

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

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Date of Decision: 04.02.2014

+ CRL.A. 92/2010

ZEESHAN

..... Appellant

Through: Counsel for the appellant.

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr Feroz Khan Ghazi, APP

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

On 13.05.2013, SI Rajesh Kumar of Special Staff received a secret information that a person named Zeeshan, who had absconded from the custody of U.P. Police, was involved in a number of serious offences committed in Delhi and keeps a deadly weapon with him shall come to a DDA Park Gate, near Arya Nagar Apartment, Road No. 54A, I.P. Extension, Patparganj between 4.00 to 4.30 PM. On receipt of the aforesaid information, a raiding party was organized, which reached the above-referred spot and took position there. Some passerby were requested to join the raiding party, but no one agreed, though two of them gave their names and addresses to the police party. At about 5.00

PM, the appellant Zeeshan was found coming from the side of Road No.57A. On being identified by the secret informer, the police officials started moving towards him at a slow pace and Sub-Inspector Rajesh loudly told him that he had been surrounded by police and, therefore, he should keep on ground the unauthorized weapon, if any, so that he may be questioned and the information available with the police may be verified. He was also told that the members of the police party would show their identity cards to him. This is also the case of the prosecution that Constable Umed Singh No. 989/E was then directed to show his identity card to the appellant. As soon as Constable Umed Singh shown his identity card to the appellant, he took out a country-made pistol from the pocket of his pant and fired a shot, which just missed Constable Umed Singh. The appellant attempted to open the barrel of his gun so as to fill another cartridge in it, but he was over-powered and the pistol was snatched from him. On his search, one live cartridge was recovered from the right side pocket of pant which he was wearing. The pistol as well as the live cartridges were seized by the police officers. The empty cartridge was also found on the spot and was seized after it had been duly sealed and an FIR under Section 186/353/307 of IPC and Section 25/27 of Arms Act was then registered.

2. Since the appellant pleaded not guilty to the charge. As many as 12 witnesses were examined by the prosecution. No witness, however, was examined in defence.

3. Constable Umed Singh came in the witness box as PW-1 and stated that on 1.05.2003, an informer came to him and informed him that one Zeeshan, who was absconding from the custody of U.P. Police and was involved in many cases of Delhi, will be coming to DDA Park, Road No. 57, near Arya Apartment, I.P. Extension, Patparganj at about 4.00-4.30 PM. On receiving the information, he made SI Rajesh aware of it and also made the informer meet him. A raiding party was then organized and some passerby were requested to join the party, but no one agreed though two persons, namely, Ravinder Thakur and Krishna Kumar gave their particulars to the police officers. The police party then reached the spot and took position there. At about 5.00 PM, on being identified by the secret informer, they moved towards the appellant so as to apprehend him. SI Rajesh Kumar asked him to surrender the arms and ammunition, if any, with him. He further stated that Sub-Inspector Rajesh directed him to show his card to the appellant. As soon as the card was shown the appellant, he took out a country-made pistol from the right side pocket of his pant and fired at him. He, however, was able

to escape it. The appellant was over-powered when he was trying to load the country-made pistol with another bullet and on his search one live cartridge was recovered from the right side pant which he was wearing.

4. PW-5 Head Constable Swadesh Pal and PW-6 SI Rajesh Kumar corroborated the deposition of PW-1 with respect to receipt of secret information, organizing raiding party, requesting some passerby to join the raiding party and none of them agreeing to join the said party. They have also corroborated his deposition with respect to the raiding party, taking position on the spot, the appellant coming there at about 5.00 PM and being surrounded by the police, after he has been identified by the informer. They have further corroborated the deposition of PW-1 with respect to the appellant being asked to put his weapon on the ground, Constable Umed Singh showing the identity card to him and thereupon the appellant taking out a country-made pistol from his pant and firing at Constable Umed Singh. They also stated that after the first bullet missed Constable Umed Singh, the appellant was re-loading the pistol, when they over-powered him. They have also deposed with respect to recovery of a country-made pistol and a live cartridge from the appellant and seizure of empty cartridge from the spot.

5. PW2, K.C. Varshseny, Sr. Scientific Officer of FSL has proved his report Ex.PW2/A.

PW4 Head Constable Pushpender stated that on 16.07.2003, he was posted as Assistant, MHC(M) at Police Station Mandawali and on that date a parcel sealed with the seal of RK was handed over to him by Constable Subhash for depositing the same with FSL, Malviya Nagar. According to him, there was no tampering with the case property so long as it remained in his custody.

PW11, Head Constable Hamender Singh was posted as MHC (M) at Police Station Mandawali on 13.05.2003 and according to him on the aforesaid date SI Rajesh came had deposited a parcel sealed with the seal of RK with him. PW-12 SI Omvir Singh has also corroborated the deposition of PW-11.

PW9, Shri Alok Kumar, Deputy Commissioner of Police, has proved the sanction Ex.PW9/A granted under Section 39 of the Arms Act, whereas PW10, Inspector Rakesh has proved the complaint under Section 195 of Cr.P.C.

6. In his statement under Section 313 Cr.P.C., the appellant denied the allegations against him and claimed to be innocent. According to him, he had gone to the chemist shop to purchase medicine for his ailing

son when he was arrested and implicated in this case at the instance of UP Police.

7. Vide impugned judgment dated 15.9.2007, the appellant was convicted under Sections 307 & 186 of IPC as well as under Section 27 of the Arms Act. Vide Order on Sentence dated 19.09.2007, he was sentenced to undergo RI for ten (10) years and to pay fine of Rs.5,000/- or to undergo SI for one (1) year in default under Section 307 IPC. He was further sentenced to undergo RI for five years and to pay a fine of Rs 3000/ or to undergo SI for six (6) months in default under Section under Section 27 of Arms Act. He was also sentenced to SI for three (3) months under Section 186 of IPC. All the sentences were directed to run concurrently.

8. In order to succeed the prosecution was required to prove (i) that the death of Constable Umed Singh was attempted, (ii) that his death was attempted to be caused by or in consequence of the act of the appellant and (iii) that such act was done with the intention of causing death or that it was done with the intention of causing such bodily injuries as the appellant knew to be likely to cause death or were sufficient in the ordinary course of nature to cause death.

What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. The intention of the assailants can be gathered from the motive for the crime, nature of weapon used, number of blows given by him, severity of blow and the parts of the body where the injuries are inflicted and other surrounding circumstances, if any. This section itself provides a punishment of 10 years for doing an act which amounts to an attempt to murder even though the act causes no hurt to anyone, but the offender is liable to the heavier punishment of imprisonment for life, if the injury is actually inflicted.

The intention of the appellant to cause death of Constable Umed Singh is apparent from the fact that he did not stop at firing at one shot and tried to re-load the pistol which obviously was intended at firing another shot on him. Had the appellant not been over-powered, he would have succeeded in his attempt by firing a shot which could have proved to be fatal. If a person, despite being surrounded by police officials has the audacity to take out a gun, fire at a police official and on missing the target, tries to re-load the gun with a view to fire another shot, his obvious intention would be to kill the police officials who were

trying to apprehend him. Therefore, the offence punishable under Section 307 of IPC is made out against the appellant.

9. The appellant also obstructed police officials, who were seeking to verify the information available with them and apprehend him in case he was found to be the person absconding from the custody of U.P. Police and involved in a number of cases in Delhi, in discharge of their official duties by firing at Head Constable Umed Singh. Therefore, he has rightly been convicted under Section 186 IPC. Since he used an unauthorised weapon at a public place and he has also rightly been convicted under Section 27 of the Arms Act. In fact, the learned counsel for the appellant when confronted with the overwhelming evidence against the appellant submits that no fault can be found with the conviction of the appellant and on instruction she only requests for taking a lenient view.

10. In the facts & circumstances of the case, the appellant is sentenced to undergo RI for five (5) years and to pay fine of Rs.1,000/- or to undergo SI for fifteen (15) days in default under Section 307 IPC. The appellant is also sentenced to undergo RI for three (3) years and to pay fine of Rs.1,000/- or to undergo SI for fifteen (15) days in default to pay fine under Section 27 of the Arms Act. The appellant is further

sentenced to undergo SI for three (3) months under Section 186 IPC. The sentences shall run concurrently. Since the appellant has already spent more than five (5) years in custody, as would be evident from the nominal roll, he need not be committed to prison, subject to his depositing fine of Rs.2,000/-, within four weeks, unless already deposited.

The appeal stands disposed of accordingly.

LCR be sent back along with a copy of this judgment.

FEBRUARY 04, 2014
BG

V.K. JAIN, J.