

Dadu Alias Indraka Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-21-2002

Reported in : 2003CriLJ1125; 2003(1)MPHT302

Judge : S.L. Jain, J.

Acts : [Arms Act, 1959](#) - Sections 25(1); [Evidence Act, 1872](#) - Sections 3

Appeal No. : Criminal Appeal No. 322/90

Appellant : Dadu Alias Indraka

Respondent : State of M.P.

Advocate for Def. : Dinesh Joshi, Panel Lawyer

Advocate for Pet/Ap. : Jagat Sher Singh, Adv.

Disposition : Appeal allowed

Judgement :

S.L. Jain, J.

1. The appellant is challenging in this appeal under Section 374(2) of the Code of Criminal Procedure, his conviction and the sentence awarded to him for the offence punishable under Section 25(1)(b) of the Arms Act by Additional Sessions Judge, Chhatarpur, vide impugned judgment and order dated 17-3-90 in Sessions

Trial No. 200/89. A sentence of 1-1/2 years' R.I. and fine of Rs. 500/-, in default 3 months' R.I. was imposed on the appellant by the Trial Court.

2. Facts necessary for disposal of the present appeal are that the appellant was prosecuted for the offences punishable under Section 302 of Indian Penal Code and Sections 25 and 27 of Arms Act on the allegations that on 15-7-89 at about 2.30 P.M. in Village Panagar he fired a pistol to deceased Bhuri Kori when he was watching the movie in Jitendra Video Hall. On 19-7-89, appellant was arrested by A.K. Jharkhedia (P. W. 9), the Investigating Officer as per Ex. P-11 and one 12 bore Katta (country made pistol) and 12 bore one cartridge were seized from his possession vide seizure memo Ex. P-10.

3. The prosecution failed to connect the appellant with the murder, hence learned Trial Judge acquitted him of the offence punishable under Section 302 of Indian Penal Code. The learned Trial Judge also acquitted him of the offence punishable under Section 27 of the Arms Act on the finding that there was no intention for using the Katta for any illegal act but held the appellant guilty for the offence under Section 25(1)(b) of the Arms Act and convicted and sentenced him as mentioned above.

4. Being aggrieved by the said order of conviction, the appellant has filed this appeal.

5. Heard Shri Jagat Sher Singh, learned Counsel appearing for the appellant and Shri Dinesh Joshi, learned Panel Lawyer, appearing for the respondent-State.

6. Learned Counsel for appellant submitted that in the absence of corroboration by independent witnesses the finding of the learned Additional Sessions Judge that the accused was found in possession of 12 bore Katta and one 12 bore cartridge cannot be sustained. He also submitted that the evidence of Investigating Officer, A.K. Jharkhedia (P.W. 9) is also not reliable. He further submitted that there is no report from the Forensic Science Laboratory nor there is any evidence to prove that the said Katta was in a working condition or that the said cartridge was alive.

7. On the other hand, Shri Dinesh Joshi, learned Panel Lawyer has supported the order of the Trial Court and submitted that from the statements of A.K. Jharkhedhia, and Abdul Salam (P.W. 7), Head Constable it would clearly appear that accused was found in possession of 12 bore Katta and 12 bore cartridge and therefore, no interference is called for in the order of conviction recorded by the Trial Court.

8. The question which emerges for consideration is :--

Whether appellant was found in possession of one 12 bore Katta and one 12 bore cartridge in contravention of Section 5 of the Arms Act ?

9. A.K. Jharkhedhia (P.W. 9), has stated that he arrested the accused on 9-7-89 as per Ex. P-11. He seized a 12 bore Katta and one cartridge from the appellant as per Ex. P-10. Abdul Salam (P.W. 7), Head Constable who is the attesting witness of Ex. P-10, was posted at Police Station, Bijawar, at the relevant time. He has stated that S.H.O., Bijawar seized one Katta and one cartridge from the possession of the appellant. Independent witness Durg Singh who is also an attesting witness of Ex. P-10 has not been examined by the prosecution.

10. There is material contradiction in the evidence of A.K. Jharkhedhia (P.W. 9) and Abdul Salam (P.W. 7). Abdul Salam (P.W. 7) has stated that the accused was in a bus while A.K. Jharkhedhia does not said that accused was in the bus. If the accused was travelling in the bus some witness should have been called to sign the seizure. Both A.K. Jharkhedhia (P.W. 9) and Abdul Salam (P.W. 7) have not stated the articles which were produced in the Court were the same which were seized from the possession of the appellant. There is no evidence to indicate with whom the Katta and cartridgewere handed over after their seizure by P.W. 9 till they were sent to the Court. This missing link weakens the prosecution case.

11. In Subhash v. State of Haryana (1999 Cr. Law Reporter SC 62), it has been held that where eye-witness did not support the evidence of investigating officer, conviction on the basis of his evidence cannot be sustained. In Sahib Singh v. State of Punjab (AIR 1997 SC 2417) also the Apex Court held that the absence of evidence of some independent witnesses from locality though they were available, would affect the weight of evidence of the police officer, though not its

admissibility.

12. The appellant was found in possession of country made pistol and cartridge when he was travelling in the bus. It does not appear that any effort whatsoever, was made to call any passenger of the bus while taking search of the appellant and recovery of pistol in that process. No explanation is forthcoming for not joining any co-traveller. The evidence of police officer has to be closely scrutinized with certain amount of care and caution. In *Mohan Singh v. State of Haryana* [(1995) 3 SCC 192] where the seizure took place in waiting hall of railway station, police officer found deliberately avoiding to join the witnesses or railway officers though available. It was held that conviction for alleged seizure of pistol was not sustainable.

13. In *State of Punjab v. Gurnam Singh* [AIR 1984 SC 1799 (1)] also it has been held that it is unsafe to convict the accused merely on the basis of uncorroborated evidence pertaining to the alleged seizure of the weapon. In *Narsi v. State of Haryana* (AIR 1999 SC 234) also it has been held that in the absence of independent evidence seizure of pistol and cartridge from the possession of the appellant becomes doubtful. Thus, in the absence of an independent evidence conviction on the basis of evidence of Investigating Officer cannot be sustained.

14. Learned Counsel for the appellant also submitted that there is no satisfactory evidence to show that the said Katta and cartridge were sent for examination by Forensic Science Laboratory, nor there is any other evidence to prove that the said Katta was in working condition or the said cartridge was alive, therefore, conviction of the appellant cannot be sustained. Learned Counsel relied on the decision in the case of *State of Punjab v. Jagga Singh* (AIR 1998 SC 3113).

15. There is no iota of evidence to give finding that the Katta seized from the possession of the appellant was in working condition or that the cartridge seized from his possession was alive. There is no evidence of an expert or an armourer to show that the pistol was in working condition or the cartridge was alive. It is true that the police officer, trained to handle the weapon, can find out as to whether the weapon is in working condition even without testfiring but in this case none of the police officer says that the weapon seized was in working condition and the

cartridge was alive. Therefore, in the absence of evidence that the pistol was in working condition and cartridge was alive, the conviction of the appellant for offence punishable under Section 25(1)(b) of the Arms Act cannot be sustained.

16. In view of the aforesaid discussion, this appeal deserves to be allowed and is accordingly allowed. The conviction of the appellant and sentence awarded to him by the Trial Court are hereby set aside. The appellant is acquitted of the charge levelled against for the offence punishable under Section 25(1)(b) of Arms Act. He is on bail. His bail bond shall stand discharged.

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