

\$~R-15 to R-17

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

% *Date of Decision: December 05, 2017*

+ **CRL.A. 519/2011**

NEERAJ KUMAR Appellant

Through: Appellant in person.

versus

STATE, N.C.T. OF DELHI Respondent

Through: Ms.Rajni Gupta, APP for the State
with SI H.P.Mudgal PS P.Vihar

AND

+ **CRL.A. 520/2011**

NEERAJ KUMAR Appellant

Through: Appellant in person.

versus

STATE, N.C.T. OF DELHI Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with SI H.P.Mudgal PS P.Vihar

AND

+ **CRL.A. 1005/2011**

RAJESH KUMAR & ANR. Appellants

Through: None.

versus

STATE, N.C.T. OF DELHI

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with SI H.P.Mudgal PS P.Vihar

PRATIBHA RANI, J. (Oral)

Crl.A.519/2011 & Crl.M.A.No.4944/2011 & Crl.M.B.No.685/2011
Crl.A.520/2011 & Crl.M.A.No.4945/2011 & Crl.M.B.No.686/2011

1. The appellant/convict Neeraj Kumar has filed these two appeals assailing his conviction and sentence awarded to him in case FIR No.358/2005 under Section 379/411 IPC, PS Paschim Vihar and in case FIR No.422/2005 under Section 307/186/353/411/34 IPC& under Section 25/27/54/59 Arms Act, PS Nangloi.

2. By filing Crl.A. No.519/2011, the appellant/convict Neeraj Kumar has impugned the judgment dated 19th February, 2011 and order on sentence dated 28th February, 2011 passed in SC No.1116A/09 (pertaining to case FIR No.358/2005 under Section 379/411 IPC, PS Paschim Vihar) whereby he has been convicted for committing the offence punishable under Section 411 IPC and sentenced to undergo RI for three years.

3. By filing Crl.A. No.520/2011, the appellant/convict Neeraj Kumar has impugned the judgment dated 19th February, 2011 and order on sentence dated 28th February, 2011 passed in SC No.1116/09 (pertaining to case FIR No.422/2005 under Section 307/186/353/411/34 IPC& under Section 25/27/54/59 Arms Act, PS Nangloi) whereby he has been convicted for committing the offence

punishable under Section 186 r/w Section 353/34 IPC and sentenced as under:-

- (i) U/S 186 IPC : to undergo RI for three months.
- (ii) U/S 353 IPC : to undergo RI for two years.

4. Pursuant to the order dated 22nd November, 2017, fresh Nominal roll of the appellant has been received from the Jail as per which the appellant has already been released on 18th May, 2013 after completion of sentence awarded to him in this case.

5. Today appellant Neeraj Kumar is present in person. He submits that he has already undergone the sentence awarded to him in SC No.1116A/09 (pertaining to case FIR No.358/2005 under Section 379/411 IPC, PS Paschim Vihar) and SC No.1116/09 (pertaining to case FIR No.422/2005 under Section 307/186/353/411/34 IPC& under Section 25/27/54/59 Arms Act, PS Nangloi). The appellant submits that he does not want to continue with these appeals and he may be permitted to withdraw these two appeals.

6. Accordingly, CrI.A. No.519/2011 and CrI.A. No.520/2011 are dismissed as withdrawn.

CrI.A. No.1005/2011

1. This CrI.A.No.1005/2011 has been preferred by appellants/convicts Rajesh Kumar and Somvir impugning the judgment dated 19th February, 2011 and order on sentence dated 28th February, 2011 passed in Session Case No.1116/09 (pertaining to case FIR No.422/2005 under Section 307/186/353/411/34 IPC& under Section 25/27/54/59 Arms Act, PS Nangloi) whereby they alongwith

co-convict Neeraj Kumar have been convicted and sentenced as under:-

Appellant Rajesh Kumar

- (i) U/S 186 IPC : to undergo RI for three months.
- (ii) U/S 353 IPC : to undergo RI for two years.
- (iii) U/S 25/54/59 Arms Act : to under RI for two years with fine of ₹5000/- and in default of payment of fine to undergo SI for one month.

Appellant Somvir

- (i) U/S 186 IPC : to undergo RI for three months.
- (ii) U/S 353 IPC : to undergo RI for two years.
- (iii) U/S307 IPC : to undergo RI for five years with fine of ₹5000/- and in default of payment of fine to undergo SI for one month.
- (iv) U/S 25/27/54/59 Arms Act : to undergo RI for five years with fine of ₹5000/- and in default of payment of fine to undergo SI for one month.

2. None has appeared on behalf of the appellants Rajesh Kumar and Somvir.

3. Pursuant to the order dated 22nd November, 2017, fresh Nominal rolls of the appellants have been received.

4. As per nominal roll of appellant Rajesh Kumar, he has already been released on 20th March, 2013 after completion of sentence awarded to him in this case.

5. As per nominal roll of appellant Somvir, he has been transferred to Ambala Jail on 7th March, 2011 from where he has been released on 29th May, 2013 after completion of sentence awarded to him in this case.

6. Brief facts of the case as mentioned in the charge-sheet and noted by the learned Trial Court in the impugned judgment read as under:

'The case of the prosecution is that on 3.5.2005 SI Satish along with his staff were patrolling in the area and when they reached at Azad Hind Gram, Tikri a secret information was received that three boys would be coming from Bahadurgarh side in a stolen Maruti Car bearing no.DL-5C-2577 with arms and ammunition. At about 10.45 am a Maruti Car came from wrong side on service road on which SI Satish gave signal to stop the car and Ct.Om Prakash put the barricades. The driver stopped the car and tried to run away alongwith his two associates on which Ct.Lalit apprehended the accused Neeraj and the accused Rajesh was apprehended by HC Devender Singh whose names they came to know later on. The accused Somvir who was sitting next to the driver seat, fired upon the police party while running away and was overpowered by SI Satish Kumar who snatched the desi katta from his hand. On personal search of the accused Rajesh one buttondar knife was recovered from the right pocket of his pant. On thorough interrogation the accused disclosed that the said car was stolen from the area of Paschim Vihar on the intervening night of 2/3.5.2005 and on verification from Police Station Paschim Vihar, it was learnt that a case FIR No.358/05 under Section 379 IPC has been registered at Police Station Paschim Vihar. Thereafter the FIR was got registered and the accused persons were arrested and chargesheeted.'

7. The judgment of the Courts below reflects that the accused persons pleaded not guilty to the charges framed. In order to substantiate its case, the prosecution examined 16 witnesses in all. The accused persons were also examined under Section 313 Cr.P.C. to enable them to explain the incriminating evidence appearing against them wherein they denied the case of the prosecution and claimed their false implication but preferred not to lead any evidence in defence.

8. The learned Trial Court, after appreciating the testimony of material prosecution witnesses especially PW-4 SI Satish Kumar and PW-15 HC Om Prakash, convicted all the appellants for the following reasons:-

(i) The identity of all the appellants namely Rajesh Kumar, Somvir and Neeraj has been proved by PW-4 SI Satish Kumar and Om Prakash to be the persons who had been apprehended on 3rd May, 2005 from Tikri Kalan and at that time Neeraj Kumar was driving the car bearing No.DL-5C-2577. The accused Somvir was sitting on the front seat while accused Rajesh Kumar was sitting on the rear seat.

(ii) The above persons were apprehended on the basis of the secret information and after nakabandi was done by putting barricades. The appellants were seen coming from the wrong side and when signaled to stop, though the car was stopped, all the three occupants tried to escape from the car.

(iii) Ct.Lalit apprehended Neeraj Kumar, the driver of the car. Somvir who was on the front seat, fired from his desi katta. But he was overpowered by PW-4 Satish Kumar and the desi katta was

recovered. From Rajesh Kumar, who was sitting on the rear seat a button knife was recovered.

(iv) The katta recovered from Somvir and knife recovered from Rajesh were seized and sealed. All the three convicts were interrogated.

(v) The complaint under Section 195 Cr.P.C. filed by the Additional DCP (PW-7) was also proved as Ex.PW7/A.

(vi) The car recovered from the possession of the three convicts was registered in the name of R.K.Gupta which has been proved from the record of MLO, North-East Zone, Transport Authority, Loni.

(vii) Sanction under Section 39 Arms Act Ex.PY was obtained and FSL result Ex.PX i.e. report of the Ballistic expert was obtained in respect of the fire arms. Gazette notification in respect of the knife was also placed on record.

(viii) Non-joining of public witnesses at the time of apprehension and recovery was considered not to be fatal.

(ix) Learned Trial Court accepted the contention on behalf of the convicts that at the time of firing by Somvir, the other two convicts - Neeraj Kumar and Rajesh Kumar did not share the common intention, hence, while Neeraj and Rajesh were acquitted of the charge under Section 307/34 IPC, only Somvir was held guilty under Section 307 IPC.

9. A perusal of the testimony of the prosecution witnesses unequivocally revealed the commission of the offence punishable under Section 186/353 IPC & 25/54/59 Arms Act by convict Rajesh and offence punishable under Section 186/353/307 IPC and

25/27/54/59 Arms Act by convict Somvir. The role of each of the convict has been described by the prosecution witnesses in clear terms and their testimony has remained consistent and un-shattered even during their cross-examination.

10. The convicts have not only been duly identified, even their role has been clearly described by the prosecution witnesses.

11. After going through the testimony of prosecution witnesses, I concur with the observations of learned Trial Court in accepting the prosecution evidence on all aspects to convict the appellants.

12. Having regard to above conclusion, the appeal is dismissed.

13. TCR be sent back alongwith copy of this Court.

14. Copy of this order be also sent to the concerned Jail Superintendents for information.

CRL.M.B.1422/2011 in Crl.A. No.1005/2011

Dismissed as infructuous.

**PRATIBHA RANI
(JUDGE)**

DECEMBER 05, 2017

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