

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

% **Decided on: 5th February, 2018**

+ **CRL.A. 1210/2016**

ASHWANI @ CHINNI

..... Appellant

Represented by: Mr. Dhan Mohan, Ms. Tanu B. Mishra, Mr. Ravi Mishra, Ms. Harkamal Jeet Kaur and Ms. Manisha Saharan, Advocates.

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP for State with SI Karamvir, PS Narela.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present appeal, the appellant challenges the impugned judgment dated 5th November, 2016 convicting him for the offence punishable under Sections 307/34 IPC and the order on sentence dated 8th November, 2016 directing him to undergo rigorous imprisonment for a period of six years and to pay a fine of ₹2,00,000/- and in default of payment of fine to undergo simple imprisonment for a period of six months for the offence punishable under Sections 307/34 IPC.

2. Learned counsel for the appellant submits that the dispute was between the complainant and co-accused Dinesh and Dinesh has been acquitted by the learned Trial Court. Hence, the appellant is also required to be acquitted.

3. Learned APP for the State on the other hand contends that the name of the appellant is mentioned in the PCR call. There is categorical

deposition with respect to the role of the appellant in the testimony of Rajesh (PW-12) and Narender (PW-14). Furthermore, acquittal of Dinesh has no implication on the appellant.

4. Process of law was set into motion on 10th May, 2011 around 9:50 P.M. when information was received from the wireless operator to the effect that “*H.No.1033, Pana Paposiya, Narela do ladke ek ladke ko goli maar kar bhag gaye*”. Aforesaid information was recorded vide DD No.32A (Ex.PW-1/A) and was entrusted to SI Ram Kishan (PW-18) who along with Ct.Anuj (PW-4) reached the spot i.e. main street of market of Narela at chabutra (platform) outside one house. They learnt that two persons had been shot and were taken to SRHC Hospital, Narela. Ct. Anuj remained at the spot while SI Ram Kishan went to hospital and collected MLCs of both the injured Narender and Rajesh @ Monu. Rajesh @ Monu was unfit for statement but Narender was declared fit for statement and therefore, he recorded his statement (Ex.PW-14/A).

5. Narender stated that he was a resident of H.No.1033 Pana Paposian, Narela, Delhi and works as a ‘desi baid’. On the date of the incident, at around 9:30 P.M. he along with his friend Rajesh @ Monu, s/o Raghubir Singh, R/o H.No.1029 Pana Paposian, Narela, Delhi was sitting on a ‘Chabutra’ in front of their friend Rohtash, S/o Sardar’s house when a motorcycle with two men came. Out of them the one unknown man who was sitting in front was not wearing a helmet and sitting behind him was Ashwani (appellant), S/o Chini who resides near the gas godown in the neighbourhood. The motor cycle stopped near them and Ashwani took out his pistol and started firing at them. He further stated that both of them suffered bullet wounds whereby they ran towards their houses but Ashwani

ran behind them and kept shooting at them. Thereafter, Ashwani and his accomplice ran away on the motor cycle. He stated that this life threatening attack on them was done by Ashwani and his accomplice whose name he did not know but can identify him if brought in front. Thus legal action be taken against them.

6. On the basis of the aforesaid statement, FIR No. 205/2011 (Ex. PW-1/B) was lodged for the offences punishable under Sections 307/304 IPC and Sections 25/27/54 of Arms Act, 1959. SI Ram Kishan again went to the spot and picked up blood lying there with a cotton swab, seized vide seizure memo is Ex.PW-4/B, earth control vide memo Ex.PW-4/D, blood stained earth vide memo Ex.PW-4/C and two empty cartridges were seized vide memo Ex.PW-4/A. Site plan (Ex.PW-18/A) was prepared at the instance of Narender. Blood stained clothes of Rajesh @ Monu were seized vide memo Ex. PW-4/F. Photographs (Ex. PW-3/1 to 15) of the spot were taken. Crime team report (Ex.PW-9/A) was prepared by Inspector Anil Kumar (PW-9). Efforts were made to find out the accused persons. On 3rd October, 2011, co-accused Dinesh, who had already been arrested by Special Staff in FIR No. 255/2011 under Sections 25/24/59 Arms Act, was produced in Court. His disclosure statement was recorded and his personal search memo was prepared vide Ex.PW-18/C. Ashwani was declared proclaimed offender, however, he was arrested later on in FIR No. 195/2012 whereafter he was arrested in the present case vide arrest memo Ex. PW-19/D and a pistol was recovered from him. After completion of investigation, charge sheet was filed. Charge was framed.

7. Narender was examined as PW-14 in Court. He deposed in sync with his statement made before this police as noted above. Rajesh @ Monu (PW-

12) corroborated the testimony of Narender.

8. Rohtash (PW-16) stated that he was inside the house eating at around 9:30 P.M. On hearing noise, he came out of his house and saw his nephew Rajesh in an injured condition. He was told by Rajesh that he had been shot by Ashwani. He took him to the SRHC hospital, Narela.

9. Dr. Avdhesh (PW-6), Medical Officer, SRHC Hospital stated that on 10th May, 2011 he was working as casualty officer in the aforesaid hospital. He examined Rajesh who was brought by Rohtash, his uncle, with an alleged history of bullet injury. He prepared the MLC of Rajesh Ex. PW-6/A and on examination, following injuries were found:

- i. Three bullet injury wounds over left upper chest, bleeding from wounds was present.
- ii. One bullet injury on right arm, for which the patient was provided emergency treatment and further referred to SR surgery for further treatment and management.
- iii. One bullet injury over right side of upper chest which was profusely bleeding which was measuring 1 x 0.5 cms.

10. Dr. Avdhesh also examined Narender. On examination he found that there were four punctured wounds out of which one was on left upper back, two wounds were on left arm and fourth wound on left upper chest. Each wound was measuring 1 x 0.5 cms. MLC of Narender is Ex. PW-6/B.

11. Dr. A.K. Rawat (PW-8), Consultant Surgeon stated that on 10th May, 2011, Narender was examined and operated on by him. He observed the following injuries.

- i. Gun shot injury on left arm.
- ii. Gun shot injury on left chest.

12. Copy of the discharge summary is Ex. PW-8/A. He opined that the nature of injuries sustained by Narender were dangerous to his life. A certificate to this effect was issued vide Ex. PW-8/B.

13. Co-accused Dinesh was acquitted by the learned Trial Court for the reason he was not named in the FIR and on the basis of statement of Narender who stated that the person driving the motorcycle was not wearing the helmet and it also came in evidence that he was known to the injured but still he failed to name him. Considering the nature of evidence of the two injured witnesses duly corroborated by the injuries received by them and appellant being named by the injured in the first instance itself, this Court finds no illegality in the impugned judgment of conviction and order on sentence.

14. Appeal is accordingly dismissed. Copy of the order be sent to Superintendent, Central Jail, Tihar for updation of jail record.

15. Trial Court record be returned.

(MUKTA GUPTA)
JUDGE

FEBRUARY 05, 2018

‘vn’