashera side at about 12.00 AM in a stolen Maruti car bearing registration No. HR-06-5338. He was also told that these individuals would be in possession of unlicensed arms. PW-14 constituted a raiding party which comprised of himself and three other Sub

Inspectors, two ASIs and constables. This raiding party left in an official vehicle armed with service pistols. One Constable Ravish was armed with an AK 47; he wore his uniform. At about 12.15 PM; the said Maruti car came from the Kapashera direction and was sought to be stopped by PW-14 and Constable Ravish. As the police barricades were shut, the car was stopped, the respondent Shailender Kadyan (who was driving the car) shouted out to his other accomplices that the police party had surrounded them and they should start firing. A co-accused Anoop allegedly opened the car door, whipped out his pistol and fired at Ravish; the latter managed to evade and PW-14 opened fire in the air and asked the accused to surrender. The co-accused Anoop Singh was over powered by Constable Ravish and the other co-accused Yogesh -who also took out his pistol was over powered by the police.

3. After conclusion of investigation the accused were charged with having committed the offence; they denied guilt and claimed trial. In the course of the proceedings the prosecution relied on the testimonies of 12 witnesses. The material witnesses were PWs-6, 8, 12 and 14. The Trial Court concluded that the prosecution had been able to establish the role attributed to the co-accused Anoop Singh and Yogesh Sharma. However, so far as Shailender Kadyan was concerned, the Court concluded that his guilt had not been established beyond reasonable doubt.

4. The learned APP urged that the Trial Court fell into error in hyper-technically trying to discern the role of the accused Shailender. In this respect, it was submitted that he was admittedly driving the vehicle in which the co-accused were sitting; they were armed. The car was a stolen one and the co-accused did not have a license or authorization to possess the fire arms. Immediately upon perceiving the threat from the police it was Shailender who instigated the other co-accused to open fire. This was not only provocation but clearly amounted to his

complicity in the entire incident. But for his shouting a warning and further exhorting the other-accused to fire upon the police, there would have been no occasion for all of them to have been charged with offences punishable under Section 307/353 IPC.

5. The relevant discussion by which the Trial Court concluded about the prosecution's inability to prove Shailender's guilt is extracted below.

“39. It has been argued by Ld. Defence Counsel for accused Shailender that he did not nurture any intention to commit the offence punishable U/S 307 IPC and his only intention was to escape and it is for this reason, he asked the other accused persons to fire so as to facilitate their escape.

40. Undoubtedly, the intention of accused Shailender can be gathered only from the words which were used by him and there is no evidence to this effect on record. As stated above, as per PW6 & PW7 deposed that accused Shailender shouted “Police party Ne Gher Liya Hain, Goli Chalao”, whereas as per PW8 & PW12, accused Shailender shouted “Police Party Ne Gher Liya Hai, Fire Karo Aur Bhago”. As per the deposition of PW6 & PW7, it cannot be said that the intention of accused Shailender was merely to escape since he asked the other accused persons to fire as they had been surrounded by the police party, whereas in the light of testimony of PW8 & PW12, it can be said that his intention to escape by firing as they had been surrounded by the police party. It cannot be disputed that there has to be some variance in the testimony of prosecution witnesses. However, the benefit of such discrepancies must, in all circumstances, go to the accused.”

41. In other words, considering the deposition of PW6, PW7, PW8 & PW12, I find that the accused Shailender merely shouted that they had been surrounded by the police party and asked the other accused persons to escape after firing. This clearly reveals that the intention of the accused Shailender was merely to escape and he asked the other accused persons to fire only with an intention to facilitate their escape. No intention

can be imputed on the part of the accused Shailender to say that he had the intention to cause any hurt or to assault any member of the police party. Admittedly, no fire arm has been recovered from the possession of accused Shailender.

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50. However, insofar as the accused Shailender is concerned, as discussed above, I find that there is no evidence on record to establish that he ever nurtured any intention to cause death of Ct. Ravish or to cause any harm. There is no evidence regarding any common intention of accused Shailender with accused Anoop Singh for committing offence punishable U/S 307 IPC. Similarly, I find that accused Shailender did not voluntarily obstruct or deter the police officers in discharge of their public functions as his intention was merely to facilitate their escape.

51. On the basis of evidence on record and in the light of the above discussion, accused Shailender is acquitted from the charge as framed against him.”

6. The prosecution concededly alleged that Shailender was driving the stolen car. The evidence in the form of depositions of all police witnesses clearly shows that he shouted out, on observing that the car had been surrounded by the police who were thwarting their attempt to flee. The Trial Court reasoned that since Shailender merely warned the other co-accused about the threat and did not himself participate in any overt or covert action or attempt, guilt could not be fastened upon him. The core of this reasoning may be found in para 50 of the impugned judgment.

7. Aside from the fact that High Court when petitioned to grant leave to appeal (by the State against orders of acquittal) exercises its jurisdiction only upon its satisfaction that there are substantial or compelling reasons to do so, it is equally well settled that if there are two views which can be reasonably taken on the basis

of the materials and evidence on the record, the Appellate Court would be extremely slow and circumspect in upsetting the view which prevailed with the trial court unless there are substantial reasons. On an overall analysis of the case records - which were requisitioned for the purpose of this petition and after considering the submissions of the APP, this Court does not discern any reason, substantial or compelling to differ from the view taken by the Trial Court in the impugned judgment. The petition therefore has to fail; it is accordingly dismissed.

(S.RAVINDRA BHAT)
JUDGE

December 05, 2011

(G.P. MITTAL)
JUDGE