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

Date of reserving: 07th April, 2026

Date of Decision: 15th April, 2026

IN THE MATTER OF:

\+ CRL.A. 822/2003

ADITYA KUMAR .....Appellant

Through: Mr. Lalit Kumar and Ms. Akansha Lal, Advs. with Appellant-in-person.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Satinder Singh Bawa, APP for State.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. In order to keep check on the untoward activities in the area and maintain law and order, police patrol normally moves in their jurisdiction. On 19.08.1994, one such patrolling party consisting of Inspector Inspector Rajinder Singh examined as PW-6, HC Zile Singh examined as PW-4, Const. Shambhu Singh, Const. Prem Chandan and Const. Mehfooz Alam, ASI Ram Singh who, while in the area of Police Station Janakpuri, noticed a TSR with defective Registration Number Plate, which aroused suspicion in the mind of the police personnel(s) and the suspicion further grew strong when it was noticed that the TSR was moving in a particular area frequently. In the meantime, at about 7:45 PM, the SHO, PS Janakpuri Inspector O.P. Yadav examined as PW-3 alongwith his driver and the operator Const. Raj

Kumar and Const. Chander Pal respectively, arrived there. The matter was reported to him, which led to lay a trap (*Nakabandi*) by the police officials. Two teams were formed, one was headed by the SHO and the second team was led by HC Raj Kumar, consisting of Const. Chander Pal and Const. Prem, whereas the remaining persons, as mentioned hereinbefore, formed part of the team headed by the SHO. The former police team headed by HC Raj Kumar went towards Mother Dairy/Milk Booth, whereas the latter headed by SHO Inspector O.P. Yadav (PW-3), stationed itself near the gate of C-3A, Janakpuri. At about 8:05 PM, the same TSR with defective number plate i.e. on one side it was DL IR 6239, whereas, on one side, only 239, was spotted coming from the side of Pankha Road via Mall Road and slowed down near Mother Dairy Booth. Inspector Rajinder Singh (PW-6) told SHO that it is the same TSR, which was taking rounds in the area in a suspicious manner. The SHO tried to stop the TSR, but instead of stopping, the TSR sped away. The TSR was then followed by the police team in the vehicle of the SHO and on being asked to stop, one of the occupants i.e. Appellant Aditya Kumar fired a gunshot on the police party. Thus, the Police Gypsy was brought in front of the TSR forcing it to stop. Police team also took out their weapons. The attempt by the occupants of the TSR to escape was foiled and the police team overpowered them.

2. A country made pistol was recovered from the possession of Appellant Aditya Kumar and his search further revealed that he was having a live cartridge as well in his right side pocket of the pant, whereas the empty shell of the bullet fired was still there in the country made pistol. Thereafter, the requisites of the seizure of the country made pistol (Ex. P1), live cartridge (Ex. P-3), its sketch (Ex. PW-3/2), site plan (Ex. PW-6/A), etc. were carried out and based upon the rukka sent by the SHO (Ex. PW-3/3), a

case was registered under Sections 307/353/186/34 Indian Penal Code, 1860 ('IPC') and 25/27 of Arms Act against the occupants of the TSR and the driver as well, namely Aditya Kumar, Ashwani Kumar, Jasvir Singh and Raj Pal. Ashwani Kumar and Jasvir Singh were found carrying button actuated knives. All these were seized and deposited in the Malkhana after duly sealing them. The TSR was also seized. The other requisites of the investigation were completed and thereafter, the chargesheet was filed against all the four accused persons. All four were charged under Sections 186/307/34 IPC. Accused Aditya Kumar was additionally charged under Section 27 of the Arms Act.

3. In order to bring home its case, the prosecution examined eight witnesses and thereafter, on conclusion of the trial, Statements of Accused persons under Section 313 Cr.P.C. were recorded and ultimately, the Appellant Aditya Kumar was held guilty and sentenced vide impugned judgment dated 14.08.2003, whereas accused Ashwani Kumar and Jasvir Singh were acquitted of the charges under Section 307 and 186 IPC and due to absence of requisite sanction under Section 39 of the Arms Act, the charge under Section 27 of Arms Act could not be brought home by the prosecution.

4. Appellant Aditya Kumar was sentenced to undergo Rigorous Imprisonment (RI) for a period of 04 years under Section 307 IPC and to pay a fine of Rs. 1000/- and in default of payment of fine, he was to further undergo Simple Imprisonment (SI) for six months. He was further sentenced to undergo RI for a period of two months for the offence punishable under Section 186 IPC.

5. Against the backdrop of aforesaid facts and circumstances, the Appellate jurisdiction of this Court has been invoked and Appellant

preferred the instant appeal assailing the impugned judgment and order on sentence on various counts.

6. Learned counsel for the Appellant has at the outset submitted that the requisite ingredients of Section 307 Indian Penal Code are amiss and the learned Trial Court has still decided against the Appellant and held him guilty under Section 307 IPC. For ready reference section 307 IPC is reproduced herein:-

> *"307 IPC – Attempt to Murder: Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned."*
> ***Attempts by life convicts:*** *[When any person offending under this Section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death]."*

7. In an offence under Section 307 IPC, it is the intention, knowledge and circumstances under which the act has been committed are the most vital factors to infer as what exactly was the object of the assailant. Bodily injury is not necessarily to be there to constitute an offence under Section 307 IPC. This can be inferred from the bare reading of Section 307 IPC, where enhanced punishment of life imprisonment has been provided in case hurt has been caused, and where there is no hurt caused by the acts of the assailant(s), the punishment has been confined to 10 years only. It is, thus, evident that the victim getting hurt is not the deciding factor, rather the intention/knowledge in doing an act directed towards the victim holds the key. Although, the nature of injury actually caused may often give

considerable assistance in coming to a conclusion qua the intention of the accused, which may be deduced from both pre and post incident circumstances too apart from the incident itself. The deciding factor, however, remains the intention or knowledge and the circumstances in which the particular act done gives reasons to conclude that murder was the intention or ultimate object, but the act fell short of murder, that is why Section 307 IPC comes into play.

8. In ***Hari Kishan/State of Haryana vs. Sukhbir Singh,*** AIR 1988 SC 2127, the Hon'ble Supreme Court discussed as to what all is required to bring case under Section 307 IPC, in the following words:-

> *"Under Section 307 IPC 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 that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention."*

9. The intention or knowledge can be inferred from the utterances, the acts, a combination of utterances and conduct or from the overall circumstances, the relationship of parties involved, previous enmity or hostility and motive etc. Thus, factual position, the acts/omissions, the words/utterances accompanied by the acts or otherwise, and the circumstances/situations are relevant factors together with attending circumstances to infer intention, albeit this is not exhaustive, conclusive and

complete. The question of intention or knowledge of the accused must be such as is necessary to constitute murder, as was observed in the case titled as ***Hari Kishan's case (supra)***.

10. The Hon'ble Supreme Court in ***Kesar Singh v. State of Haryana***, (2008) 15 SCC 753, proceeded to draw the distinction as:

> *"30. It can thus be seen that the "knowledge" as contrasted with "intention" signifies a state of mental realisation with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, "intention" is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore, in the case of "intention" mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact."*

11. In ***Jai Prakash v. State*** (Delhi Admn.) (1991) 2 SCC 32, it was elucidated that knowledge is bare awareness and not something equivalent to intention, for the latter requires something more than a mere foresight of the consequences namely, the purposeful doing of a thing to achieve a particular end. Knowledge has to be factually implied from the circumstances, and it may not be necessary that the accused must exactly know what will happen. It is not necessary that the accused should have intended what had actually happened. It is sufficient and adequate that the accused deliberately or voluntarily takes the "risk" that the crime/offence might be committed, even when he hopes that the risk would not lead to any damage or harm.

12. It has been observed that the question of intention to kill or knowledge of death in terms of Section 307 IPC is a question of fact and not one of law as it would depend on the facts of a given case. Reference can be made to the judgment in ***Vasant Virthu Jadhav's case (Supra).*** Thus, the

facts narrated and gathered during investigation becomes deciding factors together with the overall evidence. Reference in his context can also be made to the judgment titled as ***Ansarudin v. State of Madhya Pradesh,*** (1997) 2 Crimes 157 (MP)**.**

13. It is the intention which is of paramount importance and if such an intent coupled with some overt act in execution of that particular intention is there, then it is sufficient to hold a person responsible for an offence under Section 307 IPC as contemplated in section itself.

14. Incidentally, it is not mandatory that there should be a physical harm or bodily injury to the victim as in that eventuality a punishment goes up to the life imprisonment as can be seen in part 2 of Section 307 IPC.

15. Therefore, what is important is that the assailant should have the intention or the knowledge that the act which is being done by him has potential to cause death or it may likely cause death of the victim.

16. Intention is an abstract phenomenon and cannot be deciphered or inferred by anyone regarding the mindset of the other. What is going in the mind of a person is nearly impossible to ascertain or cull out. However, intention manifests itself in the act utterances, omissions, use of weapon, targeted body, part number of attempts or injuries caused, so on and so forth.

17. When the evidence on record is juxtaposed to the requirement of law then it apparently attracts section 307 IPC. What has come in evidence is that the TSR was being chased by the police personnel and the Appellant fired a gunshot from the back window of the TSR aiming towards the police party. There is evidence to the effect that gunshot was fired as the spent cartridge found stuck in the barrel was recovered in the weapon of offence i.e. a country made pistol. The Central Forensic Science Laboratory (CFSL) report is there, which corroborates the requisite aspect in this

context. This evidentiary finding, coupled with the fact that a country made pistol is a lethal weapon having the potential to cause death if the bullet hits the victim, removes any doubt in establishing intention under Section 307 IPC.

18. The contention on behalf of the counsel for the Appellant that there was no intention to cause death as the gunshot, even if it is presumed to have been fired, was fired to scare away the police team hot on the heels of the Appellant and his Associates. However, this contention seems to be hollow enough to be believed inasmuch as the gunshot was fired aiming at the police team from the back window. In case the Appellant wanted to scare away and escape from the scene then the gunshot would have been fired in the air from the side openings of the TSR. As such this contention of the Appellant is brushed aside.

19. Apart from the aforesaid submissions it is further argued that the case of the prosecution is full of contradictory circumstances and therefore, does not inspire confidence, so much so as to hold the Appellant guilty of any offence.

20. Variation of contradictions are bound to occur in the narrative on account of the limitation of the human memory and narration skills. A slip in narration of facts here or there is not unusual rather natural. What is important is that the soul of the narrative has been kept inact. As long as the material aspects remain intact and unalloyed, the discrepancies or variations do not affect the core issue. Reference in this context can be made to the following judgment where various judgments were taken into account to give a kind of detailed guideline.

***Balu Sudam Khalde v. State of Maharashtra*, (2023) 13 SCC 365:**

"25. *The appreciation of ocular evidence is a hard task. There is no*

fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

> *XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."*
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> *Reference can also be made to Narayan Chetanram Chaudhary v. state of Maharashtra (2000) 8 SCC 547, State of rajasthan v smt. Kalki &anr 1981 SCC(@) 752, Sunil kumarsambhudayalgupta (Dr.) V. State of Maharashtra (2010) 13 SCC 657, Raj kumarsingh alias raju alias batya v. state of rajasthan (2013) 5 SCC 722."*

21. It has also been put forth by learned counsel that there is no direct and cogent evidence as to who exactly fired the gunshot. Therefore, holding the Appellant Aditya Kumar responsible for the offence under Section 307 IPC is not appropriate. Learned Trial Court has held him responsible only on the basis of surmises and conjectures. However, the witnesses have deposed about the gunshot being fired aimed at the police team and recovery of the fire arm from the possession of the Appellant i.e. country made pistol and a live cartridge from his pocket, unequivocally tells that it was he who had the audacity and temerity to fire a gunshot aiming at the police team. None of the other occupants of the TSR were carrying any fire arm, rather two of them were having button actuated knives. In such circumstances, the only inference which can be drawn and has been drawn is the complicity of the Appellant and rightly so.

22. The other contention that lead of the bullet was not recovered nor any imprint or impact has been found on the police vehicle indicates that it was not fired towards police team therefore, the aim was not the policemen. The Appellant therefore cannot be attributed with the intention or

knowledge as required under Section 307 IPC and as such cannot be held responsible, even if it is presumed that gunshot was fired.

23. This again is not a convincing argument in view of the fact that lead may not have hit the police vehicle as aim was not the vehicle but the policemen and as the bullet was fired from a moving vehicle towards another moving vehicle, therefore, it is not necessary that it had to hit the vehicle, though it did not hit any policemen either. But, this does not in any manner diminishes or takes away the guilty intention of the Appellant.

24. Investigation has also been questioned by the Appellant and it is asserted that it is inappropriate and defective by pointing out that the site plan (Ex. PW-6/A) does not reflect the position of the personnels of the two teams formed and that the TSR having the defective number plate was not seized by the police.

25. It is not that the site plan Ex PW-6/A is not there and does not reflect anything material, apart from showing that a "milk booth" was there instead of "Mother Dairy Milk Booth". Therefore, the investigation cannot be said to be incomplete or defective merely because the site plan is not according to the expectations of the Appellant. Had there been no Milk Booth at all there the position would have required some explanation as Milk Booth is being referred in the testimony as a kind of landmark too. Milk Booth and Mother Dairy Milk Booth are interchangeably and frequently used. So no adverse inference can be drawn against the prosecution.

26. So far as the seizure of the TSR is concerned the contention is contrary to the record and unfounded inasmuch as the TSR was seized, as can be seen from the Malkhana register, and was later on released on Superdari of Rs. 40,000/- to the driver, namely Ashwani Kumar as

reflected in Ex. PW5/A 1-8, at entry number 2552 in the Malkhana Register. Therefore, the contention raised on behalf of the Appellant is bald having no substance.

27. It is submitted that the incident took place in a crowded residential area but the policemen did not bother to join any independent public witness and for that matter no effort was made either, that too despite the fact that independent public persons were available at the spot. It has been deposed by the witnesses that requests were made to the public persons, but none agreed, therefore, no such witness was available. However, there is no requirement of law to include so called independent public witness, which may be termed as mandatory or indispensable. What is required is the evidence and the law does not make any distinction between a public witness or an official witness. The need of the independent public witness is only felt where something like possession in itself is an offence, but even that is not mandatory rather a precautionary measure. In addition to that, it is a matter of common knowledge that nobody from the general public wants to get entangled into any proceedings, which has some relation with police or the Court on account of the perceived harassment due to the procedural formalities. Therefore, in such circumstances, having an independent public witness is neither required nor fatal to the case.

28. The learned counsel for the Appellant has further argued that no reason has been assigned as to why a '*nakabandi*' was put in place inasmuch as there was no information, secret otherwise with the policemen about the Appellant and the other occupants of the TSR that some or the other offence is being contemplated by them. In such circumstances, the case is nothing but a high-handed approach on the part of the policemen who have falsely implicated the Appellant in the instant case.

29. The genesis of the case is in the defective Registration Number Plate of the TSR, as has been noticed by Inspector Rajinder Singh (PW-6) and police team along with him. That the TSR was having incomplete number on one side i.e. 239, whereas the complete number was DL1R6239. This was sufficient to ignite the suspicion in the mind of the policemen and the suspicion grew further and stronger when the TSR was seen hovering around in that particular area. The police team, as such, has sufficient reasons to become suspicious about the intentions of the occupants of the TSR.

30. The apprehension and the suspicion turned out to be correct when the police team signaled the TSR to stop, but instead of stopping, the TSR sped away, which was chased and neutralized by putting the police vehicle in front of the TSR, but before that a gunshot was already fired on the police team.

31. The Policemen are responsible for maintaining law and order and check the crime. Patrolling in the jurisdiction of the police station is one of the methods used by the policemen in order to keep a watch on the activities on the street and during one such patrol, the TSR was spotted displaying defective number plate and when it took round after round in that particular area, which gave reason to the policemen to doubt the intentions of the occupants of the TSR. In such circumstances, if a *'nakabandi'* or the trap was laid or the TSR was asked to stop and chased when the accused tried to escape in it, there was nothing unusual for the police, which was done by the police. As such the contention in this context has no substance and thus, is brushed aside.

32. Ultimately, it turned out to be a case where the occupants were armed with the illegal weapons and a gunshot was fired, thus, the

contention raised on behalf of the Appellant gets a drubbing and loses its strength and sheen and bound to fail, being unable to carve out a case in favour of the Appellant.

33. The antecedents of the Appellant are questionable as his involvement has been reported in a number of cases by learned APP whereas the learned counsel did not come forward with his details nor has he countered the contentions of learned APP and as, all cases in question are reportedly of violent nature, therefore, no mitigating circumstance qua the sentence is there to reconsider the sentence awarded. Therefore, in such circumstances, the Appellant does not deserve any indulgence on the aspect of sentence either.

34. As a result the appeal stands dismissed. He is to surrender to undergo the remaining sentence.

35. A copy of the judgment be transmitted to the prison authorities and the Court concerned.

VIMAL KUMAR YADAV, J

APRIL 15, 2026/*akc/hk/ij*