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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 176/2001

Decided on : 12th November, 2010

AMRIK SINGH

..... Appellant

Through: Mohd. Nasir and Mohd. Saleem,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J. (ORAL)

The Appellant was charged for offence under Section 307IPC for having injured one Joginder Kumar Chaddha with a country made revolver on 8th January, 2000. When the Appellant was arrested on 13th December, 2000, on his pointing out, a country made pistol was recovered and for this

he was also charged for offence punishable under Section 25 of the Arms Act. As the public witnesses and even the injured witness PW2 Joginder Kumar Chaddha turned hostile, the Appellant was acquitted of the charge under Section 307 IPC.

The learned Trial Court convicted the Appellant for the charge under Section 25 Arms Act on the basis of the testimony of the police officers PW7, Head Constable Shri Krishan and PW8 SI Gulab Singh and sentenced him to undergo Rigorous Imprisonment for one year. During the pendency of the present appeal the Appellant was involved in another case and thus, as per the learned counsel for the Appellant he has already undergone the sentence of one year awarded to him.

Learned counsel for the Appellant states that all the public witnesses, that is, the injured and also PW3 Hardev Singh who had joined at the time of alleged arrest of the Appellant and had signed the seizure memo of the country made pistol, have turned hostile. Not only this, the Appellant produced a telegram sent by the Appellant through his cousin who appeared as defence witness that he was going to surrender before SI Gulab Singh on 13th December, 2000 at 9.00 A.M. Learned counsel for the Appellant contends that the testimony of both these witnesses PW7 and PW8 is full of contradictions and thus, no conviction can be based upon their testimony.

Moreover the public witnesses having not supported the case of the prosecution, the Appellant is entitled to acquittal. It is further contended that no site plan of the place of recovery has been prepared. In the area from where allegedly the recovery has taken place, there are two ponds and it is not evident from near which pond the recovery had taken place. Around 40-50 yards away from the place of alleged recovery, admittedly there were showrooms however no independent person was associated with this recovery. Reliance is place on *Dalaut Ram vs. State of Haryana, AIR 1995 SC 1998*, *Nanak Chand vs. State of Delhi, 1991 JCC 1* and *Munni Lal vs. State, 1995 JCC 110* to contend that where no independent witnesses are associated though available for proving seizure and recovery of the pistol and the testimony of police officials is full of contradictions, the accused is entitled to the benefit of doubt. Reliance is also placed on *Raosaheb Balu Killedar vs. State of Maharashtra, 1995 Crl. Law Journal 2632* to canvass the proposition that the recovery of revolver and cartridge pursuant to disclosure statement by the accused does not clothe him with the conscious possession thereof.

Learned APP for the State on the other hand contends that from the testimony of PW7 and 8 it is apparent that the Appellant was in conscious possession of the weapon of offence which he had concealed in the garbage

and after his arrest pursuant to his disclosure at his instance the same was recovered from below the garbage. The CFSL report received in this regard clearly prove that the same was a country made pistol and was capable of firing. It is also stated that the telegram exhibited as Exhibit DW/1 appears to be an afterthought as the same has not been put to the witnesses and what has been put is that a telephone call was made. Moreover, the alleged telegram only states his prospective surrender. It is contended that there is no discrepancy in the testimony of the two witnesses and the testimony of police witnesses cannot be disbelieved merely because the public witnesses turned hostile.

In the present case the Appellant has been acquitted of the charge under Section 307 IPC for having injured Joginder Kumar Chaddha on 8th January, 2000. The only charge for which he has been convicted is under Sec. 25, Arms Act for unlawful possession of the country made revolver on 13th December, 2000 so the fact that PW1 who was witness to the incident of 8th January, 2000 and PW2 who was the injured of the incident have turned hostile, has no relevance in the present appeal. However, PW3 who was the witness to this recovery of the country made pistol and had signed the seizure memo has also turned hostile. The Hon'ble Supreme Court in *Karamjit Singh vs. State (Delhi Administration)* (2003) 5 SCC 291 held that

the testimony of police personnel should be treated in the same manner as testimony of any other witness and their testimony could be relied upon without being corroborated by the testimony of independent witnesses. It may be noted that no suggestion has been put to the witnesses PW7 and PW8 in the cross-examination as regards the telegram and what has been put is that the Appellant was produced by his cousin Sunder Singh and a telephone to this effect was made to the higher officials. There is no contradiction or improvement in the testimony of PW7 and PW8 and the same is reliable. The testimony of both the witnesses show that pursuant to the arrest of the Appellant he had disclosed about the country made pistol. This pistol was recovered from below the garbage. Though the place was an Aam Rasta (thorough way) but the manner in which it was concealed clearly demonstrates that he had knowledge where this pistol was lying. The Hon'ble Supreme Court in *Raosaheb* (Supra) held that recovery of country made revolver and cartridge pursuant to the disclosure statement by the accused though attribute knowledge of the concealment of revolver at the particular place but the same cannot attribute a conscious possession thereof. This decision rendered by the Hon'ble Supreme Court applies on all force to the facts of the present case, and thus, entitles him to be acquitted of the charge under Sec. 25 Arms Act.

For the reasons stated above, the Appellant is acquitted of the charge under Sec. 25 Arms Act.

The appeal is accordingly allowed.

MUKTA GUPTA, J.

NOVEMBER 12, 2010
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