

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

Reserved on: 19th July, 2018

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Decided on: 15th November, 2018

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CRL.A. 692/2017

ANIL CHAUHAN @ SANDEEP

..... Appellant

Represented by: Mr. Islam Khan, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the
State with SI Narasi Prasad, PS
Hazrat Nizamuddin.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal, Anil Chauhan @ Sandeep challenges the impugned judgment dated 8th May, 2017 convicting him for the offences punishable under Sections 186/307/174A IPC read with Sections 25/27 Arms Act and the order on sentence dated 15th May, 2017 directing him to undergo simple imprisonment for a period of three months for the offence punishable under Section 186 IPC, rigorous imprisonment for a period of five years and to pay a fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for a period of three months for the offence punishable under Section 307 IPC and rigorous imprisonment for a period of five years for the offence punishable under Section 25/27 Arms Act.

2. Learned counsel for the appellant submits that the prosecution story that an information was received that one person will go to take delivery of the car for ₹50,000/- is doubtful. Furthermore it is impossible that the bullets fired in front of the car, would not hit the car. Versions of Ct. Vedhveer

Singh (PW-1), Ashok (PW-3) and SI Karamveer Singh (PW-6) qua firing are different. Cars which were the case properties were not taken into custody nor mechanical examination thereof was got conducted. SI Karamveer Singh stated that there were two ladies in the car whereas Ashok does not state the above fact. The distance between the place of arrest and firing was 200 meters, hence alleged firing could not have been witnessed.

3. Learned APP for the State submits that the case of the prosecution is duly proved by the testimony of independent witness Ashok, which is duly corroborated by the opinion of the ballistic expert. There are no contradictions in the testimonies of the prosecution witnesses.

4. Sequence of events of the prosecution case is that two persons Dubble Bahadur and Nawal Singh were arrested for theft of a car in case FIR No.222/2000 under Sections 379 IPC at PS Defence Colony. During their interrogation, they revealed that Anil Chauhan @ Sandeep and Vinod Kumar @ Kalu commit theft of new vehicles in Delhi and send the same to Nepal through Nepali carrier. Technical surveillance was kept and information was passed on. On 3rd May, 2000, FIR No.325/2000 was registered at PS Defence Colony for the offence punishable under Section 379 IPC for theft of one Pajero car bearing No. DL 2 CH 6651.

5. On 6th May, 2000, SI Karamveer Singh had gone to the parking of Sujan Singh colony in connection with the investigation of the case. In the corner of the park, one Pajero car with number plate bearing No.CH 01 Z 0101 was found parked. Complainant Krishan Gopal Atari (PW-10) identified the vehicle as his and the number plate affixed was fake. SI Karamveer Singh along with Ct. Mahesh, Ct. Vedhveer, Sudhir and HC Jagat kept vigil.

6. On 7th May, 2000 one person came there in a suspicious condition, reached near the Pajero car and after observing the place, he took out the key from the right pocket of his pant, opened the car, sat on the driver seat and started the vehicle. The police officials apprehended that person. On interrogation, his name was revealed as Padam Raj Awasti resident of PS Mahendergarh, Dist. Kanchanpura, Nepal. He further revealed that he was sent by one Anil Chauhan @ Sandeep with the key for taking the same to Nepal and Anil Chauhan @ Sandeep promised him to pay ₹50,000/-. He further revealed that he was dropped by Anil Chauhan @ Sandeep in a stolen Maruti Zen car in which his wife and sister-in-law were sitting near Ambassador Hotel. Padam Raj was directed to come with the stolen Pajero Car to Sunder Nagar park where another stolen Maruti Zen was parked. HC Jagat Singh and Ct. Sudhir remained at the spot where Pajaro car was parked. SI Karamveer Singh along with Ct. Mahesh, Ct.Vedhveer and Padam Raj went to Sunder Nagar Park at about 9:15 P.M. Padam Raj pointed out towards one Maruti Zen white colour car on which number plate bearing No. DL 3 CP 5369 was affixed. The police officials took their positions. After few minutes another Maruti Zen car bearing No. DL 7 CD 3643 came there and one person came out from the vehicle from the driver seat. Padam Raj pointed out towards that person and identified him as Anil Chauhan @ Sandeep. SI Karamveer and Ct. Vedhveer tried to apprehend Anil Chauhan @ Sandeep but he sat in the car and fled away. They followed the car on their scooters. In the meantime, one Honda City car bearing No. DL 3 CB 1571 came there and they requested the person driving that car to follow Maruti Zen Vehicle. They got seated in the Honda City car and started following the Maruti Zen. There were two ladies, who were sitting

on the back seat of the Maruti car, who told Anil Chauhan to fire on the police officials. On their instruction, Anil Chauhan fired towards their vehicle. In the meantime, the Maruti Zen car ran over the footpath and hit against one huge tree pot, as a result of which, the Maruti Zen car stopped. SI Karamveer with the help of Ct. Vedhveer overpowered Anil Chauhan @ Sandeep with a country made pistol. On his search, one live cartridge was recovered from the right pocket of his pant. Country made pistol was checked and from its barrel, portion of fired cartridge was recovered. The ladies who were sitting on the back seat of the vehicle were interrogated and their names were revealed as Sita and Geeta. Consequently, FIR No.207/2000 (Ex.PW-4/A) was registered at PS Hazrat Nizamuddin for the offences punishable under Sections 186/353/307 IPC and Sections 25 Arms Act.

7. Further investigation of the case was handed over to SI Praveen (PW-7). He prepared the site plan (Ex. PW-7/A) at the instance of SI Karamveer. Disclosure statement of Anil Chauhan was recorded vide Ex.PW-1/J who was arrested vide arrest memo Ex.PW-1/C and his personal search was conducted vide Ex.PW-1/I.

8. On 12th September, 2000 ACP Kumar Gyanesh (PW-8) forwarded the written complaint (Ex. PW-8/A) by SI Praveen Kumar as well as the documents to the Court under Section 195 Cr.P.C. On 24th April, 2002 P. Kamraj (PW-9) Deputy Commissioner of Police, South District accorded sanction (Ex.PW-9/A) under Section 39 Arms Act against Anil Chauhan @ Sandeep.

9. Krishan Gopal Atari (PW-10) complainant deposed that on 3rd May, 2000 he left his house to meet his mother at House No. 209, Masjid Moth

New Delhi, in his Pajero car with registration No. DL 2 CH 6651. He went inside the house after parking his Pajero car in front of the house. When he came back after 15-20 minutes, he could not find the Pajero where he had parked it. Consequently, he lodged a complaint regarding theft of his car at PS Defence Colony and FIR No. 325/2000 was registered on the said complaint.

10. Ashok (PW-3) stated that on 7th May, 2000, at around 9:15 A:M-9:20 A.M., when he was going from South Extension to Daryaganj in his car, he was stopped by police officials at the red light before Chidiya Ghar. He allowed the officials to board his car and followed the stolen vehicle. They followed the stolen vehicle Maruti Zen (number plate: 3643) and in the process his car was damaged. He categorically deposed that the appellant fired on his vehicle before red light. On apprehension, a katta was in his hand. The katta had an empty cartridge and on search of appellant another live cartridge was recovered. He identified his signatures on the sketch and seizure memo.

11. Contradiction as pointed out by learned counsel for the appellant in the testimony of Ct. Vedveer and the Investigating Officer as to the time of receipt of rukka and copy of the FIR from the police station is not material and does not go to the root of the matter as by passage of time exact time may not be remembered. As noted above Ashok is an independent witness in whose car lift was taken by the police officers to follow the stolen Zen car. Even in the cross-examination of Ashok nothing material has been elicited. Car of Ashok got damaged not due to firing but he was following the Maruti Zen car driven by the appellant at a high speed. In his cross-examination Ashok clarified that he had taken the claim of damage from the insurance.

Though learned counsel for the appellant states that Ct. Vedveer stated that the appellant fired at them, whereafter his car dashed with the patri and he was arrested however, SI Karamveer Singh stated that there was a distance of around 200-300 meters from the place of occurrence and the place of arrest.

12. There is no contradiction in the two statements for the reason the place of occurrence would be technically from where the car was stolen and the firing was done and not where the car dashed. Merely because the two were not seized in this FIR which related to offence punishable under Sections 186/307/174A IPC and 25/27 Arms Act the same will not affect the case of the prosecution.

13. Main contention of learned counsel for the appellant is that no intention to kill can be deciphered from the case of the prosecution as SI Karamveer Singh stated that the appellant fired towards their vehicle, hence Section 307 IPC is not made out. From the narration of the statements of the witnesses, it is evident that while the police party was chasing the appellant by taking a lift from Ashok to deter the police party from following them the appellant fired. The firing was with the clear intention to deter the police party from following him and in the process if hurt would have been caused the same would have been caused with the intention to cause murder. Hence there is no merit in the contention that offence punishable under Section 307 IPC is not made out. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and

may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. [See: (2004) 9 SCC 31 Vasant Vithu Jadhav v. State of Maharashtra]

14. In view of the discussion aforesaid, this Court finds no infirmity in the impugned judgment of conviction and order on sentence. Appeal is dismissed.

15. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

16. Trial Court record be returned.

(MUKTA GUPTA)
JUDGE

NOVEMBER 15, 2018
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