Kartar Singh

Vs

State of Punjab, Respondent.

Criminal Appeal No. 179 of 1991

(S. Mohan, B. P. Jeevan Reddy JJ)

23.10.1992

JUDGMENT:-

1.The appellant took trial under Section 5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (for short TADA) read with Section 25 of the Arms Act.

2. The case of the prosecution is, on 27-1-89 a police party headed by ASI Dilbagh Singh consisting of Head Constable Balwant Singh and other police officials was present in the area of Railway crossing Chhebarta. A secret information was received that the appellant was in possession of huge quantity of unlicenced arms and ammunity. A raid was conducted. The accused (appellant) was taken into custody. He made a statement to the effect that he kept concealed one pistol of 9 m.m. bore along with 60 live cartridges of the same bore under bricks lying near the main gate of the house. This statement of the accused was attested by Head Constable Balwant Singh and Chaukidar Shingara Singh. Acting on this statement, the pistol of 9 m.m. bore along with 60 cartridges were recovered after digging out some bricks, Inasmuch as he did not have a valid licence, he was proceeded against under Section 5 of TADA. The prosecution examined PW2 armourer, the investigating officer PW3 and eye-witness PW4. However, chaukidar was given up since he was wonover by the appellant.

3. The case of the appellant as found in the statement under Section 313 of the Code of Criminal Procedure was that he had been falsely implicated. In support of his defence he also examined DW 1. The learned Judge of the Designated Court on weighing the evidence came to the conclusion that the discripancies pointed out by the appellant in the evidence including the delay in sending the fire-arm to test whether it was in working condition would not in any manner affect the credibility of the prosecution case. Therefore, he sentenced him to five years' rigorous imprisonment under Section 5 of the Act read with Section 25 of the Arms Act.

4. In this appeal before us the following points are urged on behalf of the appellant:

(i) there is a delay in sending the pistol for mechanical test to find out whether it was in working condition;

(ii) there are infirmities in the evidence adduced on behalf of the prosecution. The first and foremost infirmity in the case of the prosecution is that there is not even an independent witness is made a party during the alleged Search of the house of the appellant, certainly at least some villagers should have been made a party during the search.

(iii) Besides, the vital discrepancies in the testimony of the prosecution witnesses have been overlooked by the court below. While ASI Dilbagh Singh would state that the seized pistol and the cartridges were not made into parcels and no seal was affixed on those parcels. Head Constable Balwant Singh would give a different version that they were wrapped in parcels and were sealed. This mutual contradiction is destructive of the prosecution case.

(iv) Then again PW3 would say that the place of the recovery was on the left side of the entrance to the house of the appellant, PW4 would say it was on the right. It is got over by the learned Judge of the designated court as being attributable to the lapse of memory having regard to passage of time. On the contrary, a recovery, if was so made as alleged, on a vital aspect like this, there could hardly be any discrepancy. Having regard to all these there is considerable doubt about the version of the prosecution which must be weighed in favour of the appellant and the conviction and sentence are liable to be set aside.

5. In meeting these submissions, the learned counsel for the State would urge that it is true there was no independent witness during the time of search but none can be expected in such matters. In any event, it cannot be overlooked that Chaukidar Shingara Singh did in fact sign the memo of seizure but he was wonover by the accused. Therefore, it is idle to contend that no independent witness had accompanied during the search. No doubt there are discrepancies in the evidence of the prosecution but they are not material in nature since it was not the case of the accused that there was no seizure at all. As has been rightly observed by the learned Judge of the designated court a fire-arm of this nature namely 9 m.m. bore is rarely available. Coupled with this, the recovery of the pistol consequent to the statement of the appellant, it must be held that the prosecution had established its case.

6. We will now proceed to consider the correctness of the above submissions. We have ourselves carefully examined the evidence. PW2 is the armourer. He does not say that the cartridges were ever sent to him for test. He merely states that only pistol of 9 m.m. bore was produced which was tested by him to find out whether it was in working condition. It is somewhat surprising that in a matter like this when 60 cartridges had been seized not even one had been sent to PW2 armourer. This is apart-from the delay in sending the pistol itself. The recovery as stated by the prosecution was on 27-1-89 while pistol was sent for mechanical test only on 8-4-89. As to what exactly was the cause for delay, we are left in the realm of guess. Be that as it may, on the question whether the recovered arm together with cartridges were kept in parcels or not, there are contrary statements between ASI and the Head Constable, while former would state that they were not kept under seals, the later would depose that they were kept in sealed parcels. This casts a serious doubt about the version of the prosecution.

7. There may be a discrepancy as to whether the recovery was from the left side of the entrance or the right side of the entrance. Nevertheless while trying to prove the recovery the prosecution ought to have left the best in evidence, instead of escaping its liability by pleading lapse of memory on account of passage of time. It is no use contending that no question was put to the prosecution witness to shatter the defence of the disclosure statement.

8. Having regard to the above material contradictions seen in the light of the delay in sending the arm for mechanical test coupled with failure to send the cartridges to PW2 armourer we are disinclined to accept the version of the Prosecution. We cannot merely rest our conclusion on the

statement suffered by the accused during investigation as is one by the learned Judge of the designated court. Under these circumstances, we are obliged to reject the case of the prosecution which means the appellant is entitled to acquittal. Accordingly, we set aside the conviction and sentence of the appellant and allow the appeal. He shall be set at liberty forthwith.

Appeal allowed.

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