Paras Ram vs State Of Haryana on 20 October, 1992

Equivalent citations: AIR 1993 SUPREME COURT 1212, 1992 (4) SCC 662, 1993 AIR SCW 169, 1993 CRIAPPR(SC) 3, 1993 SCC(CRI) 13, (1993) IJR 104 (SC), 1992 JT (SUPP) 472, (1992) 46 DLT 521, (1992) 2 CRICJ 494, (1992) 3 ALLCRILR 536, (1993) 1 CHANDCRIC 47, (1993) MAD LJ(CRI) 225, (1993) 2 RECCRIR 623, (1993) 1 SCJ 349, (1992) 3 CURCRIR 407

Bench: J.S. Verma, S.P. Bharucha

PETITIONER:
PARAS RAM

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT20/10/1992

BENCH:
[J.S. VERMA AND S.P. BHARUCHA, JJ.]

ACT:
Terrorist and Disruptive Activities (Prevention) Act, 1987: Sections 5, 12-Offence under Section 25 of the Arms Act-Conviction under Section 12 of the T.D.A. Act by Designated Court-Legality-Sentence-Modification of.
Arms Act 1959:
Section 25 (1B) (a)-Offence under-Conviction by Designated Court u/s. 12 of the T.D.A. Act-legality of-Sentence-Modification of.
Interpretation of Statutes-Terrorist and Disruptive Activities(Prevention) Act, 1987-Section 5-"Arms and ammunition"-Construction.

HEADNOTE:
On 7.4.1988, the Police apprehended the appellant on the G.T. Road on suspicion, and he was found carrying a 12 bore country-made pistol without licence or permit.
The District Magistrate issued sanction for prosecuting the appellant for an offence under Section 25 of the Arms Act, 1959.
The Judicial Magistrate, First Class ordered that as

the case should be tried by the Designated Court under Section 5 of the Terrorist and Distruptive Activities (Prevention) Act, 1987. The case was transferred to the Additional Judge, the Designated Court, for Trial, Charging the appellant for the offence punishable under Section 5 of the T.D.A. Act, 1987. The appellant pleaded not guilty.

The Designated Judge found that the prosecution had brought home the offence to the appellant beyond reasonable doubt and the appellant was convicted of an offence punishable under Section 5 of the T.D.A. Act and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 200 or, in default, to undergo rigorous imprisonment for a further period of three months.

Against the judgment and order of the Designated Court, the present appeal was filed.

The appellant contended that the prosecution itself did not consider the case against him to be a fit case to frame a charge and proceed under the T.A.D.A. Act, 1987 and that it was, therefore, not proper to try and convict thereunder; that a country-made pistol fell outside the ambit of the Category III(a), of Schedule I to the Arms Rules, 1962; that Section 5 of the T.A.D.A. ACT, 1987 applied only when a person was in possession "arms and ammunition" and that the provisions of Section 5 of the T.A.D.A. Act did not apply to the appellant.

The respondent-State submitted that the prosecution had considered the case to be a fit case to frame a charge and proceed against the appellant under Section 5 of the T.A.D.A. Act 1987 and had requested the Magistrate to transfer the case to the Designated Court for trial.

Modifying the sentence, this Court,

HELD : 1.01. Section 12 of the T.A.D.A Act, 1987 empowers Designated Court to convict a person of any offence under any other law if he is found to have been guilty of the same during the course of a trial under that Act and to punish appropriately. [60-E]

Jaloba v. State of Haryana, [1989] SCC Supple. II 197, followed.

1.02. Upon the authority of the judgment in Jaloba's case, the appellant was rightly tried by the Designated Court under the provisions of the T.A.D.A Act, 1987. [59-E]

1.03. That the evidence relied upon was of two police officials does not ipso facto give rise to doubt about its credibility. On examination of the evidence no reason was found to question the conclusion of the Designated Court that the appellant was guilty. [60-G-F]

1.04. The appellant, being guilty of an offence under Section 25 (1B) (a) of the Arms Act, is punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and he is also liable to fine. In the circumstances of the case the appellant must undergo rigorous imprisonment for a term of one year and pay a fine of Rs. 200. [60-H, 60-A]

2.01. The words "arms and ammunition" in Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 should be read conjuctively. This is not merely a matter of correct grammar but also subserves the object of the Act. [60-C]
2.02. A person in possession of both a firearm and the ammunition therefor is capable of terrorist and disruptive activities but not one who has firearm but not the ammunition for it or vice versa. [60-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 341 of 1990.

From the Judgment and order dated 4/5.6.90 of the Additional Judge, Designated Court, Rohtak at Sonepat in Sessions Case No. 42/88, Sessions Trial No. 18/90 & F.I.R. No. 96 dated 7.4.88, Police Station, Rai.

K.L. Rathee, Raghu Raman and S. Balakrishnan for the Appellant.

Ms. Indu Malhotra for the Respondent.

The Judgment of the Court was delivered by BHARUCHA, J. This is an appeal against the judgment and order of the Additional Judge, Rohtak, being the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short T.A.D.A Act, 1987) whereby the appellant was convicted of an offence punishable under Section 5 thereof and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 200 or, in default, to undergo rigorous imprisonment for a further period of three months.

The appellant was apprehended by Sub-Inspector Rohtas Singh and Head Constable Ram Krishan near the Hilton factory on G.T. Road in the State of Haryana on 7th April, 1988 on suspicion. In the envelope of wax paper that the appellant was carrying was found a.12 bore country-made pistol for which he had no licence or permit. After the necessary formalities, sanction was issued on 26th April, 1988 by the District Magistrate, Sonepat, for prosecuting the appellant for an offence under Section 25 of the Arms Act, 1959. On 7th December. 1989, the Judicial Magistrate, First Class, Sonepat, before whom the appellant was being prosecuted for the said offence, passed the following order:

> "Present A.P.P for the State.
>
> Accused on bail.
>
> At this stage it has come to my notice that this case should have been tried by the learned Designated Court under Section 5 of the Terrorist and Disruptive Activities

(Prevention) Act, 1987.

Consequently this case is sent to learned Designated Court (Shri B.R. Gupta learned Addl. Sessions Judge), Sonepat. Accused is directed to appear in that court at 12.00 noon to day itself. File completed in all respects be sent immediately.

Sd/-J.M.I.C. Sonepat Announced 7.12.89."

The appellant was then tried by the said Additional Judge under Sections 5 of the T.A.D.A. Act, 1987. The judgment under appeal noted that the appellant was charged on 18th December 1989 by the said Additional Judge for the offence punishable under Section 5 of the T.A.D.A. Act, 1987, to which the appellant pleaded not guilty. Upon the evidence led, the said Additional judge found that the prosecution had brought home the offence to the appellant beyond reasonable doubt. Accordingly, the appellant was convicted and sentenced as aforesaid.

The appellant has in his grounds of appeal taken, inter alia, the plea that the prosecution itself had not considered the case against him to be a fit case to frame a charge and proceed under the T.A.D.A. Act, 1987 and that it was, therefore, not proper that he should have been tried and convicted thereunder. In the counter filed by Khajan Singh, Sub-Inspector, Police Station Rai, it is submitted in reply that the prosecution had considered this to be a fit case to frame a charge and proceed against the appellant under Section 5 of the T.A.D.A. Act, 1987 and had requested the learned magistrate to transfer the case to the Designated Court for trial.

It is not in dispute that the provisions of the T.A.D.A. Act, 1987 had been extended to cover the whole of the State of Haryana by a notification dated 18th November, 1987.

This Court in the judgment in Jaloba v. State of Haryana, [1989] SCC Supple. II 197 considered the submission that the Designated Court had no jurisdiction to try the appellant jaloba because he had not been charged with having committed any offence under the T.A.D.A. Act, 1985. he had been charged under Section 25 of the Arms Act. This Court rejected the submission noting Sections 6 and 9 of the T.A.D.A. Act, 1985 (equivalent to Sections 5 and 11 of the T.A.D.A. Act, 1987). Section 6 lain down that if any area notified by the State Government under the T.A.D.A Act, 1987, a person contravened any provision or rule made, inter alia, under the Arms Acts, then he was liable to the enhanced punishment provided for in the section. Section 9 of the T.A.D.A. Act, 1985 laid down that, not withstanding anything contained in the Criminal Procedure Code, every offence punishable under that Act or a rule made thereunder was triable only by the Designated Court within whose local jurisdiction it was committed. It, therefore, followed that though the offence committed by the appellant was in contravention of Section 25 of the Arms Act, it became exclusively triable by the Designated Court because of the notification made by the State Government and the operation of Section 6 of the T.A.D.A. Act, 1985. it was,

therefore, futile for the appellant to contend that the Designated Court did not have jurisdiction to try him for the offence for which he stood charged.

Upon the authority of the judgment in Jaloba's case it must be held that the appellant before us was rightly tried by the Designated Court under the provisions of the T.A.D.A Act, 1987.

It was submitted on behalf of the appellant that, in any event, the provisions of Section 5 of the T.A.D.A. Act did not apply to the appellant. These provisions applied where "any person is in possession of any arms and ammunition specified in ....Category III(a) of Schedule I to the Arms Rules, 1962, unauthorisedly in a notified area".

Category III(a) of Schedule I to the Arms Rules reads thus:

"III Firearms other than Ammunition for firearms other those in categories I, II than those in categories I, II and IV, namely: and IV, namely:

(a) Revolvers and Pistols Ammunition for fire arms of category III(a)".

It was pointed out that the appellant was found to be carrying a country-made pistol and submitted that a country- made pistol fell outside the ambit of the said Category III(a). That category speaks in broad terms of "revolvers and pistols" and there is no reason to exclude a country- made revolver or pistol therefrom.

It was then argued, and, we think, with substance, that Section 5 of the T.A.D.A. Act, 1987 applied only when a person was in possession of "arms and ammunition" and that the appellant, while he had been found in possession of a country-made pistol, had not been found in possession of any ammunition. We think that the words "arms and ammunition" in Section 5 should be read conjuctively. This is not merely a matter of correct grammar but also subserves the object of the T.A.D.A. Act, 1987. A person in possession of both a firearm and the ammunition therefor is capable of terrorist and disruptive activities but not one who has a firearm but not the ammunition for it or vice versa. It is, therefore, our view that the provisions of Sections 5 of the T.A.D.A Act, 1987 could not have been applied to the appellant.

This is not to say that the appellant should necessarily have been acquitted. Section 12 of T.A.D.A. Act, 1987 empowers the Designated Court to convict a person of any offence under any other any other law it he is found to have been guilty of the same during the course of a trial under that Act

and punish appropriately.

It was submitted that the evidence against the appellant did not establish that he was guilty of an offence under Section 25 (1B) (a) of the Arms Act, namely, of having in his possession an unlicenced firearm., We have examined the evidence and found no reason to question the conclusion of the Designated Court that the appellant was so guilty. That the evidence relied upon was of two police officials does not ipso facto give rise to doubt about its credibility. There is nothing on record to show that these police officials were hostile to the appellant and their evidence was not shaken in cross-examination. That the private party who was called as a witness by the prosecution did not support it does not, in the circumstances,, lead to the conclusion that the appellant was innocent.

The appellant being guilty of an offence under Section 25 (1B) (a) of the Arms Acts is punishable with imprisonment for a term which shall not be less than one year but which may extent to three years and he is also liable to fine. In the circumstances of the case, we think that the appellant must undergo rigorous imprisonment for a term of one year and pay a fine of Rs. 200.

The appeal is, accordingly, allowed in the aforesaid terms. The appellant has already paid the fine of Rs. 200 and has served a part of the sentence of imprisonment imposed upon him, He is presently on bail. The bail now stands cancelled and the appellant shall surrender to serve the balance of the sentence of imprisonment. V.P.R. Appeal allowed.