

Reserved on 6.7.2023**Delivered on 17.11.2023****HIGH COURT OF JUDICATURE AT ALLAHABAD****CRIMINAL APPEAL No. 1793 of 1996**

Satya Vir Singh

...Appellant

versus

State of U. P.

....Respondent**JUDGMENT****HON'BLE SANJAY KUMAR PACHORI, J.**

1. The present criminal appeal has been preferred to set-aside the judgment and order dated 27.8.1996 partly, passed by IVth Additional Sessions Judge, Agra passed in Session Trial No. 665 of 1995, arising out of case crime no. 152 of 1995, under section 302, IPC and Session Trial No. 664 of 1995, arising out of case crime no. 153 of 1995, under Section 25/27 of Arms Act, by which the trial court acquitted the appellant under section 302, IPC, but convicted the appellant under section 25/27 of Arms Act and sentenced him under section 25/27 of Arms Act, one year rigorous imprisonment by a common judgment.

2. Present criminal appeal has been filed to set aside the conviction and sentence order passed in Session Trial No. 664 of 1995.

3. Brief facts of the case are that the first informant (PW-1) and his uncle Prem Singh (deceased), father Niranjana Singh (PW-2) and aunt Smt. Javitri Devi (PW-3) were returning to their village Undera after marketing from Fatehpur Sikri on 23.5.1995 at about 5:45 p.m. When they reached at the bus stand, the appellant came having country made pistol in his hand and shot fire his uncle and ran towards the market and the police chased him. His father Niranjana Singh and aunt Javitri Devi took his uncle to hospital by a jeep. There exists old enmity between the

appellant and his party as the appellant murdered two persons Vijay Singh and Sahab Singh earlier in which the appellant has been convicted by life imprisonment. Due to this enmity, the appellant shot fire his uncle.

4. The First Information Report (Ex.Ka-2) was registered as case crime No. 152 of 1995, under section 307 I.P.C. against the appellant at Police Station-Fatehpur Sikri, District Agra, at 17.45 hours on 23.5.1995, on the basis of a written complaint (Ex.Ka-1) of Gopal Singh (PW-1) which was scribed by Dalveer Singh. The distance between the place of occurrence and the Police Station is 200 meters.

5. Sub-Inspector Jitendra Singh had lodged FIR of case crime No. 153 of 1995 (Ex.K.-14), under section 25/27 of Arms Act on 23.5.1995 at 17.55 hours stating that on 23.5.1995, when he was on patrolling duty, he heard gunshot and saw a person wearing green shirt running towards the market. He and another police personal Srikant Pandey chased the appellant and caught him. On search, a country made pistol of point .303 bore and used empty and live cartridges were recovered and he prepared a recovery memo (Ex.K.-13) on spot.

6. During the investigation, injured Prem Singh succumbed to the injuries and inquest proceedings were completed at mortuary of S.N. Medical Hospital, Agra on 24.5.1995 at 10:50 a.m. and prepared inquest report (Ex.K-9) and post-mortem report (Ex.K-10) was prepared on 24.5.1995 at 3:30 p.m. and thereafter the case was investigated under Section 302, IPC and Section 25/27 of Arms Act.

7. The investigation of the cases were entrusted to S.I. S. K. Yadav and S.I. R. S. Pandey separately for both the crimes. During the course of investigation of case relating to Arms Act, the Investigating Officer prepared a site map of the recovery of country made pistol and obtained a sanction for prosecution (Ex.K.-) of the District Magistrate, Agra. After completion of the investigation, they had submitted two charge sheet Nos. 65 of 1995 (Ex.K-12) under Sections 302/303 of IPC and 52 of 1995 (Ex.K.-17) under section 25 Arms Act respectively. The court took cognizance on 3.8.1995 and 11.8.1995 respectively.

8. On committal of the cases on 4.9.1995, trial court framed the charges against the appellant after consolidating both the trials on 21.3.1996 under section 302, IPC and under section 25/27 of Arms Act, respectively. The prosecution evidence had been recorded in Session Trial No. 665 of 1995.

9. In order to prove the prosecution case, the prosecution examined as many as 4 witnesses namely; PW-1 Gopal, PW-2 Smt. Javitri Devi, PW-3 Niranjana (witnesses of Session Trial No. 665 of 1995, arising out of case crime No. 152 of 1995), PW-4 S.I. Jitendra Singh, PW-5 C.P. Dhyan Pal Singh, PW-6 S.I. Ram Saran Pandey and PW-7 C.P. Srikant Pandey.

10. After completing the prosecution evidence, statement of the appellant under section 313 of Cr.P.C. has been recorded wherein he stated that he has been falsely implicated in the above case and he has not produced any evidence in his defence.

11. The appellant was acquitted under section 302, IPC by the trial court after considering the evidence of PW-1, PW-2 and PW-3, who were declared hostile by the prosecution and they had not supported the prosecution case.

12. The trial court found that all the eye witnesses of the incident of murder of Prem Singh have turned hostile, but nothing has come out which can create any doubt in the recovery of country made pistol and live and empty cartridges were found from the possession of the appellant. The trial court acquitted the appellant under Section 302/34 I.P.C. Further concluded that the prosecution has successfully proved the charges against the appellant under section 25/27 of Arms Act on the basis of evidence of two police personnels beyond reasonable doubt and thereby convicted and sentenced the appellant as above.

13. Being aggrieved by the trial court's judgment and order, the appellant has preferred this appeal.

14. Heard Sri Kuldeep Singh Chahar, learned counsel for the appellant, Sri Karunakar Singh, learned A.G.A. for the State and perused the material available on record.

15. Learned counsel for the appellant vehemently urged that *firstly*; eye witnesses of the incident of murder who turned hostile, had not supported the incident, *secondly*; there is no independent or public witness of the recovery of country made pistol by which the appellant caused the incident, wherein witnesses of the public were available and neither they were associated nor there was any explanation given as to why they have not associated, *thirdly*; the previous sanction of the District Magistrate for the prosecution against the appellant has not been proved, *fourthly*; the country made pistol, empty and live cartridges allegedly seized from the appellant were not sent to any expert opinion either to any ballistic expert or to any armourer and *fifthly*; the prosecution had not proved that PW-4, PW-5 and PW-7 were on patrolling duty on 23.5.1995 at 5:55 p.m.

16. **Per Contra**; learned A.G.A. submitted that PW-4, PW-5 and PW-7 proved the recovery of the objects from the appellant who reached at the spot within a minute of the incident and saw the appellant running away from the spot. Learned trial court has rightly held the appellant guilty; the findings recorded by the trial court are on appreciation of the evidence, which is neither perverse nor contrary to the evidence on record; the charges levelled against the appellant under Section 25/27 of Arms Act had been proved beyond reasonable doubt. Thus, his conviction and sentence do not warrant any interference. The judgment and order of the trial court in connection having the country made pistol is liable to be affirmed. A prayer was, therefore, made to dismiss the appeal.

17. Before I proceed to dwell upon the merit of the contentions raised before me, it will be apposite to have close scrutiny of the entire ocular evidence, which is as follows:-

17(i). PW-4, S.I. Jitendra Singh stated in his examination-in-chief that he was on patrolling duty on 23.5.1995 at that time he was sitting on the

shop of Juice of Jagdish near the bus stand. After hearing the sound of gunshot he came out from the shop and saw a person wearing green shirt running towards the market and a crowd was also pointing out him that he fired. He and PW-7 Srikant Pandey chased him and caught him near the Piau of RSM. On search, a country made pistol of .303 bore with used and empty cartridges were recovered from the appellant. He also recovered three live cartridges from the left pocket of the pant of the appellant. He could not show the licence of the same. He proved the recovery memo (Ex.K.-15) of the objects recovered.

17(ii). PW-4 in his cross-examination stated that the recovered country made pistol and three live cartridges are not before him today. The shop of Jagdish is about at a distance of 7-8 steps from the bus stand which is a very crowded place. He heard the gunshot and he chased the appellant from the shop and caught him at a distance of 1/2 km. Due to fear, nobody identified the appellant that he is the same person who fired. The appellant was searched in his presence at the police station in the lockup, but could not say that the copy of recovery memo was recovered from the appellant. It is wrong to say that the country made pistol and cartridges were planted by him and the appellant has been falsely implicated. It is wrong to say that he had not recovered country made pistol and cartridges from the appellant and he did not prepare any recovery memo.

17(iii). PW-5, Constable Dhyanpal Singh in his examination-in-chief proved the chik report of FIR of case crime No. 153 of 1995, under Section 25 of Arms Act against the appellant. In cross-examination, he told that in search no copy of recovery memo was recovered from the appellant.

17(iv). PW-6, S.I. Ram Saran Pandey (Investigating officer) in his examination-in-chief proved the site plan (Ex.K.-16), charge-sheet (Ex.K.-17) and stated that a report of District Magistrate was filed by S.I. R.S. Panwar. The signature of District Magistrate is on it, which is Ex.K.-18.

17(v). PW-6, S.I. Ram Saran Pandey stated in his cross-examination that he did not show the shop of Jagdish in the site plan. He did not record the statement of PW-7 Srikant Pandey under section 161 of Cr.P.C. on 23.5.1995. It is wrong to say that he did not investigate the case rightly and the charge sheet has falsely been submitted against the appellant.

17(vi). PW-7, C.P. 650 Srikant Pandey stated in examination-in-chief that on 23.5.1995 he was on patrolling duty along with S.I. Jitendra Singh. They were drinking water at the shop of Jagdish near the bus stand when they heard gunshot. He and S.I. Jitendra Singh came out from the shop and saw a person wearing a green shirt running towards the market. They chased and caught him in Kalar Gali near Baba Ram jas Piau at about 5:55 p.m. and arrested the person, who told his name Satyavir, son of Prem Singh resident of village Undera, P.S. Fatehpur Sikri and a country made pistol of .303 bore, an empty cartridge and three live cartridges .303 bore were recovered from the pocket of his pant. The sealed objects recovered were opened before the court and proved country made pistol as material Ex.K.- 1, live cartridges as Ex. K.-2, 3, 4 and an empty cartridge as Ex.K.-5.

17(vii). PW-7 stated in his cross-examination that he did not write the departure of patrolling duty. The place of firing is far away from the place of sitting. The crowd was collected, but nobody was ready to become a witness. They searched the appellant at the time of entrance in the police lock-up, but nothing was recovered from him. It is wrong to say that they have prepared recovery memo at the police station and falsely implicated the appellant.

18. After analyzing the evidence of above noted witnesses, clearly emerge the facts; (i) PW-4, PW-5 and PW-7 had not seen the incident of causing fire shot by the appellant; (ii) They proved the fact that they chased the appellant 1/2 Km. and arrested and recovered a country made pistol .303 bore, one empty and three live cartridges from the appellant; (iii) the sanction under section 39 of Arms Act was obtained by S.I. R.S.

Panwar, who had not been examined. (iv) the objects recovered had not been sent for forensic report.

19. Now, I shall weigh the argument of learned counsel for the appellant that the prosecution has failed to prove case against the appellant.

20. There is no independent or public witness of the recovery of country made pistol by which the appellant caused the incident, wherein witnesses of the public were available and neither they were associated nor there was any explanation given as to why they have not associated. However, as per evidence, PW-4 has stated in his cross-examination that "nobody identified the appellant that he is the same person who fired."

21. So far as the question of grant of sanction is concerned, mere filing of a document alongwith other papers submitted at the time of police report, cannot be said to be a proper compliance of giving evidence to prove the requirement of Section 39 of the Arms Act. Section 39 of the Arms Act provides that previous sanction of the District Magistrate is necessary for the prosecution against any person in respect of any offence under Section 39. Sanction under section 39 of the Arms Act is not a mere formality. It has to be proved that it was granted by District Magistrate after applying his mind. It must be shown that the firearm or weapon with respect to which sanction was prayed, was actually taken to the authority concerned and after looking to it, the relevant papers, understanding and after applying his mind sanction was granted.

22. There is no evidence on record that the investigating officer asked for sanction and nothing has been brought on record to suggest that the country made pistol .303 bore was made available to the District Magistrate at the time of granting sanction under section 39 of the Arms Act.

23. In the present case, the objects allegedly seized from the appellant were not sent to for any expert opinion either to any ballistic expert or to any armourer. There is no evidence with regard to the recovered articles

sent for FSL report or opinion of a ballastic expert to ascertain whether the bullet could have been fired from the recovered weapon. There is no evidence on record to show that the objects recovered from the appellant satisfied the definition of "arm" and "ammunition" or "firearm" as contained in the Arms Act.

24. The recovery of one country made pistol .303 bore, one empty cartridge and three .303 bore live cartridges is not sufficient to prove the guilt of the appellant regarding the commission of the alleged offence.

25. It is difficult for the court to ascertain whether the recovered weapon has been used by the appellant in the commission of the present offence or having possession of illegal weapon, when the PW-1, PW-2 and PW-3, who were claiming themselves as eye witnesses of the incident stated that they had not seen the appellant to shot fire upon the deceased. In the absence of any such evidence, the conviction of the appellant under section 25/27 of the Arms Act cannot be sustained.

26. The contrary view taken by the trial court is against the weight of the evidence. A substantial portion of the judgment of the trial court goes in narration of the prosecution story and the statement of the prosecution witnesses. I hardly find objective evaluation, analysis, or scrutiny of evidence in a proper perspective.

27. For all the reasons recorded and discussed above, I am of the considered view that the prosecution has failed to prove the charge of offences punishable under Section 25/27 of the Arms Act against the appellant beyond reasonable doubt. As the evidence on record does not bring home the guilt of the appellant beyond the pale of doubt, the appellant is entitled to the benefit of doubt. Consequently, the appellant is entitled to be acquitted the charge for which he was tried.

28. As a result, the criminal appeal is allowed. The judgment and order of conviction as well as sentence recorded by the trial court under section 25/27 of the Arms Act is set aside. The appellant is acquitted of the charge under section 25/27 of the Arms Act. The appellant is on bail,

therefore, his personal bonds and sureties are hereby discharged. The appellant will fullfill the requirement of Section 437-A Cr.P.C. to the satisfaction of the trial Court at the earliest.

29. The trial court record be returned forthwith together with a certified copy of this judgment for compliance. The office is further directed to enter the judgment in compliance register maintained for the purpose of the Court.

(Sanjay Kumar Pachori, J)

Dated: 17.11.2023

T. Sinha