

SAHIB SINGH  
v.  
STATE OF PUNJAB

SEPTEMBER 13, 1996

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

*Criminal Law :*

*Terrorist and Disruptive Activities (Prevention) Act, 1987 : Section 5.*

*Revolver and six live cartridges—Recovery of—No independent people of locality witnessed search—Arms and ammunition allegedly recovered from accused not packeted and sealed—No evidence to indicate with whom revolver was after its seizure till it was sent to Arms Expert—Held : In the circumstances of the case, accused was entitled to benefit of reasonable doubt—Armed Act, S. 25.*

The appellant was convicted and sentenced under Section 25 of the Arms, 1959 and Section 5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987. Hence this appeal

According to the prosecution, the appellant was apprehended on suspicion and on search by police officers a revolver with six live cartridges were recovered from the bag the appellant was holding in his right hand.

On behalf of the appellant it was contended that no independent people of the locality were called upon by prosecution to witness the search; that the Designated Court was not justified in solely relying upon the evidence of police officers in convicting the appellant; that the arms and ammunition recovered from the appellant were not packeted and sealed; and that there was no evidence to indicate with whom the revolver was after its seizure till it was sent to the Arms Expert.

Allowing the appeal, this Court

**HELD :** 1. Before conducting a search the concerned police officer is required to call upon some independent and respectable people of the locality to witness the search. In a given case it may so happen that no such person is available or, even if available, is not willing to be a party

A to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but if it is found - as in the present case - that no attempt was even made by the concerned police officer to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of evidence of the police officer, though not its admissibility. The arms and ammunitions allegedly recovered from the appellant and seized were not packeted and sealed. There was no evidence to indicate with whom the revolver was after its seizure till it was sent to the Arms Expert for testing. This missing link also weakens the prosecution case. For all these infirmities the appellant is entitled to the benefit of reasonable doubt. [247-F-H; 248-A-B]

*Amarjit Singh v. State of Punjab*, [1995] Supp. 3 SCC 217, relied on.

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 61 of 1992.

From the Judgment and Order dated 21.12.91. of the Designated Court, Amritsar, in S.C. No. 61 of 1991.

E Ms. Naresh Bakshi for the Appellant.

Ms. Rupinder Wasu for R.S. Suri for the Respondent.

The Judgment of the Court was delivered by

F M.K. MUKHERJEE, J. This appeal is directed against the judgment and order dated December 21, 1991 rendered by the Additional Judge, Designated Court, Amritsar in Sessions Case No. 21 of 1991 convicting and sentencing the appellant under Section 25 of the Arms Act, 1959 and Section 5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987.

G According to the prosecution case on May 12, 1990 at or about 12.30 P.M. when Inspector Gurmit Chand of Chheharata Police Station (P.W. 3) along with Sub-Inspector Rattan Lal (P.W. 2) and other police officials were on patrol duty near Bole-di-Bambi they apprehended the appellant on suspicion and on search recovered a revolver with six live cartridges H from the bag he was holding in his right hand.

The appellant pleaded not guilty to the above accusation and his defence was that he was falsely implicated at the instance of his neighbour Sewa Singh. A

To prove its case, prosecution examined four witnesses of whom Manohar Lal (P.W. 1), a clerk in the office of the District Magistrate, Amritsar, proved the sanction accorded for prosecution of the appellant under the Arms Act; P.Ws. 2 and 3 spoke about the arrest of the appellant and the recovery of the revolver and the cartridges from him and Sital Singh (P.W. 4), an Armourer, claimed to have mechanically tested the revolver and found it in working order. Accepting their evidence the learned Judge recorded the impugned order of conviction and sentence, B C

It was first contended on behalf of the appellant that since no independent witness was examined by the prosecution to prove the alleged recovery of the arms and ammunitions from the appellant the designated Court was not justified in convicting him relying solely upon the evidence of the two police officers. It was next contended that since no evidence was led by the prosecution to prove that the offensive articles were packeted and sealed after their seizure the possibility of tampering with them could not be ruled out. It was lastly contended that from the test report of P.W. 4 (Ex. PF) it would appear that one Head Constable Baita Singh produced the revolver before him (P.W. 4) but neither he was examined nor any other witness to explain how he (the constable) got the revolver from P.W. 3. D E

Having gone through the record we find much substance in each of the above contentions. Before conducting a search the concerned police officer is required to call upon some independent and respectable people of the locality to witness the search. In a given case it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but if it is found - as in the present case - that no attempt was even made by the concerned police officer to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of evidence of the Police Officer, though not its admissibility. We next find from the record that the arms F G H

A and ammunitions allegedly recovered from the appellant and seized were not packeted and sealed. In *Amarjit Singh v. State of Punjab*, [1995] 3 SCC 217 this Court has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. From the record we further find that there is no evidence to indicate with whom the revolver was after its seizure by P.W. B 3 till it was sent to the Arms Expert for testing through constable Baita Singh. This missing link also weakens the prosecution case. For all these infirmities we are of the view, that the appellant is entitled to the benefit of reasonable doubt.

C We, therefore, allow this appeal and set aside the conviction and sentence against the appellant. The appellant, who is on bail, is discharged from his bail bonds. Fine, if paid, be refunded to him.

V.S.S.

Appeal allowed.