

Anil alias Andya Sadashiv Nandoskar

Vs

State of Maharashtra

Criminal Appeal No. 728 of 1995

(Dr. A. S. Anand, K. S. Paripoornan JJ)

19.02.1996

UDGEMENT

Dr. ANAND J.

1. This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, (hereinafter referred to as 'TADA'), is directed against the Judgment and Order dated 27-4-1995 of the Addl. Judge, Designated Court for Greater Bombay convicting the appellant for an offence under Section 5 of TADA read with Section 3(1) and Section 25(1-B)(a) of the Arms Act, 1959 and sentencing him to suffer R.I. for 5 years. The appellant has called in question his conviction and sentence through this appeal.

2. According to the provision story, on prior information received by PSI Varpe (PW-2) that the appellant herein, who was a wanted criminal, was likely to visit Sanket Hotel situate in the hamlet of Worli Koliwada, Bombay, the police officials of Dadar Police Station proceeded to Sanket Hotel on 1st of April, 1992, at about 9.00 P.M. As soon as the appellant entered the hotel, he was over powered by PSI Sawant (PW-1) who took him in his clutches. Sanjay Kashinath and Arjun Padmathali, two panches from the public were joined and in their presence from the personal search of the appellant, a country made revolver loaded with two live cartridges and cash amount of Rs.1230/- were recovered by PW-1 with the assistance of PSI Patki PW-5. A panchanama Ex.15 was prepared and the articles seized and sealed at the spot. The appellant was arrested and the police party took him to police Station Dadar, where formal FIR Ex.P11 was registered. The sealed parcel were handed over by PW-2 for safe custody to PI Administration, Shri Kamath. The parcel containing the country-made revolver and the cartridges was carried by Police Naik Ravindra Ranganath (PW-6) to the Forensic Science Laboratory. The ballistic expert subsequently submitted his report, Ex.P-17, according to which the recovered revolver was found to be in a working condition. The appellant possessed no licence for the revolver found in his possession and could not explain the possession of the unlawful arm and ammunition. Vide notification, Ext.18 the area, where Sanket Hotel was situate, had been declared a notified area under TADA. The appellant after completion of investigation, was sent up for trial.

3. In support of its case, the prosecution examined 6 witnesses and tendered in evidence various documents including the FIR, Ex.11, the report of the ballistic expert Ext.P-17, the notification, Ext. 18. Out of the 6 prosecution witnesses examined at the trial, PW-1 PSI Sawant, PW-2 PSI Varpe, PW-3 PI Hadap, PW-4 PI Gaikwad and PW-5 PSI Patki were the members of the raiding party. PW-6 had carried the sealed parcel to the ballistic expert. The appellant, in his statement recorded under Section 313, Cr. P.C. denied prosecution allegations against him and pleaded false implication. The trial Court analysed the evidence on the record and found that even though PW-1

to PW-5 were all police officials, nonetheless their evidence was cogent, trustworthy and reliable and suffered from no infirmity. The trial Court found that the prosecution had established satisfactorily that the area from where the appellant was apprehended along with the country made 32 bore revolver pistol, which was in his conscious unauthorised possession, had been declared a notified area and since according to the report of the ballistic expert Ext.P-17, the fire arm recovered from the possession of the appellant was in a working condition, he was guilty of an offence under Section 5 of TADA in view of the law laid down by the Constitution Bench of this Court in Sanjay Dutt v. State, (1994)(5)JT(SC) 540 : (1994 AIR SCW 3857).

4. Mr. Thakare, learned counsel for the appellant, firstly, submitted that search and seizure of the revolver and cartridges had not been established by the prosecution by adducing any independent evidence, and went on to urge that the non-examination of Sanjay Kashinath and Arjun Padmathali, the two independent panchas, is a serious lacuna detracting from the reliability of the prosecution case. Learned counsel for the appellant further submitted that there was a serious contradiction in the evidence of PW-2 and PW-4 regarding the signature of the witnesses on the label on the revolver and in this connection referred to the statement of PW-4 (P.24 of the Paper Book), wherein it is stated by PW-4 that "The fire arm to wit art. 1 and the cartridges to wit art. 4 were duly sealed and labelled separately. The panchas made their signatures on the label and the statement of PW-2 (Page 16 of the Paper Book) wherein PW-2 has stated that "No labels bearing the signatures of the panchas were pasted on the revolver (art.1)", and submitted that this contradiction rendered the entire search and seizure doubtful. In our opinion the argument has no merit. There is no contradiction between the two statements referred to above. Whereas the question asked from PW-2 was regarding pasting of the label bearing the signatures of the witnesses on the revolver, the question asked from PW-4 related to the pasting of label on the parcel and not on the article (revolver).

5. Indeed all the 5 prosecution witnesses who have been examined in support of search and seizure were members of the raiding party. They are all police officials. There is, however, no rule of law that the evidence of police officials has to be discarded or that it suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinised and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness. We have carefully and critically analysed the evidence of all the 5 police officials. There is nothing on the record to show that any one of them was hostile to the appellant and despite lengthy cross-examination their evidence has remained unshaken throughout. These witnesses have deposed in clear terms the details of the trap that was laid to apprehend the appellant and the manner in which he was apprehended. Their evidence regarding search and seizure of the weapons from the appellant is straightforward, consistent and specific. It inspires confidence and learned counsel for the appellant has not been able to point out any serious, let alone fatal, infirmity in their evidence. In our opinion, the factum of search and seizure of the country-made revolver from the conscious possession of the appellant has been established by the prosecution beyond any reasonable doubt. The explanation given by the prosecution, for the non-examination of the two panch witnesses, which is supported by the report Ex.24 filed by PW-4 PI Gaikwad is satisfactory. The evidence on the record shows that the raiding party made sincere efforts to join with them two independent panches at the time of search and seizure and they were so joined. They were also cited as prosecution witnesses and summoned to give evidence. However, despite diligent efforts made by the prosecuting agency to serve them, they could not be located or traced and therefore, they could not be examined at the trial. In the face of the facts stated in report Ext.24, the correctness of which

has remained virtually unchallenged during the cross-examination of PW-4, the non-examination of the two panches cannot be said to be on account of any oblique reason. Their non production at the trial thus has not created any dent in the prosecution case. The prosecution cannot be accused of withholding these witnesses since it made every effort to trace and produce them at the trial but failed on account of the fact that they had left the addresses furnished by them at the time of search and their whereabouts could not be traced despite diligent efforts made in that behalf. We, therefore, do not find any reason to doubt the correctness of the prosecution version relating to the apprehension of the appellant, the search and seizure by the raiding party and the recovery from the appellant of the country-made revolver and cartridges for which he could produce no licence or authority because of the non-examination of the panch witnesses. We find that the evidence of PW-1 to PW-5 is reliable, cogent and trustworthy.

6. Learned counsel for the appellant then submitted that the delay in sending fire arm and the cartridges to the ballistic expert rendered the report of the Ballistic Expert Ext.P-17 vulnerable and the conviction of the appellant unsustainable. We cannot agree.

7. Of course, the seizure of the revolver had been affected on 1st of April, 1992 and it was sent to the ballistic expert through PW-6 on 16-4-1992. Not only this delay has been satisfactorily explained but even otherwise in the established facts of the case, this delay is of no consequence. Ext.29, is an entry dated 1-4-1992 in the Moddemal Register. It clearly records that one country-made revolver of .32 bore (brake frame type) with two live cartridges with markings 32 "S & WKF" the case property in this case, had been received in a sealed parcel in the Malkhana. There is also reference to the deposit of cash amount of Rs.1230/-, consisting of Rs. five denomination currency notes which had also been recovered by PW-1 from the possession of the appellant at the time of search. This entry thus unmistakably shows that after search and seizure had been effected the recovered articles had been immediately placed in the safe custody of Shri Kamath, PI, Administration by PW-2. The sealed parcels were carried and delivered in the same condition to the ballistic expert by police naik Ravinder Ranganath, PW-6. His evidence on this aspect of the case has remained unchallenged in the cross-examination. The report of the ballistic expert also shows that he had received the parcel in a sealed condition and that the seal tallied with the specimen of the seal as fixed on the requisition memo. Thus, there is no legitimate basis for the argument that the articles recovered from the appellant might have been tampered with till their examination by the ballistic expert or that the same might have been substituted between 1-4-1992 and 16-4-1992. The mere delay of about 15 days in despatching the articles for examination by the ballistic expert, in the facts and circumstances of this case, is therefore neither inordinate nor fatal and does not affect the credibility of the prosecution case.

8. Faced with this situation, learned counsel for the appellant submitted that in the absence of any clear opinion of the ballistic expert in his report. Ext.P-17, regarding the 'working status' of the two live cartridges, the conviction of the appellant could not be sustained. This argument also needs a notice only to be rejected. In Sanjay Dutt's case (1994 AIR SCW 3857) (supra) it has been clearly laid down that with a view to hold an accused guilty of an offence under Section 5 of TADA, the prosecution is required to prove satisfactorily that the accused was in conscious possession, unauthorisedly, in a notified area, of any arm and ammunition of the specified description, the use of the word "and" was explained by the Constitution Bench to be disjunctive and that to sustain the conviction for an offence under Section 5, TADA it is not necessary to establish that the accused possessed both the arm and ammunition. The unauthorised possession of either, in a notified area, attracts the provisions of Section 5, TADA. The absence of any expert opinion about the status of the recovered cartridges, therefore, cannot militate against the conviction of the appellant for the

offence under Section 5 of TADA for being found unauthorisedly in possession of the specified fire arm, (Art 1), in the notified area.

9. In our opinion the prosecution has satisfactorily established the case against the appellant. The trial Court rightly convicted and sentenced him. This appeal has no merits. It fails and is accordingly dismissed. Appeal dismissed