

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

**RESERVED ON : 24th MARCH, 2017
DECIDED ON : 08th MAY, 2017**

+ CRL.A. 511/2016, CRL.M.A.No.8740/16 & CRL.M.B. 1074/16

**RAMESH @ NANKU Appellant
Through : Mr.S.K.Sethi, Advocate.**

versus

**STATE of NCT OF DELHI Respondent
Through : Mr.Amit Gupta, APP.**

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 12.01.2016 of learned Addl. Sessions Judge in Sessions Case No.74/2015 arising out of FIR No.92/2009 PS Vikas Puri by which the appellant – Ramesh @ Nanku along with others was held guilty for committing offences punishable under Sections 186/353/307/411/34 IPC and Section 25 Arms Act. By an order dated 14.01.2016, he was awarded various prison terms with fine. The sentences were to operate concurrently.

2. I have heard the learned counsel for the parties and have examined the file. Charge-sheet was filed in case FIR No.86/2009 registered at PS Rajouri Garden on the allegations that on 14.03.2009 at around 11.45 p.m. at Footover bridge, Ring Road, Rajouri Garden, the

appellant in furtherance of common intention with his associates had committed dacoity using deadly weapons depriving the complainant – Ashok Yadav of his vehicle Tata Sumo bearing registration No. RJ 02 TA 0110 along with documents; mobile phone make Nokia, etc. By a judgment dated 12.01.2016, the appellant along with others was convicted in Sessions Case No.73/2015. By an order dated 14.01.2016, he was awarded various prison terms with fine. The said judgment was challenged before this Court in Crl.A. 231/2016. By a judgment dated 29.07.2016, the said appeal was dismissed.

3. On the night intervening 26/27.03.2009 at around 07.00 p.m. information was received at the office of Spl. Staff / West, Tagore Garden, that the appellant and his companions armed with illegal weapons would arrive in red colour Tata Sumo at 08.30 p.m. from the side Uttam Nagar Hastal DDA Flats and would go towards Ring Road via Road No.236, Vikas Puri. It was further disclosed that they had put registration number plate as UP 14 AF 2314 on Tata Sumo looted from the area of PS Rajouri Garden. A raiding team was constituted and at around 08.40 p.m. Tata Sumo was found coming from the side of Uttam Nagar. The appellant who was driving the said Sumo did not stop it despite indication to do so; it was chased and forced to stop. The appellant while descending from the driver's seat of Tata Sumo fired at the police party from the country-made pistol but it did not hit anyone. SI Manoj Kumar in self-defence fired a shot in the air. The appellant and his associates were apprehended and a country-made pistol was snatched from appellant's right hand. On his personal search, one live cartridge was recovered from the right side pocket of his pant. Necessary proceedings were conducted at the spot. Upon completion of

investigation, a charge-sheet was filed against the appellant and others in the said case. To establish its case, the prosecution examined ten witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as aforesaid.

4. All the material prosecution witnesses - members of the raiding party i.e. PW-1 (Const. Suresh Kumar), PW-4 (SI Manoj Kumar), PW-5 (ASI Nirakar Sharma) and PW-9 (SI Charan Singh), have implicated the appellant and his associates for obstructing them in the discharge of their official duties and to have been fired at them without any provocation. The testimonies of these witnesses have been detailed in the impugned order and need no repetition. All these witnesses were cross-examined at length. However, no material inconsistency or discrepancy could be elicited to disbelieve the version of the police officials. Their statements are consistent. The appellant did not deny his presence at the spot and did not produce any cogent evidence on record as to where else he was present at the time of occurrence. No defence evidence was adduced. It was also not explained as to how the appellant and his associates came into possession of robbed Tata Sumo.

5. It is relevant to note that while deciding the appeal 231/2016 to challenge conviction in case FIR No.86/2009, facts in this case were also taken into consideration.

6. Merely because, no independent public witness was associated at the time of the appellant's apprehension, testimonies of the police officials who had no prior ill-will or animosity cannot be discredited per se their being police officials. During the course of arguments, learned counsel for the appellant primarily insisted that the sentences in the present FIR

No.92/2009 at PS Vikas Puri and FIR No.86/2009 at PS Rajouri Garden be ordered to be run concurrently. The appellant has already undergone the sentence awarded in this case. Perusal of the common judgment dated 29.07.2016 in CrI.A.Nos. 231/2016, 431/2016 & 229/2016 reveals that this Court in para No.15 has already ordered that the sentences in both the cases were to run concurrently.

7. Since the sentences in both the FIRs i.e. FIR No.86/2009 and FIR No.92/2009 have already been ordered to run concurrently. CrI.M.A.No.8740/2016 has become infructuous and is disposed of as such.

8. The appeal filed by the appellant is unmerited and is dismissed. The sentence awarded in this FIR, however, shall run concurrently with the sentences awarded in FIR No.86/2009.

9. Pending applications also stand disposed of.

10. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

MAY 08, 2017 / tr