

**State of Maharashtra Vs. Arvinder**

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**Court :** Supreme Court of India

**Decided On :** Aug-20-2002

**Reported in :** JT2002(8)SC544

**Judge :** U.C. Banerjee and; Shivaraj V. Patil, JJ.

**Acts :** Criminal Law; [Evidence Act, 1872](#) - Sections 3; TADA Act, 1987 - Sections 3(1) and 5; [Indian Penal Code \(IPC\), 1860](#) - Sections 325/34, 395 and 397; [Arms Act, 1959](#) - Sections 25

**Appellant :** State of Maharashtra

**Respondent :** Arvinder

**Disposition :** Appeal dismissed

**Judgement :**

ORDER

1. The state of Maharashtra is in appeal against the order of the designated court (under TADA Act). Be it noted that the accused persons (including the respondent herein) were prosecuted for committing robbery of a carbine gun of PW.2 Anil Kumar Srivastava, police constable of police head quarter, Nanded along with two absconding accused on or about 25.1.1992 at 8.00 p.m. near the Sachkhand Gurudwara and Bhagat Singh Road, Nanded and while committing the said robbery the accused persons used deadly weapons i.e. country made revolver, spear and caused grievous hurt to PW.2 Anil Kumar Srivastava, which struck a

terror in the society and the accused persons were unauthorisedly in possession of the arms punishable under Section 395 read with Section 397 of the Indian Penal Code and under Section 25 of the Arms Act as also under Section 3(2) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA Act').

2. The learned trial judge upon consideration of the detailed evidence dealt with the issue rather elaborately with all the 17 witnesses tendered by the prosecution. The designated court, upon consideration thereof, acquitted accused Nos. 1, 2 and 3 of offences punishable under Section 395 read with Section 397 of the Indian Penal Code as also under Section 25(1) read with section 5 of the TADA Act and Section 3(2) of the same Act and instead convicted accused No. 1 Arvinder s/o Dharam Chand Sharma, accused no.2 Jagendra Singh Khelsingh Binda and accused No. 3 Pola Singh Puran Singh for the offence punishable under Section 325 read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment undergone by them till the date of the judgment pronounced by the designated court, i.e, 3rd of October, 1996 ; and further sentenced to pay a fine of Rs. 100/- each.

3. The principal reasoning weighed with the designated court has been the factum of there being no panchnama or even the seizure of carbine gun. Secondly, the evidence of PW.2 Anil Kumar recorded that accused Jagendra Singh was armed with a country made revolver and he (PW.2) was threatened by accused Jagendra Singh on the point of the said revolver. The definite evidence of PW.2 is only that he accosted accused Jagendra Singh while all the three accused persons ran away with his carbine gun. As per the evidence of PW.4 Surjeet Singh, he had snatched the said revolver from the person of accused Jagendra Singh after the accused was handed over to him by PW.2 Anil Kumar. PW.2 Anil Kumar did not identify the revolver before the court, as the same revolver, which was used by accused Jagendra Singh for threatening him at the time of incident. As per the evidence of PW.4 Surjeet Singh, he had handed over the said revolver to (PW. 15 ) D. B. Chavan and evidence of (PW. 15) D.B Chavan had been that he had brought the said revolver from the police chowki at gurudwara gate No. 1. There is thus a total inconsistency which has prompted the designated court to doubt the

prosecution story resulting in coming to the conclusion that the prosecution has failed to establish that at the time of the incident, accused were in possession of a country made revolver which is a fire arm. In any event , there exists no evidence on record that PW.2 Anil Kumar was in uniform who could be identified as a police constable. The factum of the PW.2 not being in uniform also weighed with the learned designated judge and we do record our concurrence therewith. We find there are sufficient materials on record to concur with the order as passed by the learned designated court. In any event, the order was passed upon appreciation of evidence which the Apex Court would not further scrutinise while dealing with an appeal with the grant of leave under Article 136 of the Constitution save, however, on there being any miscarriage of justice.

4. On the wake of the aforesaid, we are not inclined to interfere with the findings of the designated court. The appeal, therefore, fails and is dismissed accordingly.

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