

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

RESERVED ON : 17th APRIL, 2014

DECIDED ON : 29th APRIL, 2014

+ CRL.A. 45/2011

AKASH SINGH

..... Appellant

Through : Mr.J.P.Dhanda, Advocate.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant – Akash Singh has preferred the appeal to challenge the legality and correctness of a judgment dated 13.12.2010 of learned Addl. Sessions Judge in Sessions Case No. 251/09 arising out of FIR No. 424/06 PS S.N.Puri by which he was convicted under Sections 307 IPC and 27 Arms Act. By an order dated 16.12.2010, he was sentenced to undergo RI for three years with fine ₹ 5,000/- under Section 307 IPC; RI for three years with fine ₹ 1,000/- under Section 27 Arms Act. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 27.07.2006 at about 11.15 or 11.30 A.M. at main gate DESU Colony, Old Kilokri, the appellant – Akash Singh and his associates – Arun Kumar @ Gabbar and Raghvinder @ Sonu in furtherance of common intention inflicted injuries to Parmod Kumar by firing at him. Daily Diary (DD) No. 12 was recorded at Police Post, Sunlight Colony at 12.50 P.M. regarding the firing incident. The investigation was assigned to ASI Sambhu Shah who with Const. Gangadhar went to Jeevan Nursing Home. They came to know that the injured Parmod Kumar had already been taken to Metro Hospital, Noida, U.P. The Investigating Officer lodged First Information Report after recording complainant – Parmod Kumar's statement (Ex.PW-1/A). Statements of the witnesses conversant with the facts were recorded. On 28.07.2006, Akash Singh was arrested and a country-made pistol was recovered from his possession. Subsequently, Raghvinder @ Sonu and Arun Kumar @ Gabbar were arrested on 20.08.2006 and 23.08.2006, respectively. After completion of the investigation, a charge-sheet was submitted against all of them; they were duly charged and brought to trial. The prosecution examined fifteen witnesses to substantiate the charges. In 313 statements, the accused persons denied complicity in the crime and

pleaded false implication. DW-1 (Raj Nath) appeared in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, acquitted Arun Kumar @ Gabbar and Raghvinder @ Sonu of the charges and convicted Akash Singh for the offences mentioned previously. It is pertinent to note that the State did not challenge their acquittal. Being aggrieved and dissatisfied, the appellant – Akash Singh has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. The appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and ignored vital infirmities in the statements of the witnesses examined. It led to the acquittal of Arun Kumar @ Gabbar and Raghvinder @ Sonu who were falsely implicated along with the appellant. No independent public witness was associated at any stage of the investigation. PWs have given inconsistent version about the apprehension of the appellant and recovery of country-made pistol from him. Learned Addl. Public Prosecutor urged that there are no sound reasons to disbelieve the complainant / victim who has implicated the appellant for the injuries caused to him.

4. The occurrence took place in between 11.15 – 11.30 A.M. on 27.07.2006. The police came into motion when Daily Diary (DD) No. 12

was recorded at Police Post, Sunlight Colony at 12.50 P.M. regarding the firing incident. It further recorded that the victim had been taken to Jeevan Nursing Home. MLC (Ex.PW-8/A) pertains to Metro Hospital where the injured was shifted. It records the arrival time of the patient at 12.50 P.M. It further records the alleged history of 'gunshot'. Gunshot wound in the left thigh was found on the body of the patient. FIR was lodged in promptitude by sending rukka (Ex.PW-10/A) after recording complainant's statement (Ex.PW-1/A). In the complaint, the victim narrated the detailed account as to how and under what circumstances, injuries were inflicted to him by firing at him by a country-made pistol by Akash Singh. Apparently, Akash Singh was named in the FIR at the first instance. While appearing as PW-1 (Parmod Kumar), the complainant attributed specific role to the appellant and deposed that when he was going to a chemist shop to purchase medicines at about 11.15 or 11.30 A.M., he was obstructed and surrounded by Akash Singh and his associates - Arun Kumar @ Gabbar, Raghvinder @ Sonu and Akash Singh's mother. They threatened to kill him. At the exhortation of his mother, Akash Singh fired at him. He also fired at his brother, however, it missed. He further deposed that he was taken to Jeevan Nursing Home by his brother. From there, he was taken to Metro Hospital where his

statement (Ex.PW-1/A) was recorded. He remained admitted in the said hospital for about a week. He identified pant (Ex.P1) and T-shirt (Ex.P2) seized by the police. In the cross-examination, he disclosed that a quarrel had taken place with the appellant about three days prior to the incident when a cricket ball had gone near his foot. He denied the suggestion that four / five complaints were lodged against him for theft and eve-teasing. He denied the suggestion that he was discharged from Metro Hospital the next day. He further denied that he was armed with a country-made revolver and in a scuffle, a fire was shot and hit him. Apparently, despite lengthy and searching cross-examination, no material infirmity could not elicited to disbelieve the version given by the injured witness. Injuries sustained by him due to firing incident are not under challenge. PW-8 (Dr.Ajay Purang) proved MLC (Ex.PW-8/A) by which he was medically examined by Dr.Akhlesh Kumar Srivastava. PW-12 (Dr.Gurpal Singh Gandhi) deposed that it was a case of 'gunshot' in thigh. He had removed the bullet from the thigh of the injured. Nature of injuries were opined by him at point 'A' on Ex.PW-12/A. The opinion given by the witness regarding the nature of injuries as 'dangerous' remained unchallenged in the cross-examination. Appellant's plea that the victim sustained injuries due to accidental fire in a scuffle is without any foundation and no witness

has been examined to substantiate it. Nothing was suggested to PW-8 (Dr.Ajay Purang) or PW-12 (Dr.Gurpal Singh Gandhi) in the cross-examination if the injuries sustained by the victim were possible due to accidental shot fired from the weapon. Nothing has come on record to establish that the at the time of scuffle, the victim had any weapon in his possession. No such weapon was found at the spot. PW-7 (Pramod Kumar Yadav), Chowkidar (Guard) in DESU Colony rushed to the spot at around 11.00 A.M. and found a boy lying near the gate. Parvinder Kumar, victim's brother was picking Parmod Kumar. Victim's mother also reached there. He noticed blood at the spot. This witness did not depose if any country-made pistol was seen by him at the spot that time. It is not the case of the appellant that the said weapon of offence was taken away by the assailants after the incident. The appellant did not plead this defence in 313 statement. He admitted his presence at the spot. Suggestion was put to the victim that in a scuffle with Akash Singh, the complainant had wanted to fire at him. The appellant, however, did not explain as to how the scuffle had originated and on what account. After the victim sustained injuries, the appellant fled the spot and did not bother to take the injured to hospital. He did not report the incident to the police. These circumstances rule out that the victim sustained injuries due to accidental

fire. The appellant was arrested next day and the country-made pistol was recovered from his possession. FSL report linked the deformed bullet (Ex.EBI) with the crime weapon. It connects him with the crime.

5. Acquittal of co-accused Arun Kumar @ Gabbar and Raghvinder @ Sonu for lack of evidence is not enough to exonerate the appellant. The Trial Court has dealt with this aspect observing that the principle of “falsus in uno falsus in omnibus” is not the sound rule. The complainant had attempted to implicate Arun Kumar @ Gabbar and Raghvinder @ Sonu, appellant’s friends. This part of the statement of the complainant was not accepted by the Trial Court and benefit of doubt was given to them. The complainant is, however, categorical and certain regarding the role played by the appellant in firing at him. In the absence of material discrepancies or contradictions in his testimony which is in consonance with medical evidence, his otherwise reliable version cannot be discredited.

6. The victim sustained ‘dangerous’ injuries on his body and remained admitted in the hospital for a week. Sentence awarded to the appellant cannot be termed excessive. The appeal is unmerited and is dismissed. The appellant shall surrender before the Trial Court on 8th May, 2014 to serve the remaining period of his sentence. Trial Court

record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

APRIL 29, 2014 / *tr*