
(2006) 01 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1715-SB of 2004

Sarup Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-01-2006

Acts Referred:

Explosive Substances Act, 1908 — Section 4, 5

Citation : (2006) 2 RCR(Criminal) 350

Hon'ble Judges : Baldev Singh, J

Bench : Single Bench

Advocate : P.S. Hundal, for the Appellant; B.S. Chahar, Assistant Advocate General, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Baldev Singh, J.—Sarup Singh son of Gurdit Singh resident of Mahmoodpura/ Rishi Nagar, Majitha Road, Amritsar has filed this appeal against the impugned judgment dated 12.8.2004 and the sentence order dated 13.8.2004 passed by Shri G.S. Bakshi, the then Additional Sessions Judge (Ad hoc) in Fast Track Court at Gurdaspur in case FIR No. 28 dated 22.1.2000 under Sections 4/5 of the Explosive Substances Act, 1908 and Section 25 of the Arms Act, 1959 registered at Police Station Sadar Pathankot.

2. The appellant was convicted u/s 25 of the Arms Act and was sentenced to undergo RI for 3 years and to pay Rs. 100/- as fine and in default of payment of fine, to undergo further RI for one month. He was also convicted u/s 5 of the Explosive Substances Act and was sentenced to undergo RI for a period of 10 years and to pay fine of Rs. 1,000/- and in default of payment of fine, to undergo further RI for six months. Both the substantive sentences were ordered to run concurrently.

3. The facts of the prosecution case are that on the night intervening 21/22.1.2000, Gurmit Singh SI, the then SHO Police Station Sadar Pathankot

Alongwith Jassa Singh ASI, Parshotam Lal ASI and other police officials was present at T-point Sarna. They spotted a Maruti car of white colour bearing registration No. PB-2R-9089 coming from the side of Madhopur. The time was about 12 midnight. Torch light was flashed and the car signaled to stop. The driver of the car stopped the car. He disclosed his name as Dr. Sarup Singh son of Gurdit Singh resident of Mahmoodpura, P.S. Kathu Nangal, then residing at Rishi Bihar, Amritsar. The car was searched. A pistol with seven live cartridges kept in a ploythene bag was recovered lying under the seat of the driver. Two hand grenades, four detonators, one timer along map and a battery were also recovered. Two polythene bags were recovered lying under the front seat by the side of the driver. RDX colour brown was recovered from one polythene bag and RDX colour black was recovered from another polythene bag. RDX colour brown on being weighed was found 3 kgs., while RDX of black colour on being weighed was found to be 3 kg 200 grams. 100 grams RDX was taken out from each polythene bag as sample and the samples were sealed in plastic bags. The remaining RDX of brown and black colour was sealed in separate parcels. Gurmit Singh SI affixed his seals on sample parcels and other parcels. Two hand grenades were also sealed in separate plastic bags. Timer, battery and detonators were sealed in one box. Sketch of the pistol was prepared. Pistol was also sealed in the shape of a parcel. Seven live cartridges were also sealed in a separate parcel. These articles Ex. P1 to P15 were taken into possession vide recovery memo Ex. PC. Rs. 3,018/- were recovered from the front pocket of the appellant and sealed in an envelope, which is Ex. P-16. These were taken into possession vide recovery memo Ex. PB. The appellant could not produce any permit or license for carrying the arms and ammunition. Ruqa Ex. PF was scribed and was sent to the Police Station, whereupon, FIR was recorded by MHC Bharat Bhushan. Copy of the FIR is Ex. PF/1. Site plan Ex. PG was prepared showing the place of recovery. The case property on reaching the police station was deposited with the MHC. Hand grenades were sent to PAP, Jalandhar for test. Test report Ex. PJ was received. Samples of the RDX were sent to Forensic Science Laboratory, Chandigarh. Test report Ex. PK was received. Pistol was sent to the Head Armourer for test. His report was received. After obtaining sanction for prosecution from the concerned District Magistrate, challan was put in against the appellant for the offence punishable u/s 25 of the Arms Act and Sections 4/5 of the Explosive Substances Act.

4. The case was committed to the Court of Session for trial. Charge was framed against the appellant for the offence punishable u/s 25 of the Arms Act and Sections 4/5 of the Explosive Substances Act, to which he did not plead guilty and claimed trial.

5. The prosecution at the trial examined 11 witnesses, namely; PW-1 ASI Jassa Singh, PW-2 MHC Bharat Bhushan, PW-3 SI Gurmit Singh, PW-4 Des Raj, PW-5 HC Harjinder Singh, PW-6 ASI Sham Lal, PW-7 Sukhdev Singh, PW-8 Harvinder Kaur, PW-9 Constable Kulbhushan, PW-10 Inspector Bhagwan Singh and PW-11 Dr. Ravinder Verma. They proved various documents, which are on the file.

6. Statement of the appellant was recorded by the trial Court u/s 313 Cr. P.C. on the conclusion of the prosecution evidence. He stated that he along with his family members was picked up by the police from the Gurdwara Chhote Ghuman on 2.1.2000 at about 1030 p.m. and no recovery was effected from him and his family members. He was illegally detained by the police and later on 22.1.2000, the police foisted this case against him. The appellant adduced no evidence in support of his version.

7. Arguments of the Ld. Counsel for the appellant and of the Assistant Advocate General were heard and the evidence was scrutinised with their help.

8. The factum of the alleged recovery of arms and ammunition from the possession of the appellant has been cogently proved from the testimonies of PW-1 Jassa Singh ASI and PW-3 Gurmit Singh SI. Except for a few discrepancies, which are ignorable, their testimonies are cogent and consistent. Ammunition in heavy quantity was recovered. It cannot be said that it was planted by the police on the appellant. The version of the appellant that he was picked up along with his family members on 2.1.2000 at 1.30 p.m. from Gurdwara Chhote Ghuman is not supported by any evidence. The testimonies of these two police officials cannot be discarded simply because of their official status. The recovery was effected at an odd hour i.e. at midnight at an isolated place. So, the presence of independent witnesses could not be procured before searching the car of the appellant. There was no prior information with the police. So, independent witnesses could not also be joined before hand. It was a sudden recovery, which is not vitiated because of the non-joining of the independent witnesses. So, the factum of the alleged recovery of arms and ammunition is proved.

9. Ex. PJ is the report of the In-charge of Bomb Disposal Squad, PAP Lines, Jalandhar. He tested two live hand grenades and reported that if safety pins could be removed from them, those could cause heavy destruction as these were in a workable condition.

10. Ex. PK is the report of the Deputy Director, Forensic Science Laboratory, Punjab, Chandigarh. Two parcels containing RDX were sent for test and he reported that the parcels contained mixture of various substances, which are used in explosive activities and cause damage to human lives and property if exploded.

Ex PL/1 is the report of Sham Lal ASI, Head Armourer regarding the pistol recovered from the appellant. It was found in a workable condition. Similarly, he tested seven rounds/cartridges and reported that rounds/cartridges were live and were in a workable condition.

11. Ex. PM is the order of the District Magistrate, Gurdaspur. He gave sanction to prosecute the appellant. The prosecution has proved this order by examining PW-7 Sukhdev Singh.

The car recovered from the appellant was found to have been registered in his

name. Ex. PN is the Registration Certificate. It has been proved by PW-8 Harvinder Kaur clerk of the office of D.T.O., Amritsar.

12. The Ld. Counsel for the appellant, in fact, has not seriously challenged the conviction during his arguments addressed before me. The trial Court rightly convicted the appellant for the offences punishable u/s 25 of the Arms Act and Section 5 of the Explosive Substance Act for possessing arms and ammunition without any permit or license. The impugned judgment of conviction dated 12.8.2004 is, therefore, upheld.

13. The Ld. Counsel for the appellant submitted that lenient view be taken against the appellant regarding sentence. The appellant was sentenced to undergo RI for 3 years and to pay fine of Rs. 100/- and in default of payment of fine to undergo further RI for one month u/s 25 of the Arms Act. He was also sentenced to undergo RI for 10 years and to pay fine of Rs. 1,000/- and in default of payment of fine, to undergo further RI for six months u/s 5 of the Explosive Substance Act. Both the substantive sentences were, however, ordered to run concurrently.

14. The Ld. Counsel for the appellant submitted that the appellant is presently aged about 50 years. He is BAMS, medical practitioner. He has 60% disability of left lower limb. In this respect, Disability Certificate has been placed on the file. He has chronic ailment of heart and he has also undergone angiography. Certificate of the Cardiologist has been placed on the file. He has a wife and one student son, who are dependent on him. There is no other earning member in the family. He has already undergone sentence for a period of five years three months and 16 days till today. Custody certificate issued by the Superintendent, Maximum Security Jail, Nabha has been produced in this respect.

15. Though, the offences committed by the appellant are of serious nature, yet he deserves to be dealt with compassion in view of the pitiable circumstances explained by his counsel. So, the impugned sentence order dated 13.8.2004 is modified. The sentence of imprisonment already undergone by him would satisfy the ends of justice. He shall deposit the amount of fine. Except this modification in the impugned sentence order, the appeal fails and the same is dismissed.

Appeal dismissed.