Supreme Court of India
Megha Singh vs State Of Haryana on 9 February, 1995
Equivalent citations: AIR 1995 SC 2339, 1995 CriLJ 3988, (1996) 11 SCC 709
Bench: G Ray, F Uddin
JUDGMENT

1. This appeal is directed against the judgment dated 16th February, 1987 passed by the Additional Judge, Designated Court Bhiwani at Sirsa in Terrorist Act Case No. 76 of 1986. The appellant was tried under Section 6(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as TADA) and Section 25 of the Arms Act, 1959 on the basis of FIR No. dated 19th September, 1985 lodged in the Police Station Baragudha. It is the prosecution case that on 29th September, 1985 Head Constable Siri Chand (P.W. 3) and Constable Bhup Singh (P.W. 2) and other police personnel were present on the Kacha route connecting village Faggu with village Rohan. At about 12-00 noon the accused was spotted while coming from the side of village Rohan. As the accused after seeing the police party tried to cross through the field, the police party became suspicious and he was intercepted and the Head Constable Siri Chand, P.W. 3 thereafter searched the person of the accused and on search a country made pistol Ex. P. 1 was recovered from the right dub of his chadar and three live cartridges Exts. P2 to P4 were also recovered from the right side pocket of his shirt. The said pistol and the cartridges were possessed by the accused without any valid licence. After recovery of the said pistol and the cartridges the same were seized wide recovery memo Ex. PC and a rukka Ex.PD with regard to the recovery was prepared and sent to the police station on the basis of which FIR Ex. PD/1 was recorded by Sub-Inspector of Police Charanjit Singh. The prosecution case was sought to be proved by the said Head Constable Siri Chand (PW-3) and Bhup Singh (P.W. 2). No independent witness was examined to support the prosecution case.

2. The accused has, however, stated that he was falsely implicated in the case at the instance of local M.L. A. But it may be noted that he had not led any independent witness to support such contention. It may be stated here that about the recovery of the said pistol and the cartridges there are discrepancies in the depositions of the said two witnesses. While PW-2 Bhip Singh stated that the pistol was recovered from the right dub of the chadar, PW-3 Siri Chand stated that the said pistol was recovered from the left dub of the chadar. On the question of the number of cartridges stated to have been recovered from the accused, there is also discrepancy. PW-2 stated that two cartridges were recovered from the pocket of the shirt of the accused but PW-3 Siri Chand stated three cartridges were recovered from the accused. The learned Judge, however, held that since the police patrol party on suspicion apprehended the accused, there was no question of taking any independent witness for the purpose of such apprehension and search. The learned Judge has also held that although there was discrepancy in the depositions of P.Ws. 2 and 3 about the recovery of the pistol and the cartridges such discrepancy according to the learned Judge was not material and the depositions given by the police personnel were not required to be discarded, because they were not personally interested in the prosecution of the accused. The learned Judge convicted the accused under Section 25 of the Arms Act and Section 6(1) of the TADA and sentenced him to suffer rigorous imprisonment for one year.

3. The learned Counsel for the appellant has submitted that admittedly at 12-00 noon on the village road the appellant was apprehended by the police and it was only natural that some villagers would remain present but the prosecution chose not to examine any independent witness to corroborate the prosecution case. The learned Counsel in his fairness has submitted that although the evidence given by the police personnel cannot be discarded as a matter of rule but the rule of prudence requires that the prosecution case should stand corroborated by an independent witness when such evidence can easily be available so as to lend credence to the prosecution case. He has also submitted that both the witnesses of the prosecution were police personnel and they were examined shortly after the arrest of the accused. In such circumstances, there should not have been any discrepancy about the number of cartridges alleged to have been recovered from the accused and the place from where the pistol was recovered from the person of the accused. It has been submitted by the learned Counsel that such discrepancy only points out that the said police personnel were not actually present at the time of search and seizure but a false case was initiated against the appellant and precisely for the said reason the discrepancy arose.

4. After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of the P.Ws. 2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW-3, Siri Chand, head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161, Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.

5. In the aforesaid facts and circumstances, we allow this appeal and set aside the conviction and sentence passed against the appellant.