

Deba Barua Vs. State of Assam

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Court : Guwahati

Decided On : Apr-07-2000

Judge : M.L. Singhal, J.

Acts : [Arms Act, 1959](#) - Sections 25(1); [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : Criminal Revision No. 49 of 1995

Appellant : Deba Barua

Respondent : State of Assam

Advocate for Def. : D.P. Saikia, Adv.

Advocate for Pet/Ap. : K. Agarwal, Adv.

Disposition : Revision allowed

Prior history : M.L. Singhal, J. 1. At the very outset, it has been pointed out by the learned counsel for the revisionist that the accused revisionist Sri Deba Barua died during the pendency of the revision. The provisions of abatement of the appeal do not apply to the criminal revision, as the conviction of the revisionist may affect the right of the family members of the deceased to receive the family pension, so, the disposal of this revision on merit is necessary. 2. I have heard Mr. K. Agarwal, learned

Judgement :

M.L. Singhal, J.

1. At the very outset, it has been pointed out by the learned counsel for the revisionist that the accused revisionist Sri Deba Barua died during the pendency of the revision. The provisions of abatement of the appeal do not apply to the criminal revision, as the conviction of the revisionist may affect the right of the family members of the deceased to receive the family pension, so, the disposal of this revision on merit is necessary.

2. I have heard Mr. K. Agarwal, learned counsel for the revisionist as well as Mr. D.P. Saikia, learned counsel for the State.

3. While investigating the Koliabor PS case No. 161/88 under Section 51(1) of Wild Life Protection Act, 1972 (for short, 'the Act') read with Section 379 IPC on receiving a secret information that a stolen Rhino horn had been concealed by the accused-revisionist, the Police raided the house of the revisionist Daba Barua and in the search they recovered a large number of arms and ammunitions. After observing necessary formalities, a search memo (Exbt. 1) was prepared. The seized materials were sent to the forensic laboratory. In the examination, the ammunition had been found to be fire arms both live and empty. After obtaining sanction required under Section 39 of the Arms Act the accused was put on trial. The learned Magistrate found the accused-revisionist guilty under Section 25(10)(a) of the

Arms Act, sentenced him to 3 years RI and a fine of Rs. 2000, in default of payment of fine, further RI for 3 months. In appeal, the learned Sessions Judge has confirmed the conviction. Hence, the revisionist before this Court,

4. One of the arguments advanced by the learned counsel for the revisionist is that under Section 25(1)(a), it is necessary for the prosecution to prove the conscious control of the arms and ammunitions by the accused which is totally wanting in the present case. The statement of the 3 witnesses, namely, Thulswar Baruah, PW 1, Nripen Bora, PW 2 and Mema Kanta Nurzery, PW 3 were read before the Court. Admittedly, the accused-revisionist Deba Barua was working as a Forest guard. The premises searched were at the place Kuthari. It has been admitted by PW 1

Thuleswar Baruah in his cross-examination that at the time of occurrence, accused-revisionist Deba Barua was living in his forest quarters. The said PW 1 has further deposed that at the first instance, the house was searched and nothing incriminating was found inside the house. The Police officials asked for the key of the godown. The revisionist Deb Barua's father produced the key of the godown, the Police opened the lock of the godown and from inside the godown a packet with a box which contained the incriminating arms and ammunitions was taken out, and after that a search memo was prepared. The witnesses further admitted in cross-examination that the revisionist Deb Barua has 3 Brothers and father. In view of the statement of the PW 1 Thuleswar Barua it is clear that the revisionist Deb Barua at the time of the occurrence was living in Forest quarters and not in the premises at Kothari from where the incriminating arms and ammunitions were recovered. The revisionist has 3 more brothers and father, So, the conscious possession and control of the arms and ammunitions recovered is not proved beyond any doubt.

5. As has come in the evidence of PW 1 Thuleswar Baruah, PW 2 Nripen Bora and PW 3 Hema Kanta Nurzery on 5.3.1989 the search was made, the recovery memo was prepared relating to the recovered arms and ammunitions. PW 3 Hema Kanta Nurzery, however, further deposed in cross-examination that he again seized one 303 live bullet, one bullet of 9 mm pistol, one bullet of sten gun in presence of witnesses to enter seizure memo (exbt-4). The subsequently recovered articles were sent to the forensic laboratory for chemical examination. It is not clear from the evidence on record as to why this subsequent second seizure was made and why the articles seized earlier on 3-3-89 were not sent to the forensic laboratory for examination.

6. In view of the aforesaid infirmities in the prosecution case, the prosecution case against the accused-revisionist is not proved beyond doubt. It is not necessary to dictate upon the other infirmities in the prosecution case, argued by the learned counsel for the revisionist.

7. In view of the discussions made above, the conviction of the revisionist under Section 25(1)(a) of the Arms Act is not sustainable. Therefore, the present revision

succeeds and accordingly the same is allowed. The judgment and order dated 24.1.1995 passed by Sri D.D. Bhuyan, Addl. Sessions Judge, Nagaon in Crl. Appeal No. 7(N) of 1994 upholding the judgment and order dated 4.3.1994 passed by Addl. CJM in G.R. case No. 312 of 89 is hereby set aside. Sureties are discharged.

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