Chitwant Singh vs State Of Punjab on 2 September, 1997

Equivalent citations: JT1998(9)SC2, (1998)9SCC549, AIR 1999 SUPREME COURT 1606, 1998 (9) SCC 549, 1998 AIR SCW 4137, 1998 SCC(CRI) 1061, (1999) 38 ALLCRIC 305

Bench: G.N. Ray, K.T. Thomas

ORDER

1. This appeal is directed against the judgment dated 14-5-1997 passed by the learned Additional Judge, Designated Court, Sangrur in Special Sessions Case No. 13 of 27-2-1992. By the impugned judgment, the appellant has been convicted by the learned Designated Court under Section 25 of the Arms Act, 1959 and Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "TADA"). The prosecution case in short is that on 18-10-1991, Police Inspector Mohinder Singh along with Sub-Inspector Bharpur Singh and other police personnel were present near a bridge of Rajwaha in Village Sanghera in connection with a "nakabandi". According to the prosecution case, the accused was found coming by the side of a kutcha passage which joins the metalled road. After seeing the police party there, the accused became nervous and tried to escape. Therefore, there was suspicion about the accused and he was apprehended by the said police party and by search of his person one AK 47 assault rifle bearing No. 15215345 fitted with a magazine was recovered. On inspection, it was found that such rifle was loaded with 20 cartridges. From the pocket of the accused another 15 cartridges were also recovered. All the said 35 cartridges and the said rifle were seized by the police and a rukka was sent to the local police for registering a case. It is an admitted position that the said rifle and the cartridges were not sealed. In the deposition, it has been stated by the police officer that because there was a number on the rifle, it was not sealed. So far as the cartridges are concerned, the police officer was constrained to admit that if the said cartridges were not sealed, it was not possible to identify whether the cartridges were seized from the place of occurrence. It may be stated here that the rifle which was produced in the Court by stating that such rifle was the seized rifle appeared to be an AK 56 rifle and not an AK 47 rifle as noted in the seizure memo and the rukka. The police officer has deposed to the effect that in those days, such rifles were generally known as AK 47 rifles. Such statement only indicates that the police officers who were present and had seized the weapon concerned, were not quite familiar with AK 47 and AK 56 rifles and therefore they could not distinguish between an AK 47 rifle and an AK 56 rifle. Although a statement has been made by some witness that the rifle was in working condition, no expert has been examined to establish whether the seized rifle was in working condition. Such lapse assumes significance because the police officers appeared to be not very familiar with the type of the weapon stated to have been seized otherwise they would not have failed to identify the type of weapon seized by them. There is also no independent witness to the seizure of the rifle and the cartridges. For all these reasons, there is occasion to entertain doubt about the prosecution case. We, therefore, allow this appeal and set aside the conviction and sentence passed against the accused. The appellant is in custody. He is directed to be released forthwith if not wanted in any other criminal case.