

SUPREME COURT OF INDIA

Ram Kumar

Vs.

State (Nct) of Delhi

(G Nanavati and S Hegde JJ.)

28.04.1999

ORDER

NANAVATI, J.

1. The appellant has been convicted by the Court of Additional Judge, Designated Court II, Delhi in Sessions Case No. 78 of 1997, for the offences punishable Under Section 307 IPC, Section 5 of the TADA Act and Section 27 of the Arms Act. For the offence punishable Under Section 307 IPC, he has been sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/-. For the offence punishable Under Section 5 of the TADA Act, he has been sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 1,000/- and in respect of his conviction Under Section 27 Arms Act, he has been sentenced to suffer imprisonment for 3 years and to pay a fine of Rs. 1,000/- He has, therefore, filed this appeal challenging his conviction and also the sentence imposed upon him. As the appellant has not engaged any Advocate, Shri T.N. Singh, learned counsel has been appointed as Amicus Curiae to assist the Court.

2. The learned counsel for the appellant, relying upon the evidence of the eye-witnesses submitted that neither the injured has supported the prosecution case nor any other independent witness has proved that the appellant had fired the shot which injured Ram Karan, and that he had 'Desi Katta' with him when he was apprehended by the police. The evidence of P.W. 2 - Jamna Das, discloses that he along with other police officers was on patrolling duty during the night between 10.4.91 and 11.4.91 and while at about 7.30. a.m. they were standing at a place near village Ditchaon they had seen two persons running. One was chasing the other. The person chasing was having a country made pistol in his hand. He fired a shot from his pistol and it had hit the person who was running ahead. Head Constable Chandrabhan and Joginder. Singh, chased the person who had fired a shot, overtook him and apprehended him. From his pocket two more cartridges were also recovered. As the person who was chasing, was first knocked down by their vehicle, he had also received some

injuries. Therefore, along with the other injured he was also taken to the hospital. He further explained that they had come across the accused and the injured by chance and as the incident had taken place outside the village, it was not possible to associate any independent person to witness the search and seizure. We do not find any material on record on the basis of which it can be said that independent witness was available near the place of incident. Therefore, on the ground that no independent witness has been examined by the prosecution, the evidence of the police officers cannot be discarded when it is found to be reliable. Head Constables Jamna Das and Chandra Bhan have fully supported the prosecution case and even ASI Ora Prakash who was required to be cross examined has stated that he had seen two persons running and at that time had heard a shot having been fired.. He has also stated that he had seen the accused running away thereafter with 'Desi Katta' in his hand. The accused was immediately taken to the hospital along with the injured and that stands proved by the other prosecution evidence.

3. We have no reason to doubt the evidence of Head Constable Jamna Dass and Head Constable Chandra Bhan. It is true that injured Ram Karan has not supported the prosecution case but that is explained by the fact that the accused happened to be his uncle's son. The prosecution has thus satisfactorily established that the appellant Ram Kumar had a Desi Katta with him, he fired a shot and injured Ram Karan. The circumstances under which the injury was caused clearly indicates the intention of the appellant and, therefore, we are of the view that the High Court has rightly convicted him for the offence punishable Under Section 307 IPC. As the pistol was found in possession of Ram Kumar for which he did not possess any licence, his conviction Under Section 5 of the TADA Act also deserves to be confirmed. So also his conviction under the Arms Act.

4. It is urged by the learned counsel for the appellant that the sentence imposed upon the appellant for the offence punishable Under Section 307 IPC is rather harsh and it deserves to be reduced. Considering the near relationship of the injured and the appellant and other facts and circumstances of the case, we are of the view that the ends of justice would be met if the sentence of rigorous imprisonment for 10 years, for the offence punishable Under Section 307 IPC, is reduced to 7 year's rigorous imprisonment.

5. We, therefore, partly allow this appeal. We maintain the appellant's conviction for the offence punishable Under Section 307 IPC, Section 27 of the Arms Act and Section 5 of TADA Act, the sentence imposed upon him is also confirmed. However, the sentence imposed upon him for the offence punishable Under Section 307 IPC is reduced from 10 years rigorous imprisonment to 7 years rigorous imprisonment. The sentence of fine is maintained.