
(1999) 10 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 533-SB of 1987

Mohinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Citation : (2000) 1 AICLR 59 : (2000) 1 RCR(Criminal) 192

Hon'ble Judges : T.H.B.Chalapathi, J

Advocate : G. S. Gill, T. P. S. Mann, Advocates for appearing Parties

Judgement

T.H.B. Chalapathi, J.

1. The accused was convicted for the offence under Section 5 of the Explosives Substances Act (hereinafter called the 'Act') and sentenced to undergo rigorous imprisonment for a period of four years and pay a fine of Rs. 2000/ by the learned Additional Sessions Judge, Kapurthala in Sessions Case No. 80/27 of 25.5.1987 in FIR No. 215 dated 23.6.1985.

2. According to the case of the prosecution on 23rd June, 1985, Sub Inspector of Police Sat Pal alongwith other police officials held a Nakabandi at the bridge of a canal minor towards the side of Khilwara Gate. At about 3.30 A.M. three persons came from the side of Khilwara Gate who wanted to go towards Phagwara. When the Police party asked them to stop, they started running towards the different directions and the Police Party was able to apprehend the accused and on his personal search, it was found that he was having two hand grenades and the same were recovered from his Jhola (bag) which the accused was holding in his right hand. The hand grenades were wrapped in an envelope and a match box was also found in the Jhola (bag). The police seized the hand grenades, Jhola and the match box and on the receipt of the report of the Controller of Explosives, a chargesheet was filed against the accused for the offences under Sections 4 and 5 of the Act.

3. On the basis of the material before him, the Magistrate committed the case to

the Court of Session. The learned Additional Sessions Judge framed charges under Sections 4 and 5 of the Act against the accused to which the accused pleaded not guilty.

4. In order to prove the guilt of the accused, the prosecution examined three witnesses besides marking the report of the Controller of the Explosives. The accused was examined under Section 313 Cr.P.C. In defence, the accused examined two witnesses namely the Reader of the Court of the Judicial Magistrate Ist Class, Phagwara and Constable Lakhwinder Singh.

5. After considering the evidence on record, the learned Additional Sessions Judge came to the conclusion that the accused was guilty of the offence under Section 5 of the Act and accordingly convicted the accused and sentenced him as stated above. Aggrieved by the conviction and sentence, the accused preferred this appeal.

6. PW1 is the Sub Inspector of the Police. According to him on 23.6.1985, he alongwith Inspector Bharpur Singh and other police officials went for Nakabandi at the bridge of the canal minor on the side of Khilwara Gate and at about 3.30 P.M. three persons were seen coming and when the Police Party directed them to stop. all those three persons ran towards different directions and he chased the accused and with the help of his companion he apprehended him and when he conducted the search of the accused, he found two hand grenades in the Jhola and also a match box. The hand grenades were put into separate tins and after putting cotton in the tins, they were properly packed and sealed. In the crossexamination he deposed that Nakabandi was held at one place. He also admitted that Lakhwinder Singh Constable who has been examined as DW2 was also a party to the Nakabandi. He also admitted that no attempt was made to join any independent witness at the time of the search of the accused. The evidence of PW2 is of no consequence. PW3 is the constable who was a party to the Nakabandi. His evidence also shows that no independent witness was associated when the search of the accused was conducted. Except the evidence of PW1 to PW3, there is no evidence in support of the case of the prosecution. No independent witness has been examined. Even otherwise, other members of the Patrolling Party have not been examined. On the other hand, the accused examined Lakhwinder Singh, a member of the Patrolling Party as DW2. According to him, one Sucha Ram was apprehended by their group and the other two companions of Sucha Ram were apprehended by other groups. But it is the case of the prosecution that only the accused Mohinder Singh was apprehended while the other two persons were successful in escaping. The accused was not Sucha Singh, but his name was Mohinder Singh. In the crossexamination, this witness clearly stated that their group arrested only Sucha Ram accused and one person was apprehended by the Police Party headed by Satpal Sub Inspector and the other was apprehended by the group headed by Shingara Singh, Sub Inspector. His evidence is quite contrary to the evidence of PW1 and PW3.

7. DW1 who was the Reader of the Court categorically stated that a case was

registered against Sucha Ram for the offence under Section 255459 of the Arms Act and it was decided by the learned Judicial Magistrate Ist Class, Phagwara on 1061987 and Lakhwinder Singh who is DW2 in this case appeared as PW2 in that case. Thus it is clear from his evidence that in regard to the same incident, the police filed cases not only against the accused namely Mohinder Singh, but also against another person Sucha Singh. Therefore, the very fact that the Patrolling Party had seen three persons coming and two of them escaped and the accused was apprehended cannot be believed.

8. On the facts of the present case when the evidence is inconsistent, it is unsafe to rely on the evidence of PW1 only to convict the accused. There cannot be any dispute of the fact that the prosecution is relying on the evidence of PW1 and PW3 which is selfcontradictory. Further the evidence of DW1 and DW2 makes the evidence of PW1 and PW3 unreliable. In the circumstances, I have no other alternative except to accept the appeal and acquit the accused.

I accordingly allow the appeal, set aside the conviction and sentence imposed on the appellant by the learned Additional Sessions Judge and acquit him of the charges framed against him. His bail bonds shall stand cancelled.