

(1986) 02 MP CK 0042
In the Madhya Pradesh High Court
Case No : Criminal A. No. 621 of 1982

Dayal Singh Jinwan Singh Lodhi

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 27-02-1986

Acts Referred:

Arms Act, 1959 — Section 25, 27

Madhya Pradesh Dakaiti Aur Vyaparan Prabhavit Kshetra Adhiniyam, 1981 — Section 11(4)

Citation : (1988) MPLJ 381

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; A.P. Shukla, Govt. Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C.Gupta, J.

This decision shall also govern the disposal of Criminal Appeal No. 282 of 1982 (Jalam versus State of M.P.) which arises out of the same judgment and involves common questions of fact and law.

The appellants in both the appeals have been found guilty of offence punishable u/s 27 of Arms Act and sentenced to one year's R.I. each, by judgment dated 31-5-1982, passed by Shri M.A.S. Khan, Special Judge, Damon, in Special Criminal Case No. 9 of 1982.

The prosecution case against the two appellants is that on the night intervening 25th and 26th October, 1981, at about 4.00 A.M., Sub-Inspector Shri T.N. S. Gaur (P.W.7) accosted them in the jungle between Harduwa and Ramnagar and took their search in the presence of witnesses Kannu (P.W.5) and Puransingh (P.W.6). Five live cartridges (4 new and 1 refilled) were seized from possession of Appellant Dayalsingh -- vide Ex.P-2 and one 12-bore Deshi gun was seized from

possession of Appellant Jalam -- vide Ex.P-3. The two appellants were arrested vide Ex. P-4 and subsequently put on trial for offences punishable under Sections 25/27 of Arms Act read with Section 11(4) of M.P. Dakaiti Aur Vyapaharan Pradhavit Kshetra Adhiniyam, 1981. It was alleged that the two appellants were going into the jungle to meet Chittarsingh a known and absconding dacoit. They were accosted in pursuance to the aforesaid information and tried as aforesaid.

The two appellants denied any seizure from their possession and submitted that they have been falsely implicated by the police. Appellant Dayalsingh produced a gun licence issued in his favour by the District Magistrate, Damoh, presumably to prove that his possession of five live cartridges was not illegal. During the trial, all independent witnesses, including witnesses for seizure, viz., Kannu (P.W.5) and Puransingh (P.W.6), did not support the prosecution case and were declared hostile. It was discovered that seizure-memos (Exs. P-2 and P-3) did not bear the signatures of Kannu (P.W.5), though he was cited as a witness in both of them. This was admitted to be a mistake by the Investigating Officer Shri Gaur, which had crept in because seizure was affected in the jungle and in the night. Puransingh denied any seizure in his presence. He, however, admitted his signatures in seizure-memos (Exs. P-2 and P-3). In cross-examination by the learned Counsel for the appellants, he stated that Station Officer took his signatures on these two seizure-memos at Fatehpur police out-post and in the absence of the two appellants. He further stated that he signed these documents after sun-set. The learned Judge found that the two Panch witnesses do not support the prosecution and, therefore, the appellants could not be convicted on their evidence. The learned Judge, however, found that evidence of Investigating Officer Shri Gaur (P.W.7) was worthy of credence and sufficient to base the conviction and sentence of appellants for offence u/s 27 of Arms Act. That is how the two appellants have been convicted and sentenced as aforesaid.

Submission of the learned Counsel for the appellants is that conviction of appellants Dayalsingh in the context of licence in his possession, is wholly illegal. It is also submitted that the conviction of the two appellants for offence punishable u/s 27 of Arms Act cannot be maintained in the absence of intention necessary for the said offence. Relying on Naba Kumar Das Vs. State of West Bengal, , it is submitted that the sole testimony of Shri Gaur, the Investigating Officer, in the context of evidence of Panch witnesses, is not sufficient to justify their conviction and sentence.

A bare reading of the impugned judgment indicates that the learned Special Judge has found the testimony of Shri Gaur (P.W.7) worthy of credence and has convicted the two appellants in spite of the fact that Puransingh (P.W.6), a witness to the seizure does not support the prosecution. Question, vehemently pressed for consideration of the Court is: whether the conviction can be based on uncorroborated testimony of an Investigating Officer ? In N.K. Das's case (supra), the Supreme Court was considering whether evidence of a Circle Inspector could be accepted as sufficient to base the conviction for offence

punishable u/s 411, Indian Penal Code? The Supreme Court did not deal with the broad legal question as posed before this Court as it found the evidence of the Circle Inspector full of mistakes and, therefore, unreliable. A reading of the said judgment indicates that the Supreme Court would have set aside the conviction of the Appellant even if the witness was not the Circle Inspector. The said judgment would lead one to believe that Supreme Court had no objection, on principle to convict a person on the sole testimony of a Police Officer; provided his testimony was otherwise reliable. Indeed, there are sufficient authoritative pronouncements of the Supreme Court to support this proposition. In *Aher Raja Khima Vs. The State of Saurashtra*, , it was held that "The presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds thereof." Thereafter, this view appears to have been consistently followed by our law Courts. In *Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another*, , it was argued as a matter of principle that evidence of an Investigating Officer who conducts a search, cannot be relied on unless it is corroborated. The argument was, however, rejected by observing that "it is a novel proposition and he has not been able to cite any authority or principle in support of it". In *Hazari Lal Vs. State (Delhi Administration)*, , it was submitted that evidence of a Police Officer who laid the trap should not be accepted without corroboration. The Supreme Court did not agree with the proposition of law and observed as under: --

____ We do wish to say that there is no rule of prudence which has crystallized into a rule of law, or indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case, the Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance_____

These decisions should, therefore, establish that there would be nothing illegal, on principle, in basing the conviction of the appellants on the uncorroborated testimony of the Investigating Officer Shri Gaur; provided his evidence is otherwise trustworthy. Under the circumstances, it may be examined if his evidence inspires confidence and, therefore, can be accepted. Shri Gaur (P.W.7) has deposed that on receiving information that the two appellants were in touch with the gang of dacoit Chittarsingh and were supplying arms, ammunition, food etc. to them, he went on the spot ready for ambush. He has further deposed that he apprehended the two appellants on the spot in the night and arrested them. He has also deposed that in the search, a 12-bore Deshi Katta was recovered from possession of Appellant Jalamsingh and was seized vide seizure-memo (Ex. P-3). Similarly, he deposed that five 12-bore live cartridges were seized from

possession of Dayalshingh vide Ex. P-2. The witness was cross-examined at length and admitted that he knew that it is always better to have independent witnesses to the seizure, but hither stated that when independent witnesses are not available, police witnesses serve the same purpose. He was asked to explain why witness Kannu (P.W.5) did not sign two seizure-memos, to which he admitted that it must have been accidental omission, because it was night. He, however, denied the suggestion that these seizure-memos were prepared at Fatehpur Chouki, or that nothing was seized in the presence of P.W.6 Puransingh. Cross-examination of this witness does not indicate as to what the learned Counsel for the appellants wanted from this witness. The witness, however, admitted that Appellant Dayalsingh had a gun licence, but had sold his gun before the date of incident. The suggestion that five cartridges were seized after about a month of the alleged incident, was vehemently denied. He has further stated that it is difficult to get any independent person to come to the court to depose against the appellants because of the influence and terror exercised by them. He asserted that witnesses Kannu and Puransingh had voluntarily given their statements. His statement that he apprehended the two appellants in the jungle in the night, has gone unchallenged in cross-examination. A bare reading of his statement would indicate that he is an honest and straightforward Police Officer, who has answered every question in a straightforward manner without hiding anything. His admission that absence of Kannu's signatures on seizure-memos (Exs P-1 and P-2) was accidental omission, appears to be truthful and honest explanation. His admission that Appellant Dayalsingh is a Sarpanch of village Sagron and holds a gun licence, indicates the straightforwardness of the witness. Under the circumstances, his being the Investigating Officer, is the only point against him. In case he was not the Investigating Officer and was an independent witness, his sole testimony would have been accepted as sufficient for basing the conviction of the appellants. The fact that he is a Police Officer, is, however, not sufficient to discredit his version in the context of law stated aforesaid. Under the circumstances, this Court has no hesitation in rejecting the submission that the sole testimony of this witness, which is otherwise reliable and trustworthy, cannot form the basis of the appellants' conviction.

This witness (P.W. 7 Shri Gaur), however, only proves that five live cartridges were seized from Appellant Dayalsingh and one Deshi Katta from Appellant Jalam in the night in the jungle between Harduwa and Ramnagar. Appellant Dayalsingh holds a gun licence (EX.D-1), which indicates that five live cartridges were purchased by him from a licensed dealer on 1-9-1981. Endorsement on the gun licence further indicates that he sold his gun to Vishwakarma Shastralaya, Damon, on 24-9-1981. Entries in the gun licence would indicate that Appellant Dayalsingh came in possession of five live cartridges in accordance with law and, therefore, cannot be punished for mere possession thereof. Fortunately for him, he has not been found guilty of offence punishable u/s 25 of Arms Act -- even though charged. As far as Appellant Jalam is concerned, he has been found in possession of an unlicensed gun and could be punished u/s 25 of Arms Act, as

possession of a gun without a licence, would be a contravention of Section 3 of Arms Act. Fortunately for him, he has not been found guilty and convicted under this section. Since he has been found guilty u/s 27 of Arms Act, this Court would have the necessary power to convict and sentence him for a lesser offence punishable u/s 25 of the Arms Act. The question, however, is: whether these two appellants are guilty of offence punishable u/s 27 of the Arms Act ? Section 27 of the Act provides for punishment of persons who have been found in possession of any arms or ammunition with intent to use the same for any unlawful purpose or to enable any other person to use the same for any unlawful purpose. A bare reading of this section would indicate that mere possession of Deshi Katta or live cartridges would not be covered by this provision. The prosecution will have to establish intention to use these arms for any unlawful purpose. There can, however, be no direct evidence of intention which must be gathered from the surrounding circumstances. In the instant case, two circumstances are against the appellants, viz. (i) their presence in the jungle and arms and ammunition in their possession; and (ii) their presence in the jungle in the night. Appellant Dayalsingh is resident of village Sagron, while Appellant Jalamsingh is a resident of Fatehpur. They were both found in the jungle between Harduwa and Ramnagar. Their presence in the jungle in the night armed with unlicensed gun, would reasonably lead to an inference of their intention to use Deshi Katta and live cartridges. Use of Deshi Katta, by itself, would indicate its use for illegal purpose and in an illegal manner. Under the circumstances, intention necessary to punish the two appellants for offence u/s 27 of Arms Act, is apparent on the face of record. In this view of the matter, their conviction must be upheld.

The aforesaid is sufficient to uphold their conviction and sentence u/s 27 of Arms Act. This Court, is however, of the opinion that Appellant Jalamsingh is also guilty of offence u/s 25 of Arms Act, as Deshi Katta seized from his possession, is unlicensed. It is, however, not necessary to exercise powers in this behalf. and inflict any separate punishment on this Appellant for this offence.

The appeal fails and is dismissed. Since the appellants are on bail, they are directed to appear before the Chief Judicial Magistrate, Damoh, on 7-4-1986 to receive this judgment and undergo the sentence.