

(2005) 09 DEL CK 0086
In the Delhi High Court
Case No : Criminal A. No. 680 of 2001

Javed Ahmed Munshi

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Criminal Procedure (Amendment) Act, 1955 — Section 117
Explosive Substances Act, 1908 — Section 5
Penal Code, 1860 (IPC) — Section 53A, 53A(3), 53A(4)

Citation : (2005) 124 DLT 403 : (2005) 84 DRJ 421 : (2006) 1 RCR(Criminal) 308

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Mohd. Nasir, Mohd. Saleem, Vijay Sharma and Tabrez, for the Appellant; P.P. Malhotra, ASG and Sunil K. Kapoor, for the Respondent

Final Decision : Disposed Off

Judgement

R.C. Chopra, J.—The only contention raised in this appeal by learned counsel for the appellant is that in view of Section 53-A of the Indian Penal Code, which was inserted by Act 26 of 1955, the maximum sentence awardable to an accused convicted u/s 5 of the Explosive Substances Act, 1908 is five years only. It is submitted that the sentence of transportation for 14 years as mentioned in Section 5 of the Explosive Substances Act, 1908 is deemed to have been omitted in view of Section 53-A of the IPC which was introduced by way of Amendment Act 26 of 1955. Learned counsel for the appellant submits that sentence of 14 years RI and a fine of Rs.30,000/- awarded to the appellant by the Trial Court u/s 5 of the Act vide orders dated 28.8.2001 in FIR No. 180/1999, PS Hazrat Nizamuddin, is not sustainable and since the appellant has already undergone a sentence of more than five years, he does not wish to make any further submission on the merits of the appeal.

2. Vide orders dated 5.5.2005, the learned Additional Solicitor General of India

was requested to assist this Court on this question. I have heard learned counsel for the appellant and learned ASG.

3. Learned counsel for the appellant submits that the Explosive Substances Act, 1908, prior to its amendment in 2002, reads as under:

"5. 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, shall, unless he can show that he made it or had 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. Section 53-A of the Indian Penal Code, which was inserted by Act of 26 of 1955, reads as under:

"53 A. Construction of reference to transportation.--(1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, [1955] (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to "transportation" in any other law for the time being in force shall, --

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted."

5. It is argued that Section 53-A of the Indian Penal code clearly provides, vide sub-Clause (4) thereof, that any reference to expression "transportation" in any other law for the time being in force shall if the expression means transportation for life, be construed as a reference to imprisonment for life and if the expression means transportation for any shorter term, be deemed to have been omitted. Learned counsel contends that the maximum punishment provided u/s 5 of the Explosive Substances Act, 1908, Therefore, remains imprisonment for five years

only as the transportation for a term of 14 years is deemed to have been omitted by Section 53-A(3)(4)(b) of IPC.

6. Learned counsel for the appellant also points out that the Explosive Substances Act, 1908 was amended through Amendment Act 54 of 2001 w.e.f. 1.2.2002 to provide a sentence up to 10 years under certain cases and imprisonment of life in those cases where special category explosive substance was recovered but the present case was in regard to the commission of the offence in the year 1999 as such the un-amended Section 5 of the Explosive Substances Act, 1908 is applicable which provides transportation for 14 years or imprisonment for five years and since Section 53-A(3)(4) of the IPC has omitted, the transportation for 14 years, the maximum sentence awardable to an accused u/s 5 of the Act of 1908 remains five years imprisonment only with fine.

7. Learned ASG, on the other hand, contends that Section 53-A of the IPC does not altogether abolish the sentences for transportation for a shorter term but merely converts them to imprisonment instead of transportation.

8. A plain reading of Clause(b) of sub-Clause (4) of Section 53-A clearly conveys that any reference to transportation in any other law for the time being in force shall if the expression means transportation for any shorter term be deemed to have been omitted. Section 53-A of the IPC is divisible into two parts "sub-Clause(2) provides for the conversion of sentences of transportation before the amendment of 1955 into sentences for rigorous imprisonment for the same terms and Clause (4)(a)(b) provides that any reference to transportation in any other law for the time being in force providing for transportation for life be construed as a reference to imprisonment for life and for a short term be deemed to have been omitted. It is also found that the amendment Act of 1955 had not only introduced Section 53-A of the IPC but also introduced amendments to the second schedule of the Code of Criminal Procedure which mentions various punishments for the offences committed under Indian Penal Code. Through Section 117 of the Amendment Act wherever the IPC provided transportation for life it was amended as imprisonment for life and wherever IPC provided transportation for a shorter term, it was amended to mean imprisonment for a shorter term but no such amendment was carried out in respect of the Explosive Substances Act, 1908 till 1.2.2002 when Section 5 of the Act was amended vide Act 54 of 2001 and sentences were provided which included imprisonment up to 10 years in case of the possession of explosive substances and rigorous imprisonment for life or rigorous imprisonment for a term, which may extend to 10 years for being in possession of special category explosive substances.

9. The net result is that between 1955 to 1.2.2002 when 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 53-A

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.

10. The appeal, Therefore, stands disposed of by reducing the sentence of the appellant to RI for 5 years and a fine of Rs. 30,000/-. In default of payment of fine, the appellant shall undergo further SI for six months. In case the appellant has already undergone the aforesaid sentence, he shall be set at liberty, if not required in any other case.

11. The appeal stands disposed of.