

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 1141/2015**

Judgment reserved on 4th May, 2017
Judgment pronounced on 22nd May, 2017

RAHUL @ MONI Appellant
Through : Mr. Neeraj Bhardwaj, Adv.

versus

STATE Respondent
Through : Dr. M.P. Singh, APP with ASI
Jaiveer Singh, P.S. K. Khas

AND

+ **CRL.A. 1219/2015**
MANISH ALIAS AALOO Appellant
Through : Attendance slip not given.

Versus

STATE (NCT OF DELHI) Respondent
Through : Dr. M.P. Singh, APP with ASI
Jaiveer Singh, P.S. K. Khas

AND

+ **CRL.A. 161/2016**
PANKAJ Appellant
Through : Mr. Neeraj Bhardwaj, Adv.
versus

STATE Respondent
Through : Dr. M.P. Singh, APP with ASI
Jaiveer Singh, P.S. K. Khas

AND

+ CRL.A. 430/2016
RAHUL @ CHONCHU Appellant
Through : Mr. S. B. Dandapani, Adv.

versus
STATE Respondent
Through : Dr. M.P. Singh, APP with ASI
Jaiveer Singh, P.S. K. Khas

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Aggrieved by the judgment dated 18th September, 2017 and order on sentence dated 23rd September, 2015 of the trial Court, whereby appellants have been convicted under Section 307/34 IPC and sentenced to undergo rigorous imprisonment for 7 years with fine of ₹20,000/- each and in default of payment of fine to further undergo simple imprisonment for 1 year, appellants have preferred these appeals. Appellant-Rahul@Chonchu has also been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for 3 years. He has also challenged his conviction and sentence under this provision.
2. All the appeals arise from the same judgment and order on sentence, hence, are disposed of together.
3. Prosecution case, as set out in the charge-sheet, is that PW14 SI

Yogesh Kumar along with PW3 Constable Dharam Pal reached Sushrut Trauma Centre, Delhi on the receipt of DD No. 6B PW14/A on 8th December, 2012 and obtained the MLC of PW1 Mohit Ex.PW21/1, who was admitted in the said hospital with the history of gunshot injury in the chest below the left nipple. PW1 Mohit was declared 'unfit for statement' by the concerned doctor. PW1 was immediately shifted to LNJP Hospital for treatment. The persons present with PW1 Mohit in the hospital refused to make any statement on the pretext that they were busy in shifting him to LNJP Hospital. However, PW14 SI Yogesh Kumar collected one pulanda sealed with the seal of 'STC' along with the sample seal from the staff nurse PW15 Veikhokim. This pulanda contained the clothes of injured, that is, trouser, shirt, baniyan, sweater and belt. Pulanda was taken into possession by PW14 vide seizure memo Ex.PW14/1. Later, PW14 SI Yogesh Kumar along with PW3 Constable Dharam Pal, reached LNJP Hospital and met PW8 Manjeet Singh and recorded his statement Ex.PW14/2, pursuant whereof FIR No.487/12 (Ex.PW2/B) was registered.

4. PW8 stated in the FIR that on 8th December, 2012 his elder brother Jitender was getting married. His friends including PW1 Mohit had come to attend the marriage. At about 10:30pm, at the time of '*Ghurchari*'

ceremony, Rohit S/o Rajender@ Raje, Pankaj S/o Sade Ram and Moni S/o Dalchand quarrelled with PW1 Mohit, while dancing. During the quarrel, Rohit threatened PW1 Mohit that he would kill him. He, and other persons present there pacified them and got the matter settled. Thereafter, marriage procession (*barat*) arrived at the community centre. While all of them were eating at the ground floor, '*Varmala*' ceremony started at the first floor. He told PW1 Mohit that they should also go there and get their photographs clicked with the bride and groom. They went to the first floor but there was a lot of crowd, therefore, they stood in the staircase. At about 12 o'Clock, while they were standing in the staircase, Rohit, Pankaj and Moni came there and surrounded Mohit. Thereafter, Rohit fired at Mohit who fell down and became unconscious. Thereafter, all the three persons fled from the spot. Other persons also gathered there after hearing the gun shot. He, along with his cousin Vinod S/o Rati Ram and some other persons, removed Mohit to Sushrut Trauma Centre. PW8 stated that Rohit along with his friends Pankaj and Moni, had shot Mohit with the intention to kill him.

5. Thereafter, PW14 SI Yogesh Kumar went to the spot and prepared a site plan Ex. PW14/4; collected the blood stained sand and earth control sample from the courtyard, sealed the same and took it in possession vide

seizure memo (Ex.PW14/5). Thereafter, the FIR was got registered. Blood stained clothes of Sunil and Vinod were also sealed and taken into possession vide seizure memos Ex.PW9/A and Ex.PW10/1 respectively. In the evening of 8th December, 2012 itself PW8 Manjeet made a supplementary statement stating therein, that he had inadvertently named Rohit in the FIR instead of Rahul @ Chonchu. He further stated that Rahul @ Chonchu, Pankaj and Moni had surrounded Mohit and when Mohit tried to run away, Manish @ Aaloo blocked his way. Thereafter, Rahul @ Chonchu fired at Mohit from a country made pistol. He further stated that Rohit was not present there.

6. On 11th December, 2012 PW1 Mohit was declared 'fit for statement' and PW14 Yogesh recorded his statement under section 161 Cr.P.C. Ex. PW1/D1 wherein, he corroborated the statement of PW8 Manjeet Singh. PW1 stated that while dancing during the *Ghurcharhi* ceremony, he had a quarrel with Manish @ Aaloo S/o Rajender. Later, all the appellants surrounded him at the first floor near the staircase and Rahul @ Chonchu fired at him.

7. Appellant-Manish @ Aaloo S/o Rajender was arrested by PW14 SI Yogesh on 11th December, 2012 vide arrest memo (Ex.PW14/6). Since the

other accused persons were absconding, charge-sheet was filed only against accused Manish @ Aaloo and the proceedings under Section 82 Cr.P.C. were initiated against the other accused persons.

8. On 1st March, 2013, statement (Ex.PW1/A) of PW1 Mohit under Section 164 Cr.P.C., was got recorded. On 20th March, 2013 statement (Ex.PW8/1) of PW8 Manjeet under Section 164 Cr.P.C. was got recorded. On 6th April, 2013 PW20 SI Vineet Kumar of Crime Branch arrested Rahul@ Chonchu vide arrest memo ExPW13/1. PW14 SI Yogesh Kumar formally arrested Rahul@ Chonchu in Court on 8th December, 2013. However, weapon of offence could not be recovered from Rahul @ Chonchu. Supplementary charge-sheet against Rahul @ Chonchu was filed. On 2nd August, 2013 Rahul@ Moni was arrested from Karkardooma Court vide arrest memo Ex.PW7/A. An application for TIP of Rahul @ Moni was made on 2nd August, 2013 but he refused for the same. On 14th August, 2013 appellant Pankaj was arrested from Karkardooma Court, Delhi vide arrest memo Ex.PW16/1. Rahul @ Moni made a statement that Katta used in the present case was already recovered from him in another case, that is, FIR No. 183/13 Ex.PW23/A. Supplementary charge-sheet was filed against Rahul @ Moni and Pankaj. All the charge-sheets were clubbed together and

the trial commenced.

9. Charge under Section 307/34 IPC was framed against the appellants. Separate charge under Section 27 of the Arms Act was framed against Rahul @ Chonchu. Appellants pleaded not guilty to the charges framed against them and claimed trial.

10. Prosecution examined 25 witnesses during the trial out of which, only 4 witnesses are public witnesses. Injured Mohit was examined as PW1. Complainant/eye-witness Manjeet was examined as PW8. Sunil and Vinod, who had removed PW1 Mohit to Sushrut Trauma Centre after the incident, were examined as PW9 and PW10 respectively. All other witnesses are police officials, doctor or nurse etc. who had participated in the investigation at one or the other stage. PW14 SI Yogesh Kumar was the initial Investigating Officer. PW2 ASI Santi Lal was the Duty Officer at Police Station Khajuri Khas, who had recorded the FIR 487/2012 Ex. PW2/B, on the basis of rukka sent by PW14 Yogesh Kumar. He has proved the FIR. PW3 Const. Dharam Pal had visited the Sushrut Trauma Centre along with PW14 SI Yogesh Kumar. PW4 Const. Sunil was with the Investigating Officer at the time of arrest of accused Manish @ Aaloo on 11th December, 2012 and he has deposed in this regard. PW6 Const. Mohd. Rafiq had

accompanied the Investigating Officer PW14 SI Yogesh Kumar to the court at the time when police remand of accused Manish was taken. PW7 Const. Subhodh Kumar had accompanied the Investigating Officer PW14 SI Yogesh Kumar to Village Sannot on 13th December, 2012 in search of accused Manish. He deposed that Manish was not found in the village. He was also associated with the subsequent Investigating Officer PW24 Shailender Singh in the investigation on 2nd August, 2013 when appellant-Rahul@ Moni was arrested vide arrest memo Ex.PW7/A. PW11 HC Shyam Lal is the photographer, who had taken photos of the crime scene on 8th December, 2012. He has proved 13 photographs along with the negatives as Ex. PW11/B1 to Ex. PW11/B13 and Ex. PW11/A1 to PW11/A13 respectively. PW12 Const. Suresh was present along with PW24 SI Shailender Singh when appellant- Rahul@ Chonchu was arrested at Karkardooma Courts Complex on 8th April, 2013 vide arrest memo Ex. PW12/1. PW13 HC Amrish was posted at SIT Crime Branch, Rohini on 6th April, 2013 when at about 09:30 am Rahul@ Chonchu was arrested by PW20 SI Vineet Kumar vide arrest memo EX. PW13/1 . PW15 Veikhokim, was working as a staff nurse at Sushrut Trauma Centre and has deposed that on 8th December, 2012 she had sealed the clothes of PW1 Mohit with the

seal of STC and had handed over the same to PW14 SI Yogesh Kumar. PW16 Const. Hari Om is the witness to the arrest of appellant-Pankaj on 14th August, 2013 and has proved the arrest memo as Ex. PW16/1. PW 17 HC Bijla is the Malkhana Mohrar and has proved the entries in the Malkhana register with regard to the deposits of the case properties as Ex. PW17/1 and Ex. PW17/2. He further deposed that on 14th December, 2013, four sealed parcels were sent to FSL vide RC No. 135/21/13. He has proved the entries in this regard as PW17/3. PW18 Const. Gourav is witness to the arrest of Rahul@Moni. PW19 SI Vikram Singh had arrested Pankaj on 26th July, 2013 in FIR No. 184/13 registered at police station Timarpur. He has deposed in this regard. PW20 SI Vinit Kumar had arrested Rahul@Chonchu on 6th April, 2013 vide Kalandra Ex. PW20/1. PW21 Dr. Rahul Jain has proved the MLC Ex. PW21/1 by identifying the signatures of Dr. Nischal, who had prepared the same. He deposed that Dr. Nischal had declared PW1 Mohit unfit for making statement on 8th, 9th and 10th December, 2012. He further deposed that PW1 Mohit was declared fit for statement by Dr. Nischal on 11th December, 2012. PW23 SI Netram had arrested Rahul@Moni on 26th July, 2013 in FIR No. 183/13 Ex. PW23/A registered at police station Timarpur. PW24 SI Shailender Singh was handed over the

investigation of the present case on 1st March, 2013 and he has deposed about the investigations done by him post this date. He has deposed that on 9th March, 2013 and 18th March, 2013 respectively he had made the applications for recording the statements under Section 164 Cr.P.C. of PW8 Manjeet Singh and PW1 Mohit. He has also deposed about the arrest of Rahul@Chonchu on 8th April, 2013 vide arrest memo Ex. PW12/1, arrest of Rahul@Moni on 2nd August, 2013 vide arrest memo Ex. PW7/A and arrest of Pankaj on 14th August, 2013 vide arrest memo Ex. PW 16/1. PW25 Shri Dharmender Rana is the Metropolitan Magistrate, who had conducted the TIP proceedings of Rahul @Moni.

11. I have heard the learned counsel for the appellants and perused the voluminous record and am of the view that trial court has erred in convicting the appellants by accepting the shaky, unreliable and untrustworthy statement of PW1 Mohit inasmuch as has ignored the fact that prosecution case suffered from many inherent discrepancies and is highly suspicious. PW8 Manjeet Singh did not support the prosecution case while deposing in court. He denied having seen the incident. He claimed that he was not present with PW1 Mohit at the time of incident. His this version that he did not witness the incident appears to be correct in view of the fact that PW1

Mohit himself, in his statement under Section 164 Cr.P.C. Ex. PW1/A, has stated that while he was standing in the stairs, PW8 went away for some work. Thereafter, Rahul@Chonchu, Pankaj and Manish came there and surrounded him and when he tried to run away, Manish blocked his way. Thereafter, Rahul@Chonchu fired at him and all of them ran away. As per the statement under Section 164 Cr.P.C. of PW1 Mohit, it is clear that PW8 Manjeet Singh was not an eye-witness to the incident of firing. While deposing in Court also, PW1 Mohit has corroborated his version as contained in his statement under Section 164 Cr.P.C. since he stated that PW8 Manjeet Singh was 15 steps ahead of him while he stood by the staircase and waited for the crowd to decrease. In the meanwhile, Rahul @Chonchu, Rahul@Moni and Pankaj came there and surrounded him. He turned around in order to run away but Manish had blocked the staircase. When he again turned around in order to seek help from Manjeet, Rahul@Chonchu fired at him. He did not say that he and Manjeet were standing in the staircase together when the appellants had surrounded him and Rahul@Chonchu fired at him. As against this, as per the prosecution story as set out in the charge-sheet, PW1 Mohit and PW8 Manjeet Singh were standing together in the staircase when the appellants came there and

surrounded them while appellant-Rahul@Chonchu fired at PW1 Mohit. PW8 Manjeet Singh, in his deposition, has stated that when they reached the first floor there was a lot of crowd. Mohit received a call and went away while he went downstairs to make the payment to the band. Be that as it may, from the facts as narrated above, presence of PW8 Manjeet in the staircase at the time of incident is doubtful. Then how could he describe the incident, as detailed in the FIR.

12. This makes the FIR itself is highly suspicious since the same has been registered on the complaint of PW8 Manjeet who is not an eye-witness. If he had not witnessed the incident how could he give the names of the appellants as the assailants. It appears that for this reason he did not give any statement to PW14 at the Trauma Centre immediately after the incident. It also appears that the FIR has been registered with due deliberations after about six hours.

13. Admittedly, on receipt of information from Sushrut Trauma Centre PW 14 SI Yogesh Kumar had reached the said trauma centre and collected the MLC of PW1 Mohit, who was not fit for making a statement. PW14 has deposed that the other people, including PW 10 Vinod and PW8 Manjeet Singh, were present there, however, they refused to make any statement on

the pretext that they were in the process of shifting the injured-PW1 Mohit to LNJP Hospital. This reason cannot be accepted in a serious case like this and in view of PW8 not being an eye witness. The delay indicates that Manjeet Singh was not in a position to make any statement at that stage since he had not witnessed the incident. His statement was subsequently recorded at LNJP Hospital after almost six hours of the incident. Since PW8 fumbled in naming all the accused correctly in the FIR, this also makes his presence at the spot at the time of incident doubtful. It appears that till then everybody was in dark as to who had actually shot PW1 Mohit. In the FIR, PW8 has stated that Rohit, Pankaj and Rahul@Moni had surrounded PW1 Mohit and Rohit shot at Mohit and thereafter, all the three ran away. After about 12 hours he changed this statement and stated that Rahul@Chonchu had fired at PW1 Mohit and mistakenly he had named Rohit in the FIR. He also introduced the name of Manish in his supplementary statement. This is a material discrepancy. Even otherwise, since it has come on record that PW8 had not witnessed the incident more particularly, in view of the statement under Section 164 Cr.P.C. of PW1 Mohit the whole substratum of the prosecution story falls to the ground. The delay makes it clear that FIR was registered after due deliberations, discussions and tutoring of various

persons.

14. Though, PW1 Mohit has named the appellants and has described the incident in the same manner in which it has been set out in the charge-sheet yet it would not be safe to convict the appellants only on his testimony more so, when except Manish the other appellants were not known to him but still he had named them in his statement under Section 161 Cr.P.C. Appellants do not belong to his village. He only knew Manish@Aaloo. Appellants were not the residents of Mohit's village, thus, it is highly improbable that he could have named them except Manish, without being tutored in this regard. He has admitted in his cross-examination that he knew only Manish@ Aaloo. A perusal of deposition of PW1 shows that he did not correctly identify all the appellants. He stated that Pankaj and Manish were present in court; though only Manish@Aaloo and Rahul were present in the accused box. When court confronted this fact from him he deposed that other two accused Pankaj and Moni were not present. He stated so despite the fact that they were very much present in the dock behind the seat of public prosecutor, and an observation to this effect has been made by the court in the statement of PW1 recorded on 16th November, 2013. It is noted that examination-in-chief of PW1 was deferred immediately thereafter.

15. There is no other circumstantial evidence to nail the culpability of the appellants in the crime. Weapon of offence was not recovered in this case, inasmuch as, no cartridge was extracted from the body of PW1 Mohit. Though, PW1 has claimed in court that the bullet was still lodged in his chest but no scientific or medical evidence is there on the record to corroborate his this version. MLC prepared at Sushrut Trauma Centre has been proved but he was not treated there. He was treated at LNJP Hospital. Neither his treatment record has been produced and proved in court nor any doctor, who had treated him, was produced in the witness box. There is nothing on record to indicate as to whether the bullet was removed from the body of PW1 Mohit or not. Had any bullet been recovered from the body of PW1 Mohit as well as the weapon of offence been recovered, the same would have been useful to connect the appellant-Rahul@ Chonchu, who had allegedly fired at PW1. No shell of the fired cartridge was recovered from the spot even though the Investigating Officer had reached the spot shortly after the incident. No blood was found at the staircase where PW1 was allegedly shot by Rahul@Chonchu. PW14 has categorically deposed that no blood was found on the staircase. The photographs of the staircase also does not reflect any blood stains. As per the PW14, blood was found at the gate

of community centre, which is not the crime scene.

16. In view of the shaky, blemish and untrustworthy statement of PW1 and the other discrepancies, as pointed out above, the circumstantial evidence for corroboration assumes importance, which is totally missing in this case. For the foregoing reasons, I am of the view that prosecution has failed to prove its case against the appellants beyond the shadow of reasonable doubts and appellants are entitled to get the benefit of doubt. Accordingly, appeals are allowed and impugned judgment is set aside. Appellants are acquitted. They be released forthwith, if not required in any other case.

17. All the above noted appeals are disposed of. Copy of the judgment be sent to the Jail Superintendent for serving it upon the appellants and for compliance.

A.K. PATHAK, J.

MAY 22, 2017

ga