
(2009) 04 RAJ CK 0034
In the Rajasthan High Court

Rohtash

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 315

Explosive Substances Act, 1908 — Section 4

Penal Code, 1860 (IPC) — Section 406, 420, 467

Citation : (2009) 4 RLW 2973

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Judgement

Mahesh Bhagwati, J.—Challenge in this appeal is to the judgment dated 23.05.1987 rendered by the Additional Sessions Judge, Kishangarh, District Alwar (hereinafter referred to as "the trial court") whereby he convicted accused-appellant in the offence u/s 4(b) of the Explosive Substances Act, 1908 and sentenced him to undergo three years rigorous imprisonment and a fine of Rs. 1,000/-; in default of payment of fine to suffer further rigorous imprisonment for three months.

2. The facts necessary for disposal of this appeal succinctly are thus:

On 27th January, 1985 at about 8.00 a.m. when P.W. 8, Shri Mahesh Chand Dubey, S.H.O. Police Station Khairthal, restrict Alwar was coming back after conducting an investigation in case no. 11 registered in the offences under Sections 420, 467 and 406 of Indian Penal Code, received an information from an informer that one Rohtash son of Badri Prasad resident of Khairthal, Alwar was manufacturing gun powder. Having received this information, Shri Mahesh Chand Dubey alongwith other police personnel reached at the house of Rohtash, where he found him thrashing something in a small mortar of stone with pestle. On being asked, Rohtash responded that he was manufacturing gun powder for which he had no licence. Shri Mahesh Chand Dubey seized coal, mortar, two pestles, two containers containing-three and a half kilograms gun powder from

his house which was in his conscious possession. Shri Mahesh Chand Dubey filed a written complaint, Exhibit P-5 in the Police Station whereupon F-IR, Exhibit P-6 was lodged and investigation commenced.

The Investigating Officer recorded the statements of the witnesses u/s 161 Cr.P.C, seized explosive substances vide memo, Exhibit P-10, arrested the accused-appellant Rohtash vide Exhibit P-I, sent the explosive substances, wooden pestles, one stone mortar to FSL, Jaipur for its chemical analysis and after usual investigation filed the charge sheet in the court against the accused appellant in the offence u/s 4(b) of Explosive Substances Act, 1908.

The accused-appellant was indicted for the offence u/s 4(b) of Explosive Substances Act, 1908 who pleaded not guilty and claimed to be tried. The prosecution, in order to prove its case, examined in all 8 witnesses. In the explanation u/s 313 Cr.P.C., the accused-appellant claimed innocence and pleaded that he had a licence to manufacture fire works. He produced himself as a witness u/s 315 Cr.P.C. and gave statement to substantiate his defence. After completion of trial, learned trial court found the accused-appellant guilty and convicted him for the alleged offence and also sentenced as indicated hereinabove.

3. Heard learned Counsel for the appellant as also learned Public Prosecutor appearing for the State and with their assistance scanned the relevant material available on record.

4. During arguments, learned Counsel for the appellant took me to document/ letter Exhibit D-1 and licence Exhibit D-3 issued by Deputy Controller of Explosives, Jaipur to the accused-appellant Rohtash Kumar. The first and the only thrust of argument advanced by the learned Counsel for the appellant is that on 27th January, 1985, the appellant had a licence to manufacture fire works but he had sent the same for its renewal to District Magistrate, Alwar. The learned trial court gravely erred in not taking the said licence into account and perversely convicted the accused-appellant on the basis of presumption drawn by himself. It is true that all the witnesses have supported the case of the prosecution on this premise that the appellant had no licence with him to possess gun powder and the articles used for manufacturing the same, but their statements are found to be unreal and totally contrary to the existing documentary evidence, the accused-appellant had produced in his defence. Hence, conviction of the accused-appellant and the sentence awarded to him deserve to be set aside and he be acquitted accordingly.

5. Learned Public Prosecutor, in contra, has submitted that the impugned judgment pronounced by the learned trial court is just and proper and based on limpid appreciation of the prosecution evidence. It suffers from no infirmity and in view of this, the appeal filed by the accused-appellant may be dismissed.

6. In order to prove offence u/s 4(b) of the Explosive Substances Act, 1908, the prosecution is required to prove that the accused:

(a) was found in possession of explosive substance for an unlawful and malicious purpose and;

(b) he intended to endanger life or he had an intention to do a wrongful act to the detriment of another person or to cause serious injury to property or to enable any other person by means thereof to endanger life or cause serious injury to property.

Having kept in mind the ingredients of the alleged offence, when I perused the statements of P.W. 3 Maman Singh, P.W. 5 Gajraj Singh, P.W. 7 Suraj Prakash and P.W. 8 Mahesh Chand, it is found that all these witnesses simply stated that the accused Rohtash was manufacturing gun powder in his house without licence. All these police witnesses unanimously stated that when they reached at the house of the accused, he was found crushing something in a small stone mortar with the pestle, but none of these witnesses deposed that the accused was found in possession of gun powder for any unlawful or malicious purpose. None of these witnesses deposed that they had apprehension from the accused that by means of this gun powder he will endanger human life or cause bodily injury to any person. From no stretch of imagination, it can be gathered from the prosecution evidence that the accused-appellant had any malicious or unlawful purpose for possessing the alleged gun powder as also the pestles and stone mortar.

7. A duty is cast upon the prosecution to prove the offence against the accused beyond any shadow of doubt. The prosecution seems to have miserably failed in establishing its case and there is no evidence on record which may fasten the guilty upon the appellant.

8. Now advertent to the defence put forth by the accused-appellant that he had a licence on 27th January, 1985 and he had sent the same for its renewal to the District Magistrate, Alwar. Exhibit D-1 is a letter addressed by the District Magistrate, Alwar to Deputy Chief Controller, Explosives, Agra (U.P.). This document reveals that a licence No. 11/55 had been issued by the competent authority to the accused-appellant Rohtash which was valid for the whole of year 1984 and which was also sent to the District Magistrate, Alwar for its renewal. The note scribbled on the back of this document tangibly suggests that the appellant Rohtash S/o Badri Prasad had a licence for fire works which was valid for the year 1984 and which was sent for its renewal to the competent authority. Document Exhibit D-3 is a licence issued to accused-appellant Rohtash S/o Badri Prasad resident of Khairthal, Alwar issued by Deputy Controller of Explosives, Jaipur on 21.08.1986 which suggests that this licence was valid upto 31st March, 1988. This licence contains the date of reference renewal application which is 28th March, 1985. This document also suggests that the licence number of accused-appellant Rohtash Kumar was 11/55, The Sub-Rule 3 of Rule 165 of the Explosives Rules, 1983 envisages:

165(3).- Every application for the renewal of a licence shall be made . so as to

reach the licensing authority or the authority empowered to renew the licence at least 30 days before the date on which the licence expires, and if the application is so made, the licence shall be deemed to be in force until such date as the licensing authority renews the licence or until an intimation that the renewal of the licence is refused, has been communicated to the applicant.

9. It is manifestly clear from the perusal of the aforesaid rule that if an application for the renewal of the licence is made to the competent authority within the stipulated period, the licence shall be deemed to be in force until such date the licensing authority renews the licence or until an intimation that the renewal of the licence has been refused. Unequivocally and undeniably, the accused-appellant had submitted an application for the renewal of his licence to District Magistrate, Alwar within the stipulated period. The District Magistrate, Alwar has himself reported on the back of document Exhibit D-I which is addressed to Deputy Chief Controller, Explosives, Agra(U.P.) that the licence was valid for the whole year 1984 and pursuant to the application of the accused-appellant and reminder renewal dated 28.03.1985, the licence of the appellant was renewed which is found to be valid upto 31st March, 1988. The learned trial court does not seem to have taken into account both these documents while adjudicating the case. Both these documents are on record but the reason of having abandoned them by the learned trial court is not found in the impugned judgment. The learned trial court is also not found to have taken note of the provisions of Sub-Rule (3) of Rule 165 of the Explosives Rules, 1983. Had the learned trial court properly understood the scheme of the Explosive Substances Act, 1908 and the rules made thereunder, he would not have arrived at the finding of conviction exclusively made on the basis of surmises and conjectures. The following observation:

vr% bl rF; ds vk/kkj ij ;g lqj{kk iwoZd fu"d"kZ fudkyk tk ldrk gS fd bl voS/k ck:n fuekZ.k ds ihNs vfHk;qDr dk vk"kk; ekuo thou dks ladVkiUu djus dk FkkA

made by the learned trial court in the impugned judgment appears to be perverse in toto and contrary to the evidence led by both the prosecution and the defence, as the intention of endangering life of people does not find any place in the statement of any prosecution witness.

10. The impugned judgment rendered on the basis of surmises and conjectures is found to be totally perverse and contrary to evidence on record. The finding of conviction arrived at by the learned trial court is not only improper but unjust too with which I do not agree and the impugned judgment deserves to be set aside.

11. For these reasons, the criminal appeal filed by the accused-appellant Rohtash S/o. Badri Prasad by caste Bhadbhuja R/o Asrani Gali, Khairthal, District Alwar is allowed. His conviction in the offence u/s 4(b) of the Explosives Act, 1908 and the sentence awarded thereunder are set aside.

12. The accused appellant is on bail. He need not surrender. His bail bonds stand discharged.