

(2004) 10 DEL CK 0163
In the Delhi High Court
Case No : CRLA 37 of 2000

Rajinder Singh Sahni

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 16-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Explosive Substances Act, 1908 — Section 4, 5

Citation : (2004) 10 DEL CK 0163

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Sindhu Vishwkarma, for the Appellant; Richa Kapur, for the Respondent

Judgement

S.K. Agarwal, J.—By judgment dated 29.11.1999, appellant was held guilty for the offence u/s 4(b) and Section of the Explosive Substances Act (for short the "Act") on the allegation of his being in possession of explosive substance (six bombs) without any license or any lawful authority and on 30.11.1999 he was sentenced to undergo R.I. for five years and fine of Rs.3,000/- for the offence u/s 4 of the said Act. He was further sentenced to undergo R.I. for three years and fine of Rs.2,000/- for the offence u/s 5 of the Act, and in default of payment of fine of Rs.3,000/- and Rs.2,000/-, appellant was ordered to undergo S.I. for three months and two months respectively. The sentences were to run concurrently, subject to benefit of set-off u/s 428 of the Code of Criminal Procedure (for short "Cr.P.C."). This order is under challenge in this appeal.

2. Prosecution allegations, in brief, are that on 16.1.1997, at about 5.00 pm., on receipt of information, a raiding party was formed and the appellant was found in possession of six country-made bombs at the main bus stand, GTB Road, Jahangirpuri, Delhi.

The same were defused. After completion of investigation, challan was filed. Charge under Sections 4 and 5 of the Act was framed against the appellant.

Appellant pleaded not guilty to the charge. In support of its case, prosecution placed reliance on the CFSL report dated 27.2.1997, which, inter alia, reads as under:

??All the exhibits of parcel 1-6 were examined, physically and Chemically, including chromatographic analysis. On thorough examination it has been found that :-

Potassium, Aluminium, Barium, sulphur and Nitrate ions are present in all the exhibits of parcel 1-6. These Chemical substances are used in the manufacturing of low explosives as well as fire crackers.??

3. A perusal of the report reveals that the contents of the exhibits consisted of Potassium, Aluminium, Barium, Sulphur and Nitrate ions. These substances are used in the manufacture of low explosives as well as fire crackers.

4. Learned counsel for the appellant submitted that appellant was a young boy of about 25 years of age on the date of alleged incident. He has already undergone sentence of more than three and a half years, including remissions; that appellant now is a married man, having minor children to support; that he has absolutely clean antecedents; that he does not wish to challenge his conviction and only prays for a lenient view on the quantum of sentence. Appellant's father has filed an affidavit stating that appellant is a married man, having a child aged about nine months, as well as ailing parents who are dependent on him. It is further stated that appellant is the only bread-earner in the family; and that he has been earning his livelihood by selling fish in the local market. Fine has already been deposited.

5. Learned APP for the State seeks to place on record the verification report received in respect of antecedents of the appellant. As per verification report, there is nothing adverse against the appellant. It is stated that appellant is engaged in cultivation and also runs a fishery farm in his village. Learned counsel further argued that the question of sentence is a matter of discretion and there is no minimum sentence prescribed by law.

6. As noted above, as per CFSL report, the material contained in the bombs is used in manufacture of low explosives and fire crackers. Nominal roll of the appellant reveals that he has already undergone sentence of over three and a half years. Antecedent of the appellant are not in dispute. Looking into the nature of allegations, the impugned order is modified and the sentence awarded to the appellant is reduced to the period of sentence already undergone by him. Fine, if not deposited so far, be deposited within two weeks.

7. Appellant is ordered to be released forthwith, if not required in any other case. Appeal stands disposed of.