

TAHIR
v.
STATE (DELHI)

MARCH 21, 1996

[DR. A.S. ANAND AND S.B. MAJMUDAR, JJ.]

Terrorist and Disruptive Activities (Prevention) Act, 1987 :

S.5—Accused having possession of an unauthorised firearm within the notified area and supporting a mob of rioters—Trial—Conviction recorded by Designated Court on the basis of evidence of police officials—Held, well merited—Accused was in conscious possession of an unauthorised firearm within the notified area—Proceedings initiated under the Act would continue even after expiry of the Act and would not come to an end without final conclusion and determination.

Criminal Law :

Evidence of police officials—Accused prosecuted for an offence u/s. 5 of Terrorists and Disruptive Activities (Prevention) Act—Prosecution examined the police officials who had apprehended and arrested the accused—No independent witness of local area examined—Designated Court recorded conviction on basis of evidence of police officials—Held, conviction can be recorded on evidence of police officials in absence of independent witness to lend corroboration, if their evidence found to be trust-worthy and reliable.

The appellant was prosecuted for an offence under s.5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987. The prosecution case was that on 14.11.1990 the appellant was supporting a mob of rioters in Chandni Chowk, Delhi and was found waving a country made pistol in the air. He was apprehended by the local police and was formally arrested u/s. 27 of the Arms Act. Since the place of occurrence from where the appellant was arrested along with the unauthorised fire-arm fell within the area notified under TADA, a case under s.5 thereof was registered against him. The investigation culminated in the trial of the appellant before the Designated Court which convicted him under s.5 of TADA and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5,000.

In the appeal filed by the appellant before this Court, it was contended that the prosecution witnesses on whose evidence the conviction was recorded were all police officials and in the absence of any independent witness to corroborate them it was not safe to rely upon their testimony to sustain the conviction of the appellant; that, in any event, the appellant could not be convicted under s.5 of TADA as the Notification dated 20.10.1987 declaring Delhi to be a notified area for the purposes of TADA had lapsed and as such it could not be said that after the expiry of the Act the area continued to be a notified area under the TADA and; that since the prosecution had not brought any evidence on record to show any connection between the appellant's holding the pistol and any terrorist activities as such, his conviction under s.5 of TADA could not be sustained.

Dismissing the appeal, this Court

HELD : 1.1. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence does not in any way affect the credit worthiness of the prosecution case. [761-E-F]

1.2. In the present case, a critical analysis of the evidence of the police officials shows that they are trustworthy witnesses and their evidence suffers from no infirmity whatsoever. Nothing has been brought out in their lengthy cross-examination which may create any doubt about their veracity. Keeping in view the circumstances of the situation, when the appellant was apprehended alongwith the country made pistol, the failure of the prosecution to examine any independent witnesses of the locality does not detract from the reliability of the prosecution case. [761-G-H]

2. The notified area from where the appellant was apprehended has not been denotified and therefore it cannot be said that after the expiry of the act, the area has 'ceased' to be a notified area. Moreover, even after the expiry of TADA, the proceedings initiated thereunder would not come to an end without the final conclusion and determination and that they are to be continued inspite of the expiry of the Act. [762-C; B]

Mohd. Iqbal Madar Sheikh v. State of Maharashtra, [1996] 1 SCC 722, relied on.

3. The appellant was having conscious possession of an unlicensed firearm in a notified area and was, therefore rightly convicted under section 5 of the TADA. The conviction recorded by the Designated Court in the established facts and circumstances of the case is well merited. [762-G]

Sanjay Dutt v. State of Maharashtra, [1994] 5 SCC 410, followed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 835 of 1995.

From the Judgment and Order dated 1/8.8.95 of the Designated Court, Ind Addl. Judge, Delhi in Sessions Case No. 171 of 1995.

D.D. Thakur and R.N. Keshwani for the Appellants.

Ms. Shashi Kiran and B. Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

DR. ANAND, J. The appellant calls in question his conviction and sentence for an offence under Section 5 of Terrorists and Disruptive Activities (Prevention) Act 1987 (hereinafter referred to as TADA) recorded by the Designated Court II, Delhi on 1st of August 1995 through this appeal under Section 19 of TADA.

According to the prosecution case on 14.11.1990, a mob collected at Gurudwara Sis Ganj Sahib in Chandni Chowk, Delhi and moved in a procession towards the Idgah Park. A meeting was going on in Idgah Park where some provocative speeches were made by some of the speakers leading to communal riots. At about 4.30 p.m. the riot was at a pitch and stones and other missiles, were hurled on the members of the opposite side from Idgah Road - Nawab Road of Sadar Bazar by the rioters. The appellant was supporting the mob of rioters and was found holding a country made pistol in his hand and waving it in the air. The police party made some arrests. The appellant was apprehended by SI Didar Singh PW4, who caught him along with the pistol. The appellant was then handed over to SI Sukhbir Singh PW7 who arrested him in the riot case and later on formally arrested him in a case under Section 27 of the Arms Act for being in possession of a country made pistol without any authority also. A ruqa was sent by ASI Diwani Ran PW6 to SI Ishwar Chand PW 1 who registered the FIR and copy of the FIR was sent to SI Sukhbir Singh PW7.

After the arrest of the appellant, the country made pistol was seized from him possession and sealed into a parcel which was kept with the Moharar Head Constable (Malkhana) PW3. The parcel containing the country made pistol was lateron sent to the Central Forensic Science Laboratory for examination and the Ballistic Expert opined that the 12 bore country made pistol was a fire arm as defined in the Arms act 1959 and was found to be in a working order. The report from the Central Forensic Science Laboratory with the opinion of the Expert was received on 27.12.1990. Since, the place from where the appellant was arrested alongwith the unauthorised fire arm fell in the area Notified under TADA, the investigating agency after obtaining the statutory sanction registered a case against the appellant for the offence under Section 5 TADA. On completion of the investigation, the appellant was sent up for trial before the Designated Court and on conviction for an offence under Section 5 of TADA, was sentenced to undergo RI for five years and to pay fine of Rs. 1,000 and in default of payment of fine to undergo further RI for two months.

With a view to connect the appellant with the crime, the prosecution examined seven witnesses. PW 1 is the duty officer who recorded the formal FIR Ex. PW1/A Sealed parcel containing the country made pistol was taken from the Moharan Head Constable Malkhana PW3 to the Central Forensic Science Laboratory by PW2. These there witnesses are of a formal nature.

PW 4, Inspector Didar Singh was the SHO of the area at the relevant time was present at the spot alongwith the police force. From the evidence of Inspector Didar Singh PW4, it clearly emerges that the appellant was apprehended at the spot at about 4.30 p.m. on 14.11.1990 and at that time he was found holding a country made pistol in his hand and waiving it in the air. It also transpires from his evidence that because of provocative speeches made at Idgah Park communal rioting had ensued and brickbats, stones and other missiles were being hurled at the opposite party from the rioting mob present at the Idgah Road. Constable Mahabir Singh PW5, fully corroborated the statement of Inspector Didar Singh PW4 in all material particulars. It was he who took the ruqa from PW4 to the police station for registration of the formal FIR. The evidence of Didar Singh PW4, is also corroborated by ASI Diwani Ram PW6 and Inspector Sukhbir Singh PW7. Nothing has been brought out in the evidence of any of these witnesses to show as to why they should falsely deposed against the

appellant. They have given a clear and cogent version of the occurrence and their evidence inspires confidence. Their testimony has remained unshaken in cross-examination.

The appellant in his statement recorded under Section 313 Cr.P.C. claimed innocence and submitted that he was apprehended from the tea shop outside his house near Filmistan when some riot was going on near and around Idgah and he was later on taken to the police station and implicated in this case. This appellant, has, however, led no evidence in defence. The reason for the alleged false implication has, however, not been spelt out.

Mr. D.D. Thakur, the learned senior counsel appearing for the appellant, submitted that PW 4 to PW 7 on whose evidence the conviction has been recorded were all police officials and in the absence of any independent witness to corroborate them, it was not safe to rely upon their testimony to sustain the conviction of the appellant. We cannot agree. In our opinion no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the credit worthiness of the prosecution case.

Our critical analysis of the evidence of the aforesaid four police officials has created an impression on our minds that they are trustworthy witnesses and their evidence suffers from no infirmity whatsoever. Nothing has been brought out in their lengthy cross-examination which may create any doubt about their veracity. We find evidence to be reliable. Keeping in view the circumstances of the situation, when the appellant was apprehended alongwith the country made pistol, the failure of the prosecution to examine any independent witnesses of the locality does not detract from the reliability of the prosecution case. Faced with the unimpeachable evidence of arrest of the appellant at the spot with the country made pistol,

Mr. Thakur submitted that the Notification dated 20th October 1987 declaring Delhi to be a Notified Area for the purposes of TADA had lapsed because of the lapse of the Act itself and it could not be said that after the expiry of the Act area continued to be a notified area under TADA and therefore the appellant could not be convicted for an offence under Section 5, TADA. This submission has no force and merits rejection. In *Mohd. Iqbal Madar Sheikh v. State of Maharashtra*, [1996] 1 SCC 722, a three Judge Bench of this Court has expressly considered the effect of the expiry of the Act and opined that even after the expiry of the Act, the proceedings initiated under that Act would not come to an end without the final conclusion and determination and that they are to be continued inspite of the expiry of the Act. The notified area from where the appellant was apprehended has not been denotified and therefore it is futile to contend that after the expiry of the Act, the area has 'ceased' to be a notified area.

Mr. Thakur lastly submitted that since the prosecution had not brought any evidence on the record to show any connection between the appellant's holding the pistol and any terrorist activity as such, his conviction under Section 5 of TADA cannot be sustained. The argument also deserves a notice only to be rejected. A Constitution Bench of this Court in *Sanjay Dutt v. State of Maharashtra*, [1994] 5 SCC 410 has laid down that mere conscious possession of an unlicensed fire arm, which answers the description of an arm under the Arms Act, without any licence, in a Notified Area attracts punishment under Section 5 of TADA and an accused shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine. In view of the established facts on the record, the law laid down by the Constitution Bench in *Sanjay Dutt's* case (supra), fully applies to the case of the appellant since the appellant was having conscious possession of the weapon which answers the description of an arm under the Arms Act in a notified area. The conviction of the appellant recorded under Section 5 of TADA by the learned Designated Court in the established facts and circumstances of the case is well merited.

There is no merit in this appeal which fails and is hereby dismissed.

Appeal dismissed.