

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

RESERVED ON : 28th APRIL, 2016

DECIDED ON : 04th MAY, 2016

+ **CRL.A.1306/2014**

DAULAT @ KALIA Appellant

Through : Mr.Kanhaiya Singhal, Advocate with
Ms.Vani, Advocate.

VERSUS

STATE NCT OF DELHI Respondent

Through : Mr.Amit Gupta, APP.

AND

+ **CRL.A.1304/2014**

VIRENDER Appellant

Through : Mr.Kanhaiya Singhal, Advocate with
Ms.Vani, Advocate.

VERSUS

STATE NCT OF DELHI Respondent

Through : Mr.Amit Gupta, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Aggrieved by a judgment dated 22.07.2014 of learned Addl. Sessions Judge in Sessions Case No.40/2010 arising out of FIR No.01/10 PS Rithala Metro Station whereby the appellant – Daulat @ Kalia (A-1) and Virender (A-2) were convicted for committing offence punishable under Section 307 IPC and Sections 25/27 Arms Act, they have filed the instant appeals. By an order dated 25.07.2014, they were awarded various prison terms with fine. The substantive sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 03.02.2010 at around 07.15 p.m. at Metro Parking of Rohini East, the appellants along with their associates Himmat and Deepak (since acquitted) fired upon the police party on being asked to surrender. On that day, Insp. Rajiv Shah from Special Staff North-West received an information that A-2 along with his gang members would arrive at Rohini East Metro Station to commit robbery and was armed with weapons. On this information, a raiding team was constituted and the police party surrounded the area by deploying police personnel at various points. At about 07.15 p.m. on getting signal from the informer, the appellants and their associates total numbering five arrived at the spot. They were asked to surrender. On that, the appellants fired at the police party. Insp. Rajiv Shah directed HC Dinesh to fire two rounds in the air but it had no impact. A-2 again fired at the police party. In defence, HC Dinesh fired at A-1 and he sustained bullet injury on his thigh and fell down. In the commotion, the four assailants fled the spot. A-1 was taken to hospital for medical examination. Various arms and cartridges were recovered at the spot and

necessary seizure memos were prepared. Subsequently, A-2, Deepak and Himmat were also apprehended. Applications for conducting Test Identification Proceedings were filed but they declined to participate in it. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellants and their associates – Deepak and Himmat for committing offences punishable under Sections 186/353/307/34 IPC and Sections 25/27 Arms Act. In order to establish its case, the prosecution examined twenty-five witnesses. In 313 Cr.P.C. statement, the accused persons denied their complicity in the crime and pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment convicted the appellants under Section 307 IPC and Sections 25/27 Arms Act. It is apt to note that Himmat and Deepak were acquitted of the charges and the State did not challenge their acquittal. Being aggrieved and dissatisfied, the instant appeals have been preferred by the appellants.

3. I have heard the learned counsel for the parties and have examined the record. Learned counsel for the appellants would urge that the Trial Court did not appreciate the evidence in its true and proper perspective. No independent public witness was associated at any stage of the investigation. No CCTV footage was collected. In the presence of so many police officials, it was highly improbable for any assailant to escape from the spot. In the alternative, prayer has been made by the learned counsel for the appellants, on instructions, for modification of the sentence order. Learned Addl. Public Prosecutor urged that there are no valid reasons to

disbelieve the testimony of police officials who had no prior animosity with the appellants.

4. On perusal of the impugned judgment, it reveals that only plea urged by the defence counsel was that neither public witnesses nor CCTV footage of parking, CRPF employees and metro employees of Rohini East metro station were joined though the incident had already taken place at 07.15 p.m. which was high time of the officials to return to their home. It appears that no other plea was urged before the Trial Court. The Trial Court further noted that it was not disputed that firing had taken place in the parking lot Rohini East Metro Station at 07.15 p.m. The plea that no independent public witness was associated has been dealt with by the Trial Court in the impugned judgment. Evidence of the police officials can be acted upon if it inspires confidence and is free from infirmities. Reliance has been placed on '*State (Govt. of NCT of Delhi) vs. Sunil and ors.*', 2001 (1) SCC 652. In the instant case, request was made to 4 or 5 individuals to join the investigation, however, none of them joined because of specific reasons. It is well known that public at large are generally reluctant to join the police investigation for various reasons. Testimonies of the police officials cannot be thrown away simply because no independent public witness was associated at the time of occurrence, however, their statements must be perused with great care and caution.

5. PW-2 (HC Baljeet), member of the raiding team, categorically deposed that at around 07.15 p.m. at the pointing out of the informer, five persons were rounded up by the raiding team. Four of them were apprehended whereas one Vinod could not be arrested. Insp. Rajiv Shah gave introduction to the accused persons and directed them to surrender. On

that, A-1 and A-2 aimed their katta and pistol respectively at the police party and fired at them. The police party saved themselves by lying on the ground. HC Dinesh fired two shots in the air in defence. Investigating Officer again directed the accused persons to surrender but they did not pay any heed. A-1 again fired one shot aiming at the police party. Insp.Rajiv Shah then directed HC Dinesh to fire. On instructions, HC Dinesh fired one shot which hit A-1's leg. After the firing incident, crowd started running here and there and by taking advantage of the situation, four accused persons left the spot. A-1 who was unable to flee due to injury in his leg was apprehended at the spot. The assailants running away from the spot dropped one pistol near the spot and it was lifted by Insp.Rajiv Shah. A-1 was carrying katta in his hand. On A-1's search, one dagger type knife was recovered from the left side pocket of his wearing jacket. Necessary proceedings were conducted and the arms and ammunitions were seized by preparing its sketches by various seizure memos which bear his signatures.

6. In the cross-examination, the witness disclosed that they had left the office of Special Staff at around 05.45 p.m. There were two private Santro cars. He expressed his inability to disclose if the assailants had arrived at the spot on foot or by any vehicle. He disclosed that A-2 was wearing brown colour jacket and A-1 was wearing brown and white colour jacket. Two shots were fired at the police party. He fairly admitted that he did not sustain any injury. A-1 was taken in a Santro car to hospital for medical examination. He took the rukka at about 11.50 p.m. and returned the spot after about two hours. He denied that the accused persons were falsely implicated and no recovery was effected from their possession.

7. PW-3 (HC Dinesh Kumar), PW-4 (Const.Anand), PW-5 (Inap.Rajiv Shah), PW-7 (ASI Suresh Chand) and PW-8 (Const.Anil Kumar), other members of the raiding team, have made similar depositions. They were cross-examined at length but no infirmities could be extracted in their cross-examination to disbelieve their version. PW-17 (ACP Prem Lata) posted at PS Metro Rithala was on patrolling duty in the official Gypsy in the area at around 08.00 - 08.30 p.m. She deposed that on receipt of information regarding firing incident at Rohini South on wireless, she immediately reached to the spot. ASI Suresh Chand and Const.Anil from PS Rithala Metro Station also reached the spot. Further investigation was taken over by her. PW-11 (SI Matadin), Crime Team In-charge, North-West District, also reached the spot and prepared his report (Ex.PW-11/A).

8. Inconsistent and contradictory suggestions have been put in the cross-examination to the members of the raiding party. It has not been explained as to how the appellants along with their associates arrived at the spot and what was their purpose. Injuries sustained by A-1 in the encounter are not in dispute. A-1 did not explain as to how and in what manner, he had been injured by the police team. MLC (Ex.PW-18/A) lends corroboration to the statements of the prosecution witnesses.

9. The Trial Court has already noted that the FSL / ballistic report (Ex.PX) is on record. A-1 was apprehended at the spot whereas A-2 was apprehended subsequently. He declined to participate in the Test Identification Proceedings. No plausible reason has been given for declining to participate in the Test Identification Proceedings. Moreover, in the Court statements, the prosecution witnesses identified him to be one of the perpetrators of the crime.

10. Two empty shells mark EC1 and EC2 were seized from the spot. Country made pistol mark F2 was recovered from A-1. Both were sent to FSL and Biology Division report Ex.PX is to the effect that 8 mm / .315” two cartridges mark TC1 and TC2 from laboratory stock were fired through the country made pistol mark F1 recovered from A-1. Individual characteristics of firing pin and breech face marks of EC1 and EC3 on one side and TC1 and TC2 on the other side were found identical. It proved that two fired shells of .315 bore found at the spot were fired through desi katta recovered from accused A-1.

Improvised pistol 7.65 mm mark F2, four live bullets mark A1 to A4 of 7.65 mm and a fired cartridge mark EC2 of 7.65 mm were seized from the spot. All these articles were sent to the FSL and Ballistic Division report is to the effect that Mark A1 and A2 were test fired through pistol mark F2 in lab and were given mark TC3 and TC4. Individual characteristics of firing pin and breech face of EC2 on one hand and marks TC3 and TC4 on the other hand were found identical. It proved that one empty shell of 7.65 mm found at the spot was fired through improvised pistol left at the spot by A-2. Moreover A-2 got recovered two live cartridges of 7.65 mm by lifting the seat of the bike used in the commission of crime.

Further corroboration of the prosecution version is coming from the FSL report about the arm and ammunition used by HC Dinesh. The impugned judgment notes that 10 bullets of 9 mm were issued to PW3 HC Dinesh Kumar by PW16 HC Mahavir Singh on 02.02.2010. PW2, PW3, PW4 and PW5 deposed that three bullets were fired by HC Dinesh on the accused. Police could recover only two empty shells of 9 mm from the spot.

Police also took into possession 9 mm pistol F3 and seven live cartridges A5 to A11. Cartridges A5 and A6 were test fired in lab through pistol F3 and were given mark TC5 & TC6. Mr.Puneet Puri (Sr.Scientific Officer Ballistic) opined that individual characteristics of firing pin marks of EC4 and EC5, TC5 and TC6 were found identical. It showed that EC4 and EC5 seized from the spot were fired through 9 mm pistol seized from PW3 HC Dinesh.

11. The accused persons did not explain as to how and when they came into possession of these arms without licence.

12. Accused Himmat and Dinesh were acquitted of the charges as no specific role was assigned to them. They did not participate in the crime. None of them was in possession of any arm. No overt act was attributed to them in firing at the police team.

13. The impugned judgment based upon fair appraisal of the evidence warrants no intervention.

14. Regarding sentence, A-1 has been sentenced to undergo RI for seven years under Section 307 IPC whereas A-2 has been sentenced to undergo RI for five years. Since the role played by both the appellants was at par and A-1 had sustained injuries on his leg, there was no sufficient reason to award sentence of seven years to A-1. A-1's Nominal Roll dated 28.09.2015 reveals that he has already undergone three years, six months and nineteen days incarceration besides remissions for four months and nineteen days as on 27.09.2015. His overall jail conduct is satisfactory. Considering the facts and circumstances of the case, the sentence is modified to the extent that substantive sentence under Section 307 IPC shall be five years. Default sentence for non-payment of fine ₹20,000/- shall be SI for

three months in all instead of twenty months. Other terms and conditions of the sentence order qua A-1 are left undisturbed.

15. A-2's sentence is modified to the extent that default sentence for non-payment of fine ₹15,000/- shall be two months in all instead of sixteen months. Other terms and conditions of the sentence order are left undisturbed.

16. The appeals stand disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

MAY 04, 2016 / tr