

**State of U.P. Vs. Dalbir Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/487704](http://sooperkanoon.com/487704)

**Court :** Allahabad

**Decided On :** Feb-04-1997

**Reported in :** 1997CriLJ3186

**Judge :** R.K. Singh, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 313 and 378(3); [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 307, 409 and 452

**Appeal No. :** Govt. Appeal No. 1711 of 1988

**Appellant :** State of U.P.

**Respondent :** Dalbir Singh

**Advocate for Def. :** R.S. Yadav, ;A.B.L. Gour ;and Arvind Yadav, Advs.

**Advocate for Pet/Ap. :** A.G.A.

**Disposition :** Appeal dismissed

**Judgement :**

R.K. Singh, J

1. This appeal has been preferred by the State of U.P. under Section 378(3) Cr.P.C. against the judgment and order dated 26-4-1988 passed by the Additional Chief Judicial Magistrate, Aligarh in Criminal Case No. 797 of 1985 acquitting the

respondent Dalvir Singh.

2. Respondent Dalvir Singh has been charged under Section 409, IPC on the allegation that on 21-2-1983 Thana Malkhana, P.S. Tappal, District Aligarh was inspected and one item of SBBL gun No. 47229 licence No. 7438 along With two cartridges and 12 empty cartridges were found missing which was under the trust of the accused Dalvir Singh.

3. The accused pleaded not guilty to the charge and claimed to be tried. In this statement under Section 313, Cr. P.C. he denied the allegation and alleged that the Station Officer has shifted his liability on the head of this accused.

4. The accused is admittedly a constable who was posted at the relevant time in the year 1982-83 at the police station Tappal, District Aligarh and he was incharge Thana Malkhana and material Exhibit of crime case No. 61 of 1981 under Sub-section. 147, 148, 307 and 452, IPC State v. Bhagwat i.e. SBBL gun No. 47229 licence No. 7438 with two cartridges. This is also not disputed that Thana Malkhana was inspected by Virendrapal Singh, Station Officer, P.S. Tappal on 21 - 2-1983 and on that date the above said gun and cartridges were found missing from the Malkhana. The prosecution alleges that the accused has committed criminal breach of trust in respect of the said gun and cartridges. To prove the charge the prosecution has examined three witnesses. P.W. 1 Virendrapal Singh is Reader in the office of the Senior Superintendent of Police, Aligarh. He stated that on 21 -2-1983 he was Station Officer, P.S. Tappal and at 7-00 a.m. he inspected the Thana Malkhana, Tappal and on checking he found that the material exhibit noted at serial No. 28 having relation with crime case No. 61 of 1981 under Sections 147, 148, 307 and 452, IPC P.S. Tappal State v. Bhagwat one number of gun of 12 bore and two cartridges which was in one sealed bundle was not present. The witness says that this material exhibit was brought by constable Ram Prakash from Lucknow on 26-2-1982 after examination and the relevant entry in the G.D. was made. He further stated that the accused Dalvir Singh has taken charge of the said material on 11 -1 -1983 as per G.D. entry No. 24 and Dalvir Singh continued to be the incharge of the said material exhibit till the date of inspection and he was holding the charge of the Malkhana. The key was also with

the accused.

5. P.W. 2 Bhudeo Prasad Sharma has stated that he was posted at the police station Tappal on 11-1-1983 on which date he handed over the charge of Thana Malkhana to Dalvir Singh through the G.D. entry No. 24. This witness has proved the original G.D. and has proved the signatures of Dalvir Singh marked Ex. Ka-3. The carbon copy of the list of articles has been marked Ex. Ka. 4 and the certificate given by accused Dalvir Singh on the same has been marked Ex. Ka. 5.

6. P.W. 3 Karan Singh has stated that in February, 1983 he was Station Officer of P.S. Tappal District Aligarh. He has investigated the case. The witness says that on inspection he found that one number of SBBL gun No. 47229 noted at serial No. 28 in the Malkhana register, was not present in the Malkhana. He has proved the sanction for prosecution of the accused sanctioned by the S.S.P. Aligarh and the same has been marked Ex. Ka. 10.

7. In the cross-examination of P.W. 1 and P.W. 3 the duty and responsibility of the Station Officer of the police Station has been taken into consideration and the Court below has observed that the Station Officer did not follow the duties entrusted to him because he was incharge of the police station including the Malkhana and daily he should have checked the entry and should have physically verified the items in the Malkhana which he did not. Further the trial Magistrate has observed that this accused Dalvir Singh had some quarrel with constable Satyapal Singh in the night of 12/13-2-1983 and Satyapal Singh threatened him to teach a lesson, so there was chance of manoeuvring by Satyapal Singh keeping the Station Officer Virendrapal Singh in his collusion as both Satyapal Singh and Virendrapal Singh belong to the same caste i.e. Jat. The trial Magistrate has observed that there were three constables having watch on the Malkhana according to duty hours so it is not possible to hold the accused solely responsible for the loss of the relevant SBBL gun and cartridges.

8. The view taken by the trial Magistrate is not in accordance with the facts of the case. In this case the relevant SBBL gun was a material exhibit of crime case No. 61 of 1981 under Ss. 147, 148, 452 and 307, IPC. It was one number of SBBL gun No. 47229 with two cartridges in a sealed packet. The carbon copy of the list of the

articles kept in the Malkhana has been marked Ext. Ka. 5 and there is endorsement and certificate of accused Dalvir Singh to the effect that he received all the materials as per list. This certificate is dated 11-1-1983. In the cross-examination of P.W. 2 there is no denial of this fact by accused Dalvir Singh. It is very much specific in the statement of P.W. 1 Virendrapal Singh that he inspected the police Malkhana and physically verified each and every article kept in the Malkhana and he found that one SBBL gun No. 47229 licence No. 7438 with two cartridges which related to the crime case No. 61 of 1981 under Sections 147, 148, 452 and 307, IPC of P.S. Tappal, District Aligarh (State v. Bhagwat) was found missing. There is no challenge of this fact stated by P.W. 1 in his lengthy cross-examination. The cross-examination is directed against the duties of the Station Officer which according to the defence side was not strictly followed by P.W. 1 who was the Station Officer of the police station. P.W. 1 has inspected the Malkhana. He stated that usually as practice they give the key to Head Moharir having faith on the Head Moharir and it is not possible to physically verify each and every item daily in the Malkhana. This explanation of the witness is not absurd or unnatural, Though the rule requires daily inspection and daily physical verification of the items kept in the Malkhana but if it has not been done by the Station Officer, as P.W. 1 has stated, then it is not proper to hold the Station Officer himself responsible for the loss of any article in the Malkhana. The constable on duty who is incharge of the Malkhana is obliged to keep the items in the Malkhana intact. Ex. Ka. 5 proves that this accused Dalvir Singh had taken the relevant SBBL gun in his charge along with other materials as per list on 11-1-1983. The Malkhana was inspected by P.W. 1 on 21-2-1983 when this gun and cartridges were found missing till that date the accused Dalvir Singh was the incharge of the Malkhana. There is no case of defence that at any point of time prior to inspection on 21-2-1983 the accused had informed the Station Officer or any authority suspecting any malpractice by any of his colleagues or theft of any material from the Malkhana. In this way there is no scope to shift the burden. The accused had taken the relevant SBBL gun in his charge alongwith the other materials in the Thana Malkhana. The responsibility to keep it safely lies on the head of the accused Dalvir Singh. The loss of the same makes it a clear case of criminal breach of trust because the accused was a public servant and he has

caused the loss of relevant gun and cartridges. The charge under Section 409, IPC is well established against the accused

9. The finding of acquittal recorded by the Additional Chief Judicial Magistrate Aligarh is not based on proper appreciation of evidence on record. The same is accordingly set aside. The offence charged against the accused is proved beyond any reasonable shadow of doubt. Accordingly the accused is convicted for the offence punishable under Section 409, IPC and he is convicted accordingly. The order on the point of sentence will be passed after hearing the counsel for the respondent.

10. Heard learned counsel for the accused and the learned A.G.A. in the point of sentence.

11. The learned counsel for the accused-convict has prayed for lenient sentence on the ground that the accused is facing suspension since last eleven years and he has already retired from the Government service on 31st January, 1997. Further, it has been pointed out that the accused is an old man. The learned A.G.A. has prayed for server sentence considering the nature of the crime. The accused has retired from service and has lost the benefits of service also due to the present conviction and sentence. Considering this aspect and the old age of the accused, he is given a lenient sentence of one year's rigorous imprisonment only. He be taken into custody and remanded to jail for serving the term of sentence.

12. Let a copy of judgment and order be supplied to the accused within twenty four hours.