

Narsi

Vs

State of Haryana

Criminal Appeal No. 145 of 1998

(Sujata V. Manohar, G. T. Nanavati JJ)

12.11.1998

JUDGMENT

NANAVATI, J. -

1. The appellant has been convicted under Section 25 of the Arms Act, 1959 and Section 5 of the TADA Act, 1987 by the Designated Court, Bhiwani as he was found in possession of a country-made 315 bore pistol and a live cartridge.
2. The Designated Court relying upon the evidence of PW 2, Ganga Ram held that the allegation made against the appellant was proved and he was in fact found in possession of a pistol and a live cartridge. The Designated Court also relied upon the report of the Forensic Science Laboratory and held that the pistol was in a working condition.
3. What is contended by the learned counsel for the appellant is that the Designated Court failed to appreciate that the evidence of Ganga Ram was so improbable that it did not deserve to be accepted. As disclosed by the prosecution evidence, a case was registered against the appellant and seven others for the offence of murder on 1-11-1988 at Fatehabad Police Station. The police was on the lookout for the appellant. On 8-11-1988, the appellant accompanied by his maternal uncle presented himself before the officer in charge of the Fatehabad Police Station. SHO Ganga Ram took him in custody and at that time found from his possession, a pistol and a cartridge. No independent witness was kept present at the time of either taking the appellant into custody or while seizing the pistol and the cartridge. The reason given by Ganga Ram in this behalf is that because his maternal uncle was present, he did not think it fit to call any other person to witness the seizure of the weapon and the cartridge. This obviously is a lame excuse. In the absence of any independent evidence, seizure of a pistol and a cartridge from possession of the appellant becomes doubtful. It is also highly improbable that the appellant had presented himself with a weapon which was unlicensed. He had not gone there to make a confession. He had gone to the police station because he was wanted by the police in that case. No other witness was examined by the prosecution on the point of recovery of a pistol and a cartridge from the possession of the appellant. As the evidence of Ganga Ram does not appear to be truthful, the conviction of the appellant will have to be set aside.
4. We, therefore, allow this appeal and set aside the conviction of the appellant and also the order of sentence passed against him and acquit him of the charges levelled against him.