

DATE OF DECISION: 26.04.2017.

...Appellant.

...Respondent.

Mr. Yogesh Kumar Gupta,
Assistant Advocate General, Punjab.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction dated 12.05.2004 and order of sentence dated 14.05.2004 passed by learned Additional Sessions Judge, Kapurthala whereby appellant, Baldev Singh was convicted for the offence punishable under Sections 4 and 5 of Explosive Substances Act, 1908 (for short. "the Act") and sentenced as under:-

Name	Under Section	Sentence	In default
Baldev Singh	Section 4 of the Act	to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹2,000/-.	To further undergo rigorous imprisonment for a period of one month.
	Section 5 of the Act	to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹2,000/-.	To further undergo rigorous imprisonment for a period of one month.

2. Relevant facts for the purpose of decision of this appeal; that on 05.05.2002, Inspector/ SHO Tarlochan Singh and other police officials were on patrol duty and at that time the appellant was found to be in possession of a glazed packet containing an old towel in which a countrymade Throw Down bomb was wrapped which was sealed on the spot and was taken into police custody. After completion of investigation proceedings, challan was presented in the Court for trial.

3. During trial, learned Court below completed various proceedings of trial including framing of charges against the accused, recording of evidence of the prosecution witnesses as well as examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, the trial Court held the appellant guilty and convicted him for commission of offence under Sections 4 and 5 of the Act, on 12.05.2004 and sentenced him on 14.05.2004.

4. Aggrieved by the judgment of conviction and the order of sentence, the appellant is before this Court by way of present appeal.

5. Learned counsel for the appellant, while arguing on the plea of innocence of the accused, submitted that no recovery of such like material was effected from the appellant, rather he was impleaded because of rivalry with the Investigating Officer. Even the only recovery witness introduced by the police namely, Hukam Singh was a stock witness of the police as he was associated in different cases by the police earlier as well.

6. Learned counsel for the appellant also contended that the appellant has already undergone actual sentence of 1 year, 4 months and 13 days while remaining in custody during investigation and trial of the case and the matter relates to the year 2002. The appellant is innocent and is not

involved in any other case of similar nature, so his appeal be accepted.

7. Learned State counsel contended that the appellant was found in possession of countrymade Throw Down bomb and recovery was effected in the presence of witnesses including Hukam Singh. The defence version is just a plea of denial which has rightly been discarded by the Court below. There is no ground to set aside the judgment of conviction dated 12.05.2004 and order of sentence dated 14.05.2004.

8. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the prosecution case is based upon the statement of Investigating Officer Tarlochan Singh and the recovery of countrymade Throw Down bomb, was effected in presence of other police officials. Apart from that, independent witness Hukam Singh was joined. None of them has been proved to be liar. The material recovered from the possession of the appellant was sent for chemical examination and as per report of FSL (Ex.P3), it was countrymade Throw Down bomb. The defence version is just plea of denial which was rightly discarded by the Court below and as such, the appeal against judgment of conviction is without any merit and same stands dismissed.

9. As regard to the appeal against order of sentence, the appellant has already undergone actual sentence of 1 year, 4 months and 13 days and the same has been confirmed by learned State counsel on the basis of custody certificate placed on file. The appellant is not involved in any other case of similar nature after 2002 and there is no material to this effect on the file. Thus, the order of sentence is modified to the extent that the appellant shall undergo sentence for the period which he had already undergone while remaining in custody during investigation and trial.

9. Resultantly, the present appeal against judgment of conviction stands dismissed and the appeal qua order of sentence is partly allowed and the order of sentence is modified to the extent that the appellant shall undergo sentence for the period which he had already undergone while remaining in custody during investigation and trial.

(SHEKHER DHAWAN)
JUDGE

26.04.2017.

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Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No