SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Mohinder Singh Vs. State

Mohinder Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/707844

Court : Delhi

Decided On : Aug-01-2001

Reported in : 2001VIIAD(Delhi)468; 2002(1)Crimes1; 93(2001)DLT589

Judge : R.S. Sodhi, J.

Acts : Arms Act, 1959 - Sections 25, 54 and 59; Indian Penal Code (IPC), 1860 - Sections 34, 392 and 397

Appeal No. : Crl. Appeal No. 220 of 1995

Appellant : Mohinder Singh

Respondent : State

Advocate for Def. : V.K. Malik, Adv.

Advocate for Pet/Ap. : Jayant Sud, Adv

Disposition : Appeal allowed

Judgement :

R.S. Sodhi, J.

1. This criminal appeal is directed against the judgment and order dated 16.11.1995 of the learned Additional Sessions Judge is Sessions Case No. 141/95 whereby the leaned Additional Sessions Judge held the appellant guilty under

Section 25/54/59 of the Arms Act and further by his separate order of the same date sentenced him to undergo R.I. for four years with a fine of Rs. 200/- and in default of payment of fine to further undergo R.I. for fifteen days. The appellant was further sentenced to undergo R.I. for seven years.

2. The facts of the case as noted by the leaned Additional sessions Judge are as follows:

'On 11.2.86, at about 8.30 p.m. all the above mentioned accused persons in furtherance of their common intention entered the shop of Balu Ram Goel was handing over some money to Hari at that the above said accused persons who were armed with pistols entered the shop of Balu Ram Goel and one of the accused person put pistol on the chest of Balu Ram Goel and the other accrued person snatched the bag containing currency notes and all the accused persons after snatching the bag containing money fled away from the spot. After hearing both the parties on the point of charge, I come to conclusion that a prima facie case under Sections 392/34 and 397/34, IPC were framed against all the accused persons while a charge under Section 25/54/59, Arms Act was framed against the accused Mahinder Singh, to which all the accused persons pleaded not guilty and claimed to be tried.'

3. The main point of the learned Counsel of the appellant is that the identity of the accused has not been established. he submits that no witness categorically identifies the accused nor has any test identification parade being held and that mere identification done in Court is not an identification sufficient to hold the prosecution's case proved beyond a shadow of doubt. Learned Counsel for the appellant has taken me through evidence on record. It appears that the prosecution in support of the case brought home three witnesses sought to be eye-witnesses. Of them PW 1, Anil Kumar, does not support the prosecution case at all. similarly, PW 4 does not support the case of the prosecution. The only witness upon which the conviction has been maintained is PW 3, Balu Ram. This witness states that he was shown a photograph of the accused in the police station which was the basis of the identification of the accused. this witness also states that accused Mohinder was shown to him at Police Station, Laxmi Nagar by

the police. The same witness states that after he was shown the photograph of Mohinder, the S.H.O. told him that the accused is confined to Tihar Jail. It is not clear, as to how, from Tihar Jail the accused was brought to Police Station, Laxmi Nagar, where he was again shown to this witness. However, the prosecution has not placed on record the photograph purported to be that of Mohinder nor placed on record any application seeking a test identification parade. This being the only evidence to establish the identity of the accused the same has to be looked at with reference to the established position at law. the law on the point of identification is very clear. Identification by way of photograph is not admissible in evidence. However, the photograph also having not placed on record, it cannot be said that such an identification is not beyond a shadow of doubt. The Supreme Court in 2001 (AD) CSC 309, has held that if the mode of establishing identity of the accused is only that referred to above, such cannot from the basis of conviction.

4. Having gone through the record of the case, I am of the view that the identity of the accused has not been established by the prosecution. Accordingly, I acquit the appellant of all charges and set aside the judgment of conviction dated 16.11.1995, of the learned Additional Sessions Judge and allow the appeal.

5. The appellant is on bail, his bail bond and sureties shall stand discharged.

6. Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com