

State of Punjab

Vs

Jagga Singh

Criminal Appeal No. 12 of 1998

(G. T. Nanavati, S. P. Kurdukar JJ)

06.08.1998

JUDGMENT

G. T. NANAVATI, J. –

1. This appeal is directed against the judgment and order passed by the Designated Court, Sangrur in Sessions Case No. 55 of 1993.
2. The respondent was tried for the offences punishable under Section 25 of the Arms Act, 1959 and Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "the TADA Act"). The charge against him was that he was found in unlawful possession of one .12 DBBL gun and four live cartridges on 15-5-1992 in Village Khillan, which has been declared as a notified area under the TADA Act. The Designated Court held that the evidence of PW 1 HC Baldev Singh and PW 3 Constable Basant Singh was sufficient to establish that the respondent was in unlawful possession of a gun and four live cartridges. The Designated Court, however, did not scrutinise the evidence further and thought it fit to acquit the respondent only on the ground that as no sanction under Section 39 of the Arms Act was obtained to initiate prosecution against the accused under Section 25 of the Arms Act and Section 5 of the TADA Act, has, "the effect of enhancing penalty as prescribed under the Arms Act", the
3. Aggrieved by the order of acquittal, the State has filed this appeal. We are of the opinion that Mr. Sodhi is right in contending that the view taken by the Designated Court that in the absence of sanction for prosecuting an accused under the Arms Act, he cannot be prosecuted even under Section 5 of the TADA Act, is wrong. But it is not necessary to allow this appeal and remand the case to the Designated Court as the respondent deserves to be acquitted even otherwise on merits. Though the evidence of PW 1 HC Baldev Singh and PW 3 Basant Singh establishes that the respondent was found in possession of one .12 bore DBBL gun and four live cartridges, there is no satisfactory evidence to show that the said gun and the cartridges were sent for examination by the Central Forensic Scientific Laboratory. There is no report from the Forensic Scientific Laboratory nor any other evidence to prove that the said gun was in a working condition or that the said cartridges were live cartridges. An entry made in the Malkhana Register was relied upon by the prosecution. It does not mention that gun bearing No. 14119-88 was sent to the Central Forensic Laboratory nor does it contain any description of the cartridges.
4. Therefore, in the absence of any evidence to show that the respondent was found in possession of one .12 bore DBBL gun in a working condition and four live cartridges, the respondent cannot be convicted under Section 5 of the TADA Act. This appeal is dismissed.