

Supreme Court of India

Daulat Ram vs State Of Haryana on 14 February, 1995

Equivalent citations: AIR 1995 SC 1998, 1995 CriLJ 3648, 1995 (2) SCALE 75, (1996) 11 SCC 711

Bench: Faizanuddin, S Majmudar

JUDGMENT

1. This Criminal appeal has been directed against the Judgment dated 17th October, 1988 passed by the Additional Sessions Judge Designated Court, Sirsa in Terrorist Case No. 47 of 1986, convicting the appellant under Section 25 of the Arms Act and sentenced him to undergo rigorous imprisonment for one year. The prosecution case is that on 7.7.1986 head constable, Jai Dayal, P.W. 3 along with head constable Ram Sarup, and two other constables were going from C.I.A. Staff, Sirsa towards village Bappan. They stopped the appellant who was coming from the side of his Dhani. On seeing the appellant is said to have turned back. The police party the police party/apprehended the appellant on suspicion, on search made of his person one pistol was recovered from the right gob of his Tehmad and one cartridge was recovered from the right side pocket of his shirt. The accused did not possess any licence for the said pistol and the cartridge. The head constable, Jai Dayal, P.W. 3 sent a rage to the police station upon which the offence was registered against the appellant. The Head Constable Jai Dayal commenced the investigation and recorded the statement of the witnesses.

2. The challan was filed against the appellant under Section 25 of the Arms Act, 1959 read with Section 6(1) of the Terrorist & Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as TADA). The defence of the appellant was that he was falsely implicated at the instance of one Hans Raj Lambardar of village Neza Delia. The appellant also examined four witnesses in his defence to show that he was in fact taken into custody on 3.7.86 and a false case under the Arms Act was foisted on him. The learned Designated Court rejected the defence and accepting he prosecution evidence and convicted the appellant under Section 25 of the Arms Act and sentenced him to undergo rigorous imprisonment for one year. The Designated court however found no case, under Section 6 of TADA and, therefore, acquitted him under that charge.

3. The learned Counsel appearing for the appellant urged before us that there is ample evidence and material on record to show that the appellant was falsely implicated in the offence by the police party. He also submitted that the police also did not examine the independent witness Bhagwan Das who is said to be present at the time of recovery and seizure of the pistol and the cartridge. He further submitted that there were other public witnesses available at the place of occurrence but none of them were taken as witnesses to the said occurrence. The learned Counsel took us through the defence evidence to show that the appellant was in fact apprehended and taken into custody by the police from the residence of the appellant on 3.7.1986 and foisted a false case on him on 7.7.1986 while he was already in the police custody since 3.7.1986. On going through the prosecution and defence evidence we find that there is much substance in the suppressions made by the learned Counsel for the challan. It is true that one Bhagwan Das, public witness was a witness to the recovery and seizure of the pistol and cartridge but he was given up by the prosecution on the ground that he has been won over by the accused. There being absolutely no material to entertain such an apprehension. It also turns out from the prosecution evidence that other public witnesses

were also available at the place of occurrence but none of them was taken as witness to the incident of seizure and recovery. Kewal Krishan, P.W. 4 is the son of the appellant who deposed that his father, the appellant herein was taken into custody on 3.7.1986 from his house by the C.I.S. staff Sirsa for which he had made complaint to the Sub-Divisional Magistrate and Deputy Commissioner of Police on 5.7.86. He stated that after his father was taken away by police on 3.7.86 he waited for the return of his father but when he did not return even on 4.7.86, he approached Jaimal Chand, Sarpanch of village Neza Delia on 5.7.86 and reported the matter to him. The Sarpanch advised him to move the S.P. and D.C. and S.D.M., Sirsa in that connection. It was thereafter that he made written complaint to the SDM by sending the same by Registered post bearing Postal receipt Nos. 5509 and 5510. On perusal of the evidence of Krishan Lal, D.W.3 who is Reader in the Court of SDM, Sirsa goes to show that the complaint sent by Kewal Krishan, D.W.4 under registered cover was received in the office of the SDM on 11.7.86 and he produced the said complaint in the Designated Court. We have perused the said complaint and find that the same was dispatched by registered post on 5.7.86 to the SDM, Sirsa. The reading of the said complaint goes to show that he reported that his father was taken away from his residence by the C.I.A. Staff police on 3.7.86 without any rhyme or reason. Om Prakash, D.W. 1 is the Sub Post Master Sappen. He testified that the receipt Nos. 5509 and 5510 were issued by him on 5.7.86. The said letters were addressed to the SDM, Sirsa and D.C., Sirsa. The appellant had also examined Jaimal Chand, the Sarpanch of Village Neze Delle who deposed that on 4.5.86 Kewal Krishan the son of appellant had come to him and told that on 3.7.86 his father had been taken away by C.I.A. Police, Sirsa at the instance of Hans Raj of Village Malewalle and he advised him to sent letters to D.S.P./S.P. etc. The evidence of D.W.1, D.W.2, D.W.3 and D.W.4 read together clearly goes to show that Kewal Krishan, D.W.4, the son of the appellant had made complaints by registered post to the SDM as well as to the D.C. on 5.7.86, that the appellant was taken away by the police from his residence. There is nothing on record to show that the evidence of said defence witnesses suffers from any infirmity whatsoever. Kewal Krishan, D.W. 4 was neither questioned about the reports made by him to S.D.M. and D.C. by registered post nor about the contents of the letter/complaints. This suggested that the prosecution neither disputed the complaints made by the complainant not the contents thereof. But the learned Designated Court rejected this evidence on the ground that the contents of the letter could not be stated by Kewal Krishan, D.W.4 which is not a fact. The Designated Court fell into serious error in finding faults with the defence evidence. According to the prosecution the appellant was apprehended on 7.7.86 with a pistol and cartridge which fact falls to the ground on the evidence discussed above. In the facts and circumstances stated above the conviction of the appellant under Section 25 of the Arms Act could not be sustained. It is unfortunate that the police officers, namely, Head constable, Randhir P.W. 2 and the then head constable Jai Dayal, P.W. 3 (sic) a false case on the appellant for reasons best known to them, which is a very serious matter. We are informed that the appellant was in custody for a few days in connection with this case we, therefore, direct the respondent -State to pay a sum of Rs. 5,000/- as compensation to the appellant within two months. The respondent - State may however recover the said amount from the police officials, Randhir P.W. 2 and Jai Dayal, P.W. 3 (Rs.2,500/- each), who are responsible in false implication of the appellant.

4. In the result the appeal succeeds and is allowed the conviction of the appellant under Section 25 of the Arms Act is set aside. The bail bond of the appellant shall be discharged.