

The State of M.P. Vs. Usman

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Court : Madhya Pradesh

Decided On : Aug-22-2012

Appellant : The State of M.P.

Respondent : Usman

Advocate for Def. : Shri. Satish Kashyap

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SB: Honble Mr. Justice N.K.Gupta, J.Criminal Appeal No.1859/1998 State of Madhya Pradesh Vs. Usman Shri Ajay Tamrakar, Panel Lawyer for the respondent/State. Shri Satish Kashyap, counsel for the respondent.

JUDGMENT

(Delivered on the 22nd day of August, 2012) The State has preferred this appeal against the judgment dated 17.4.1998 passed by the Sessions Judge, Damoh in ST. No.111 of 1993 whereby the respondent was acquitted from the charge of offence punishable under Section 392 read with Section 397 of I.P.C and Section 25 of the Arms Act.

2. The prosecution's case in short is that on 22.2.1992 at about 2.30 p.m the complainant Dwarka Prasad Patel (PW1) was taking the bus from the bus stand to the village Bila, District Damoh for Barat of his nephew Rambahadur. In the bus, driver, conductor and one Hetram (PW3) were present. Near Gadhi Mohalla the

respondent snatched the licensed 12 bore gun from the hands of the complainant. The respondent had a baka (dagger) in his hands and therefore, the complainant could not resist. However, he tried to chase the 2 Criminal Appeal No.1859 of 1998 respondent but, he ran away. The complainant had lodged an FIR Ex.P/1 at Police Station Damoh within half an hour. Nothing was done after his report. Approximately after one year the gun was seized from the respondent. It was sent for its mechanical inspection to the Reserve Inspector, Damoh and after taking a prosecution sanction from the District Magistrate, Damoh a charge sheet was filed before the CJ.Damoh who, committed the case to the Sessions Court.

3. The respondent abjured his guilt. He did not take any specific plea but, he has stated that he was falsely implicated in the matter. No defence evidence was adduced.

4. After considering the evidence adduced by the prosecution the learned Sessions Judge acquitted the respondent from the aforesaid charges.

5. I have heard the learned counsel for the parties.

6. The learned Panel Lawyer has submitted that one licensed 12 bore gun was robbed by the respondent and the same gun bearing the same number was seized from the respondent and therefore, its seizure as well as the robbery was proved. The trial Court has erred in acquitting the respondent for those offences. It is prayed that the respondent be convicted for the offences as mentioned in the memo of charge and sentenced accordingly.

7. The learned counsel for the respondent has submitted that a false report was lodged by the complainant and therefore, the Police could not seize any gun from the 3 Criminal Appeal No.1859 of 1998 respondent in one year after the alleged incident and it was seized after one year. There was no reason as to how the police obtained the gun from the appellant whereas the appellant is a resident of Damoh itself. He did not abscond and therefore, there was no problem to the Police in seizure of the gun soon after the incident. It appears that the gun was again provided to the Police by Dwarka Prasad Patel and therefore, it was seized. Secondly, the gun was obtained in a broken condition and therefore, it was not a

fire arm at the time of seizure. Dwarka Prasad Patel was a friend of the Reader to the S.P and therefore, a false case has been created against the respondent.

8. After considering the submissions made by the learned counsel for the parties it is to be considered as to whether the appeal filed by the State can be accepted and if Yes what would be the sentence against the respondent ?.

9. So far as the story relating to the incident is concerned Dwarka Prasad Patel (PW1), Hetram (PW3) and driver Kurre @ Bansilal (PW2) were examined to prove the incident. Kurre @ Bansilal turned hostile whereas Hetram could not inform that why he was with the complainant Dwarka Prasad Patel whereas neither he was relative nor he was a friend of the complainant. Presence of the witness Hetram shown in the FIR Ex.P/1 indicates that a fake case was prepared. In the FIR it is said that the gun was snatched by the respondent by opening the gate of the bus. It is nowhere 4 Criminal Appeal No.1859 of 1998 mentioned that the respondent came inside the bus whereas, in the trial Court the complainant Dwarka Prasad Patel has alleged that the respondent came inside the bus and snatched the gun. The statement given by the witness Hetram that at the Shaukat Hotel the vehicle was not stopped but, in the case diary statement it was mentioned that the bus was stopped at Shaukat Hotel. He has accepted that he heard a noise that Usman robbed the gun and he has admitted that the complainant did not inform the name of the respondent to him whereas, in his case diary statement it is mentioned that it was the complainant who, informed the name of the respondent to this witness. The witness Hetram has also accepted in para 6 of his cross examination that one Usman was conductor in that bus. Looking to the contradictory statements of the witness Hetram it appears that he was not present in the bus and he was made a witness to support the prosecution's case.

10. The FIR was lodged within half an hour of the incident and in that half an hour, name of the witnesses were also settled. Under such circumstances, when the driver Kurre @ Bansilal turned hostile and he refused that he took any bus with the complainant then the testimony of the complainant Dwarka Prasad Patel cannot be relied upon.

11. Under such circumstances, it is a highly doubtful case that the respondent robbed the gun of the complainant. On the contrary it is possible that since the respondent was a 5 Criminal Appeal No.1859 of 1998 known criminal he was falsely implicated in the matter. If the respondent entered in the bus to snatch a gun then why such a fact was not mentioned in the FIR whereas the person who, was sitting on the seat of the bus could not lose his gun in such a manner that a pedestrian from the road could snatch the gun and therefore, story told by the complainant Dwarka Prasad in the FIR appears to be unnatural.

12. Similarly, seizure of a gun is also unnatural. Sub Inspector K.K. Tripathi (PW9) has stated that on the festival of Rang Panchami, he found that the respondent was standing in Kasai Mandi with a gun because he was going to kill someone and therefore, that gun could be seized but, according to Head Constable Armor Rajnarayan (PW6) the gun was not in a working condition. Its hand grip was missing and without the hand grip gun could not be used. Under such circumstances, there was no possibility that the respondent came out with the gun to kill someone because by that gun he could not make any fire without the hand grip. Therefore, pretext shown by Sub Inspector Shri Tripathi for the seizure of the gun appears to be unnatural. The respondent was a known criminal and he could be arrested and interrogated in last one year for the recovery of the gun but nothing has been done for a period of one year. Under such circumstances, the seizure of the gun also makes the story to be doubtful that any gun was robbed from the victim. 6 Criminal Appeal No.1859 o

13. When the story of robbery is doubtful then the respondent could not be convicted for offence punishable under Section 392 read with Section 397 of I.P.C. Similarly, when the robbery was not proved beyond doubt then gun of the complainant Dwarka Prasad Patel could not be seized from the respondent and therefore, it could not be said that the respondent had the possession of the gun at the time of the seizure and therefore, he could not be convicted for the offence punishable under section 25 of the Arms Act.

14. The learned Sessions Judge has rightly acquitted the respondent from the charges of offences punishable under Section 392 read with Section 397 of I.P.C

and Section 25 of the Arms Act. There is no basis by which any interference can be made in the findings of the trial Court. The appeal filed by the appellant/State appears to be not acceptable and consequently the appeal is hereby dismissed. The findings directed by the trial Court are hereby maintained.

15. The presence of the respondent is no more required before the Court and therefore, it is directed that his bail bonds shall stand discharged.

16. Copy of the judgment be sent to the trial Court for its record and information.
(N.K.Gupta) Judge bina 22.8.2012

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