

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

RESERVED ON : 13th JANUARY, 2014

DECIDED ON : 21st MARCH, 2014

+ CRL.A. 1161/2012

KULDEEP SINGH

..... Appellant

**Through : Mr.Ramesh Gupta, Sr.Advocate
with Mr.Kundan Kumar, Advocate.**

Versus

STATE OF NCT OF DELHI

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 06.08.2012 of learned Addl. Sessions Judge in Sessions Case No. 420/09 arising out of FIR No. 299/2009 PS Vijay Vihar by which the appellant – Kuldeep Singh held guilty for committing offence punishable under Section 307 IPC. By an order on sentence dated 14.08.2012, he was awarded RI for ten years with fine ₹ 50,000/-.

2. Allegations against the appellant as projected in the charge-sheet were that on 06.09.2009 at about 09.30 P.M. near Rice Mill Rithala,

Lal Dora village Rithala, he and his companion Raj (Not arrested) in furtherance of common intention inflicted gunshot injuries to Sachin Bhardwaj by a revolver. Daily Diary (DD) No. 43A (Ex.PW-15/A) was recorded at 10.15 P.M. at PS Vijay Vihar on getting information that two boys had fled after firing at his friend and the injured was being taken to Sanjay Gandhi hospital. The investigation was assigned to ASI Saheb Singh who went to the spot and came to know that the victim had been taken to Saroj hospital, Sector 14, Rohini. Since no eye witness was available and the victim was unfit for statement, he lodged First Information Report by making endorsement (Ex.PW-15/C) over Daily Diary (DD) No. 43A (Ex.PW-15/A). The victim Sachin Bhardwaj in his statement recorded on 09.09.2009 implicated Kuldeep and his associate to have fired at him. Statements of the witnesses conversant with the facts were recorded. On 12.09.2009, the appellant was arrested. After completion of investigation, a charge-sheet was submitted against the accused; he was duly charged and brought to trial. To prove its case, the prosecution examined eighteen witnesses. In 313 statement, the appellant pleaded false implication and denied his complicity in the crime. The trial resulted in his conviction as aforesaid. Being aggrieved, he has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the file. The police machinery came into motion when PW-10 (W/Ct. Saraswati) received a call at 10.11 P.M. on mobile No. 9968800893 regarding the incident and PCR form (Ex.PW-10/A) filled up. Consequent to that, Daily Diary (DD) No. 43A (Ex.PW-15/A) was recorded at 10.15 P.M. The informant did not name the assailants though he claimed that they were known to him. It did not mention if the assailants had arrived in a car. Daily Diary (DD) No. 43A (Ex.PW-15/A) records that the victim was being taken to Sanjay Gandhi hospital. However, this information was found incorrect as on reaching at the spot, the Investigating Officer came to know that the injured had been taken to Saroj hospital, Sector 14, Rohini. MLC (Ex.PW-5/A) records that the victim was brought at Saroj hospital at 10.30 P.M. by Anuj (brother). PW-3 (Sunil Kumar) stated in his deposition before the Court that information was conveyed to police at 100 by him on his mobile and he shifted injured Sachin Bhardwaj to Saroj hospital. MLC (Ex.PW-5/A) does not reveal if the victim was taken to the hospital by PW-3 (Sunil Kumar). PW-11 (Anuj) claimed that victim was admitted by him. PW-3's presence at the spot soon after the occurrence is doubtful. When the Investigating Officer went to the spot, he did not find any eye witness there. Even when he

went to Saroj hospital, he did not meet PW-3 (Sunil Kumar) and First Information Report was lodged by making endorsement on Daily Diary (DD) No. 43A (Ex.PW-15/A). PW-3 (Sunil Kumar) did not give reasonable explanation as to why he did not inform the Investigating Officer about the appellant's involvement in the incident when he had allegedly seen him along with his companion in a Santro car soon after the incident near the spot. No explanation has been offered by the witness as to why his statement was not recorded soon after the incident. There is delay of about six days in recording his statement under Section 161 Cr.P.C. which has not been explained. He did not reveal the number of the Santro car in which the appellant and his associate had fled the spot. He was also unable to identify the assailant who was driving the said vehicle. In the cross-examination, he admitted that he never met the police and did not record his statement. He was confronted with his statement (Ex.PW-3/DA) recorded under Section 161 Cr.P.C. where there was no mention that victim – Sachin Bhardwaj had disclosed to him that the appellant – Kuldeep had fired at him. PW-2 (Sachin Bhardwaj) did not support the prosecution and resiled from the previous statement given to the police on 09.09.2009. He disclosed in his testimony before the Court that Kuldeep was named as the assailant due to suspicion because of previous quarrel

which took place with him on 03.09.2009. To the specific court question, whether assailants were in a car or on bike on 06.09.2009, the victim stated that they were on bike. It has come on record that the parties had moved this Court for quashing of the FIR which was not permitted. That aspect itself is not enough to establish that the appellant was the perpetrator of the crime. The complainant has specifically stated that due to the intervention of the relatives he was informed that the appellant was not the assailant and the matter was settled and compromised. The delay in recording statement of the victim has also not been explained. As per MLC (Ex.PW-5/A), he was fit to make statement on 08.09.2009. PW-3 (Sunil Kumar) did not lodge FIR. He was not found present in the hospital after the arrival of the Investigating Officer in the hospital till the sending of the rukka at 12.45 A.M. on 07.09.2009. No crime weapon was recovered from the possession of the appellant or at his instance. His alleged companion / associate could not be traced and his identity could not be established. No proceedings were initiated against him to declare him Proclaimed Offender. The vehicle in which the assailants had travelled was also not recovered. Mere involvement of the appellant in various cases was not enough to prove his guilt in the present case in view of various glaring lapses in the investigation and because of the testimony

of the complainant in which he had not implicated the appellant for inflicting injuries.

4. In the light of above discussion, the impugned judgment cannot be sustained and is set aside. The appeal is accepted and conviction and sentence of the appellant are set aside. The appellant shall be released forthwith if not required to be detained in any other case. 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

MARCH 21, 2014/*tr*