

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.03.2020

+ **CRL.A. 935/2017 & CRL.M.A. 37383/2019**

JEETE @ JITENDER

..... Appellant

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Kanhaiya Singhal, Advocate.
For the Respondent : Ms Kusum Dhalla, APP for State.

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 25.07.2017, whereby the appellant was convicted of the offences punishable under Sections 307/34 of the Indian Penal Code, 1860 (IPC) and Sections 25/27 of the Arms Act, 1959. The appellant also impugns an order on sentence dated 09.08.2017, whereby he was sentenced to (i) undergo seven years of rigorous imprisonment with a fine of ₹25,000/-, and in default to undergo simple imprisonment for a further period of two years for committing the offence punishable under Sections 307/34 of the IPC; (ii), undergo two years of rigorous imprisonment for the offence under Section 25 of the Arms Act, 1959; and (iii) undergo three years of rigorous

imprisonment for the offence under Section 27 of the Arms Act, 1959. All the aforesaid sentences were directed to run concurrently.

2. The appellant contends that the impugned judgment and order on sentence ought to be set aside because the Trial Court failed to correctly appreciate the facts of the present case. It is contended on behalf of the appellant that the evidence brought on record does not prove the case of the prosecution. The appellant submits that Sonu Nagar (PW13) has not supported the case of the prosecution in his testimony. Further, the CCTV footage relied upon by the prosecution was collected after a considerable delay and no certificate under Section 65B of the Indian Evidence Act, 1872 was obtained or produced. The appellant contends that there are various discrepancies between the testimonies of the witnesses and thus, the impugned judgment ought to be set aside on this ground as well.

3. The appellant was prosecuted pursuant to the registration of FIR bearing no. 251/2015, under Sections 307/34 of the IPC and Sections 25/27/25(54)/59 of the Arms Act, 1959 registered with PS Khajuri Khas. The case of the prosecution is that on 06.03.2015, DD No. 54A was received by the concerned police station regarding a quarrel at Pushta Road, near Thakur ka Makaan, Karawal Nagar. The said DD was assigned to ASI Chandraveer Singh who, along with Ct Rajender, reached the spot (A.K. Telecom Centre) where they noticed that a crowd had collected at the spot and a boy, who had been beaten up by public persons, was lying inside the said shop. There were blood stains inside the shop. Inquiries conducted at the spot revealed that two

bullets were fired by the accused (appellant herein) at the owner of the shop – Akram Khan. The pistol was handed over to the police officials by one Rajesh Kumar, who stated that he, along with Sonu Nagar, had snatched the same from the accused.

4. It was stated that the injured (Akram) had been shifted to St Stephen's hospital by his mother (Shehnaz). The crime team was called to the spot. The FIR was lodged on the basis of the statement of the complainant (Rajesh Kumar), who stated that the accused asked Akram to download *dehati* songs to his mobile phone, which Akram refused to do. The accused then took out a pistol and opened fire twice in the air outside the shop and thereafter, fired on Akram Khan resulting in him sustaining injuries on his arms and stomach.

5. A chargesheet under Section 307 of the IPC and Sections 25/27 of the Arms Act, 1959 was filed and, subsequently, charges under Sections 307/34 of the IPC and Section 27 of the Arms Act, 1959 were framed against the accused. They pleaded not guilty and the matter was set down for trial. An additional charge of Section 25 of the Arms Act, 1959 was framed against the appellant herein.

6. The prosecution examined twenty-three witnesses and the defence examined two witnesses.

Evidence

7. Sonu Nagar deposed as PW13. He stated that on 06.03.2015 at about 09:30 pm, he and his friend Rajesh Kumar reached the mobile

repairing shop of Akram Khan at Karawal Nagar Road, Gali No. 6, West Karawal Nagar because Rajesh had to recharge his mobile phone. PW13 pointed at the appellant and stated that he had come to the said shop along with his associate in a white coloured Santro car. The accused asked Akram Khan to download some *dehati* songs onto his mobile phone. Akram Khan expressed his inability to do so as he did not have any *dehati* songs (*dehati songs uske pass nahihai*). At this stage, the appellant went outside the said shop and opened fire from his pistol. Thereafter, he came back inside the shop and opened fire twice; the bullets hit Akram Khan and he fell down. PW13 stated that at this stage, he overpowered the appellant and snatched the country made pistol wielded by him. PW13 and his friend took the appellant outside the shop where the public, which had gathered there, beat the appellant. PW13 stated that someone made a call at 100 number. The mother and sister of the injured (Akram) came at the spot and took him to St Stephen's hospital in a car. PW13 stated that the PCR and the local police came to the spot. He and his friend gave their statement to the police. The police officials lifted two-three fired cartridges from the spot.

8. In his cross-examination, PW13 denied knowing the injured (Akram) earlier. He affirmed that he had consumed liquor before entering the said shop. PW13 affirmed that he had signed three blank papers at the request of the police when he went to the police station. He denied the suggestion that his statement had been recorded by the police on the day of the incident. He affirmed that on 02.06.2015, a

police official had tutored him (*usnemujhe bayan padwaya tha, court room ke bahar*). He denied having seen any assailant at the said shop and denied having seen the incident of firing inside Akram Khan's shop.

9. Akram Khan (the injured) deposed as PW4. He stated that he has been running a mobile shop under the name and style of A.K. Telecom at B-11, Gali No.6, Kali GataPusta Road, West Karawal Nagar for the last eight-ten years. He stated that on 06.03.2015 at about 09-09:30 pm, he was present at the said shop. Rajesh Kumar and Sonu Nagar were also present at the shop. A white Santro car came to his shop from which the appellant and Sunil @ Kale alighted. PW4 stated he knew them as the appellant had come to his shop earlier. He testified that the appellant had come to his shop to get *dehati* songs downloaded onto his pen drive. However, PW4 stated that he had told the appellant that he did not have any *dehati* songs. The appellant demanded PW4's laptop and on his refusal to do so, he went outside the shop and fired in the air. He came back inside with a pistol in his hand. PW 4 stated that he warned the appellant that there was a CCTV in his shop. After a heated argument, the appellant fired towards the main road from inside the shop. PW4 asked him to go out of the shop. Thereafter, the appellant fired two rounds towards PW4 and caused an injuries to his arms and abdomen. On his raising an alarm, the appellant was apprehended by Sonu Nagar and others. The appellant's pistol was snatched. Public persons, who had gathered there, beat the appellant. PW4 was, thereafter, taken to St Stephen's hospital by his

mother and sister, who were called by the persons from the neighborhood (*Mohalla*). PW4 stated that the police visited the said hospital about two days after the incident and interrogated him about the incident. PW4 stated that both, the appellant and Sunil @ Kale, used to open fire in the area after consuming liquor.

10. On 20.05.2015, PW4 stated that he was called to the police station to produce the DVD of the footage pertaining to the incident. He reached the PS along with the DVD containing the said footage and handed the same over to the IO. The same was seized vide seizure memo Ex. PW4/B. In his cross-examination, PW4 affirmed that the accused fired once towards the main gate of his shop. He denied having called the appellant in a pre-planned manner to implicate him in this case. He stated that he came to know that Rajesh had made the call to the PCR. PW4 stated that at the time of the incident, Rajesh was standing inside the shop and Sonu was sitting on the sofa. The appellant was standing across the counter, in front of him. PW4 affirmed that he was conscious at the time of the MLC. He denied having received any acknowledgement for the receipt of the CCTV footage.

11. Ms Shehnaz Parveen, the mother of the injured, was examined as PW-5. She deposed that on 06.03.2015 at about 9:30-9:45 pm, she and her daughter were watching television at home when someone rang the bell of their house from outside. As a result, she came out of the house and she was informed that her son had been shot. Consequently, she and her daughter reached his shop where they

found her son lying inside in an injured condition. At that time, public persons were beating one person outside. The appellant/accused was identified by PW-5 in the court and it was stated by her that he was the same person who was being beaten up by public. Thereafter, she took her injured son to St. Stephens Hospital. She deposed that on the way to hospital, her son was asking her to save him from dying (*“main mar jaunga mujhe bacha lo mummy”*). Thereafter, on the second or third day of the incident, police reached the hospital and met the injured. By then, the doctor had taken out one bullet during operation and the same was shown to her (PW-5). The wounds of the injured were stitched and on 14.03.2015, he was discharged from the hospital on 14.03.2015.

12. In her cross-examination, she stated that her mother was present there when she along with her daughter reached the spot. The police reached the hospital within ten minutes after she had reached the hospital with her injured son. She further stated that the police inquired from her son about the incident. Police further inquired from the doctor. PW-5 further deposed that her son had sustained bullet injuries in both his forearms and stomach.

13. Shama Khan, the sister of the injured was examined as PW-12. She deposed that on 06.03.2015 at about 10 pm, she alongwith her mother (PW-5) were present at home when someone rang up the doorbell and told them that someone had shot her brother (the injured) at his mobile repairing shop. Consequently, she along with her mother reached at the shop and lifter her injured brother with the help of some

persons and took him to St. Stephens Hospital. At that moment, some persons were present outside the shop and were saying that the accused/appellant had caused the bullet injury to her brother. Thereafter, she made a call at 100 number from her brother's mobile phone on the way to hospital.

14. Rajesh Kumar is the friend of the injured and he was examined as PW-6. He deposed that on 06.03.2015 at about 9:30 pm, he and his friend Sonu Nagar reached at the shop of the injured where they found that the accused had come alongwith an associate. Both the accused and his associate were identified by PW-6 in the court. He further deposed that the accused came inside the shop and asked his friend Akram (the injured) to download *dehati* songs; he declined the request as he did not have recordings of any such songs. Thereafter, the accused went outside and opened fire (two shots) from his pistol. He again entered inside the shop and aimed the pistol towards Akram, to which he responded by telling him that there were CCTV cameras installed in the shop. In the meantime, the accused opened firing towards Akram (two shots) and as a result, he sustained injuries on his right arm and stomach. He further deposed that thereafter, PW-6 and Sonu Nagar overpowered the accused and took him outside the shop. Public persons gathered there and started beating the accused outside the shop. In the meanwhile, the mother and sister of the accused came to the spot and they took him to St. Stephens Hospital. He deposed that he made a call at 100 number. As a result, local police came at the spot and the accused alongwith his pistol was handed over to them. In

the presence of PW-6, the police lifted blood sample and fired cartridge case from the spot and outside the shop.

15. PW6 was also shown eighteen photographs marked as Ex.PW6/A-1 to Ex.PW6/A-18. He testified that the photographs showed the shop of the injured, the blood lying at the spot, fired cartridges cases, pistol used in the crime and a Santro Car used by the appellant. He also testified that the photographs had been taken by the police official in his presence. The sketches of pistol (Ex.PW6/B) and fired cartridge cases (Ex.PW6/C) were shown to him. He testified that both the sketches were prepared in his presence and he admitted that his signatures appeared on the said exhibits. He also testified regarding the seizure memo of the pistol (Ex.PW6/D) and the seizure memo of the fired cartridge cases (Ex.PW6/E).

16. ASI Chandraveer Singh was posted on emergency duty at PS Khajuri Khas on 06.03.2015. He was examined as PW-19. He deposed that after reaching at the spot, he found a crowd in front of the shop (AK Telecom in Makaan no. B-11, Gali No.6, Main Karawal Nagar Road). One white Santro car bearing no. DL 4CS 7765 was also stationed at some distance from the shop. He deposed that after entering into the shop, he noticed one boy lying on the floor of the shop in an unconscious state and under the influence of alcohol. The said person was identified as Jeete (the accused) in the court by PW-19. He further deposed that blood and two fired cartridge cases were also lying on the floor of the shop. On further search, two other fired cartridge cases were also found lying on the road in front of the shop

near the drain. In the meantime, EECO CAT ambulance arrived and took the accused to Jag Parvesh Hospital for medical examination. PW-19 further came to know notice about the fact that the accused had been beaten by the public. On interrogation, it was found that two boys had come there in the Santro car. One remained inside the vehicle and the other went inside the shop. He stated that one Rajesh Kumar and his friend Sonu Nagar met him at the spot. They claimed to have witnessed the incident. Rajesh Kumar informed the names of the two assailants as Jeete @ Jitender and Rohit. Thereafter, he went to St. Stephens Hospital where the injured was taken by his mother for medical examination. There he collected the MLC of the injured (Ex.PW4/A) and came back to the spot as the injured was declared unfit to make any statement at that time.

17. On returning to the spot, he recorded the statement of Rajesh Kumar who also produced a pistol stating that the same had been used by the accused while committing the offence. He also stated that the said pistol was snatched by him with the help of Sonu Nagar and other public persons.

18. HC Bijla Oraon, who was posted as the Duty Officer from 4 pm to 12 midnight at PS Khajuri Khas on the date of incident, was examined as PW-2. He deposed that on that day at about 9:57 pm, the wireless operator informed him that one person was shot in a quarrel near Thakur ka Makan Pushta Road, Karawal Nagar. The said information was recorded in DD No. 54A (Ex.PW2/A). The said DD was assigned to ASI Chanderbir. At around 10:13 pm, the wireless

operator came to PW-2 and informed that the brother of the caller was shot in Gali No.6, West Karawal Nagar and was taken to the hospital. The said information was recorded as DD No. 96B (Ex.PW2/BN). Thereafter, at around 10:33 pm, PW-2 was informed that one man sustained bullet injury at House No.11, B Block, Gali No.6, West Karawal Nagar and the injured was brought to St. Stephen's hospital. The said information was recorded as DD No. 97B (Ex.PW2/C).

19. SI Suman Kumar was examined as PW-9. He deposed that on 06.03.2015, he received information from control room to reach the spot. Thereafter, he alongwith ASI Surender Prasad, finger print official and Ct. Sanjay, the photographer reached at the spot – AK Communication, B Block, Main Kali GhataPusta Road, West Karawal Nagar, Delhi at about 10:45 pm. He inspected the shop and noticed blood stains on the floor of the shop. PW-9 further noticed two fired cartridge cases lying on the floor of the shop. Besides pistol, he found two fired cartridge cases lying on the road outside of the shop. One white Santro car was also stationed at a distance of about ten metres from the shop. Thereafter, PW-9 prepared the SOC report (Ex.PW9/A) and handed over the same to the IO.

20. Dr J.P.N. Gupta, CMO, St. Stephens Hospital was examined as PW-14. He deposed that on 06.03.2015 at about 10:18 pm, injured Akram Khan was brought by his mother to be medically examined by him. On local examination, the following injuries were found:

- (i) Entry wound ½ centimetre over left hypochondrium, tenderness present.
- (ii) Right forearm entry wound over volar aspect and exit wound over the dorsal aspect.
- (iii) Left forearm entry wound lateral aspect over upper third and exit wound medial aspect mid third.

Thereafter, the injured was referred by PW-14 to the surgeons for further management. At around 11:30 pm, when fitness was issued, the patient was unfit because he was in the operation theatre.

21. Dr. Avinash Sharma, Consultant (surgery) at St. Stephens Hospital was examined as PW-15 and he deposed that on 04.05.2015, he had opined on the nature of injury of the injured Akram Khan. After examining the MLC (Ex.PW15/A) and other medical treatment documents, he termed the injury as dangerous. He deposed that one bullet was taken out from the body of the injured during the operation.

22. Dr. Meghali Kelkar, CMO Jag Parvesh Chand Hospital, was examined as PW-18, wherein she deposed that on 06.03.2015 at about 10:57 pm, the injured Jeete (the accused) was brought to her by CATs EECO officials with alleged history of physical assault near his home about an hour back from that time. The following injuries were found on his face:

- (i) Red blue contusion on right eye lid.
- (ii) Red abrasion 1x1 cm on left elbow.

- (iii) Multiple scratches on right shoulder.
- (iv) Contused lacerated wound 1x0.2 cm on right upper lip.
- (v) Red abrasion 2x2 cm right forehead.
- (vi) Red blue contusion 2x2 cm right cheek.

She deposed that all injuries were fresh and the injured smelled of alcohol. She stated that the patient did not co-operate for breath alcohol analysis. Injuries were caused by blunt objects.

23. Smt Brij Bala deposed as DW1. She stated that she could not recall the date, however, on the occasion of Holi prior to last year (her statement was recorded on 04.05.2017), accused Sunil @ Kale was called by her to install a water motor in the street. Thereafter, the accused played Holi the entire day and went back to his home. In her cross-examination, she could not recall about the presence of the accused at the spot at 09:45 pm on 06.03.2015.

24. Sh Sunil deposed as DW2. He stated that he was sitting with the father of the accused Sunil @ Kale outside his house on the day of Holi prior to last year (statement recorded on 04.05.2017) from 06:00pm to about 10:30 pm. The accused arranged for a *hukka* for him and he was present on the roof of his house. In his cross-examination, he stated that he knew the accused for the last twenty years as he was his uncle.

Reasons and Conclusion

25. The evidence obtaining in this case clearly establishes, beyond reasonable doubt, that the appellant had committed the crime and had shot the injured (PW4) using a pistol. Although it is contended that there were inconsistencies in the testimony of witnesses, the learned counsel for the appellant has been unable to point out any material inconsistency.

26. Sonu, who deposed as PW13, was examined on 02.06.2016. His testimony fully corroborated the testimonies of other witnesses for the prosecution. On that day, his cross-examination was deferred and he was called for cross-examination on 16.08.2016. On that date, opportunity was granted to the learned counsel for the appellant as well as the co-accused (Sunil @ Kale). However, the counsel for the accused did not wish to cross-examine him. Subsequently, an application was moved on behalf of the appellant for recalling PW13 for cross-examination and this was allowed by an order dated 19.08.2016. He was cross-examined on 03.10.2016 and it is apparent from his cross-examination that he had been won over and he turned hostile. His testimony was not only contrary to his examination-in-chief; but he also deposed that the police had tutored him.

27. It is contended on behalf of the appellant that since PW13's testimony was demolished in his cross-examination; the prosecution's case was not established beyond reasonable doubt. The aforesaid contention is unmerited. It is apparent that PW13 had been won over

after his examination was completed and this is possibly the reason why an application was filed for recalling him for cross-examination. However, even if his testimony is ignored, there is sufficient evidence to establish beyond any reasonable doubt that the appellant is guilty of the offence of firing the pistol at PW4 and injuring him. It is well settled that the evidence of the injured is required to be given high weightage and unless any evidence is brought on record to doubt the same or his testimony is found to be highly improbable, the same must be accepted. In the present case, the testimony of PW4 (the injured) is unambiguous and clearly establishes the appellant as the perpetrator of the crime for which he was charged. PW4's testimony is also corroborated by other witnesses. PW6, Rajesh Kumar, is also an eyewitness and had testified as to the incident. He had also testified that the photographs brought on record (Ex.PW6/A-1 to Ex.PW6/A-18) were taken in his presence by the police officials. The said evidence also establishes the case set up by the prosecution.

28. The learned Trial Court has also viewed the CCTV footage from the shop of PW4 and the same had clearly supported the prosecution's case. However, the appellant contends that a certificate under Section 65B of the Indian Evidence Act, 1872 had not been produced. However, that too does not affect the case of the prosecution, since other evidence available on record is overwhelming and sufficient to establish that the appellant is guilty of the offence for which he was charged.

29. The injured had remained in hospital from 06.03.2015 to 14.03.2015. The injuries suffered by him were grievous. The appellant had shot the victim (PW4) using a 9 mm caliber pistol. Clearly, the appellant had the intention to fatally injure the victim and the knowledge that his acts, in all likelihood, would do so.

30. This Court concurs with the decision of the Trial Court that the appellant is guilty of committing an offence under Section 307 of the IPC. However, Section 34 of the IPC is not attracted in the facts of this case, as the Trial Court has acquitted the co-accused (Sunil @ Kale). This Court finds no infirmity in the decision of the Trial Court in convicting the appellant for offence punishable under Section 25 and 27 of the Arms Act, 1959.

31. The appeal is unmerited and is, accordingly, dismissed. The pending application is also dismissed.

MARCH 11, 2020
RK

VIBHU BAKHRU, J