

In Re: S.S. Sundaram

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Court : Chennai

Decided On : Aug-28-1974

Reported in : 1975CriLJ1196

Judge : Krshnaswamy Reddy, J.

Appellant : In Re: S.S. Sundaram

Judgement :

ORDER

Krshnaswamy Reddy, J.

1. The revision petitioner , who was tried for having attempted to commit murder was ultimately convicted under Section 27 of the Arms Act and Sentenced to undergo simple imprisonment for one year, by the Assistant Sessions, Judge, Ramanathapuram at Devakottai.

2. On appeal, the learned Sessions Judge, Ramanathapuram at Madurai confirmed the conviction and sentence of the petitioner.

3. The facts of the case are briefly these : P. W. 1 Ramachandran is a resident of Vanjinipatti Village. On 26-11-1970, he went to A. Thekkur which is about 1 1/2 miles from his village to bring the Village Vaidyar for the treatment of his child who was not well. As the Village Vaidyar had gone out, he waited there for some time expecting him to return. P. W. 2 Kadirvelu joined P. W. 1. Both of them were sitting

in Chinnakachari Koodam which is about 100 ft. from the house of the Village doctor. It was about 3-30 P. M. The revision petitioner just then passed that side in a Herald car. The revision petitioner was seated by the side of the driver in the front seat. The car, after having proceeded some distance, returned back and was parked near Periakacheri Koodam, which is just opposite to the place where P. Ws. 1 and 2 were sitting. The revision petitioner got down from the car with a double barrel gun (M. O. 1) in his hand. He took two cartridges from the right side pocket of his shirt and loaded them in the gun. He then came towards P. W. 1 and aimed the gun towards the chest of P. W. 1 saying (original in Tamil omitted Ed.). Immediately, P. W. 1 rose up from his seat, P. W. 2, who was with P. W. 1 pounced on the revision petitioner and caught hold of the gun and thereby prevented the revision petitioner from shooting. The driver of the car also caught hold of the petitioner by the hip from behind. Both P. W. 2 and the driver took the petitioner and put him in the car in the rear seat. Thereafter, the car left that place with the petitioner and the gun. P. W. 3, Subbaiah and P. W. 4, Jayaraj claimed to have witnessed the occurrence.

4. Immediately after the occurrence, P. W. 1 got into the lorry driven by P. W. 5 and proceeded to Tiruppattur for sending telegrams. P. W. 1 sent a telegram Ex. P-1 at about 6.15 P. M. on that day to the Superintendent of Police, Ramanathapuram at Madurai. At about 7.15 P. M., he went to the police Station at Nerkuppai and gave a written complaint Ex. p-2. P. W. 8 the Station writer registered the case under Section 307, Indian Penal Code and sent express reports to the concerned officers. P. W. 10 the Inspector of Police after having received the report, went to the scene of occurrence, and having prepared an observation mahazar, arrested the revision petitioner at about 12.15 P. M. on the next day at his house in Madura : and recovered the DB. B. K. Gun M. O. 1, the gun licence Ex. P-4, and also four live cartridges.

5. P. W. 6, the Fire Arms Expert attached , to the Tamil Nadu Forensic Science Laboratory, Madras, examined the gun M. O. 1 and the four cartridges. In his opinion, the gun was in working order and one of the cartridges was a live one.

6. The motive for the occurrence is stated to be that about thirteen days prior to the occurrence, namely, on 13-11-1970, P. W. 1's brother Manickam had given a complaint Ex. P-7 against the father of the revision petitioner to the Sub-Inspector of Police, Nerkuppai alleging that the father of the revision petitioner and his people trespassed into his house and attempted to shoot him.

7. When the revision petitioner was questioned, he stated as follows : On the date of occurrence, he (the petitioner) along with his friends Asservatham, Raja-ram, Manavalan and Dr. Nathan had been to A. Thekur in the car M. O. 2. and were returning home. At that time, P. W. 1 who was sitting in Chinnakacheri Koodam shouted 'Chetty Payale nilluta.' Then he (petitioner) got down from the car and stated : 'Ennata Enga Ooril Rowdythanam Cheyya Vanthaya'. There was a wordy altercation. The persons who came with him (the petitioner) pacified both of them and thereafter, he (the petitioner) left the place in the company of his friends, He further stated that he did not take his gun with him at that time nor did he attempt to' shoot P. W. 1 and the case' was filed as a result of bitter enmity between him (petitioner) and P. W. 1 and his family. He also stated that the enmity arose because P. W. 1's father who was managing the estate of his (petitioner's) wife in Saigon committed misappropriation and was sentenced to suffer a term of imprisonment at his (petitioner's) instance.

8. The learned Assistant Sessions Judge acquitted the revision petitioner of the offence under Section 307, Indian Penal Code on the ground that no case has been made out in respect of his attempt to commit murder. But, however, he convicted the petitioner under Section 27 of the Arms Act and sentenced him to undergo simple imprisonment for one year.

9. On appeal, the learned Sessions Judge agreed with the trial Judge and confirmed the conviction and sentence of the petitioner under Section 27 of the Arms Act.

10. Though both the Court's found on facts that the petitioner has committed an offence under Section 27 of the Arms Act, I am unable to agree with the same. It is very doubtful whether the petitioner was armed with a gun at all at the time of the occurrence. The petitioner has clearly stated in his statement that there was a

wordy quarrel at the time of the alleged occurrence and that P. W. I had falsely implicated him as if he was armed with a gun and attempted to shoot him. One clinching circumstance rendering the version of the revision petitioner probable is that if he really had a weapon, P. Ws. 1 and 2 who claimed to have over-powered the petitioner when he was alleged to have attempted to use the gun, could have seized the gun also. P. Ws. 1 and 2 would not have allowed the petitioner to go away with the gun when they would say that they had over-powered him. The gun was seized subsequently only from the house of the revision petitioner. I am unable to accept the evidence of P. Ws. 1 and 2 in this case that the petitioner was armed with the gun at the time of the incident. On this point alone, the petitioner will be entitled to an acquittal.

11. Even assuming that he had a gun at the time of the occurrence, since both the Courts found that he had not used the gun, it cannot be said that he was carrying the gun with the intention of using the same for unlawful purpose. When the purpose for which the gun was said to be used is negated the question that the gun was taken with the intention of using it for an unlawful purpose, does not arise. Therefore, the conviction and sentence imposed on the petitioner are set aside.

12. In the result, this revision petition is allowed and the petitioner is set at liberty. His bail bond will stand cancelled. M. O. 1 and M. O. 2 will be returned to the petitioner.