

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

**RESERVED ON : February 12, 2013
DECIDED ON : March 04, 2013**

+ CRL.A. 317/2000

AMARJEET SINGH @ BABLOO Appellant

Through : Mr.Bhupesh Narula, Advocate.

versus

STATE Respondent

**Through : Ms.Fizani Husain, APP.
SI Amit, PS Model Town.**

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Amarjeet Singh @ Babloo impugns the judgment dated 14.01.2000 in Sessions Case No.70/1998 arising out of FIR No.360/1998 registered at Police Station Model Town by which he was held guilty for committing offences punishable under Section 307 IPC and 27 of the Arms Act. Vide order on sentence dated 18.01.2000, he was to undergo RI for three years with fine ₹2,000/-.

2. Allegations against the accused were that on 12.07.1998 at about 08.05 P.M. at Bara Park, Model Town, he voluntarily fired at the

police party consisting of Inspector Suminder Pal Tyagi, SI Satender Kumar, Constable Rajesh Kumar and Constable Amit Kumar. Secret information with the police was that the accused would come at 07.00 P.M. at Bara Park, Model Town to meet his associate members of Nazim Gang. Raiding party was organized and the police party went to spot and organized 'Nakabandi'. At about 07.15 P.M. the accused came on scooter bearing No. DL-ISC9933, parked it near the gate of the park and he sat over it. Nobody came to meet him till 08.00 P.M. Thereafter, the accused started the scooter and moved towards Mall Road. When signaled to stop, he abandoned the scooter in running condition and started fleeing the spot. He also took out country made pistol and fired at the police party. Inspector Suminder Pal Tyagi also fired in the air and directed him to surrender. The accused again loaded the country made pistol and fired at the police party but the pistol did not work. Head Constable Jasbir Singh and Head Constable Satender Pal overpowered him and snatched the pistol. Necessary proceedings were conducted and First Information Report was lodged. Statements of witnesses conversant with the facts were recorded. In his disclosure statement, the accused revealed that the scooter was a stolen one. On completion of investigation, a charge-sheet was submitted against the accused. He was duly charged with and

brought to trial. The prosecution examined 11 witnesses. In his 313 statement the accused pleaded false implication and stated that he was wanted in some cases in U.P. and was detained in the police station. On appreciating the evidence and considering the rival contentions of the parties by the impugned judgment the Trial Court convicted the appellant. Being aggrieved, he has preferred the appeal.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective. PW-2 (Sanjay Kumar), an independent witness, turned hostile and did not support the prosecution case. Material discrepancies and contradictions which emerged in the statements of the police witnesses were ignored by the Trial Court. Learned Additional Public Prosecutor urged that there are no good reasons to disbelieve the statement of the police witnesses who were having no animosity with the accused prior to his arrest. Ballistic report (Ex.PW-9/A) corroborates the ocular testimony of the police witnesses.

4. I have considered the submissions of the parties and have examined the record. The accused was apprehended by the police of Special Staff who had office at a distance of about 7 km from the place of occurrence. At no stage, local police was joined in the investigation. No

efforts were made to associate independent public witnesses from the market. PW-2 (Sanjay Kumar) was allegedly associated as an independent public witness. However, in his deposition before the court he completely turned hostile. He denied that the accused was apprehended in his presence or that he had fired at the police party. With the court's permission, learned Additional Public Prosecutor cross-examined him. In the cross-examination, he denied suggestions of Id. Addl. Public Prosecutor that he had stated all these facts to the police and had signed memos. No ulterior motive was attributed to PW-2 (Sanjay Kumar) for resiling from his previous statement. I am conscious that credibility of a witness has to be tested on the touchstone of truthfulness and trustworthiness. It is not the law that the police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in the material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. It is equally true that if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence. The rule of prudence requires more careful scrutiny of their evidence.

Since the court is left with the testimony of police witnesses, it requires scrutiny with great care and caution.

5. On scrutinizing the testimonies of the police witnesses number of inconsistencies and discrepancies have emerged to believe them without independent corroboration. PW-10 (Satinder Kumar) conveyed the secret information to his Senior officers. However, the secret information was not reduced into writing. DD No.12 (Ex.PW10/A) shows departure of Inspector S.P.Tyagi at 06.20 P.M. However, it does not have contents of the secret information. As per the secret information, the accused was to reach at Bara Park to meet his gang members. Apparently, the secret information on this aspect proved wrong as despite alleged wait till 08.00 P.M. for about one hour nobody came to meet him. The accused continued to wait while sitting on the scooter. He was not apprehended by the police at that time though they knew that he was the member of Nazim gang. During this period, the accused did not attempt to contact alleged gang members. The purpose of assembling was not established. No interrogation was made from the accused as to who were the other members of the Nazim gang who were to reach there. No efforts were made to apprehend any such gang member. The police witnesses have not specified from where the accused had taken out the pistol to fire

at the police party. No such pistol was visible when the accused was sitting on the scooter. The police witnesses have given inconsistent version as to who was fired at. Some witnesses have stated that the accused fired at the police party while others deposed that he fired in the air. Fired bullet/empty cartridge was not recovered from the spot. No one was injured in the incident. There is material contradiction whether the police party was in uniform or in civil dress. Some witnesses have stated that they were in uniform whereas others have stated that only one or two of them were in uniform. There is inconsistency as to where the writing work was done. Some have stated that it was done in the park. Others have stated that it was done while sitting in the vehicle. The witnesses have given divergent statements whether after the firing incident any public person from the neighbourhood gathered or not. The scooter was allegedly a stolen one. However, no charge for having possession of the stolen property was framed against him. It is not on record that the accused was arrested under Section 379/411 IPC. There are discrepancies as to which police officer asked the accused to stop and who gave chase to him. In the personal search of the accused nothing incriminating was recovered.

6. Taking into consideration all these lapses and inconsistencies the statements given by the police witnesses cannot be taken on its face value without independent corroboration. The conviction of the appellant cannot be sustained. The appeal is allowed. The conviction and sentence of the appellant are set aside.

7. Trial court record be sent back forthwith.

(S.P.GARG)
JUDGE

March 04, 2013

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