

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

% Reserved on: 7th May, 2019
Decided on: 20th May, 2019

+ **CRL.A. 1175/2017**

SHER MOHD. @ SHERA Appellant
Represented by: Ms. Naomi Chandra, Advocate
versus

STATE Respondent
Represented by: Mr. Ashok Kumar Garg, APP
for the State with ASI
Mahender Singh, PS Nand
Nagri

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Sher Mohd. @ Shera challenges the impugned judgment dated 4th January 2017 convicting him for the offence punishable under Sections 367/393/34 IPC in FIR No. 771/2014 registered at PS Nand Nagri and the order on sentence dated 21st January 2017 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.3000/- and in default whereof to undergo simple imprisonment for a period of one month for the offence punishable under Sections 367/34 IPC and rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- and in default whereof to undergo simple imprisonment for a period of one month for the offence punishable under Sections 393/34 IPC.

2. Learned counsel for the appellant contends that recovery of the gun is highly doubtful. As per the testimony of the complainant, appellant's associate put a gun on him and ran away. Therefore even as per the

prosecution, gun was not used by the appellant. She further submits that nothing was found in the personal search of the appellant and only one mobile was recovered.

3. Learned APP for the State on the other hand contends that the impugned judgment and the order on sentence suffers from no illegality.

4. Process of law was set into motion on 9th August 2014 at about 11:25 P.M. when a telephonic call was received and ASI Satyaprakash informed that he was posted as in charge of PCR Van Baker 35. Saurabh Sharma was riding on his motorcycle DL-5S-BJ-7735 Passion Pro when three boys stopped him and tried to snatch away his motorcycle and mobile phone. On hearing noise of someone screaming “*Pakdo Pakdo Badmash*” they reached the spot. They caught one person namely Sher Mohd. (Appellant herein) who was found in possession of one pistol loaded with five cartridges. Two of Sher Mohd.’s friends fired at them and ran away. Aforesaid information was recorded vide DD No.71B (Ex.PW-2/C) and assigned to HC Kiranpal.

5. HC Kiranpal along with Ct. Shradha Ram went to the spot at Wazirabad Road, near ITI, Nand Nagri where they met ASI Satya Prakash who was present with Saurabh Sharma and Sher Mohd. He recorded the statement of Saurabh Sharma wherein he stated that he worked as an Electrical Engineer in Uttar Pradesh Nirman Nigam at Sector 30, Noida. On the day of the incident, he was coming back from work on his motorcycle bearing no. DL-5S-BJ-7135 and around 10:30 PM, he reached near Nand Nagari Bus Stand at Wazirabad Road from Gagan Cinema side. He stopped to check who was calling on his phone, when three persons came and asked him to show papers of motorcycle. When he inquired for what purpose they wanted to see the papers one person replied that his motorcycle had been

stolen. He showed his motorcycle papers to the three persons. One of the persons who was wearing a yellow T-Shirt, aged about 20 years, slim built called someone informing him that he did not have a Registration Certificate for the motorcycle and told him that he should also reach Loni round about. Two persons, one wearing red T-shirt, broad built and the other wearing yellow T-shirt, sat on his motorcycle. He refused to ride the motorcycle with three people as he would get challaned for the same. The person wearing the yellow T-shirt sat in the middle and the person wearing the red T-shirt sat behind him. One who was wearing the yellow T-shirt put pistol on him and asked him not to stop before the roundabout, as they had to take away his motorcycle and use it for snatching. Out of fear, he started riding towards ITI Nand Nagari and after 3-4 minutes, when he reached near ITI Nand Nagari, he saw one PCR van with the staff standing outside of the PCR van. He crashed his motorcycle in front of PCR van and shouted '*pakdo pakdo*'. The person wearing yellow T-shirt got off the falling motorbike and started running. ASI Satya Prakash started running behind him. After about 50 meters, the person wearing yellow T-shirt fired two shots at ASI Satya Prakash and ran away in the dark towards Nand Nagari flyover crossing. Some TSR were also present at the spot. At the same time, HC Ram Niwas caught hold of the other person. On the basis of the aforesaid statement, FIR No. 771/2014 (Ex.PW-2/A) was lodged at PS Nand Nagri for the offence punishable under Sections 393/397/367/186/353/307 IPC and for the offence punishable under Sections 25/27 Arms Act.

6. After the registration of FIR, the case was handed over to SI Nitin. He along with Ct. Sharda Ram reached the spot where HC Kiranpal handed over one pistol, five live cartridges and the appellant to him. He prepared the

sketch memo of the live cartridge and pistol vide Ex.PW-7/A and sealed them with the seal of NK and seized them vide seizure memo Ex.PW-1/B. Site plan was prepared at the instance of the complainant Saurabh Sharma vide Ex.PW-7/B. The appellant was arrested vide arrest memo Ex.PW-7/C, his personal search was conducted vide Ex.PW-7/D and his disclosure statement was recorded vide Ex.PW-7/E. The pullandas were sent to FSL on 3rd September 2014 vide RC Ex.PW-6/B.

7. On completion of investigation, charge sheet was filed. After receiving the report from FSL a supplementary charge sheet was filed. Charge was framed against the appellant for the offences punishable under Sections 307/367/393/353/186/34 IPC and under Section 25 Arms Act vide order dated 17th April 2015.

8. Saurabh Sharma (PW-1), Complainant deposed in sync with his complaint made to the police.

9. The appellant in his statement recorded under Section 313 Cr.P.C. stated that he was not apprehended at the spot as alleged by the witnesses. No recovery of katta and cartridges was affected from his possession. Police official had prepared false documents to implicate him in the present case and obtained his signatures on blank paper.

10. From the evidence of the complainant and police witnesses, it has been proved that the appellant was arrested at the spot. The complainant in his statement does not say that the appellant was the one who showed him the pistol however, the fact that the appellant sat on the motorcycle of the complainant and made him take the motorcycle to Loni which the complainant avoided smartly by reaching a place where PCR van was parked is sufficient to uphold the conviction of the appellant for the offence

punishable under Sections 367 and 393 IPC. Appellant was not the one who showed the pistol or opened fire despite the fact that he had weapon of offence in his hand as the same was done by the other accused while running away. Thus, the appellant has been rightly acquitted for offences punishable under Sections 186/353/307 IPC.

11. From the overwhelming evidence of the prosecution this Court finds no infirmity in the conviction of the appellant for offences punishable under Sections 367/393/34 IPC and the order on sentence. Appellant was tried for offence punishable under Section 25 of the Arms Act however, no conviction thereon being recorded, the appellant would be deemed to be acquitted for the said offence and since no leave to appeal has been sought by the State for acquittal for the offence punishable under Section 25 Arms Act, no orders can be passed thereon.

12. Appeal is dismissed. Copy of this order be sent to Superintendent Central Jail Mandoli for updation of the Jail record.

13. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 20, 2019