

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

+ **CRL.A. 347/2011**

Date of Reserve: 09.09.2015

Date of Decision: 16.09.2015

ALI SHER

..... Appellant

Through: Mr.B.S.Billowria and Mr.Vijay Pratap
Singh, Advocate.

versus

STATE

..... Respondent

Through: Ms.Alpana Pandey, APP.
SI Surender Singh, Special Cell.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. Ali Sher stands convicted under Sections 186/353/307 of the IPC and 25 of the Arms Act by judgment dated 07.02.2011 passed by the Additional Sessions Judge (Central-2), Tis Hazari Courts, Delhi in S.C No.46/2008 arising out of FIR No.54/2008 (P.S.Special Cell).

2. By order of sentence dated 07.02.2011 he has been sentenced to RI for three months for the offence under Section 186 IPC, RI for two years for the offence under Section 353 IPC and RI for four years, fine of Rs.4000/- and in default of payment, a further RI for four months for the offence under Section 307 IPC. For the conviction under Section 25 of

the Arms Act, the appellant has been sentenced to RI for three years and a fine of Rs.3000/- with the stipulation that if fine is not paid the appellant would suffer RI for a further period of three months. All the sentences have been directed to run concurrently.

3. The appellant fired at the police party when he was asked to surrender on 31.8.2008. The appellant could anyhow be nabbed and a pistol was recovered which he dropped on the ground when he fell down after hitting some obstruction while on run. The appellant was, therefore, charged for obstructing and using criminal force against public servants i.e. the team members led by Inspector Pankaj Sood and SI Ramesh Sharma (PW-2) with the object to deter them from discharging their official duty and thereby committing offence under Section 186 read with Section 353 of the IPC. The appellant was further charged for firing from his weapon towards the raiding team with such intention and knowledge that such act could have caused death of anyone of the team members, thereby committing an offence under Section 307 of the IPC. The appellant was found in possession of a fire arm, in contravention of Section 3 of the Arms Act, therefore, he was also charged with the offence under Section 25 of the Arms Act.

4. A raid by the police team was conducted on secret information which was received by SI Ramesh Sharma (PW-2) on 31.8.2008 at about 11 AM in the office of Special Cell, Northern Range, Rohini. The secret informer told PW-2 that the appellant who was wanted in several cases of murder and loot was expected to arrive by around 12.30 noon at cross

roads of Wazirabad-Mukherjee Nagar for meeting one of his associates. The aforesaid information was telephonically given to the ACP, Special Cell, who, in turn, directed Inspector Pankaj Sood to take action. The aforesaid information was recorded vide DD No.3 (Ex.PW-2/A).

5. Consequently, a raiding team under the supervision of Inspector Pankaj Sood was constituted which comprised SI Ramesh Sharma (PW-2), HC Amit Kumar, HC Satinder Kumar, HC Suresh Chand, Constable Sanjeev Kumar (PW-9) and Constable Rakesh Negi (PW-3). The raiding team received arms from the armoury and used a Government vehicle which was driven by Head Constable Satinder Kumar. An attempt was made to make some private persons join the process but those persons expressed their genuine difficulty and avoided joining the police team. On reaching the Mukherjee Nagar crossing, the informer pointed out towards the appellant who was found standing by the side of the road. Seeing the vehicle approaching him, the appellant started running in the opposite direction towards Mukherjee Nagar road. While making his escape, the appellant is said to have taken out a pistol from his pocket. The members of the raiding team got down from the vehicle and chased the appellant. PW-2 is said to have disclosed his identity and asked the appellant to stop. On this, it is alleged, the appellant fired at the police party and also warned them by shouting that if they did not stop chasing him, they would be killed. PW-2 thereafter fired in the air from his Government pistol. In the meantime the appellant tumbled over some obstruction and fell down on the ground. The pistol which he was

carrying also fell down. In the meantime, Constable Sanjeev Kumar (PW-9) and Constable Rakesh Negi (PW-3) overpowered the appellant. The pistol was seized. The pistol was found to be loaded with three live cartridges. The sketch of the pistol and cartridges were prepared and the weapon was put into a pullanda, sealed with the seal of RK and along with it the FSL form also was filled up. Thereafter SI Harbir Singh (PW-8) was called at the spot and further investigation was entrusted to him.

6. The prosecution has examined 9 witnesses in order to bring home charges against the appellant.

7. The FIR which is Ex.PW-1/A has been proved by ASI Surjit Singh, (PW-1) the Duty Officer.

8. In order to ascertain whether such an offence had taken place, it is necessary to analyze the deposition of SI Ramesh Sharma (PW-2) who initially investigated the matter.

9. Ramesh Sharma (PW-2) has proved a copy of DD No.3 (Ex.PW-2/A) regarding secret information, DD No.4 (Ex.PW-2/B) (regarding departure of the police party for raiding and nabbing the appellant). He has supported the prosecution version and has testified to the fact that after the weapon and the empty cover of fired bullets were put into pullandas, they were sealed and such seal was handed over to Constable Rakesh Sharma (PW-3). PW-2 has identified the appellant in Court.

10. However, in the cross examination, PW-2 has stated that he did not take down the name and address of the public persons who were requested by him to join the police party. The cartridges which were fired

by him was not seized but he denied the suggestion that he did not fire in the air to stop the appellant. No finger print expert was called to lift finger prints from the recovered pistol. The pistol which was used by him for firing in the air was also not seized by SI Harbir Singh (PW-8), the second IO. The suggestions that nothing was recovered from the appellant or that he was arrested from a different place were denied by him.

11. Rakesh Negi (PW-3) was also a member of the raiding team who has supported the prosecution version. He has testified that he was present in the office when the secret informer had come and that the FIR number was later on filled in the seizure memo.

12. The pistol and the cartridges were examined by V.R.Anand (PW-4), Senior Scientific Officer, Ballistic, FSL, Rohini. He has proved his report (Ex.PW-4/A). The report (Ex.PW-4/A) reveals that the seals over the plastic bag containing the parcel was intact and tallied with the specimen seals as per the forwarding letter (FSL Form). The weapon in question was found to be in working order. The 9 MM cartridges were found to be live and capable of being fired through 9 MM caliber firearm.

13. It has been argued on behalf of the appellant that the description of the weapon given in the report of an improvised pistol of 9 MM caliber whereas in the rukka (Ex.PW-1/A) the weapon was found to be engraved with number 7771, automatic pistol made in USA. On the barrel of the weapon it was printed "only for army supply". It was, therefore, contended on behalf of the appellant that the weapon which was seized

from his possession was not sent to the FSL for analysis. In this context, it is further submitted that even in the request for grant of sanction under Section 125 Cr.P.C, there is only a reference of recovery of a sophisticated English pistol and four live and one fired cartridge. However, such a contention of the appellant cannot be accepted for the reason that immediately on seizure of the weapon, a pullanda was made which was sealed with the seal of PW-2 and such seal was handed over to Constable Rakesh Negi (PW-3).

14. Head Constable Om Prakash (PW-6) has deposed before the Court that the sealed pullanda along with the seal and FSL form were taken to FSL, Rohini. He has proved the road certificate (Ex.PW-6/A). He has also affirmed that as long as the case property remained with him, the same was not tampered with.

15. Head Constable Sanjeev (PW-9) has proved the copy of entry regarding deposit of case property in malkhana (Ex.PW-9/A). Thus the aforesaid contention of the appellant cannot be accepted merely on the ground that in the rukka what has been stated to be engraved on the seized weapon was not found in the description of the weapon by the FSL or by the sanctioning authority. The description given by the FSL is about 9 MM caliber weapon and so is the description in the request for obtaining sanction for prosecution wherein it has been stated that the seized weapon was a sophisticated English weapon with three live cartridges and one fired cartridge. What is important is that the cartridge which was sealed along with the weapon were test fired which was

successful, affirming the fact that the seized weapon was the weapon which was sent to the FSL.

16. The appellant in his statement under Section 313 of the Code of Criminal Procedure has denied the occurrence. He has even denied that he fell on the road or that the pistol engraved with number 7771 made in USA, Army supply was recovered from him. In that view of the matter also, the objection of the appellant cannot be entertained.

17. With reference to the statement of the appellant under Section 313 of the Code of Criminal Procedure, it has been submitted that the appellant was picked up from ISBT, Anand Vihar on 30.8.2008.

18. The mother of the appellant had sent an application through fax to the Commissioner of Police and the Chief Minister, Delhi. The aforesaid documents have been marked as DA. An earlier complaint is also said to have been made to the LG about the apprehension of the appellant of being encountered by police.

19. No defence witness has been examined at the trial.

20. The only argument which has been advanced on behalf of the appellant is that the recovery of the pistol and the story of firing at the police is false and has not been proved beyond reasonable doubt. The basis for such an argument is that the identity/description of the pistol differs from what is stated in rukka and the description given in the FSL report and in the sanction order for prosecution of the petitioner.

21. As has been stated earlier, this assumes no significance for the reason that there was no time lag in seizing the weapon, sealing it and

dispatching it to the malkhana and from there, sending the same to the FSL. There was no occasion/opportunity for tampering with the seal. In that view of the matter, mere difference in description would not assume such significance so as to discard the entire prosecution version.

22. The prosecution case gets further support from the fact that the appellant has denied the recovery of any weapon from his possession.

23. There is no reason to doubt the version of SI Ramesh Sharma (PW-2) and Constable Rakesh Negi (PW-3) who were members of the raiding team. The appellant was not known to the aforesaid persons from before and it cannot be said that the entire occurrence was because of the police party being inimical to the appellant.

24. The argument of the learned counsel for the appellant that no offence under Section 186 IPC is made out as the Government vehicle which was used by the raiding team did not have any special sign of being a Government vehicle nor the members of the raiding team were in uniform, is not tenable for the reason that the consistent case of the prosecution has been that before chasing and overpowering the appellant, the identity of the team and specially of PW-2 was disclosed. It was only after such identity was disclosed, that the appellant looked back, while fleeing, and fired at the police party.

25. The objections with respect to non mentioning of the measurement in the sketch of the pistol and cartridges is not worth consideration and has been noted only to be discarded.

26. True it is, that the IO should have made arrangements for lifting of the fingerprints from the pistol and should have also taken the specimen finger prints of the appellant for tallying the same. The Trial Court has rightly observed that this was negligence on the part of the IO but the entire case which is supported by other witnesses and materials cannot be thrown overboard for such lapse on the part of the Investigating officer.

27. Though all the witnesses in the present case are police personnel and there are no public witnesses but that may not be a sufficient ground for not sustaining the conviction of the appellant if the evidence is reliable and trustworthy.

28. Thus taking into account the materials on record, I do not find any reason to interfere with the judgment and order of conviction and sentence recorded by the Trial Court.

29. For the reasons aforesaid, this appeal is dismissed.

ASHUTOSH KUMAR, J

SEPTEMBER 16, 2015

k