

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

+ CRL.A. 1403/2010 and Crl. M.B. No. 1684/2010 (suspension)

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Reserved on: 17th April, 2012

Decided on: 4th July, 2012

SUMIT KUMAR

..... Appellant

Through: Mr. Anirudh Yadav and Mr. Anurag
Ahluwalia, Advocates.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP with SI Ram
Pal, PS Uttam Nagar.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this appeal the Appellant challenges the judgment dated 29th November, 2010 convicting the Appellant for offence under Sections 307/34 IPC and order on sentence dated 1st December, 2010 directing him to undergo Rigorous Imprisonment for a period of three years with a fine of Rs. 5,000/- and in default of payment of fine to undergo simple imprisonment for a period of six months.

2. Learned counsel for the Appellant contends that the conviction is based solely on the evidence of the Complainant which is not corroborated from any other evidence on record. The weapon of offence has not been recovered at the instance of the Appellant. Further the bullets fired and the used cartridge cases have also not been recovered. No opinion was taken by the Investigating Officer from the expert whether any firing was done from the weapon so recovered from the co-accused. The MLC does not mention the history of firing though given by the Complainant himself and only

mentions history of assault. There are material contradictions in the statement of the Complainant. As per PW2/complainant the site plan was prepared after his statement was recorded however, this fact is incorrect as the site plan mentions the FIR number. The site plan only shows two spots and thus is a vague site plan. Even as per the Complainant, the Appellant was arrested on the same date however, the police witnesses have stated that they arrested the Appellant on the next date. The arrest of the Appellant has been manipulated. When the Appellant came to know that he has been framed in the alleged incident, he voluntarily went to the police station along with his father and brother and he was made to sit in the police station at the night itself. Thus the arrest of the Appellant on the next day is fabricated. Admittedly the alleged dispute between the Complainant and the Appellant was for the fact that the Appellant had taken Rs. 1 lakh from the Complainant out of which Rs. 65,000/- had been paid. The Appellant would not kill someone for a paltry sum of Rs. 35,000/-. There is no evidence on record that the alleged katta recovered at the instance of the co-accused was the same from which the Appellant fired. Thus in view of the material contradictions and there being no evidence to corroborate the testimony of PW2/the Complainant, the Appellant be acquitted of the charges framed.

3. Learned APP for the State on the other hand contends that as per DD 33 Ex.PW6/A an information with regard to a person being shoot was recorded at 7.40 p.m. The rukka Ex. PW2/A was sent at 8.30 p.m. Thus there can be no manipulation in the FIR. The contention of the Appellant that he was made to sign the blank papers and false documents were prepared cannot be believed. Admittedly the Appellant and the Complainant were

known to each other and thus there could be no false implication. In view of the cogent and convincing testimony of PW2, the appeal be dismissed.

4. I have heard learned counsel for the parties.

5. The abovementioned case was registered on the complaint of PW2 Amit Kumar. In his statement before the Court, Amit Kumar stated that he came in contact with the Appellant while he was taking tuition of 9th class. In the end of the year 2004 he started the business of sale and purchase of car. The Appellant started the business of sale and purchase of cars for which he borrowed Rs. 1 lakhs in installments of Rs. 10,000/- from PW2. Whenever PW2 used to demand for the return of his money he was threatened to be killed. Ultimately PW2 went to his house and informed the father of the Appellant. The father of the Appellant gave PW2 Rs. 65,000/- in cash and the Appellant gave him three blank cheques. However, the Appellant asked him not to present the cheque and assured to make payments. Later when PW2 demanded money, the Appellant threatened to kill him and his family members and did not make the balance payment. On 19th July, 2005 at about 7.15 p.m. when PW2 was going back to his house along with his friend Deepak and reached Ganda Nala, Mahender Park, the Appellant came on a motorcycle No. 0155 of blue colour. One more boy aged about 22 years was sitting on the pillion seat of the motorcycle. The Appellant exhorted "Tu bohat paise mang raha hai, paiso ka chakkar chod de, jan se mar dunga." PW2 stated that why should he forget the money. On this the boy sitting on the pillion seat started grappling with PW2. The Appellant asked that boy to get on one side so that he could shoot. The Appellant took out a pistol/revolver from his back side and fired at PW2. PW2 immediately ducked on the ground as a result of which the bullet

passed towards the ganda nala. After this the Appellant and his associate fled away. PW2 made a call to the PCR on which the police arrived. They recorded the statement being Ex. PW2/A on the basis of which FIR was registered.

6. On the pointing out of PW2 the police arrested the Appellant on 20th July, 2005 near Agarwal Sweets, Chankaya Place vide arrest memo Ex. PW2/B. On 15th September, 2005 PW2 again accompanied the police at Chankya Place near Mahendra Park where the co-accused Prakash who was pillion rider on the motorcycle on the date of incident was apprehended on his pointing out. From the search of Prakash a loaded desi katta was recovered from the right pocket of the pant. Three bullets were recovered from the left pocket of his pant. Katta and the bullets were kept in paper pullanda and seized vide Ex. PW2/E. The co-accused expired during trial and thus proceedings qua him abated. After recording of the statement of PW2 and other witnesses and the Appellant the learned Additional Sessions Judge convicted and sentenced the Appellant as above.

7. On hearing the learned counsel for the parties, I find merit in the contention of the learned counsel for the Appellant that besides the statement of PW2 there is no evidence on record to corroborate the version of PW2. It may be noted that a loaded desi Katta/revolver and three bullets were recovered from the co-accused vide memo PW2/A. As per the FSL opinion the country made revolver and the four live cartridges were firearms/ammunition as defined in the Arms Act, 1959 and country made revolver was in working order in view of the test fire conducted successfully. However, the recovery of katta and cartridges from the co-accused is not connected with the present FIR. No cartridge case/bullet was recovered

from the spot. Thus there is no evidence that the bullet was fired from the firearm recovered. Further PW2 does not identify it to be the same revolver from which the Appellant fired on 19th July, 2005 at PW2. Thus the recovery of the katta from the co-accused is meaningless as it is not connected with the alleged offence.

8. As per the MLC of PW2 there are abrasions present below right eye, right hand dorsal aspect and left hand dorsal aspect. There is no allegation in the statement of PW2 that the Appellant or his co-accused entered into a scuffle with him resulting in the abrasions. This is further fortified by the fact that though PW2 in his statement states that he told the doctor that he was fired by the bullet however, the only history given by the Complainant and recorded is of assault. PW2 in his cross-examination has admitted that on 19th July, 2005 brother and father of the Appellant were made to sit in the police station. There is discrepancy in the time of arrest of Appellant.

9. Further admittedly, according to PW 2, he had given Rs.1 lakh to the Appellant out of which Rs. 65,000/- had been returned and he was issued three blank cheques by the Appellant but he asked him not to deposit the same. A perusal of the three blank cheques duly exhibited during trial show that they are not signed by the Appellant but are signed by one Sanjay Kapur. There is no explanation in the entire case how the three cheques signed by one Sanjay Kapur came into the possession of PW2 and how they were relevant. The Complainant PW2 further stated that he took no receipt of payment. He could not tell the dates and months on which money was paid to the Appellant. He did not remember when the father of the Appellant gave Rs.65,000/- in cash.

10. In the present case the only evidence against the Appellant is that of the Complainant which also suffers from material contradictions and there is no evidence to corroborate the version of PW2. I, therefore, deem it fit to extend the benefit of doubt to the Appellant. Accordingly the impugned judgment of conviction and order on sentence are set aside. The Appellant is acquitted of the charge under Section 307 IPC. The Appellant is on bail. The bail bond and the surety bond are discharged.

11. Appeal and application are disposed of. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

JULY 04, 2012

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