

Court No. - 75

Case :- CRIMINAL APPEAL No. - 1383 of 1986

Appellant :- Talewar And Others

Respondent :- State of U.P.

Counsel for Appellant :- P.C. Mishra, Mohit Singh

Counsel for Respondent :- A.G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Anil Kumar, Advocate holding brief of Sri P.C. Mishra (AOR No. A/A 0024 of 2020), learned counsel for the appellant and Sri Vikas Sharma, learned State Law Officer for the State.

2. This is an appeal under Section 374 (2) of the Cr.P.C. has been preferred against the judgment and order dated 25.04.1986 passed by Vth Special Judge (Anti Dacoity) Etah in S.T. No. 68 of 1985 (State vs. Talewar and Ors) convicting them and sentencing the appellants U/s 25 of Arms Act for rigorous imprisonment of nine months.

3. The case of the prosecution in brief is that in the intervening night of 9/10.09.1985, S.I. Shiv Dayal Singh P.W.-2 of police outpost Sarai- Aghat P.S. Aliganj along with constables Indrajeet Sharma, Om Prakash, Mahipal Singh (P.W.-1) and Maqsood Ahmad had proceeded from the police out post for petrol duty within the jurisdiction of the police outpost and while patrolling the area of village Nayagaon Kharsulia Garai Manghatpur and while returning back to the police out post from village Manghatpur and when they came on the road adjacent to the abadi of village Manghatpur, the police party received information through a police informer that 5/6 armed bandit were sitting near Nagla Usar and the reason for assembling was to commit some crime. After gathering the said information and believing it to be true, S.I. Shiv Dayal Singh, tried to obtained public witness but no witness was available and, therefore, the police party reached the culvert existing on the road near Nagla Usar and on the southern side of the culvert saw six bandits armed with guns and pistols were present about fifty paces away from the police party. Meanwhile, two pedestrians carrying bags proceeded towards village Nayagaon who were seen by the police party and one of the bandit uttered that their bags be snatched so that today's expenses

would be met and as soon as the bandits rushed towards the pedestrians, S.I. Shiv Dayal Singh challenge them and asked them to surrender and the bandits became panicky and the police party rushed towards the bandits in order to apprehend them and meanwhile two bandits fired a shot each from their respective fire arms at the police party with the intention to cause death and the S.I. Shiv Dayal Singh also fired two shots from his service revolver at the bandit and they started to run away but the police party apprehended two bandits on the spot at about 5:00 a.m. and rest of the bandits managed to escape. On interrogation the arrested bandits, they disclosed their names as Talewar and Khushiram, appellants herein and on the spot from Talewar one SBBL factory made gun Ex.1 and one empty cartridge in its barrel Ex.2 and four live cartridges Ex.3 to 6 respectively were recovered from the possession and on taking search of the accused, the second appellant Khushiram, one country made pistol Ex.7 and three live cartridges (Ex.8 to 10) respectively were recovered from his possession. S.I. Shiv Dayal prepared memo about the arrest and the recovery on the spot and sealed the said articles and two empty cartridges (Ex.11 & 12) fired from his service revolver in separate bundles. Thereafter the police party proceeded to police station Aliganj from the spot at 07:00 a.m. and on the same day, reached there at 12:15 p.m. whereby articles were deposited at police malkhana and accused were lodged in police lockup. Head Moharrir Brahm Pratap Swaroop prepared FIR (Ex.Ka-2) on the basis of memo (Ex.Ka-1). Relevant entries were made in the GD.

4. Thereafter the investigation of the case was entrusted to S.I. T.P. Srivastava, he reached the spot on 20.09.1985 and prepared site plan (Ex.Ka-4) of the place of occurrence. Post conclusion of investigation, charge-sheet Ex.Ka-5 under section 399, 402, 307 IPC against the accused appellants was submitted on 28.09.1985. A further charge sheet (Ex.Ka.6) U/s 25 of Arms Act against the present appellants were submitted. On 29.10.1985, District Magistrate Etah gave sanction Ex.ka-8 and Ex.Ka-9 for prosecution against the appellants respectively U/s 25 of the Arms Act.

5. The prosecution had examined, constable Mahipal Singh (P.W.-1) S.I. Shiv Dayal Singh (P.W.-2). The court of Vth Special Judge (Anti Dacoity) Etah in Sessions Trial No. 68 of 1985 (State vs. Talewar and Ors) proceeded to acquitted the appellants of the offences punishable U/s 148, 307/ 149, 399, 402 IPC however, the appellants guilty of the offence punishable U/s 25 of Arms Act while guilty and convicting U/s 25 of Arms Act sentencing them

for rigorous imprisonment of nine months.

6. Learned counsel for the appellants have sought to argue that the entire basis of the prosecution story stands completely eroded particularly when the court below has acquitted the appellants U/s 148, 307/149, 399 and 402 IPC. Submission is that the appellants had no point of time committed the offence U/s 25 of Arms Act as there was no recovery made from them. The submission is that as per the prosecution case itself, there was no independent witnesses so as to add credibility of the prosecution case. The argument is that the entire case has been tailor made in order to rope in and to implicate and entangle the appellants. There is nothing on record even in iota of evidence to show that the appellants had proceeded to resort in gun-shot firing and further there is nothing on record even otherwise that the appellants were in possession of the arms, thus there is no question of any offence U/s 25 of Arms Act. It is further submits that the incident is 9/10.09.1985 and more than 40 years have passed from the date of the incidents and the appellants did not possess any criminal history, thus though the conviction U/s 25 of the Arms Act be upheld but the sentence for rigorous imprisonment of nine months be converted into fine.

7. Sri Vikas Sharma, learned State Law Officer on the other hand while countering the submissions made by learned counsel for the appellants submitted that though the charge-sheet came to be submitted against the appellants U/s 307/149, 399, 402 IPC read with Section 25 of the Arms Act and the appellant in the judgment under challenge was acquitted and found not guilty for the offences punishable U/s 148, 307/ 149, 399, 402 IPC but that would not be ground sufficient to hold that the appellants have not committed offence U/s 25 of the Arms Act particularly when the testimony of the prosecution witnesses and the documents available on record as well as the recovery memo itself indicates that the appellants committed offence U/s 25 of Arms Act. According to him since the incident is dated 9/10.09.1985 and approximately 40 years have passed and the appellants do not have any criminal history as the same is not forthcoming from the record, thus the conviction U/s 25 of the Arms Act be upheld. However the sentence of rigorous imprisonment of nine months be converted into fine.

8. I have heard the submissions so made across the bar and perused the record carefully.

9. Apparently, the FIR alleges the commission of the offence dated 9/10.09.1985. The charge-sheet came to be submitted post

investigation against the appellants U/s 307/ 149, 399, 402 IPC read with section 25 of the Arms Act. However the court below after considering the case of the parties and after perusing the record has acquitted the appellants for the offences U/s 307/149, 399, 402 IPC. However the appellants have been convicted U/s 25 of the Arms Act.

10. On a pointed query being raised to the learned counsel for the rival parties as to whether the State has challenged the judgment and the order under challenge in so far as it pertains to acquitting the appellants U/s 307/149, 399, 402 IPC the answer is in negative. Meaning thereby that now the only question which remains is with regard to the conviction and the sentence of the appellants U/s 25 of the Arms Act.

11. From the perusal of the records, it reveal that there happens to be the testimony of the prosecution witnesses and documents which show that the appellants herein have committed the offense U/s 25 of the Arms Act. The prosecution evidence is consistent on the point that gun (Ex.1) which appears to be factory made and whose number has been erased and four live cartridges were recovered from the possession of the accused Talewar and one country made pistol and three live cartridges were recovered from the possession of the appellant Khushiram on the spot and there happens to be the statement of the witnesses Mahipal Singh (P.W.-1), S.I. Shiv Dayal (P.W.-2) and the Ex.ka-1 being the memo bearing the signature of both the accused appellants which stands proved and corroborated. Thus it cannot be said that the findings so recorded of the court below holding the appellant guilty of Section 25 of the Arms Act suffers from any manifest illegality.

12. However bearing in mind the fact that the incident regarding commission of the offence is dated 9/10.09.1985 and more than 40 years have passed and looking into the fact that there is nothing to show that the appellants possess any criminal history thus the facts and circumstances necessitate that the conviction of the appellants U/s 25 of the Arms Act is liable to be upheld. However, the sentence be modified and altered to fine.

13. Accordingly the appeal is allowed in part. The conviction of the appellants U/s 25 of the Arms Act is upheld. The sentence of the offence U/s 25 of the Arms Act is modified and altered from rigorous imprisonment of nine months to fine of Rs. 3000/-. Fine amount imposed upon appellant accused Talewar and Khushiram, shall be deposited within three months from today. In case of default in payment of fine within the aforesaid period, appellant

shall serve out the entire sentence awarded by the trial court vide judgment and order, which is under challenge.

10. Let a copy of the judgment along with lower court record be sent to Sessions Judge, Etah for compliance. A compliance report be sent to this Court.

11. Copy of the judgement and order be provided to learned counsel for appellant and to the learned AGA as per rules.

Order Date :- 1.8.2025

C. MANI