

Jai Chand Vs. State

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Court : Delhi

Decided On : Sep-20-1973

Reported in : ILR1974Delhi494

Judge : V.S. Deshpande and; S. Rangarajan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 235(1)

Appeal No. : Criminal Appeal No. 157 of 1973

Appellant : Jai Chand

Respondent : State

Advocate for Pet/Ap. : Dinesh Mathur and; I.D. Ahluwalia, Advs

Judgement :

S. Rangarajan, J.

(1) The appellant (Jai Chand) has been convicted under section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for two years for having been in possession of a rifle the license in respect of which only his brother Hari Chand had, with the intention of using it unlawfully.

(2) The case of the prosecution, in brief, is that he along with his two

(3) The appellant along with his brother Hukam Chand went to the shop of Chhote Lal in the bazar in village Mahipal Pur at about 4 p.m. on 9-1-1972 when Chhote Lal was shot with a rifle and also hit with Pharsa. Jai Chand took the rifle from his brother Bishan Chand, who had fired a shot earlier at Chhote Lal; Jai Chand also fired from it. Subsequently Jai Chand and Hukam Chand are said to have proceeded towards the house of Jagdish Chander and in the street near the house of Mukhtiar master, Hukam Chand dealt Pharsa blows on Jagdish Chander's wife Smt. Laxmi Devi and his young son Anil Kumar, whereas Jai Chand hit both of them with the butt end of the gun. Pieces of the butt are said to have fallen down at the place where Smt. Laxmi Devi and Anil Kumar had fallen down. Jai Chand is also said to have made a disclosure statement on 13-1-1972, soon after he was arrested, that he had thrown the rifle and some cartridges, packed in a gunny bag, into a well near village Mahipal Pur and that he would point out the well after he was taken there Jai Chand took Public Witness 30 and pointed out the well. On 16-1-1972 the rifle along with some cartridges were recovered from the well with the aid of divers even after pumping out water. The Ballistic Expert, Dr. O. P. Chub (not examined in this case) was said to have been present for the purpose of testing the rifle as soon as it was taken out of the water for the purpose of finding out the time of discharge from the said rifle.

(4) The above appellant as well as Hukam Chand were separately tried for murder of the above-said four persons but were not charged under section 27 of the Arms Act even though it could have been done. A separate trial, of a truncated kind, has been held subsequently against Jai Chand alone under section 27 of the Arms Act. No evidence was adduced in this case concerning Jai Chand either shooting at Chhote Lal or hitting Smt. Laxmi Devi and Anil Kumar with the butt end of the rifle. Only the two attestors to the recovery memo. Radha Krishan (P.W. 1) and Suraj Parkash (P.W. 2) and the Police Officer concerned, Shri B. K. Mehta (P.W. 3) were examined in this case. Public Witness 1 became hostile. Acting on the evidence of Public Witness s. 2 and 3 pertaining to the disclosure statement and recovery of the rifle the learned Additional Sessions Judge has found that the appellant was in possession of it with intent to use the same for an unlawful purpose.

(5) A preliminary objection was taken that the sanction (copy of which is Ex. Public Witness 3/A) given for prosecuting the appellant under section 27 of the Arms Act was itself not valid because it had been given only by the A.D.M. (Shri P. P. Chauhan) and not by the District Magistrate. Public Witness 4 (B. D. Kaushik) of the office of Deputy Commissioner was examined to prove the said sanction and he was not cross-examined at all. When this objection was taken in this Court the Standing Counsel for the State was directed to produce the Notification, if any, under which the A.D.M. (Shri P. P. Chauhan) had been empowered to function as an Executive Magistrate of the 1st Class for the Union Territory of Delhi under section 12(1) Cr.P. C. and also as an Additional District Magistrate for the said territory under section 10(2) Criminal Procedure Code . The said Notification dated 1-9-1970 published in Part IV of the Delhi Gazette was produced for our perusal. We took judicial notice of it; the objection itself not having been raised before the trial court, the learned counsel for the appellant did not press the question of sanction.

(6) He, however, argued that there being no evidence let in in this case against Jai Chand having used the gun either for the purpose of firing at Chhote Lal or for the purpose of hitting Smt. Laxmi Devi and Anil Kumar with the butt end of it, there could not be any conviction of the appellant Jai Chand under the Arms Act when even the record of the alleged disclosure statement said to have made by him has not been exhibited in this case.

(7) We find that after an exhausting trial, in which the appellant and his brother Hukam Chand were convicted in respect of those four murders, neither side seems to have been either able or willing to go through this separated case under the Arms Act fully. What has taken place is a truncated trial in which neither the prosecution nor the appellant have even put in the necessary effort. While the prosecution has not let in evidence about the alleged use of the fire-arm by the appellant and has not even placed on the record of this case the disclosure statement said to have been made by appellant resulting in the discovery of the fire-arm the appellant has not brought in cross-examination the various infirmities- to which our attention was drawn in detail when we heard the murder reference. In this situation we considered the question of ordering a retrial under the Arms Act

after setting aside the conviction and sentence under the Arms Act. On further consideration, however, it seems to us that the ends of justice in this case may not be furthered by ordering a retrial. We have confirmed today the sentence of death passed on the appellant in the murder case. We do not wish that the appellant should be made to undergo yet another trial under the Arms Act for which under section 235(1) Criminal Procedure Code . a separate charge could have been framed under the Arms Act but was not done. The bar of section 403 Criminal Procedure Code no doubt does not apply to a subsequent trial; section 403(a) specifically provides that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge could have been framed in the previous trial but was not framed. The more convenient course to have followed would have been to frame in the murder case itself an additional but separate charge under the Fire Arms Act also as permitted by section 235(1) Cr. P.C. This is the invariable practice in Madras; the same practice is followed in Calcutta as we understand from Shri Mukerjee who argued the murder case and appeal on behalf of the present appellant also. The practice with which one of us (Rangarajan, J.) is intimately acquainted is that the Police challan itself is filed for murder as well as under the Arms Act; even if this is not possible and a separate challan under the Arms Act has to be filed later on account of any delay in obtaining the requisite sanction of the District Magistrate the committing Magistrate himself clubs both the challans and makes a single committal order; the Sessions Judge frames a charge under the Arms Act also along with the charge/charges pertaining to murder. This course is found not to inconvenience any one concerned; on the other, it is found to have the merit of not only avoiding the difficulties (noticed below) but the inconvenience, not to speak of expense (of both judicial-time and money) of a separate trial. For some reason, not explained to us, this practice of having a separate trial in such circumstances has been followed in the Punjab (including Delhi) resulting in several difficulties which are illustrated in some of the Supreme Court decisions arising from this area. A study of even a couple of them will reveal the kind of difficulties arising from this practice.

(8) It was held by Bhagwati, J. speaking for the Supreme Court in *Pritam Singh v. State of Punjab* A.I.R. 1956 S.C. 419 (1) that an acquittal of an accused in a trial under section 19(f) of the Arms Act (corresponding to the present section 27) was

tantamount to a finding that the prosecution had failed to establish the possession of certain revolver by the accused as alleged and this could not be proved against the accused in a subsequent proceeding between the State and himself under a charge of murder. This was on the basis of the rule of issue-estoppel applying to criminal proceedings as well. Another case arising from the Punjab (Gurcharan Singh v. State of Punjab A.I.R. 1965 S.C. 341) (2) had to deal with a situation where an accused was acquitted under the Arms Act in a judgment pronounced on the same day as the conviction in the murder case. An observation was made by Gajendragadkar, J. (as he then was), speaking for the Supreme Court, that if the order of acquittal under the Arms Act had been made before the judgment in the principal (murder) case, then the prosecution would not be able to contend that the concerned accused was in illegal possession of the same fire-arm, in respect of which an acquittal had been made under the Arms Act case. Though the trial Judge had given two inconsistent findings in the two cases, it was seen prima facie that the judgment in the murder case had been delivered earlier and could not, therefore, affect the acquittal in the Arms Act case. The finding in the murder case about the accused using the fire-arm was confirmed, by the Supreme Court, in appeal.

(9) We have referred to the two, out of several cases decided by the Supreme Court arising from the Punjab by way of illustration of the complications that may arise (and have actually arisen) by a separate trial under the Arms Act in such circumstances, they are completely obviated by having a joint and single trial in respect of the charges. of murder and under the Arms Act.

(10) We are convinced that setting aside the conviction of the appellant, but not ordering a retrial of the offence under the Arms Act, will have no impact on the conviction and sentence of the appellant of the charge of murder, which we have today confirmed. The observations of Gajendragadkar, J. in Gurcharan Singh will cover the present case.

(11) The principle of issue-estoppel concerning which Bhagwati, J. held as above in Pritam Singh has been more fully explained in the later cases. It may be sufficient to refer in this connection to Piara Singh v. State of Punjab : 1969

CriLJ1435 , where Ramaswami, J. observed on page 964 as follows :

'It should be stated that the principle of issue-estoppel is different from the principle of double jeopardy or autrefois acquit as embodied in section 403 of the Criminal Procedure Code. The principle of issue-estoppel is a different principle, viz., where an issue of fact has been tried by a competent Court on a former occasion and a finding has been reached in favor of an accused, such a finding would constitute an estoppel or resjudicata against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2), Criminal Procedure Code . '

(12) The above observations being sufficient for our present purpose, there is no need here to discuss the two streams of decisions, applying to differing situations, following Pritam Singh and another case, not yet cited, *Sekendar Heika v. State of West Bengal* : 1964 CriLJ733 . In the latter case the trial court had acquitted the accused on the count of falsely personating another for getting the concerned valuable security in that case registered an offence punishable under section 82-C of the Registration Act,-but had found him guilty for forging the same valuable security-punishable under section 467 of the Indian Penal Code. The Supreme Court rejected the argument that the same evidence which was not accepted for convicting the accused for the offence under the Indian Registration Act could not be accepted to convict the accused for the offence under the Indian Penal Code, because 'an item of evidence may corroborate more offences than one; but acquittal of accused for one such offence will not render that item of evidence inadmissible in assessing the criminality of the accused for another offence corroborated thereby'.

(13) For these reasons we set aside the conviction and sentence of the appellant under section 27 of the Arms Act but do not order a retrial. This appeal is accepted accordingly.