Supreme Court of India
Manoj Kumar Achhelal Brahman vs State Of Gujarat on 4 November, 1997
Equivalent citations: JT 1998 (4) SC 244, (1998) 2 SCC 354
Bench: G Ray, G Pattanaik
ORDER

1. The conviction and sentence passed against the appellant by the learned Designated Court, Valsad at Navsari by the judgment dated 22-12-1989 in Sessions Case No. 79 of 1988 are impugned in this appeal.

2. The prosecution case in short is that a theft had taken place in Village Kakaduva on 13-6-1988. When the owner of the house and other villagers were in search of the miscreants responsible for such theft, they spotted five persons present near a tea stall and they suspected their involvement in the case of theft. The matter was reported to the local police and on being searched from the possession of one of the persons, two sarees alleged to be stolen and a country-made pistol and some live cartridges were recovered. The appellant and the other accused were, therefore, tried for offence under Section 3 and Section 5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA) and also under Section 25(1)(b)(a) of the Arms Act. The learned Designated Court, however, acquitted the co-accused because nothing was recovered from his possession but considering the evidences adduced in the case, the appellant was convicted for the offence under Sections 3 and 5 of TADA and Section 25 of the Arms Act. In the instant case, there are independent witnesses who have deposed that from the possession of the appellant an object appearing to be a revolver and live cartridges had been recovered. Such depositions, therefore, appear to be trustworthy and do not deserve to be discarded. But, unfortunately nobody including the police personnel who had seized the said revolver had deposed that the police officer had himself tested the said weapon and found it to be a pistol in working condition. The learned Designated Court in this case has rightly indicated that it is not always necessary to refer the weapon to the ballistic expert for his opinion. In our view the police personnel who everyday deals with rifles and pistols will be competent to tell whether the weapon in question was in working condition or not provided he tests the same. But unfortunately that part of the deposition is missing in this case. It will, therefore, not be safe to proceed on the footing that the weapon alleged to have been recovered from the possession of the appellant was really an arm for which either under the Arms Act or under TADA conviction was warranted. We, therefore, allow this appeal by giving benefit of doubt to the appellant and set aside his conviction and sentence. The appellant has been released on bail during the pendency of the appeal. His bail bonds will stand discharged.