

BRIJ PAL  
v.  
STATE (DELHI ADMINISTRATION)

FEBRUARY 1, 1996

[G.N. RAY AND B.L. HANSARIA, JJ.]

*TADA Act :*

*S.5—Person found with unauthorised country made pistol with live cartridges—Absence of independent witnesses—Despite efforts independent witnesses could not be procured—In the circumstances deposition of police officials not to be discarded—In view of the presumption in the provision prosecution need not establish that the person was found in conscious possession of unauthorised arm in a notified area and really intended to use it for terrorist or disruptive activities—No evidence by way of rebuttal to such statutory presumption led by accused—Hence conviction and sentence not interfered with.*

*Abdula Poochamma v. State of A.P., [1989] Supp. 2 SCC 152, distinguished.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 708 of 1995.

From the Judgment and Order dated 5.8.94 of the Designated Court at Delhi in F.I.R. No. 326 of 1990.

Kirpal Singh (A.C) for the Appellant.

S.N. Sikka, B.K. Prasad for S.N. Terdol for the Respondent.

The following Order of the Court was delivered :

This appeal has been preferred by the appellant under Section 19 of the Terrorist and Disruptive Activities (prevention) Act (hereinafter referred to as the TADA Act). By the judgment dated 5.8.94, the learned Judge, Designated Court No. 11, Delhi has convicted the Appellant under Section 5 of the TADA Act and sentenced him to suffer rigorous imprisonment for five years together with a fine of Rs. 500, in default, to undergo

- A further rigorous imprisonment for 15 days. According to the prosecution case, the police received a secret information that one person of bad character who had been involved in some murder cases in U.P. was present with some unauthorised weapons at the Libaspur bus stand, Dhaula Kuan. The police thereafter organised a raiding party. They approached some public persons to become witness to search and seizure, but as no one agreed to become witness for search and seizure of such person, the police thereafter organised a raid with the help of the police officials. At about 1.30 P.M. on the day of occurrence at the Libaspur bus stand, the appellant was found and on search of his person a countrymade pistol loaded with one live cartridge and two other live cartridges were recovered by the police. After taking measurement of the said pistol and one of the cartridges, a sketch map was prepared and the said weapon and cartridges were sealed and sent by the police to police Mal Khana. After obtaining necessary sanction from the authorities concerned, the said case under Section 5 of the TADA Act was initiated against the appellant.
- D The prosecution in this case has examined Head Constable Sathir Singh (PW.1), Jagdish Chander, Sub-Inspector (PW.2) , ASI Mahipal Singh (PW.3), ASI Santokh Singh (PW.4), Head Constable Baljit Singh (PW.5) and constable Ramesh Kumar (PW.6). It may be stated here that PW.5 was the Incharge of the Police Mal Khana where the seized pistol and the cartridges were kept in sealed cover and he has deposed to the effect that he received the said articles in a sealed parcel. They were also kept in a sealed cover until they were sent to the ballistic expert at BTP Unit, Old Police Line. The armourer has also deposed that he had taken training about the arms and he has also deposed that as a matter of fact, he fired one of the seized cartridges from the seized pistol and found the pistol in working condition. As the prosecution case was found to have been established beyond doubt by the deposition of the said witnesses, the learned Designated Court convicted the appellant under Section 5 of the TADA Act and passed the aforesaid sentence.
- G Mr. Kirpal Singh, learned counsel appearing for the appellant as Amicus Curiae, submits that according to the prosecution case, the appellant was arrested from the Libaspur bus stand, Dhaula Kuan. The police could have procured independent witnesses to establish that the appellant was in fact apprehended by the police from the said place as alleged in the prosecution case and from his possession the said pistol and the cartridges
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were recovered. But in the instant case, only the police personnel were examined. In the absence of any independent disinterested public witness, solely on the basis of the depositions of the police personnel, the order of conviction against the appellant should not have been passed. Learned Counsel has also submitted that PW.2 examined as armourer should not be held to be an expert and if the said pistol had not been tested by a proper expert, benefit of doubt should be given to the appellant. Learned counsel has further submitted that it is the case of the appellant that he had been falsely implicated in the case because he had not been arrested at the Libaspur but stand. He was apprehended by the police at Rana Pratap Bag along with one Luxman, but unfortunately such case had not been properly appreciated by the learned Designated Court. He has submitted that police had released Luxman so that he could not be examined in support of his case.

We have looked into the depositions given in this case and the judgment given by the learned Designated Judge. It appears that the prosecution case has been established by cogent evidences given by the witnesses which are not inconsistent or contradictory. In our view, learned Designated Court has rightly held that since only the police personnel had been examined in this case, their depositions are not liable to be discarded, particularly when it is the specific case of the prosecution that they tried to procure independent witnesses from the public, but they failed in their attempt to get such independent witnesses. In the instant case, it has been established from the evidence that the pistol and cartridges were seized from the person of the appellant and after getting them properly sealed they were deposited in the Police Mal Khana, in sealed condition. The Incharge of the Mal Khana has deposed that such weapons remained intact and in sealed condition until the same were sent for being tested by the expert. So far as the question of examining of the said pistol by the expert is concerned, it appears from the depositions of the said expert that he had obtained certificate of technical competency and armour technical course from Bhopal and he had also long experience of inspection, examination and testing of the fire arms and ammunition. In our view, the said police personnel should be held to be expert in arms. The decision relied upon by Mr. Singh in *Abdula Pochamma v. State of A.P.*, [1989] Supp. 2 SCC 152 in this connection is clearly distinguishable in the facts of this case. In the case of Abdula it was alleged by the prosecution that a grenade was recovered from the accused but whether the substance recovered was a

A granade or not had not been examined by a proper expert and the court gave benefit of doubt by not placing implicit reliance on the testimony of an ASI that the object was a granade. In the instant case, we have already indicated that the armourer as a matter of fact, had also fired one of the cartridges from the seized pistol which was recovered from the possession of the accused.

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Learned counsel for the appellant has also submitted that the element of conscious possession of the arms and ammunition had not been established in this case. We may only indicate that it is not the case of the appellant that he was not aware about the presence of the said ammunition and arms in the pocket of his pant or that someone kept those materials surreptitiously without his knowledge. On the contrary, the case of the appellant was that he was falsely implicated in this case. We may also indicate here that once a person is found in conscious possession of any arm or ammunition in a notified area under TADA, the statutory presumption under Section 5 of the TADA Act that such articles were intended to be used for terrorist and disruptive activities is attracted as indicated in the Constitution Bench decision of this Court in *Sanjay Dutt's* case. It is therefore not necessary for the prosecution to establish that the person who was found in conscious possession of unauthorised arm in a notified area had really intended to use the same for terrorist or disruptive activities. No evidence by way of rebuttal to such statutory presumption has been led by the accused. In the aforesaid circumstances, we find no reason to interfere with the impugned judgment of the court below. The appeal is, therefore, dismissed.

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Appeal dismissed.