Supreme Court of India
Sukhpal vs State Of Haryana on 5 October, 1994
Equivalent citations: 1995 AIR 578, 1995 SCC (1) 10
Author: G Ray
Bench: Ray, G.N. (J)

PETITIONER:
SUKHPAL

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT05/10/1994

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
FAIZAN UDDIN (J)

CITATION:
1995 AIR 578 1995 SCC (1) 10
JT 1994 (6) 579 1994 SCALE (4)524

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.This appeal is directed against the order of conviction of the appellant dated 6-11-1992 by the Designated Court, Rohtak at Jind, under Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, hereinafter referred to as 'TADA Act, read with Section 25 of the Arms Act and consequential order of sentence for a period of five years with a fine of Rs 500; in default further imprisonment for six months. The prosecution case in short is that on 2-4- 1989, Shri Sumer Singh, Inspector along with the police officials and Ram Kishan and Subhash were present in the area of Village Gurthali near Canal Bank in connection with investigation of a case (State v. Surinder under Section 25 of the Arms Act and Section 5 of the TADA Act). At that time, the accused Sukhpal was apprehended by the said police party. The + From the Judgment and Order dated 6-11-1992 of the Designated Court in Rohtak in Sessions Case No. 7 of 1992 + From the Judgment and Order dated 6-11-1992 of the Designated Court in Rohtak in S. Case No. 8 of 1992 said Sukhpal was carrying, one

rifle of 315 bore and he was also having three belts each containing 25 cartridges in his waist. A magazine of the rifle containing seven live cartridges of 315 bore was also with him. The accused was also holding one bag of rexine in which two packets each containing 10 cartridges of the said rifle were also recovered. In this way 109 live cartridges were recovered from the possession of the accused apart from the said rifle. The accused could not produce any permit or licence for keeping the said arms and ammunition. The accused was put under arrest and the rifle and the cartridges recovered from his possession were sealed in separate parcels with the seal of SSM and the same were handed over to PW 6 Subhash. The said rifle was got tested by an armourer. A challan under Section 25 of the Arms Act and also under Section 5 of the TADA Act was framed against the accused. PW 1 Shri Banwari Lal, ASI, PW 2 Surjit Singh, Armourer, PW 3 Shri Brain Sarup Ahmad, PW 4 Sumer Singh, Inspector, PW 5 Ram Kishan, PW 6 Subhash and PW 7 Birbhan Kanungo were examined by the prosecution in support of the prosecution case. PW 2 Surjit Singh, Armourer was examined for the purpose of establishing that the rifle found in possession of the accused was in a firing condition. The said armourer had deposed that he had examined the rifle and found that the said rifle was in firing condition. The prosecution case has been proved by the evidences of the said police personnel and also two civilian witnesses namely PW 5 Ram Kishan and PW 6 Subhash. The said two civilians have deposed that in connection with a dacoity case they had been to the police chowki on the said date and they were asked to wait as they were given to understand that some clue about the dacoity was available. At about 2.00 a.m. at midnight, while they were sleeping in the police chowki compound they were aroused and taken in a police vehicle and they witnessed the arrest of the accused along with the said rifle and cartridges. The learned Designated Judge considering the said evidences has come to the finding that the case against the accused was established. He has accordingly convicted the accused under Section 5 of the TADA Act read with Section 25 of the Arms Act and has passed the aforesaid sentence of five years' imprisonment and a fine of Rs 500.

2.Mr Malhotra, learned counsel appearing for the appellant has contended before us that in the recent Constitution Bench judgment rendered in the case of Sanjay Dutt (II) v. State through CBI, Bombay1, this Court has indicated that the presumption under Section 5 of TADA Act is a rebuttable presumption and the accused is entitled to rebut such presumption in a trial. Mr Malhotra has submitted that unfortunately the said decision was not rendered at the time when the trial had taken place and the accused-appellant was not aware that he had a right to rebut the presumption under Section 5 of the TADA Act. He has submitted that it was the bounden duty of the Court to apprise the accused of such right of rebuttal so that he could lead evidence by way of rebuttal of the said statutory presumption. Mr Malhotra has also 1 (1994) 5 SCC 410 : 1994 SCC (Cri) 1433 : (1994) 3 Scale submitted that in the instant case, although two civilians PW 5 and PW 6 have been examined by the prosecution to support the prosecution case that the accused was apprehended with rifle and cartridges, the testimony of the said two witnesses namely PW 5 and PW 6 is not worthy of credence and should not be accepted. Admittedly, they belonged to a different locality and according to their own statement they had come to the police chowki sometime about 7 to 8 p.m. for causing enquiry about a dacoity case. There was no reason for them to stay back in the police chowki right up to the midnight so that they could accompany the police party at the time of apprehending the accused. Mr Malhotra has also submitted that while one of such witnesses had stated that both had slept in the courtyard, the other had stated that one of them slept in the room. If such contradiction is

considered along with the fact that the said two witnesses were not reasonably expected to stay back in the police station, their evidences could not have been accepted as reliable by the learned Designated Court. Mr Malhotra has submitted that if the said evidences are not taken into consideration, then the prosecution case is to be accepted only on the basis of the depositions of police officials and in the facts and circumstances of the case, such testimony of the police personnel without corroboration from a reliable independent witness should not be accepted and no conviction could be based for want of proper evidence. Mr Malhotra has also submitted that the armourer was examined for the purpose of proving that the rifle alleged to have been found with the accused was in a serviceable condition but it is an admitted case that the said armourer had not fired the rifle and he could not say if the said rifle had at all been fired or not. He has, therefore, submitted that the conviction of the appellant lies in the realm of surmise and conjecture. Such conviction and sentence are, therefore, liable to be set aside by allowing the appeal.

3.Disputing the aforesaid contentions, the learned counsel for the State has submitted that in the said Constitution Bench decision in the case of Sanjay Dutt v. State 1, it has been clearly indicated that under Section 5 of the TADA Act the prosecution has to prove three ingredients, namely, the accused had possessed the arms and ammunition as specified in the said section, such possession of arms etc. was unauthorised and, the possession of such arms and ammunition was within a notified area as referred to in Section 5 of the TADA Act. The learned counsel has submitted that in the instant case, the accused was found in possession of a large quantity of cartridges and the said rifle without any authority under the law. He was also found to have possessed such arms and ammunition within a notified area under Section 5 of the TADA Act. Accordingly, in view of the statutory presumption under the said Section 5, the accused was liable to be convicted under Section 5 of the TADA Act and no illegality has been committed in convicting the accused under Section 5 of the TADA Act. The learned counsel has also submitted that the specific charge under Section 5 of the Act was made against the accused. He, therefore, had every opportunity to give the evidence in rebuttal. He was also specifically told about the said charge under Section 5 of the Act at the time of his examination under Section 313 of CrPC. But no statement by way of rebuttal has been made by the accused. Therefore, no illegality has been committed in convicting the accused by the learned Designated Court. As the accused had ample opportunity to lead evidence by way of rebuttal of the presumption under Section 5 of the TADA Act and the learned Designated Court had not prevented him from adducing evidence in rebuttal, no question of suffering any unmerited prejudice arises in this case. He has also submitted that the rifle was examined by an armourer who with his expertise had found that the said rifle was in a firing condition. Accordingly, the Court was justified in accepting such deposition of the armourer. It was not at all necessary that the firing condition of the rifle was required to be ascertained only by resorting to actual firing. The learned counsel for the State has further submitted that in the instant case, the minimum sentence that may be imposed under Section 5 of the Act has been passed by the learned Judge. Therefore, no interference is called for by this Court and the appeal deserves to be dismissed.

4.After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel appearing for the parties it appears to us that in the instant case, the prosecution has examined the witnesses to establish that the accused had been apprehended with a rifle of 315 bore and 109 live cartridges of such rifle. It is an admitted position

that the accused had no licence or permit to possess the said rifle and cartridges at the relevant time. It is also an admitted position that the TADA Act was applicable in the area where the accused was apprehended. Accordingly, all the three ingredients as indicated in the said Constitution Bench decision, have been fulfilled in the instant case. Normally, the presence of PW 5 and PW 6 in the police chowki was not expected at that hour but PW 5 and PW 6 have given a reasonable explanation as to why they had come to the police chowki on that day and why they had waited there. We do not find any valid reason to discard the evidences adduced in the case by PW 5 and PW

6. Apart from that, the police personnel have also deposed and such depositions stand fully corroborated by the evidences of PW 5 and PW 6 and by the recovery of the rifle and cartridges. It may be indicated here that as a rule of prudence, corroboration preferably by a reliable witness is desirable. But in all cases, such corroboration cannot be insisted as a matter of course because it may not be possible in all cases to get corroboration from an independent witness. In our view, the learned counsel for the State is justified in her contention that in the instant case, firing capability of the said rifle has been found by an expert, namely, an armourer who has a special training in the subject. It is not absolutely necessary to make a test- firing for the purpose of ascertaining whether or not a rifle is capable of firing. We are, therefore, not inclined to hold that the firing capability of the said rifle has not been established in the instant case. It also appears to us that the accused was charged under Section 5 of the TADA Act but he has not given any explanation as to why and for what purpose he had possessed the said rifle and the said cartridges. Even when opportunity under Section 313 CrPC was given to the accused, no statement has been made as to why the said arms and ammunition had been kept by him at the time of his apprehension. In our view, in the facts and circumstances of the case, the accused had sufficient opportunity to explain the purpose of possession of the said arms and ammunition and to rebut the statutory presumption under Section 5 of the TADA Act but he has failed and neglected to give any explanation or evidence which may be even remotely construed as an evidence by way of rebuttal. In the aforesaid circumstances, we do not find any merit in this appeal and the same is therefore dismissed. Criminal Appeal No. 733 of 1992

5.In view of the decision referred in Criminal Appeal No. 732 of 1992, no further order need be passed in this appeal and the same is also dismissed.