

(2025) 10 DEL CK 1306
In the Delhi High Court
Case No : Criminal Appeal No.652 Of 2023

Sanjay @ Sanjeev @ Baba

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-10-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313
Indian Penal Code, 1860 — Section 174A, 186, 307, 353
Arms Act, 1959 — Section 25, 27

Citation : (2025) 10 DEL CK 1306

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Archit Upadhayay, Muskan Aggarwal, Pragya Mishra, Pradeep Gahalot

Final Decision : Allowed

Judgement

Manoj Kumar Ohri, J

1. Having been convicted and sentenced to undergo Rigorous Imprisonment (RI) of 7 years for offences punishable under Section 307 IPC along with fine of Rs.25,000/- and in default thereof, Simple Imprisonment (SI) for six months; under Section 186 IPC, SI for 03 months; under Section 25 of Arms Act, RI for 03 years and fine of Rs.10,000/-; and under Section 27 Arms Act, RI for 5 years as well as fine of Rs.10,000/-, the appellant has assailed the impugned judgment of conviction dated 13.03.2023 as well as order on sentence dated 21.04.2023. The appellant was also directed to pay fine and to undergo default sentence for non-payment of the same.

2. The sentence of the appellant was suspended by this Court vide judgment dated 15.01.2024.

3. As per the prosecution on 17.04.2004, DD No.18A came to be recorded on the information provided by a secret informer that the appellant is wanted in a case by the Lajpat Nagar Police Station and is also absconding in a case registered by

the Maharashtra police, who is having illegal weapon for commission of offence is present at Shiv Mandir, Janta Camp near Railway Bridge, Pragati Maidan. The raiding party reached the spot and later apprehended the appellant and from his possession, a katta (country-made pistol) along with one live cartridge and one empty cartridge were recovered.

4. On completion of investigation, the charges, on a complaint, were framed under Sections 186/353/307 IPC and under Sections 25/27 of Arms Act. Later, on appellant's non-appearance, he was declared a proclaimed offender and supplementary chargesheet qua the offence under Section 174A IPC was filed.

5. The prosecution examined 11 witnesses in total and all of them were police official witnesses. Dr. Puneet Puri, Assistant Director, Ballistics, who was examined as PW-10, exhibited FSL report as Ex.PW2/C.

6. The appellant in his statement recorded under Section 313 Cr.P.C. claimed false implication.

7. Notably, the charges under Sections 353/174A IPC were not made out and the appellant was acquitted for the said offences.

8. Learned counsel for the appellant contends that the appellant has been falsely framed in the present case at the instance of the police officials. Though the secret information pertained to the appellant being wanted by the Lajpat Nagar Police Station and Maharashtra police, no such evidence was recorded or the same was placed on record. Even otherwise, on reading of the prosecution witnesses would show that a glaring contradiction appeared in their testimony not only about the apprehension of the appellant, but also for the offence under the Arms Act. No public person was joined either at the raid or during the alleged recovery of articles.

9. The contentions of the counsel for the appellant were disputed by the learned APP who submitted that the appellant had fired upon the police party on which he was apprehended and the statement of the police officials are creditworthy.

10. It was ASI Attar Singh, who was examined as PW-8, who received the secret information and reduced the said information into writing vide DD no.17A dated 17.04.2004 at about 8.00 PM and the same was exhibited as PW-8/A. He deposed that the secret informer along with DD was produced before Ms Pratima Sharma, SHO, P.S. Tilak Marg, examined as PW-7, who directed Attar Singh to conduct raid immediately. Thereafter, a raiding team of him along with HC Kishan Pal, Ct. Suresh, Ct Brij, Ct. Sandeep was constituted and the police party reached Gate No.1, Pragati Maidan at about 8.25 PM. When they entered inside to apprehend the appellant, the appellant was identified by the secret informer and at that time, the appellant took out a country-made pistol and after seeing the police party, he threatened that if they tried to apprehend him, he would kill them and thereafter, he started fleeing. When the raiding team asked him to surrender, he fired from his country-made pistol towards the witness. The

witness deposed that he managed to save himself and ran towards the appellant and apprehended him. The custody of the appellant along with the case property i.e., the country-made pistol, empty cartridge and live cartridge were handed over to SI Rajkumar.

In cross- examination, the witness admitted that he was not aware if any written information was available about the absconder with the police station. He admitted that he had not collected the FIR or case particulars in which the appellant was absconding. A suggestion was given that the appellant was not wanted in any case of Maharashtra, which was denied. He stated that the police vehicle was stopped in front of Gate no.1, Pragati Maidan which was about 500 Sq. Yds. from the gate and the distance between the parking spot and Shiv Mandir was 400-500 metres. He admitted that the site-plan was not prepared by him and though 4-5 passersby were asked to join investigation, they refused. He stated that he did not remember whether the SHO was present inside the temple at the time of firing. He stated that he did not make any public person join investigation either before apprehension of appellant or thereafter. He denied the suggestion of false implication of the appellant.

11. SI Rajkumar was examined as PW-2. He deposed as to conducting further investigation. He prepared the site plan (Ex. PW2/A) at the instance of ASI Attar Singh and thereafter arrested the appellant. He deposited the case property in Malkhana and later the same was sent to FSL. In his cross examination, he deposed that the sealing was not done in his presence.

12. Ms Pratima Sharma (retired ACP), was examined as PW-7. She deposed that she had reached the spot. She had briefed the raiding team at 8.15 pm on 17.04.2004. She also reached Gate no.1, Pragati Maidan and the raiding team went across the road for Shiv Mandir. At about 8.40 PM, she heard firing sound from the side of Shiv Mandir upon which she went towards the Shiv Mandir side, where she found that the accused was apprehended by the raiding team. She identified her signatures on the seizure memo.

13. In cross-examination, she stated that she did not remember if the raiding party had signed the departure entry. She also did not remember the registration number of the vehicle in which the raiding party left for the spot or exact time when she left the police station for the spot. She stated that the IO Attar Singh had briefed about the member of the raiding team. She admitted that the place where the appellant was apprehended was not visible from the place where she was standing. She further admitted that she did not see the person who had fired the gunshot in the air nor remember name of the person who apprehended the appellant. She, however, stated that no recovery was effected from the appellant in her presence. A suggestion was given if the IO had asked the public persons to join the recovery proceedings, to which she answered that she did not remember. She denied the suggestion that she had never visited the spot. Suggestion was also denied that the appellant was falsely implicated in the present case. It was also denied that the desi katta, used cartridge as well as live

cartridge were planted upon the accused. It was also denied that all the documents were prepared while sitting in the Police Station and the same were signed even by her in the Police Station.

14. In the present case, there are only police witnesses which have been stated to have witnessed the alleged incident. The law is well settled that there is no absolute rule that police officers cannot be cited as witnesses or that their depositions should be treated with suspect. However, if the Court has good reason to suspect the truthfulness of such records of the police, the court could certainly take into account the fact that no other independent person was present at the time of recovery. (Cf: State, Govt. of NCT of Delhi vs. Sunil and Another (2001) 1 SCC 652)

15. In the present case, the secret information was received by ASI Attar Singh (PW8). Though the DD records that the appellant was wanted both by P.S. Lajpat Nagar as well as Maharashtra Police, PW8 admitted that he did not collect the either the FIR or case particulars pertaining to these cases. PW8 also stated that he produced the secret informer before the SHO, PW7. PW7 has only deposed about PW8 briefing her and there is no mention of any secret informer being produced before her. Thus, doubts are raised at the very genesis of the information. PW7 admitted that she was not a witness to either the alleged firing by the appellant, his apprehension or the seizure of the Katta from him.

16. There is also the issue of no public witnesses joining the investigation. PW8 has deposed that though he asked 4-5 public persons to join the raiding party, they refused. In his cross examination, he stated that he did not make any public person join the investigation either before apprehending the accused or thereafter. PW7 stated that she did not remember if PW8 had written the names and address of those public persons who refused to join the proceedings and she did not know if PW8 required public witnesses to join the investigation at the time of recovery as she was not present on the spot. There is also a discrepancy as to whether there was anyone else except the appellant and the raiding team present at the temple. PW1 deposed that no one was present in the mandir. PW3 on the other hand, deposed there were 5-10 people inside the mandir, including the Pujari. The Pujari was still present on the spot and his statement was not recorded because he was scared of the appellant. While it is true that non-joining of public witnesses by itself is not fatal to the prosecution case, that is only in the cases where the other evidence put forth by the prosecution is cogent, credible and reliable. A reference may be made to the decision of Supreme Court in *Gian Chand v. State of Haryana*, (2013) 14 SCC 420 wherein it was held as under:-

35. The principle of law laid down hereinabove is fully applicable to the facts of the present case. Therefore, mere non-joining of an independent witness where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot cast doubt on the version forwarded by the prosecution if there seems to be no reason on record to falsely implicate the appellants.

17. In the present case, there is substantial doubt on the very source and veracity of the secret information as no details of these other offences which the appellant was wanted in were brought on record. The SHO though present at the spot was not a witness to either the firing or apprehension of the appellant and recovery of the katta from him but stated to contrary effect in her deposition that she saw the appellant with katta in his right hand which was taken by ASI Attar Singh. Even ASI Attar Singh has deposed that he did not remember if the SHO was present at the time of firing.

18. The raid has taken in a very public place and yet not a single public witness was examined as a witness who would have witnessed the firing. There is also a contradiction between depositions of PW1 and PW3 as to the presence of the priest of the temple. Moreover, though the accused was sought to be apprehended for the reason that he was wanted in PS Lajpat Nagar and Maharashtra police however, neither such information was verified before proceeding nor any document in this regard was placed on record, In fact, it is the conceded case of State that no efforts were made during investigation on this aspect. On an overall view of the facts and circumstances, it appears that there are substantial lacunae in the prosecution case which tint the whole raid with suspicion. This Court deems it fit to grant the benefit of the doubt to the appellant.

19. Accordingly, the appeal is allowed and the impugned judgment as well as sentence are set aside and the appellant is acquitted. Since his sentence already stands suspended, his bail bonds are cancelled and sureties discharged.

20. A copy of this judgment be communicated to the concerned Trial Court.

21. Copy of this judgment be also uploaded on the website forthwith.