

State Vs. Rajinder Singh

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Court : Delhi

Decided On : May-02-1984

Reported in : 1984RLR415

Judge : R.N. Aggarwal and; M. Shriefuddin, JJ.

Acts : [Arms Act, 1959](#) - Sections 25; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 281

Appeal No. : Criminal Appeal No. 61 of 1982

Appellant : State

Respondent : Rajinder Singh

Advocate for Pet/Ap. : D.R. Sethi and; D.C. Mathur, Advs

Judgement :

R.N. Agarwal, J.

(1) On a careful consideration of the entire evidence we find that the prosecution case that the accused Rajinder Singh had come along with Sham Lal in ambassador car Dhb 9175 to house No. D-88 and two canisters alleged to be containing charas were taken out from the car and Rajinder Singh was nabbed while he was holding a loaded pistol in his hand is established beyond any doubt. [S. 3, Arms Act is then reproduced.]

(2) From a reading of the proviso (to S. 3, Arms Act) it is clear that a person may without himself holding a license, carry any firearm or ammunition in the presence or under the written authority of the holder of the license for repair or for renewal of the license or for use by such holder. The evidence is that K.K. Sharma had given the pistol and the cartridges to Rajinder Singh for taking it for repairs to Moradabad and then to bring it back after repairs. The pistol and pistol & cartridges are alleged to have been given to Rajinder Singh on 7.12.77. Rajinder Singh was found in possession of the pistol loaded with bullets on the night of 8th, 9th December. The pistol was seized from the hand of Rajinder Singh in the circumstances mentioned by the prosecution and believed by us to be true. The circumstances in which Rajinder Singh was caught with the loaded pistol lead to the irresistible conclusion that he was carrying loaded pistol intending to use it should the need arise. On these facts there can be no escape from the conclusion that the pistol was being carried with the intention to use it. The intelligence with the police and excise officials was that Rajinder Singh and Sham Lal would be taking charas for delivery to Public Witness . 10. Two canisters alleged to be containing charas were taken out of the car. Rajinder Singh was about to start the car when the car was surrounded by the police. The taking out of the pistol at that time, obviously, was for the purpose of using it.

(3) Shri Mathur contended that the excise case has failed because it was found that the canisters did not contain charas. The prosecution witnesses have stated that the contents of the canisters have been tampered with. The witnesses have stated that the contents of the canisters are not the same which were there when the canisters were seized. We need not go into this aspect of the case. There is no appeal before us against the acquittal in the excise case. We would only like to say that there are strong indications on the record that there were pulls and pressure in the case. The fact that the excise case ended in acquittal has, in our view, no effect on this case. The circumstances in which the pistol was seized from the accused proves that Rajinder Singh intended to use the pistol for an unlawful purpose. The fact that the pistol was actually used or not is immaterial. We have earlier observed that the pistol and the cartridges were given by K.K. Sharma to Rajinder Singh for taking the pistol for repairs. Rajinder Singh had no authority to keep the loaded pistol and take it out when surrounded by the police

and the excise officials. The possession of the pistol, in the circumstances mentioned, clearly was for an unlawful purpose. If the pistol was given for repairs on 7th there was no need for Rajinder Singh to carry the pistol loaded with cartridges in the night at 11 p.m. He would have definitely in that case kept the pistol at a safe place in the house. He would have taken it out only when he was to go to Moradabad to give the pistol for repairs. The Mgte. has gravely erred in law in finding that even after Rajinder Singh had taken out the pistol there was no intention to use it and his possession of the pistol remained lawful. The fact that the pistol was loaded and was snatched from the hand of Rajinder Singh puts beyond doubt that Rajinder Singh intended to use it.

(4) The expression 'uses' is employed in S. 397, IPC. A controversy arose regarding the meaning of the said expression and in the case *Phool Kumar v. Delhi Adm.* 1975 Cr. L.J. 778 the Supreme Court held :

'WHERE an accused at the time of committing robbery, carries in his hand a knife open to the view of the victims it is sufficient to frighten or terrorise them and he can be convicted u/s 397. Any other overt act such as, brandishing of the knife or causing of grievous hurt with it is not necessary to bring the offender within the ambit of S. 397.'

(5) We are of the view that the above authority would apply to the case in hand with full force. On the facts established we have no hesitation in finding that Rajinder Singh was carrying the loaded pistol intending to use it for an unlawful purpose.

(6) Shri Mathur contended that K.K. Sharma having been acquitted of the charge u/s 27 of the Arms Act, on the same evidence Rajinder Singh accused cannot be held guilty of the offence u/s 27. This is not so. The charge against K.K. Sharma was that he had given the pistol with cartridges to Rajinder Singh to enable him to use the pistol and the cartridges for unlawful purposes and therefore, he was also guilty of the offence u/s 27. The defense of Sharma is that he had given the pistol and the cartridges to Rajinder Singh with the express authority for taking it for repairs and then to bring it back after repairs. This plea for Sharma was accepted by the Court. The fact that Rajinder Singh went beyond his authority and took the

pistol and the cartridge intending to use them, obviously, could not make Sharma liable for this unauthorised act of Rajinder Singh. The acquittal of Sharma on the charge u/s 27 has no bearing on the case against Rajinder Singh.

(7) Shri Mathur next contended that in ground No. 2 of the grounds of appeal there is a misrepresentation of facts and this had misled the court in admitting the appeal. The contention raised in ground No. 2 is that Rajinder Singh had taken out the pistol while placing the canisters in front of house No. D-88 and he had done so to overawe the raiding party and, therefore, the Mgte. was in error in holding that there was no use of the pistol. Mr. Mathur is right that it is not the prosecution case that Rajinder Singh was placing the canisters in front of house No. D-88 and while doing so he had taken out the pistol to overawe the raiding party. The prosecution case is that after the second canister was taken out by Sham Lal and Rajinder Singh was about to start the car that the car was surrounded by the police and at that time Rajinder Singh took out the pistol from the pocket of his jacket. We are of the view that the error committed in the statement of facts in ground No. 2 has not resulted in any prejudice to the respondent and it does not affect the competency of the appeal.

(8) Shri Mathur lastly contended that on the conclusion of the prosecution evidence the court should have generally questioned the accused on the circumstances appearing in evidence against the accused in question and answer form u/s 313 of the Cr. Pc and the Mgte. has grossly erred in only preparing a memorandum of the substance of the exam. of the accused u/s 281 of the Cr. PC. We find from the record that on the conclusion of the prosecution evidence, the Mgte. after putting all the circumstances appearing in the evidence against the accused recorded in his own words substance of the statement made by the accused.

(9) S. 281 of the Cr. Pc finds place in Chapter XXIII of the Cr. P.C. The said chapter lays down the mode of taking and recording evidence in enquiries and trials. S. 281(1) provides that whenever the accused is examined by a Met. Mgte., the Mgte. shall make a memorandum of the substance of the exam. of the accused in the language of the court and such memorandum shall be signed by

the Mgte. and shall form part of the record. S. 281(2) which is also relevant provides that whenever the accused is examined by any Mgte. other than a Met. Mgte., or by a court of Session, the whole of such exam., including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to physical or other incapacity, under his direction and superintendence by an officer of the court appointed by him in this behalf.

(10) We find from a reading of the various sections contained in Chap. 23 that all the sections contained in Chap. 23 deal with the mode of taking and recording evidence. For instance, S. 274 provides that all summons cases tried before a Magistrate, in all enquiries u/Ss 145 to 148, and in all proceedings u/Ss 446 otherwise than in the course of a trial, the Mgte. shall, as the exam. of each witness proceeds, make a memorandum of the substance of his evidence in the language of the Court. S. 275 provides the mode of recording evidence in warrant cases and Section 276 provides for the mode of recording evidence in all trials before a Court of Session. S. 281 in our view, lays down the mode of recording of the statement of an accused by a Met. Mgte. and sub-section (2) provides for the mode of recording the statement of evidence by a Magistrate other than a Met. Mete. or by a Court of Session. Section 313(1)(a) of the Code empowers a Magistrate to examine an accused at any stage of the enquiry or trial for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him. Sub-clause (b) makes it obligatory on the Court after the witnesses for the prosecution have been examined to question the accused generally on the case. Sub-section (2) provides that no oath shall be administered to the accused when he is examined u/s (1). Sub-section (3) provides that the accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them and sub-section (4) provides that the answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(11) We find no other provision in the Cr Pc which requires the exam. of the accused on the conclusion of the prosecution evidence regarding the circumstances appearing in the evidence against him. We are of the view that an accused has to be examined u/s 313 of the Cr Pc though it may be that u/s 281(i) of the Code, the Met. Mgte may only prepare a memorandum of the substance of the exam. of the accused. The exam., however, contemplated by S. 313 Cr Pc has to be u/s 313 and not u/s 281 of the Code. Mr. Justice M.L. Jain had the opportunity to consider the point in issue in *Lal Biak Singh v. The State*, : 23(1983)DLT144 :

'THAT section 281 Cr P.C. makes it clear beyond doubt that while the court of Session and all Magistrates except the Metropolitan Magistrates are required to record in full every question put to, and every answer given by the accused, the Metropolitan Magistrate is required to make a memorandum of the substance of the examination of the accused, that Section 463 Cr. P.C. even permits a court when such statement is tendered or received in evidence, and it is found by it that the provisions of section 201 Cr. P.C. have not been complied with to take evidence in regard to the non compliance of section 281 and may if satisfied that such non-compliance has not injured the accused in his defense on the merits and that he made the statement regarded, admit it in evidence. But at the same time, the memorandum prepared by the Metropolitan Magistrates should not be so inadequate as to result in failure of justice.'

(12) We are of the view that the learned Judge has not considered the setting in which S. 281 finds its place. The mandatory requirement of examining an accused on the conclusion of the prosecution evidence is an essential part of the trial. The exam. of an accused has to be u/s 313 of the code though, as already observed, u/s 281 the Metropolitan Magistrate may not record the statement in question and answer form and he may only prepare a substance of the statement made by him. There is no complaint that the memorandum of the statement of Rajinder Singh accused prepared by the Met. Mgte. does not correctly represent the statement made by Rajinder Singh. Mr. Mathur has not made any grievance about any prejudice having been caused to Rajinder Singh by his examination u/s 281(1) of the Code.

(13) For the reasons recorded we set aside the judgment of the trial judge and convict the respondent Rajinder Singh on the charge u/s 27 of the Arms Act and sentence him to imprisonment for 18 months and a fine of Rs. 2000.00 and in default of payment of fine to undergo R.I. for 3 months. We feel sorry and sad that a senior officer of Dhani service should have indulged in these unlawful activities. This has impelled us to take a deterrent view. The appeal is disposed of.

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