

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 567 of 2017

Satyanarayan Singh

Vs.

State of West Bengal

For the Appellant : Mr. Sabir Ahmed, Adv.

For the State : Ms. Amita Gaur, Adv.

Heard on : 11.04.2022

Judgment on : 11.04.2022

Joymalya Bagchi, J. :-

Appellant has approached this court being aggrieved by the judgment and order dated 30.08.2017 and 31.08.2017 passed by the learned Additional Session Judge, 2nd Court, Malda in Sessions Trial no. 17/2014 arising out of Sessions Case No. 13 of 2014 convicting the appellant for commission of offence punishable under Sections 489C of the Indian Penal Code and under section 25(1)(AA) and 25 (1-B)(a) of the Arms Act and sentencing him to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 15,000/-, in default, to suffer rigorous

imprisonment for 1 year more for the offence punishable under Section 489C of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs. 30,000/-, in default, to suffer rigorous imprisonment for 2 years for the offence punishable under section 25(1)(AA) of the Arms Act and to suffer rigorous imprisonment for 3 years and also pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months for the offence punishable under section 25(1-B)(a) of the Arms Act with a direction all the sentences shall run concurrently.

Prosecution case as alleged against the appellant is to the effect that on 13.09.2013 at 2.15 pm one Sujit Kr. Ghosh, I/C Malda Town GRPS (PW 1) received credible information from a source that one person carrying FICNs and ammunition was waiting in the 2nd class waiting room of platform No. 1 at Malda Town Railway Station. He diarized the information. Thereafter, he left the police station with his team to work out the information. On the way he intimated the matter to one Dilip Chowhan, Station Manager of Malda Town Railway Station (PW 4), and one labour contractor Rajkumar Paswan @ Kalu (PW 6) and requested them to join the raiding party. In the waiting room, the source identified the suspect who was carrying a greenish coloured trolley bag. They surrounded the suspect who disclosed his identity as the appellant. Upon search, currency notes suspected to be fake to the tune of Rs. 15,000/- comprising of 30 pieces of Rs. 500/- denomination each, 610

rounds of 7.62 mm live cartridge, 10 rounds of live cartridge of .303, 15 rounds live cartridge of .9 mm, one empty magazine of AK 47 Rifle were recovered from the bag. A seizure list was prepared with regard to the aforesaid seizure. The seized items were sealed and labeled. The appellant was arrested. The seized consignment along with appellant was brought to the police station.

On a written complaint prepared by one Shankar Deb, ASI, Malda Town GRPS (PW 2) upon the dictation of PW 1, Malda Town GRPS case no. 35 of 2013 dated 13.09.2013 under sections 489A, 489B, 489C, 25 (1)(AA) and 25(1-B)(a) of the Arms Act was registered for investigation.

In the course of investigation, seized notes were sent for examination at Bharatiya Reserve Bank Note Mudran Press, Shalboni, West Bengal. Report was collected with regard to the seized ammunition from Arms Expert, Bidhannagar Police Commissionerate, West Bengal as well as sanction order was obtained. Charge-sheet was filed. Subsequently, further report with regard to the ammunition was obtained from Ordnance Factory, Kolkata.

Following charges were framed against the appellant :

“Firstly, that you on 13.09.2013 about 14.15 hrs at the waiting room of Malda Town Station platform No. 1 brought fake Indian Currency Notes for the purpose of trafficking and committed an offence punishable under section 489B of the IPC and within the cognizance of the Court of Sessions.

Secondly, that you on or about the same day, same time and place possessed 30 pieces of fake Indian Currency Notes of the denomination Rs. 500/- each, in total Rs. 15,000/- to wit and knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine and committed an offence punishable under section 489C of the IPC and within the cognizance of the Court of Sessions.

Thirdly, that the appellant on the same day, same time and same place possessed 610 round 7.62 live cartridge, 10 round .303 empty magazine of AK 47 Rifle which are completely prohibited and did not produce any valid document regarding the said possession and committed an offence punishable under section 25(1AA)/1(B) of the Arms Act and within the cognizance of the Court of Sessions.”

In the course of trial, prosecution examined 10 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 30.08.2017 and 31.08.2017 convicted and sentenced the appellant, as aforesaid.

PWs 1, 2, 3, 7 and 8 were members of the raiding party.

PW 4, Dilip Chowhan was the Station Manager of Malda Town Railway Station while PWs 5 and 6 were the independent witnesses of the seizure.

PWs 9 and 10 are the investigating officers of the case.

Mr. Ahmed, learned Counsel appearing for the appellant submits that the prosecution has not been able to prove the ownership of the trolley bag from which FICNs and illegal ammunitions were seized. He further submits there is nothing on record to show that the appellant had in his possession the prohibited arms for the purpose of sale. Hence, the appellant is entitled to an order of acquittal.

On the other hand, Ms. Gaur, learned counsel appearing for State submits that evidence of the official witnesses namely PWs 1, 2, 3, 7 and 8 are corroborated by independent witnesses PW 4, 5 and 6. All the witnesses in unison have stated appellant was in the second class waiting room carrying a greenish trolley bag. Recovery of FICNs and the illegal ammunition was made from the bag. Reports from experts show the seized currency notes were fake and recovered ammunition were in working order. On interrogation appellant stated that he was carrying illegal ammunition for sale in Bhagalpur. Hence ingredients of offences have been proved beyond doubt.

P.W. 1, Sujit Kr. Ghosh, who was posted as IC, Malda Town GRPS was the leader of the raiding party. He deposed on receipt of secret information he diarised the same and proceeded to the spot with his team. On the way, he informed the Station Manager Dilip Chowan and one labour contractor Raj Kumar Paswan @ Kalu and requested them to accompany the raiding party. At the second class waiting room on platform No. 1 the source identified the suspect. He was carrying one

greenish coloured trolley bag. They surrounded the appellant who disclosed his identity. PW 1 opened the bag and upon search, he recovered 30 pieces of currency notes suspected to be fake along with 610 rounds of 7.62 mm live cartridge, 10 rounds of live cartridge of .303, 15 rounds live cartridge of .9 mm, one empty magazine of AK 47 Rifle from the bag. Other articles were also recovered from the trolley bag including a black coloured money bag containing a driving license in the name of the appellant. Seized articles were labeled and a seizure list was prepared which was exhibited as Exhibit 1. Upon interrogation appellant stated he was carrying FICNs from Bhagalpur and had used some of them. PW 1 arrested the appellant and took him and the seized contrabands to the police station. FIR was prepared by ASI, Sankar Deb (PW 2) as per dictation of PW 1. He proved the FIR (Exhibit 2). He identified the trolley bag and the seized FICNs as well as the illegal ammunition in Court.

PWs 2, 3, 7 and 8 are the members of the raiding party. They have substantially corroborated PW 1 with regard to recovery. They also proved their signatures on the seizure lists and other items.

PW 4 is the Station Manager and PWs 5 and 6 are independent witnesses. They were present at the time of seizure and have corroborated the deposition of official witnesses. They identified the seized articles in Court and proved their signatures on the seizure list.

Mr. Ahmed contends the manner of recovery as narrated by PW 1 is at variance with other witnesses. PWs 3 to 7 stated the appellant had opened the trolley bag while PW 1 claimed he had opened the same. It is also contended appellant had come out of the wash room at the time when recovery was made. There is nothing on record to show that the appellant was the owner of the trolley bag.

I have scanned the evidence on record in order to test the aforesaid submissions. All the witnesses have stated that the appellant was carrying a greenish coloured trolley bag. He was making payments for use of wash room when the raiding party surrounded him. There is slight deviation as to who had opened the trolley bag which in my estimation does not affect the edifice of the prosecution case. It is also relevant to note a money bag bearing the driving license of the appellant was recovered from the trolley bag which corroborated the prosecution case with regard to its ownership.

Investigation was conducted by PWs 9 and 10 and the seized currency notes were sent for verification to Bharatiya Reserve Bank Note Mudran Press, Shalboni, West Bengal. Report received from Bharatiya Reserve Bank Note Mudran Press, Shalboni has been produced in court and marked as Exhibit 13 which shows the notes are false. Similarly, illegal ammunitions including the magazine of AK 47 rifle were sent for examination by arms expert at Bidhannagar Police Commissionerate and Ordnance Factory, Kolkata. Their reports have also been produced in

Court and marked as Exhibits 14 and 16 respectively. Reports show the ammunitions were in working condition and were prohibited in nature. Sanction order of District Magistrate, Malda has also been marked as Exhibit 15. No serious challenge has been thrown to the aforesaid expert opinions.

However there is substance in the submission of Mr. Ahmed that the prosecution has failed to lead evidence that the appellant was in possession of the prohibited ammunition for the purpose of sale. Prosecution has relied on the statement of the appellant made to PW 1 in that regard. Statement made by an accused before a police officer is inadmissible under section 25 of the Evidence Act. That apart, unlike PW 7, another member of the raiding party, PW 1 does not state that appellant told him that he was carrying ammunitions for the purpose of selling them in Bhagalpur.

Hence, I am of the opinion prosecution has not been able to prove the aggravated offence under section 25(1)(AA) of the Arms Act but the ingredients of sections 25(1-A) and 25(1-B)(a) of the Arms Act are fully satisfied.

In view of the aforesaid discussion, I uphold the conviction and sentence of the appellant punishable under Section 489C of the Indian Penal Code and 25(1-B)(a) of the Arms Act.

I convert the conviction of the appellant under section 25(1)(AA) of the Arms Act to section 25(1)(A) of the Arms Act and modify his sentence

and direct to suffer rigorous imprisonment for 10 years and to pay fine of Rs. 30,000/-, in default, to suffer rigorous imprisonment for 1 year more on such score. All the sentences shall run concurrently.

The appeal is partly allowed.

The period of detention suffered by appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Department is directed to communicate a copy of the order to Superintendent, District Correctional Home, Malda for compliance.

Copy of the judgment along with Lower Court Records be sent down to the trial Court at once for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)