

PETITIONER:
RAKESH KUMAR @ SACHDEVA @ DEVA

Vs.

RESPONDENT:
STATE (DELHI ADMN.)

DATE OF JUDGMENT 23/11/1994

BENCH:
MUKHERJEE M.K. (J)
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MUKHERJEE M.K. (J)
ANAND, A.S. (J)

CITATION:
1994 SCC Supl. (3) 729 JT 1995 (2) 450
1994 SCALE (4) 1044

ACT:

HEADNOTE:

JUDGMENT:

1. The appellant was placed on trial before the Designated Court New Delhi to answer charges under Sections 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA' for short) and 25 of the Arms Act, 1959. On conclusion of trial the learned Court recorded an order of conviction against the appellant in respect of both the charges. For the conviction under section 5 of TADA the appellant was sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for 6 months more but no separate sentence was passed for the other conviction. Hence this appeal.

2. Briefly stated, the prosecution case in that in the evening of April 23, 1991 a police party, while on patrol duty in and around Palam Village, found the appellant standing near the bus stand with a bag in his possession. As his movements aroused suspicion they apprehended him and searched the bag, which was found to contain 8 country made pistols and 31 live cartridges. As the appellant could not give any satisfactory explanation for possession of those arms and ammunition's, they were seized under a recovery memo and the packaged and sealed. A First Information Report was thereafter lodged against the appellant at Dabri Police Station and S.I. Sube Singh took up investigation of the case. In course of investigation he forwarded the seized arms and ammunitions to the Central Forensic Science Laboratory (CFSL) for examination. On completion of investigation and receipt of sanction from the deputy Commissioner of Police, New Delhi to prosecute the appellant under section 25 of the Arms Act he submitted charge sheet against the appellant.

3. The appellant pleaded not guilty to the charges levelled against him and his contention was that he was falsely implicated in the case at the instance of S.I. Sube Singh.

4. To prove the apprehension of the appellant and recovery

of the and ammunitions from his possession the prosecution relied upon the testimonies of Const. Jagpal Singh (PW 1) and Head Const. Ramesh Kumar (PW 2). Both of them stated that they were members of the police party that was on patrol duty on the date in question. They detailed the manner in which the appellant was apprehended at the bus stand with a bag in his possession and spoke about the recovery of the country made pistols and the cartridges from that bag. They also testified that a recovery memo was prepared and signed

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by them. They next spoke about the packaging and sealing of those arms and ammunitions.

5. Const. Bhim Singh (PW 4) testified that on May 3, 1991 he had taken the sealed parcels from the Malkhana of Dabri Police Station to CFSL and delivered them in fact. The report of CFSL (Ext. A) shows that all the pistols were in working order and the cartridges were live. Const. Bhim Singh (PW 4) proved the sanction accorded by Deputy Commissioner of Police under section 39 of the Arms Act which was marked by PW4/A. Head Const. Khush Ram (PW 5) who was the Duty Officer of Dabri Police Station on April 23, 1991 proved the FIR Ex.PW5/A. Const. Jasbir Singh (PW 6) proved that the arms and ammunitions seized were deposited in the Malkhana of the police station and were forwarded to the CFSL from there through Const. Bhim Singh (PW 3).

6. Having carefully gone through the evidence of PW 1 and PW 2, two of the members of the raiding party, we do not find any reason to disbelieve them, more particularly when nothing could be elicited in cross examination to discredit them. On the contrary, their evidence is consistent and corroborates each other.

7. The learned counsel appearing for the appellant first contended that non-examination of S.I. Sube Singh who investigated into the case, raised a great suspicion about the truth and bona fides of the prosecution story. We do not find any substance in the contention. It appears that in spite of best efforts the prosecution could not produce him and therefore- no adverse presumption can be drawn against the prosecution for his non-examination.

That apart, nothing was elicited in cross examination any of the prosecution witnesses wherefrom it could be said that the Investigating Officer's production was essentially required to give an opportunity to the defence to cross examine him with reference to statements recorded by him under section 161 Cr. P.C. or any steps taken by him during investigation.' Ms non-examination, therefore, did not in any way affect the prosecution case nor prejudice the appellant in his defence.

8. The only other contention raised by the appellant was that no public witness was examined though the alleged recovery took place at a bus stand in the evening. It appears from the evidence of both PWs 1 and 2 that in spite of requests made none of the shopkeepers and the people present there was willing to join the search party. As we do not find any reason to disbelieve the evidence of PWs 1 and 2 that their sincere attempt to secure public witness failed, no adverse inference for such nonexamination can, therefore, be drawn.

9. On the conclusion as above we dismiss the appeal.

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