

(2007) 02 DEL CK 0172
In the Delhi High Court
Case No : Criminal A. No. 581 of 2004

Abdul Gafoor

APPELLANT

Vs

State of Delhi and Another

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Explosive Substances Act, 1908 — Section 4, 5
Penal Code, 1860 (IPC) — Section 53, 53A

Citation : (2007) 94 DRJ 287

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Akhtar Hussain, for the Appellant; Richa Kapoor, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—This appeal has been preferred against the judgment dated 17th May, 2004 passed by the Trial Court convicting the appellant u/s 4(b) and Section 5 of the Explosive Substance Act, 1908 and sentencing the appellant to undergo Rigorous Imprisonment for 10 years with fine of Rs.15,000/- each on the two counts.

2. The learned Counsel has not argued the appeal on merits, but only on the order of sentence. It is submitted by the counsel for the appellant that the order of sentence was contrary to law and the sentence awarded to appellant was not as per the provisions of the Act. He submits that the appellant was convicted under the unamended provisions of Explosive and Substance Act, 1908 and the sentence u/s 4(b) reads as under:

4. Punishment for attempt to cause explosion or for making or keeping explosive with intent to endanger life or property - any person who unlawfully and maliciously -

(a) ... (b) ... shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to

which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

3. Section 5 reads as under:

Punishment for making or possessing explosives under suspicious circumstances - Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

4. It is argued by the Counsel that in view of Section 53(A) of the Indian Penal Code the transportation part of the punishment has to be considered omitted from the statute and Therefore, Sections 4 and 5 of the Explosive Substances Act, 1908 have to be read as if there was no sentence of transportation provided and only sentence regarding imprisonment was provided.

5. This question had arisen before this Court in case Criminal Appeal No. 680/2001 Javed Ahmad Munshi v. State 2005 (124) DLT 403 and this Court after considering the impact on Section 53(A) of Indian Penal Code inserted in 1955 on the sentencing part had observed as under:

The net result is that between 1955 to 1.2.2002 when the amendment Act 54 of 2001 was made effective, the offences u/s 5 of the Explosive Substances Act continued to be governed by the un-amended Section 5 of the Explosive Substances Act of 1908, which provided transportation for a term, which may extend to 14 years or to which fine may be added or with imprisonment for a term which may extend to 5 years to which fine may be added. In view of the provisions of Section 53A of the IPC, which omitted the transportation for shorter terms and converted the transportation for life only to imprisonment for life, the Section 5 of the Explosive Substances Act, 1908 remained punishable with imprisonment for a term which could extend to five years only to which fine also could be added. In case the plea of learned ASG that transportation for 14 years be read as imprisonment for 14 years is accepted, there would be incongruity in Section 5 of Explosive Substances Act, 1908 inasmuch as it would provide imprisonment for 14 years as well as 5 years without any classification as to for which category which punishment is provided. Thus, this Court agrees with the submissions made by learned Counsel for the appellant and has no hesitation in concluding that the impugned sentence awarded by the Trial Court u/s 5 of the Explosive Substances Act, 1908 by sentencing the appellant to undergo RI for 14 years cannot be sustained. The rigorous imprisonment could not be for more than five years and as such, it has to be reduced accordingly.

6. In view of above legal position that the punishment as provided u/s 4 and 5 of the Explosive Substances Act, 1908 has to be read bereft of the transportation

part, it is obvious that u/s 4 the imprisonment could be only for a term of seven years added with fine and u/s 5 it could only be for a term of five years added with fine. The punishment as awarded by the Trial Act is, Therefore, not in accordance with the punishment as provided under Sections 4 and 5 of the Explosive Substances Act, 1908 and is required to be modified. The punishment is, Therefore, modified to the following effect:

7. The appellant/accused shall undergo rigorous imprisonment for seven years and a fine of Rs.15,000/- u/s 4(b) of Explosive Substances Act, 1908 and rigorous imprisonment of five years and fine of Rs.15,000/- u/s 5 of the Explosive Substances Act, in default of fine, he shall further undergo simple imprisonment for six months in each lapse as provided by the Trial Court. The order of sentence of the Trial Court shall stand modified to the above extent. If the appellant has undergone the above sentence and not wanted in any other case, he be set at liberty.

8. A copy of this order be sent to the Superintendent, Central Jail, Tihar.