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Mahadeo Vs. the State

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Court : Allahabad

Decided On : Dec-16-1988

Reported in : 1990CriLJ858

Judge : G.B. Singh, J.

Acts : Arms Act, 1959 - Sections 25; Uttar Pradesh Police Regulations - Regulation 154; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 51 and 100

Appeal No. : Criminal Revn. No. 22 of 1982

Appellant : Mahadeo

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : A.S. Chaudhry, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

G.B. Singh, J.

1. This criminal revision is directed against the conviction and sentence of the revisionist under Section 25 Anns Act. The case of the prosecution was that on 27-

2-4979 at about 5.30 p.m. in village Gouhania, Police Station Mahrajganj, District Faizabad. S.I. Ram Narain Shukla (P.W. 1) apprehended Mahadeo revisionist and recovered one country made pistol and two live cartridges without any licence from his possession. A Fard about the recovery was prepared and First Information Report was lodged at the Police Station, Mahrajganj on the same day at 7-50 p.m. After investigation sanction for prosecution was obtained from the District Magistrate, Faizabad. The revisionist was thereafter prosecuted for the offence under Section 25 Arms Act. On behalf of the prosecution two witnesses S.I. Ram Narain Shukla (P.W. 1) and Constable Ram Komal Yadav (P.W. 2) were examined as eye witnesses of the recovery. S.O. Kripa Shanker Sachan (P.W. 3) investigated the case and obtained sanction. The revisionist denied the recovery and pleaded his false implication on account of enmity. Learned Magistrate believed the prosecution case and convicted the revisionist under Section 25, Arms Act and sentenced to one year R.I. In appeal, the conviction was maintained but sentence was reduced to six months. Feeling dissatisfied with this Mahadeo has preferred this revision.

2. Heard learned counsel for the revisionist and learned Assistant Government Advocate appearing for the State. The record of the lower Court was summoned and perused.

3. It has been argued by the learned counsel for the revisionist that the case against the revisionist was not proved by reliable evidence. In order to support his contention he took me through the evidence recorded in case., I do not agree with the contention of the learned counsel for the revisionist. As a general rule the High Court does not interfere with a finding of fact in revision specially when there are concurrent findings of fact of the lower Courts.

4. In the present case there are concurrent findings of the two Courts, below that the recovery of one country made pistol and two live cartridges without licence was made by S.I. Ram Narain Shukla (P.W. 1). These findings are based on appreciation of evidence and cannot be attacked on the footing of an appeal. A Court of revision does not go into the weight or sufficiency of the evidence or credibility of witnesses or substitute its own view of the evidence where two views

are possible. However, when the finding of fact is arrived at contrary to well established principles of law or where there is no evidence to support the finding or where the finding arrived at is perverse or such as no reasonable man could have arrived at on the evidence produced, interference can be made in revision on question of fact. Keeping in view these principles if the evidence produced in the case is appreciated it does not appear to be a fit case for interference.

5. The argument advanced by the learned counsel for the revisionist against the credibility of the prosecution evidence is that only police witnesses have been examined, no independent witness has been produced, copy of recovery memo was neither signed by nor given to the accused and the memo could not be prepared on the spot. In my opinion this criticism has no force and does not lead to the inference that the finding arrived at is perverse. S.I. Ram Narain Shukla (P.W. 1) and Constable Ram Komal (P.W. 2) have stated about recovery. There is nothing in their cross-examination making them unworthy of credence. The two Courts below have given satisfactory reasons for placing reliance on their testimony and I find no reason to disagree with them. There is no presumption that the police officials are liars. The testimony of police officials is treated in the same manner as the testimony of other witnesses and the view that their testimony without corroboration by independent witness is unworthy of belief cannot be supported. Conviction can be recorded on the basis of evidence of police officials. Applying this dictum to the present case it can be safely said that the Courts below did not commit any illegality in believing the aforesaid two police witnesses and convicting the revisionist on their testimony.

5A. It is true that in the present case no public witness was examined. The recovery memo has been signed by one Harbhan Singh a public witness but it appears that he was not produced because there was a suggestion on behalf of the accused in cross-examination of S. I. Ram Narain Shukla that he is on inimical terms with the accused. Mahadeo accused clearly stated in his examination his inimical relations with Harbhan Singh and in view of this statement the absence of Harbhan Singh from the witness-box cannot be much emphasised. There is an explanation on behalf of the prosecution as to why S.I. Ram Narain Shukla could not procure a public witness. On the relevant day few hours before the arrest of

the accused he received an information from informer that the accused is in the village and he is likely to leave the village to commit dacoity soon after sunset. It has also come in his statement that the accused was wanted in some dacoity cases and his apprehension was, therefore, urgent. In view of these facts if he did not procure any public witness from the village other than Harbhan Singh, it cannot be inferred that the prosecution evidence is not worthy of reliance.

6. So far as the recovery memo is concerned it is undoubtedly not signed by the accused nor there is an endorsement at the foot of it that its copy was given to the accused. It is disputed that the search of the person of the accused-revisionist was taken under Section 51, Cr. P.C. It does not require that when search of arrested person is made signature of the person searched shall be taken on the memo of recovery and its copy should be given to him. It simply requires that when any article is seized from the arrested person a receipt showing the articles taken in possession by the Police Officer shall be given to such person. In the present case there is no endorsement on the recovery memo that any such receipt was given to the revisionist. Police Regn. 154 of U.P. Police Regulations lays down that if search of an arrested person under Section 51, Cr. P.C. is made, it should be done in the presence of two witnesses unconnected with the police whenever such witnesses are available. In the present case it is undisputed that two public witnesses were not present at the time of the search and the seizure. However, there is an explanation of S. I. Ram Narain Shukla (P.W. 1) that the accused was found all of a sudden and so the public witnesses could not be taken at the time of the search of the arrested person. In view of this explanation it can be said that public witnesses were not available and as such Regn. 154 is not attracted. Section 100, Cr. P.C. however, provides that the recovery memo should be signed by the witnesses present at the time of the search and a copy of the recovery memo should be delivered to the person searched. Section 100, Cr. P.C. does not apply to the present case because its provisions are applicable when a search warrant is obtained by the Police Officer and in pursuance of the same search is taken. In the present case no such search warrant was obtained by the Police Sub Inspector and he took search of the accused-revisionist as an arrested person under Section 51, Cr. P.C. Thus, the facts that the recovery memo was not signed by more than one witness of the public and its copy was not given to the accused

cannot be much emphasised. Undoubtedly there is a defect of not giving receipt of the articles recovered and its endorsement on the recovery memo to corroborate the testimony of witnesses but it is an irregularity and does not vitiate the trial. The observations made in Radha Kishan v. State of Uttar Pradesh. AIR 1963 SC 822 and Sunder Singh v. State of Uttar Pradesh, AIR 1956 SC 411, clearly show that seizure is not vitiated by irregularities in search nor can it vitiate the trial nor affect conviction of the accused unless the accused has been prejudiced, by the defect. In the present case there is nothing to show that prejudice has been caused to the accused by such a lapse. It undoubtedly affords a ground for close scrutiny of the prosecution evidence but the evidence of the police witnesses is convincing and it cannot be rejected on the ground that receipt of the recovered articles was not given to the accused.

7. It was also argued by the learned counsel for the revisionist that the recovery was said to be made at 5.30 p.m. when the sun was about to set and a detailed recovery memo as prepared in the present case could not be written on the spot as stated by the prosecution witnesses. It was also argued by him that the story of the prosecution is unnatural. I do not find any substance in this contentions. There is nothing unnatural in the prosecution story nor there is any circumstance indicating that the recovery memo could not be prepared on the spot soon after the arrest and the seizure.

8. From the above discussion it is clear that the revision has no force. It is, therefore, dismissed. The conviction and sentence are maintained Mahadeo revisionist is on bail. His bail bonds are cancelled. He shall surrender himself at once to serve out the sentence. The Chief Judicial Magistrate Faizabad shall send his compliance report within two months.

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