

PETITIONER:
PARVEEN

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 24/10/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

WITH
TRANSFERRED CASE (CRL.) NO. 1 OF 1995

Parveen
V.
State of Haryana

J U D G M E N T

S.P.KURDUKAR

Two separate trials resulting into convictions of the appellant arising out of an incident dated August 3, 1989 have given rise to these two appeals. Criminal Appeal No. 735 of 1991 arose out of T & (P) S Case No. 31 of 1990 wherein the appellant was tried and convicted for an offence punishable under Section 25 of the Indian Arms Act but acquitted of an offence under Section 5 of the Terrorist and Disruptive activities (Prevention) Act, 1987 (for short 'TADA').

Transferred Case (Crl.) No.1 of 1995 arose out of Sessions Case No. 15 of 1990 wherein the appellant and Parkash were tried of an offence punishable under Section 307/34 of the Indian Penal Code. Both these cases were tried by the same Additional Sessions Judge, but in two different capacities, one as an Addl. Judge, Designated Court, Faridabad at Narnaul and another as an Addl. Sessions Judge, Narnaul. To be more precise, T & (P) S Case No. 31 of 1990 was tried before the Designated Court whereas Sessions Case No. 15 of 1990 was tried before the Addl. Sessions Judge, Narnaul. It may also be stated that preceding this appeal, the investigation was common and some of the material witnesses were overlapping. It is in these circumstances we are of the opinion that both these appeals can be disposed of by this common judgement.

2. We may first deal with the Criminal Appeal No. 735 of 1991 which has arisen out of T & (P) S Case No. 31 of 1990.

3. The prosecution story in nut shell is as under :-

Siri Narain (PW 2) was running a hotel in the name and style of "Sangam Hotel" at Dharuhera. His two sons, namely, Rakesh (PW 33) and Radhey Sham (PW 6) used to help him in the said business. On August 3, 1989, at about 11.00 p.m., the appellant (A-1) alongwith his two associates, namely, Dhirender, son of Birender Singh, and Prakash, son of

Richhpal Singh, came to the hotel in a tractor and demanded empty glasses and cigarette packets. Radhey Shyam (PW 66) gave two packets of cigarettes to them but refused to give the empty glasses telling them that the liquor was strictly prohibited in the hotel. The accused persons then started taking "neat liquor" from their own bottles. Siri Narain (PW 2) protested whereupon accused abusing him and threatened to kill him. In the meantime, the appellant (A-1) went to the tractor and brought a gun loaded with two cartridges and fired at Siri Narain. It was sheer providence that the bullet did not hit him (Siri Narain) as he stretched on the ground. The occurrence was witnessed by Rakesh (PW 3), Radhey Shyam (PW 6), Dharamvir servant (PW 4) and Surender (PW 5). Siri Narain then went to the Hyderabad factory, situated near his hotel and informed SI Rai Singh (PW 7) about the occurrence who then reached at the place of incident alongwith police party. Siri Narain (PW 2) then gave his statement Ex. PA and a ruqqa was sent to the Police Station for registration of the crime. SI Dharam Singh registered the FIR (Ex. PA//1) and directed SI Rai Singh (PW 7) to carry out the necessary investigation. During the investigation, a site plan of the place of occurrence was prepared and the appellant and two other accused persons came to be arrested. A double gun was seized from the appellant vide seizure memo. Ex. PK. One empty cartridge and one live cartridge were seized from the place of occurrence vide seizure memo Ex.PL. The gun and the cartridges were then sent to Forensic Science Laboratory, Haryana, Madhuban for examination. After completing the investigation, the charge sheet under section 25 of the Indian Arms Act read with Section 5 of TADA was filed against the appellant before the Designated Court, Faridabad at Narnaul.

4. A separate charge sheet was also filed against the appellant and two other accused persons for an offence punishable under Section 307/34 of the Indian Penal Code in the Court of Addl. Sessions Judge, Narnaul being Sessions Case No. 15 of 1990.

5. The appellant denied the accusations and claimed to be tried. According to him, the entire incident as narrated by Siri Narain is false, concocted and there was neither recovery of any weapon nor any cartridge from the place of incident. He is innocent and he be acquitted.

6. The prosecution in order to prove the guilt of the appellant examined five witnesses of facts, viz., Siri Narain (PW 2), Rakesh (PW 3), Dharamvir servant (PW 4), Surender (PW 5) and Radhey Shyam (PW 6). Besides their evidence, the prosecution also adduced the evidence of formal witnesses and placed reliance upon the report given by Forensic Science Laboratory, Haryana, Madhuban.

7. The learned Addl. Sessions Judge, Designated Court, Faridabad at Narnaul, after careful persual of the oral and documentary evidence on record by his judgement and order dated 14/15-11-1991 convicted the appellant for an offence punishable under Section 25 of the Indian Arms Act and sentenced him to suffer RI for two years, however, the appellant was acquitted under Section 5 of TADA. IT is against this judgement and order of conviction and sentence passed by the Designated Court, the appellant has filed this appeal to this Court.

8. Mr. U.R.Lalit, Learned Senior Counsel appearing in support of this appeal assailed the impugned judgement on the ground that there is no evidence of any judgement witness on record to support the charge. He urged that except Siri Narain (PW 2), all other witnesses of facts have turned hostile and it would not be safe to accept his

evidence to convict the appellant. He also urged that the seizure memos in respect of the double barrel gun, empty and live cartridges were all false and could not be made the basis of conviction. The impugned judgement be set aside and the appellant be acquitted.

9. Mr. Rao Ranjit, Learned Advocate appearing for the State of Haryana supported the impugned judgement.

10. After careful scrutiny of the evidence and other materials on record, we are satisfied that there is no substance in any of the contentions raised by Mr. U.R.Lalit. Siri Narain (PW 2) in his evidence has stated that the appellant went to the Tractor after wordy quarrel, brought the gun in question, loaded the same and fired at him. He also testified that the double barrel gun, empty cartridge and the live cartridge were seized in his presence by SI Rai Singh (PW 7). Although this witness was examined at great length but we are unable to find any material in his cross-examination which could make us to disbelieve in his testimony. His evidence was fully corroborated by SI Rai Singh (PW 7). Besides this ocular evidence, the report given by the Assistant Director (Ballistics), Forensic Science Laboratory, Haryana, Madhuban, also corroborated their evidence. However, Mr. U.R.Lalit, Learned Senior Counsel strongly relied upon the evidence of other witnesses of facts, ignoring the fact that they have been declared hostile and were cross-examined by the defence. No reliance whatsoever could be placed on such evidence. We, therefore, see no reason to interfere with the order of conviction passed by the Designated Court. Sentence of two years RI also cannot be said to be disproportionate having regard to the facts and circumstances of this case. This Criminal Appeal is, therefore, devoid of any merit.

11. Coming to the other appeal, namely, Transferred Case (Crl.) No. 1 of 1995 arising out of conviction and sentence under Section 307/34 of the Indian Penal Code, at the outset, it may be stated that although the prosecution examined several witnesses to the occurrence but except Siri Narain (PW 3), other four witnesses have turned hostile and entire prosecution case, therefore, rested on his evidence. It may also be stated that two other accused persons who were put up for trial alongwith the appellant, one of them, namely, Dhirender died during the pendency of the trial and, therefore, it abated against him. Parkash (A-2) was, however, acquitted by the Trial Court and State of Haryana, did not prefer any appeal against the said order. The net result, therefore, is that the appellant alone stood convicted by the Trial Court vide its judgement alone stood convicted by the Trial Court vide its judgement and order dated 14/15-11-1991 for an offence punishable under Section 207 of the Indian Penal Code and sentenced him to suffer RI for three years and a fine for Rs. 1,000/- and, in default, to undergo further RI for six months. The learned Trial Judge also directed that the substantive sentences in both these trials to run concurrently. It is against this judgement and order of conviction, the appellant had filed criminal appeal No. 433-DB/91 to the Punjab and Haryana High Court, Chandigarh. This Court, however, vide its order dated 22nd February, 1995 directed that the appeal No. 433-DB pending before the Punjab and Haryana High Court be transferred to this Court and be heard alongwith Criminal Appeal No. 735 of 1991.

12. Mr. U.R.Lalit, the Learned Senior Counsel appearing in support of this appeal urged that the evidence of Siri Narain (PW 3) is totally untrustworthy and his evidence be not accepted in the absence of corroboration from the

independent witnesses. We see no substance in this contention because Siri Narain (PW 3) testified that the appellant alongwith two other accused persons came to his hotel at about 11.00 p.m.; demanded cigarette packets and empty glasses. He further stated the cigarette packets were given to them by Radhey Shyam (PW 6) but, refused to give empty glasses to them as the liquor was prohibited in the hotel. Thereupon the appellant went to his tractor, brought the gun, loaded the same and fired at him. However, he was luckily saved as he stretched on the ground. We have gone through the evidence of this witness very carefully and we are satisfied that his evidence is trustworthy and conviction could be based on his sole testimony. The seizure of double barrel gun and the cartridges were proved by the prosecution through the evidence of SI Rai Singh (PW 7) and this fact was also testified by Siri Narain (PW 3). It also needs to be noticed that the report of the Assistant Director (Ballistics), Forensic Science Laboratory, Haryana, Madhuban, also supports the prosecution case. In the face of this positive evidence, it is not possible to disturb the impugned judgement. There is no substance in this appeal.

13. In the result, the appeal and transferred case (CrI.) No. 1 of 1995 are devoid of any merits and are accordingly dismissed. The appellant, if on bail, shall surrender to his bailbonds forthwith to serve out the remaining period of his sentence.