

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

% *Judgment Reserved on: December 04, 2018*
Judgment Delivered on: May 31, 2019

+ **CRL.A. 247/2017**

SHAHANAWAZ @ SANU Appellant

Represented by: Mr.Saurabh Tyagi, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Represented by: Ms.Meenakshi Chauhan, APP for the
State with SI Prem Kumar, PS
Kotwali

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal, Shahnawaz @ Sanu challenges the impugned judgment dated 11th January, 2017 convicting him for the offence punishable under Section 397 IPC and Section 27 Arms Act in FIR No. 106/2013 registered at PS Kotwali and the order on sentence of the even date directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹10,000/- and in default whereof to undergo simple imprisonment for a period of one month for the offence punishable under Section 397 IPC and rigorous imprisonment for a period of three years and to pay a fine of ₹1,000/- and in default whereof to undergo simple imprisonment for a period of three days for the offence punishable under Section 27 Arms Act.

2. Learned counsel for the appellant contends that there are material contradictions in the testimony of Rajesh Kumar and Satyaveer Singh regarding the role of the appellant while allegedly committing robbery. Even as per the statement of Rajesh Kumar, appellant inserted his hand inside the pocket of the t-shirt of his father but his father caught hold of the hand of the appellant still he goes on to say that the appellant took out the desi katta from his pocket and pointed it towards his father. The sequence of events as narrated by Rajesh Kumar is highly improbable. The learned Trial Court grossly erred in holding that the appellant was having a country made pistol and that he used it. The appellant is not involved in any other case and has been falsely implicated in this case.

3. Learned APP for the State on the other hand contends that the appellant was apprehended at the spot along with the country made pistol. One live cartridge was recovered from the pistol besides three live cartridges from the rexine bag. Hence there is no error in the impugned judgment of conviction or order on sentence.

4. Process of law was set into motion on 15th June, 2013 at about 9:50 P.M., when Ct. Kishan received telephonic information about some people running from Kotwali to Geeta Colony flyover and looting people by showing a revolver. Aforesaid information was recorded vide DD No. 42PP (Ex.PW-5/A) which was assigned to Inspector Dharmender Kumar Singh. He along with ASI Ramesh Kumar and Ct. Sunil Kumar went to the spot at Geeta Colony flyover and met the complainant Rajesh Kumar Singh and his father Satyaveer Singh who produced the appellant Shahnawaz before him and handed over one country made pistol used by him during the commission of the robbery. On inspection one live cartridge of .12 bore was

recovered from the pistol. One dark colour rexine bag was produced which was found containing three live cartridges of .12 bore. Additionally, two daggers were also recovered from the bag. The sketch of the pistol, live cartridges and the missed cartridge was prepared vide Ex.PW-2/B and they were seized vide seizure memo Ex.PW-2/E. The sketch of the daggers was prepared vide Ex.PW-2/C and Ex.PW-2/D and they were seized vide seizure memo Ex.PW-2/A.

5. Thereafter, Inspector Dharmender Singh recorded the statement of Rajesh Kumar Singh wherein he stated that he shut his shop in Bhagirath Place, Chandni Chowk at around 9:00 P.M. He put that day's sale proceeds of ₹60,000/- consisting of both ₹500 and ₹1000 notes, shop bills, a cheque book of ICICI Bank in his father's name in his dark khaki colour rexine shoulder bag. They left Chandni Chowk on his father's red colour motorcycle. His father was driving the motorcycle and he was sitting behind him with the bag on his lap. After getting petrol filled from Darya Ganj petrol pump, they reached the Geeta Colony flyover at about 9:30 P.M. At the flyover, a motorcycle came from behind and signaled at them to slow down. When his father slowed down the motorcycle, two persons on the motorcycle circled around them from the front. At that time another motorcycle Passion Pro bearing No. DL-5S-AK-0242 of black colour stood on their right side. Another motor cycle came and stood behind them. Two boys each from the three motorcycles got down and left the engines of the motorcycles on. Shahnawaz and his companion who were riding the motor cycle parked on their right side, came towards them. Shahnawaz put his hand in his father's t-shirt pocket who caught hold of his hand. Shahnawaz took out a country made pistol from his jeans pocket and aimed it at his

father and asked him to give everything he had otherwise he would shoot him. During this time, he had taken out his helmet and was holding it in his right hand. After hearing this, he immediately got off the motorcycle and hit Shahnawaz with his helmet on his right hand due to which the country made pistol fell on the ground. His father quickly got off the motorcycle and picked up the country made pistol from the ground. He gave a kick on Shahnawaz's stomach due to which he fell down on his bike. During this time, another boy took out his country made pistol and aimed it at them and threatened to shoot at them so his father also told them that if they fire at him, he will also shoot them. His companions were asking Shahnawaz to shoot at him and two boys got down from the motorcycle and started coming towards him. He hit one of them on their hand with his helmet. The person who had the country made pistol in his hand, tried to shoot but the pistol did not fire so he hit him on his right hand with the butt of the gun. The other four persons gathered around him, snatched his bag and ran away. He kept screaming for help, but no one stopped to help him as they were scared. When all of them ran away, Shahnawaz was left alone over there with his motorcycle. Many people gathered over there and hit Shahnawaz with the helmet and a stick. They also gave him kick and fist blows on other parts of the body. Due to this Shahnawaz started bleeding. One grey colour bag was also found in his possession and after checking that bag, three live cartridges and two daggers were found. He called the police on 100 number. Aforesaid statement was recorded vide Ex. PW-11/A. On the basis of the aforesaid statement, FIR No. 106/2013 (Ex.PW-1/A) was lodged at PS Kotwali for the offence punishable under Sections 395/397/307/323/34 IPC and under Sections 25/27 Arms Act.

6. Rough site plan was prepared at the instance of Rajesh Kumar Singh and his father vide Ex.PW-13/B. Shahnawaz was taken for medical examination at Aruna Asaf Ali Hospital. Thereafter, one motorcycle bearing number DL-5S-AK-0242 Passion Pro was recovered alongwith a bag which were seized vide seizure memo Ex.PW-2/H. Shahnawaz was then arrested from the hospital vide Ex.PW-2/F. His personal search was done vide Ex.PW-2/F and Ex.PW-2/G.

7. During interrogation, Shahnawaz disclosed the names of the other four accused who were also residents of the same locality. His disclosure statement was recorded vide Ex.PW-9/A. Pursuant to the disclosure statement an attempt was made to arrest the co-accused but they could not be traced.

8. On completion of investigation, charge sheet was filed. Charge was framed under Section 307/397/323/34 IPC and under Section 25/27 Arms Act vide order dated 21st October, 2013.

9. Rajesh Kumar (PW-2), complainant deposed in sync with his complaint made to the police.

10. Satyaveer Singh (PW-3), father of the complainant corroborated the testimony of his son Rajesh Kumar.

11. Shahzad (PW-4), brother-in-law of Shahnawaz deposed that he was the registered owner of the motorcycle bearing number DL-5S-AK-0242, Passion Pro. He had given his motorcycle to Shahnawaz and his sister. In his cross-examination he stated that the name of his sister's husband is Shahnawaz and the seized motorcycle is also his but the person present in court is not the Shahnawaz his sister was married to.

12. Dr. Prashant Kumar, (PW-10) Medical Officer, Aruna Asaf Ali

Hospital stated that on 16th March, 2013 Shahnawaz was brought to the hospital for his medical examination. He prepared the MLC of Shahnawaz vide Ex.PW-10/A. On examination, the following injuries were found on the injured:

- i. CLW of size approx 0.5cm X 0.8cm X 0.5cm over left perital scalp.*
- ii. Tenderness present over right forearm, right hand, left hand, right leg, right knee and right ankle.*
- iii. Bruises present over right supra scapular region, right forearm and right mid-arm.*
- iv. Abrasion present over right leg.*
- v. Old healed wound present over right leg.*

He also prepared the MLC of Rajesh Kumar vide Ex.PW-10/B wherein he opined the nature of injuries as simple in nature caused by a blunt weapon.

13. The appellant in his statement recorded under Section 313 Cr.P.C. stated that on the night of the incident at about 9:30 P.M., he was going on foot from the side of Jama Masjid towards Geeta Colony flyover. When he covered some distance of the flyover he found some persons on three motorcycles were quarrelling with Rajesh Kumar and Satyaveer Singh. He intervened in order to pacify them. The riders of the motor cycles ultimately sped away from the spot. Rajesh Kumar and Satyaveer Singh mistook him to be the companion of the motorcyclists and beat him up.

14. Testimony of Rajesh Kumar the complainant is duly corroborated by his father coupled with the fact that the appellant was arrested with the motorcycle bearing No.DL-55 AK 0242 belonging to his brother-in-law and has received injury as claimed by Rajesh Kumar and Satyaveer Singh by

hitting him with the helmet in which brother Rajesh Kumar also received simple blunt injury. Though in his statement appellant states that he was passing by and Rajesh Kumar and Satyaveer Singh were quarrelling with some other people and he tried to intervene in order to pacify them and was mistaken to be the companion of the motorcycle and thus beaten however he has no explanation whatsoever for the pistol with one live cartridge and the dark colour rexine bag containing three live cartridges recovered. Moreover, Rajesh Kumar and his father Satyaveer Singh had ample time to see the person who had put the pistol and was snatching the bag for the reason there was a scuffle between the three of them thereby giving them sufficient time to identify the accused.

15. Considering the evidence led by the prosecution and the defence of Shahanawaz @ Sanu not being probable, this Court finds no error in the impugned judgment of conviction or order on sentence.

16. Appeal is dismissed. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

17. TCR be returned.

 (MUKTA GUPTA)
JUDGE

MAY 31, 2019
vj/mamta