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

Judgment reserved on: 03.12.2024

Judgment pronounced on: 06.02.2025

+ **CRL.A. 776/2023**

SANDEEP @ RODDI

..... Appellant

Through: Mr. Kanhaiya Singhal, Mr. Prasanna,
Ms. Chandani, Advs.

versus

THE STATE (NCT OF DELHI)

....Respondent

Through: Ms. Priyanka Dalal, APP
SI Gurtej Singh, PS JP Kalan

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is an appeal challenging the judgment dated 23.11.2022 and the order of sentence dated 11.05.2023 passed by ASJ(FTC) South West Dwarka Courts, New Delhi in case bearing FIR No. 48/2011, Sessions Case No. 441056/2016 registered at P.S Jafarpur Kalan u/s 307/34 and u/s 452/34 IPC.

2. The appellant has been convicted for offences u/s 307/452/34 and has been sentenced to undergo imprisonment for a period of 3 years & 6 months and fine of Rs. 5,000/- for the offence punishable u/s 307/34 IPC. Further, the appellant was sentenced to undergo rigorous imprisonment for a period of 3 years for the offence punishable under u/s 452/34 IPC and a fine of Rs. 5000/-.



3. When the matter came up for hearing on 26.11.2024, it was recorded that the appellant has already undergone the entire sentence.
4. The brief facts in the present case are that the appellant along with the main accused Sh. Harish Dagar in pursuance of a common intention with an intent to assault entered the house of Govind on 16.06.2011 at about 11:45 PM.
5. Co-accused Harish Dagar fired on the chest of the victim Govind from his unlicensed gun, the victim was taken to hospital where he survived the incident.
6. The FIR was lodged against the appellant and Harish Dagar as per the statement given by the victim's mother.
7. Charges were framed u/s 307/452/34 and u/s 25 and 27 of the Arms Act on 03.10.2011.
8. Prosecution examined 18 witnesses to substantiate the accusations against the accused persons.

PW1 HC Bhagwati Prasad was the Duty Officer at PS Jaffar Pur Kalan, on 12.05.2011. He proved the factum of lodging of DD No. 3-A making of call to SI Udai Singh, sending of rukka by SI Udai Singh through Ct. Sanjay, lodging the present FIR by him on the basis of said rukka and marking of investigating to PW-12 Inspector Ram Singh.

PW-4 Constable Virender was posted at CPCRC on 17.06.2011. He proved the factum of receipt of call regarding the incident from mobile number 9540372281, the factum of uploading the



said information on net, filling up of the PCR form and the PCR Form Ex. PW-4/A.

PW-6 Constable Suresh was the Photographer posted with mobile Crime Team South-West Delhi on 17.06.2011. He proved the factum of taking the photographs of the spot and also proved the said photographs as well as their negatives vide as Ex.PW-6/A to PW-6/A-12, Ex. PW—6/B-1 to PW—6/B-12.

PW-7 Inspector Anil Kumar was the Incharge Crime Team South West, New Delhi on 17.06.2011 who reached the spot along with one photographer PW—6. He proved the factum of finding blood spots in the compound of the house, factum of taking of photographs of the crime spot by photographer PW-6 on his instance, factum of inspection of the spot of incident and also proved his report in that regard Ex. PW-7/A.

PW-8 Constable Sanjay was the police official of PS Jaffar Pur Kalan, who was the first person to reach the spot along with SI Udai Singh, PW-13 from PS Jaffar Pur Kalan. He proved the factum of reaching of Inspector Ram Singh at the spot, the fact that he and SI Udai Singh were left at the spot by Inspector Ram Singh, the fact that PW-12 SI Ram Singh went to RTRM Hospital, the factum of return of Inspector Ram Singh to the spot after about one hour, the fact that mother of injured Govind had already reached at the spot, the factum of recording of



statement of victim's mother by Inspector Ram Singh, the factum of preparation of rukka and handing over of the same to him by Inspector Ram Singh.....

PW—9 Dr. Bikas Sinha was the Medical Officer in RTRM Hospital, Jaffar Pur, New Delhi who proved the MLC Ex. PW - 9/A of victim and his observations qua injuries upon the victim.

PW-10 Constable Ajay Pal was posted as Constable in Police Station, Jaffar Pur Kalan. He proved that he along with Inspector Ram Singh and SI Udai Singh reached village Issapur in search of accused Harish where they met the father of injured Govind who told them that accused Harish was seen in village Samaspur and he can be found there, the factum of reaching the house of accused Harish in village Samaspur, the factum that Inspector Ram Singh made inquiries from the mother of accused Harish, the fact that they went to the fields of accused Harish and remained hidden there for about ten minutes in wait for accused Harish, the fact that on his arrival there accused Harish was duly identified.....

IO/PW- 12/Inspector Ram Singh and PW—13/SI Udai Singh who accompanied the IO in the major part of the investigation.

PW-14 Sh. Pankaj Kumar Singh was posted as Addl. DCP, SW District Dwarka, New Delhi 26.09.2012.



PW—15 Sh. Naresh Kumar, was posted as Sr. Scientific Officer (Biology) on 05.08.2011 at FSL Rohini. The witness proved his biological report as Ex. PW—15/A and his serological report as Ex. PW-15/B. He further proved that out of the 10 sealed parcels received in the office of FSL, Rohini, three parcels were sent to Ballistic Division for examination.

PW—16 Sh. Puneet, was posted as Sr. Scientific Officer (Ballistics), FSL, Rohini on 24.11.2011. He proved the factum of receiving three sealed parcels through Biology Division of their laboratory. He further proved that the country made pistol marked as Ex. F1 was a firearm and the cartridges marked as Ex. A1 and Ex. A2 and the bullet marked as Ex. EB1 were ammunition as defined in Arms Act 1959. He further proved the his detailed report in this regard as Ex. PW- 16/A.

PW-17, Dr. Maninder Kaur Chhabra, Specialist Surgery was posted at DDU hospital on 17.06.2011. She proved the fact the victim/patient was admitted in surgery department and was operated on the same day and the fact that his injuries were dangerous and caused by gun shot. She further proved the original discharge file of patient Govind vide Ex. PW-17/A and the fact that bullet was handed over to Ct. Dushyant Rathee.

PW-18 SI Narender Singh (was summoned pursuant to allowing of application under Section 311 CrPC) was posted as HC at PS J.P. Kalan on 17.06.2011 and was assigned duty of MHC(M). He proved the factum of deposition of seven sealed parcels on 17.06.2011 by the



IO Inspector Ram Singh in the malkhana vide entry number 962/11 Ex. PW—18/A made in the register number 19. He further proved that on 20.06.2011 three sealed parcels and one Zen car bearing registration number DL3CK2680 was handed over to him by the IO which were also deposited in the malkhana vide entry number 966/11 Ex. PW- 18/B made in the register number 19. He further proved that on 5/8/2011 10 sealed parcels of this case were got deposited in FSL, Rohini vide RC number 104/21/11 Ex. PW—18/C and the case property remained intact in his possession.

9. The accused persons recorded their statements u/s 313 Cr.P.C. but did not lead any defence evidence.

10. The learned counsel for the appellant has stated that there are material inconsistencies in the evidence led by the prosecution especially the statement of PW-2, PW-3, PW-5.

11. It is stated that PW-2 (mother of the victim) and PW-3 (father of the victim) were not the eye-witnesses and were not present at the time of the alleged incident.

12. It is further stated that the statement of PW-5 (victim himself) has not established any role of the appellant in the occurrence of the event. Merely because the appellant was present at the time of the incident does not make him guilty of the offence u/s 34 IPC.

13. It is also stated that the Ld. Sessions Court mis-appreciated the evidence of PW-2 (mother of the victim), wherein PW-2 had specifically stated that she allowed the appellant to enter the house willingly as she knew the co-accused. It is stated that the Ld. Trial Court erred in convicting



the appellant u/s 452 IPC by declaring the space outside the house of the victim as building and considering it as house trespass

14. I have heard the learned counsel for the parties, PW-5 is the victim and his testimony is clear, cogent and trust worthy. He has categorically stated that on 16.06.2011 he was present in a marriage party in Kazipur, New Delhi. The co-accused Harish and the appellant were present in the marriage party and were drunk. The victim knew both the persons as they were in his friend circle. On account of hurling abuses, a scuffle took place between the victim and the co-accused and they manhandled each other. Thereafter the victim came home and slept. Sometime later the accused persons came to the house of the victim and crossed over the boundary wall and knocked on the door which was opened by the mother of the victim PW-2.

15. The appellant exhorted the co-accused Harish to kill the victim by saying that he was acting smart at the marriage party and thereupon Harish fired upon the victim. The bullet hit him on the left side of his chest and he was rushed to the hospital where he remained admitted for about 10-11 days. The clothes of the victim were seized and were exhibited as P-2 (colly). The defence in the cross-examination were not able to shake the testimony or the credibility of the evidence of PW-5. The testimony of PW5 in this regards reads as under:-

14.03.2012

PW5/Govind -I heard accused Harish and Sandeep hurling abuses and I asked them why they are doing so. A scuffle took place between me and the two accused and we manhandled each other.



Thereafter all of us left the marriage party. I returned to my home and slept.

After some time, the two accused Harish and Sandeep came to my house and crossed over the boundary wall of our house. They knocked on our door which was opened by my mother. I also came out. The two accused asked my mother for tea. I also asked my mother to serve the two accused with water and tea. Accused Harish asked me to come outside as he had to talk to me. I refused. At the same time, accused Sandeep exhorted Harish to kill me saying that I was acting smart in the marriage party. Accused Harish made a gun fire on me. The bullet hit me on the left side of my chest. I fell down on the floor and both the accused ran away. Thereafter I was taken to RTR Hospital Jafarpur from where I was referred to DDU Hospital, where I remained admitted for about 10 to 11 days.....

16. The identity of the accused persons, the entry of the accused persons after crossing over the boundary wall, the firing of the gun-shot by the co-accused Harish on the left side of the chest of PW-5 at the instance of the appellant due to which the PW-5/victim sustained injuries and the quarrel in the marriage function at Kazipur being the motive behind causing the injury by the accused persons, to my mind, stands proved.

17. In addition, PW-2 Sunita, PW-3 Ajay Singh are the parents of victim PW-5/Govind, who are eye witnesses and present at the time of the incident. PW-2 supported the version of PW-5 by deposing in her examination-in-chief regarding the factum of knocking at the door by accused Harish at about 11:30, the exhortation given by the appellant to fire



upon the victim, the gun firing made by Harish on PW-5, bullet hitting left side of the chest of PW-5. Their testimonies in this regard reads as under:-

16.01.2012

PW2/Sunita (eye witness):Somebody knocked at the door I asked who is it. I heard the voice of accused Harish saying that it is me. I went to open the door. My husband also was with me. I opened the door and accused Harish said 'Namaste' to me and my husband. He told me that he has some work with Govind. I woke up Govind. Accused Harish shook hands with Govind and they started talking with each other about some mobile phone. While talking, they went outside the house, I also followed them. Accused Harish asked me to fetch some water for him. When I turned around to go inside the house and fetch water, I heard the voice of accused Rori exhorting Harish to hit on the chest of my son (the witness used the expression "de chhati mein"). When I again turned around to see what was going on, by that time, accused Harish had fired upon my son. The bullet had hit my son on the left side of the chest. I followed accused Harish but he jumped over the wall and left in a waiting car outside the gate. I could not jump over the wall. Thereafter accused left.....

16.01.2012

PW3/Ajay Singh (eye witness):Somebody knocked at the door. I shouted from inside who is it? I did not hear any reply. The door was knocked again. I again shouted who is it? The person at the door spoke that he is Harish. Meanwhile my wife opened the door. She



spoke to Harish for about half a minute and thereafter she came inside. I asked what the matter was and she replied that it is the friend of Govind. I told my wife to ask that person to leave and come in the morning as it is not the time to visit a house. While I was talking to my wife, my son Govind woke up. He asked me not to be angry. Govind went outside. My wife also went outside the room. When they did not return for about one or two minutes, I also went outside. My wife was standing on the varandah of the house. Govind and Harish were standing at a distance of about 7/8 ft. from my wife. They were talking to each other while shaking their hands. On seeing me Harish said 'Namaste' to me. I asked them to wind up their talks quickly and go to sleep. I went towards the wall of the courtyard to answer the call of nature. Soon I heard a voice of a person saying that hit on the chest (witness has used the expression "de chhati mein"). I turned my head towards the direction of the voice and I saw accused Sandeep present in court today, standing at a distance of about 8 to 10 paces from me. Harish and Govind were standing behind me at the same distance. Just after two or three seconds when I had heard the aforesaid expression, I heard the sound of a gun fire. When I turned back to see what has happened, I saw Govind holding his chest with both his hands and bending downwards. Accused Harish, present in court today, was fleeing away from the spot. I became scared on seeing the condition of Govind. I felt giddy and sat at that place only. Thereafter Govind shouted and I realised that he is alive. I reached near Govind and he told me that he has received a bullet in his chest. Thereafter I as well as my wife called PCR on telephone NO. 100. We also took



Govind to RTR Jafarpur Hospital in the car of my uncle. There Govind was given some first aid treatment and thereafter was referred to DDU Hospital. We took him to DDU hospital in an ambulance where he remained admitted for about 14/15 days.....

18. The cross-examination has not been able to discredit the testimony of the eye witnesses or shake its credibility. Both the witnesses' statements corroborate the statement of PW-5 and are firm. The blood stained clothes worn at the time of incident were exhibited as Ex. P-2 by PW-2. Similarly, father of the victim identified the red colour shirt worn by the appellant and the blue jeans worn by the co-accused Harish. The said testimony has gone un rebutted. PW-5 also identified his clothes Ex. P-2.

19. PW-12 IO Mr. Ram Singh and PW-13 who accompanied the IO have also testified the factum of recovery of the aforesaid clothes from the eyewitness/injured as well as the accused persons.

20. The testimony of PW-12 also clarified that the boundary wall of the house is about 4½ feet, there is a distance about 40 feet between the main gate and the house. Hence, the house comprised of the main building with a veranda surrounded by a boundary wall and one gate installed on the boundary wall and the other at the main building.

21. As per the testimony of PW-12, the incident took place outside the dwelling house but in the house of the victim which was enclosed by the boundary wall. The Ld. Sessions Judge has correctly appreciated that it is the accused persons armed with gun/pistol entered the house of the victim by crossing over the boundary of the house and hence committed criminal trespass after making preparation for causing harm which is duly



established.

22. The learned Sessions Court further correctly analyzed that both the accused persons namely, the appellant and Harish were present together at the place of incident and hence had committed house trespass after making preparation to cause hurt to the victim. The consistent testimonies of PW-2, PW-3 and PW-5 clearly establish that the accused persons not only committed house trespass but also made preparation to cause hurt to the victim and shared the common intention to kill the victim by firing at the victim.

23. The medical evidence also supports the injury on the victim which was a gun shot. The same has duly been proved by PW-9 Dr. Bikas Sinha (who prepared the MLC Ex. PW-9/A). The injury being “dangerous” was also confirmed by PW-17 Dr. Maninder Kaur Chhabra.

24. The learned Sessions Court in the impugned order has also discussed the arrest, recovery evidence and the ballistic evidence which is neither being doubted nor challenged in the present appeal.

25. For the said reasons, I find no infirmity in the order of learned Sessions Court which is well analyzed and based on the evidence available.

26. For the said reasons, the appeal is without merit and is dismissed.

JASMEET SINGH, J

FEBRUARY 6th, 2025

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