

PETITIONER:
SURJIT SINGH

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 07/08/1996

BENCH:
MUKHERJEE M.K. (J)
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MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)

CITATION:
JT 1996 (7) 635 1996 SCALE (5)683

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

The appellant before us stands convicted and sentenced under Section 5 of the Explosive Substances Act, 1908 by the Designated Court Karnal for having been found in unlawful possession of a hand-grenade and a detonator,

According to the prosecution case on April 3 1994 when Inspector Sada Ram (P.W. 5) and ASI Bench Singh (P.W. 4) of Panipat City police Station along with other police personnel were proceeding along Jatal road for investigating into a case they found the appellant coming from the opposite direction. On suspicion they apprehended him and started interrogating. On interrogating. On interrogation he disclosed that he had kept concealed a hand-grenade underneath a Barn tree in front of his house. To work out that information the police party along with Pratap Singh (PW 2), a member of the public, went to the house of the appellant. Reaching there the appellant brought out the hand - grenade along with a detonator after digging the earth from near a Barn tree. Inspector Sada Ram prepared a recovery memo in respect of those article, wrapped them in separated packets and sealed them. A case was thereafter registered against the appellant and in course of investigation the sealed packets were sent to the forensic Science Laboratory where the hand-grenade and the detonator were examined by Dr. O.P. Chugh (PW 1). Director of the Laborat Laboratory. He found the same to contain substances which on explosion could cause damage to live and properties around the point their explosion. On completion or investigation the police submitted charge-sheet along with a sanction of the District Magistrate, Karnal to prosecute the appellant under the Explosive Substances Act.

The appellant pleaded not quality to the charge leyelled against him and his defence was that he was falsely implicated in the case. In support of his defence he examined a witness, namely, Sultan Singh (DW 1) who

testified that there was no tree near the house of the appellant as claimed by the prosecution witnesses.

The learned Judge of the Designated Court accepted the case of the prosecution in preference to that of the defence and passed the impugned order of conviction and sentence.

Mr. Hardev Singh, the learned counsel appearing for the appellant, first contended that since the appellant was not in custody of the police at the time he purportedly made the statement (Ex, PF). which according to the prosecution led to the discovery, the statement would not be admissible under Section 27 of the Evidence Act. We do not find any substance in this contention for not only the two police officers, namely Inspector Sada Ram (P.W. 5) and ASI Bachan Singh testified that the above statement was made by the appellant after he was arrested by them but also by Pratap Singh (P.W. 2), who categorically stated that when he was called by the police he found the appellant in their custody.

He next contended that the learned Court below ought not to have placed any reliance upon the evidence of P.W.s 4 and 5 relating to the recovery as their evidence was contradictory. This argument is also devoid of any merit for, apart from the fact that we have not found any material contradiction in their evidence, Pratap Singh (PW 2), whose credentials as an independent witness was not - and could not be successfully assailed fully supported their testimonies regarding recovery of the offending articles. Indeed in his (P.W. 2's) cross-examination it was elected that the hand-grenade and the detonator were lying buried about 6" below the ground. Having carefully gone through the testimonies of the above three witnesses namely, P.Ws 2, 4 and 5 we find no reason to disbelieve their consistent claim that the appellant brought out a hand-grenade and detonator which were laying buried below the Barh tree adjoining his house. As regards the evidence of Sultan Singh (D.W. 1) that there was no Barh tree in between the shop of the appellant and the adjoining road we can only say that it does not impair the prosecution case for the evidence led by it shows that the tree in question is behind the house of the appellant and not in front of his shop.

It was next contended on behalf of the appellant that the recovery of the offending articles at the instance of the appellant did not necessarily mean that he was in possession of the same for he might have only knowledge about those articles being there. In other words, according to the learned counsel for the appellant, there was no evidence to conclusively prove that the appellant was in possession of the offending articles. This argumentation cannot be accepted. In his statement (Ex.PF) made before Inspector Sada Saing (P.W. 5) which was signed by him and attested by the other persons present, he categorically stated that he had kept concealed hand-grenade under the Barh tree in front of his house. The statement so made, which we find no reason to disbelieve, leads to the only conclusion that the appellant was in possession of the hand - grenade and detonator for otherwise he could not have kept them concealed at the place wherefrom the same were recovered.

It was lastly contended that the sentence of two year rigorous imprisonment imposed upon the appellant for the conviction is unduly harsh, Considering the nature of the offence committed by the appellant and the opinion of Dr Chugh (P.W. 1) that on explosion, the hand-grenade found with the appellant, could cause damage to the lives and properties around the point of its explosion we do not think

that the sentence is too severe. The appeal is, Therefore, dismissed. The appellant, who is on bail, will now surrender to his bail bonds to serve out the remainder of his sentence.

JUDIS