

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Appellate Jurisdiction)

Cr. Appeal (DB) No. 511 of 2006

Aslam Sheikh, son of late Mustafa Sheikh, resident of village Lalgah, PS Madhupur, District Deoghar	Appellant
	Versus		
The State of Jharkhand	Respondent

CORAM : HON'BLE MR. JUSTICE RATNAKER BHENGRA
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant : Mr. Jitendra S. Singh, Advocate;
Mr. Arvind Kumar Choudhary, Advocate
For the State : Mr. Bhola Nath Ojha, APP
For the Informant : Mr. Lakhan Chandra Roy, Advocate

Order No.05/Dated: 29th July, 2024

The instant criminal appeal has been filed against the judgment of conviction and the order of sentence dated 03.04.2006 passed by the learned Additional Sessions Judge, Fast Track Court No. V, Deoghar in Sessions Case No. 277 of 2004 whereby and whereunder the appellant has been convicted for the offence under section 307 of the Indian Penal Code and sentenced to undergo RI for twelve years and further he has been convicted for the offence under section 27 of the Arms Act and sentenced to undergo RI for seven years and both the sentences were directed to run concurrently.

2. The prosecution case, as per *fardbeyan* of the informant Mansur Sheikh is that when he went to attend nature's call in the *bari* at 6:30 a.m. the appellant along with his brother Chhotka Sheikh arrived there and told that they were the men of Dr. Afzal and the appellant fired from his pistol which hit him below his chest and on *halla* both of them fled away and the informant was brought to the hospital for treatment.

3. On the basis of said *fardbeyan* of the informant, Madhupur PS case No. 237 of 2003 was registered against the appellant under sections 324, 326, 307/34 of the Indian Penal Code and Section 27 of the Arms Act. After investigation, charge-sheet was submitted under sections 324,326,307/34 of the Indian Penal Code and under section 27 of the Arms Act and cognizance of the offence was taken. Thereafter, case was committed to the Court of Sessions.

Charges were framed against the appellant under sections 307/34 of the Indian Penal Code and 27 Arms Act and trial was held. At the conclusion of trial, appellant was convicted and sentenced as aforesaid, hence, this appeal.

4. In the meantime, present interlocutory application (IA No. 3518 of 2024) has been filed on behalf of the appellant and the informant to compromise the case as they have already settled their disputes and the informant does not want to proceed with the instant case as because he has no grievance against the appellant.

5. The learned counsel for the appellant has submitted that the conviction for the offence under section 27 Arms Act is totally bad in law in absence of any proved fact with respect to either contravention of section 5 or section 7 of the Arms Act in order to constitute the offence punishable either u/s 27(1) or 27(2) or 27(3). Further, it has been pointed out that Investigating Officer of this case has not been examined and, therefore, the place of occurrence, the manner and mode of occurrence, non-production of any arms or ammunition remained unproved and the learned trial Court did not apply the appropriate judicious mind while upholding the conviction under section 27 of the Arms Act which is bad in law.

6. The learned defence counsel has relied upon paragraph Nos. 29 and 30 of the judgment rendered by the Hon'ble Supreme Court in the case of *"Surinder Singh v. State (Union Territory of Chandigarh)"* reported in (2021)20 SCC 24 which read as under:

"29. Adverting to the conviction of the appellant under Section 27 of the Arms Act, it appears to us that the trial court has erred in arriving at his culpability. There is no gainsay that in order to prove a charge under Section 27 of the Arms Act, the prosecution must necessarily demonstrate contravention of either Section 5 or 7 of the Act. In the instant case, although not explicitly stated, it appears that the trial court has held it to be a case of breach of Section 5 of the Arms Act, which stipulates that no person shall use, possess, manufacture, etc. any firearms, unless such person holds a licence in this behalf, and prescribes a minimum punishment of 3 years of imprisonment.

30. The relevant extracts of unamended Sections 5 and 27 of the Arms Act which were in force at the relevant time, read as follows:

"5. Licence for manufacture, sale, etc., of arms and ammunition- (1) No person shall-

*(a) use, manufacture, sell, transfer, convert, repair, test or prove, or
(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any firearm or any other arms of such class or description as may be prescribed or any ammunition, unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.*

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27. Punishment for using arms, etc.-(1) *Whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

(2) *Whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.*

(3) *Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person, shall be punishable with death."*

7. In the present case the learned defence counsel appearing on behalf of the appellant submitted that the learned trial court has found the appellant guilty for the offence punishable under section 27 of the Arms Act and sentence therein for 3(three) years without any iota of evidence under section 27(1) of the Arms Act i.e. the prosecution has totally failed to fasten the guilt of the appellant that he has used the arms and ammunition in contravention section 5 of the Arms Act to hold his guilt under section 27(1) of Arms Act to award the sentence for three years i.e. minimum mandatory sentence under section 27(1) of the Arms Act, hence the conviction and sentence under section 27 of the Arms Act as held by the learned trial court is bad in law.

8. On the other hand, the learned counsel for the State has argued and said that the conviction under section 27 of the Arms Act along with section 307 of IPC is fully sustainable as victim has sustained gun-shot injury which has also been proved by the medical evidence.

9. Having gone through the arguments of both the parties and on perusal of the impugned judgment, we find that there is no evidence to the effect that either section 5 or section 7 of the Arms Act has been violated by the appellant and, therefore, none of the offence under section 27 of the Arms Act has been proved.

10. In the light of aforesaid judgment, this Court is of the opinion that the conviction of the appellant under section 27 of the Arms Act is bad in law as the learned trial court did not discuss under which sub-section of section 27 of Arms Act, appellant was found guilty. Further it is also found that I.O. in this case has not been examined and hence the manner, mode and place of occurrence could not be proved formally and also it is fatal for the prosecution as it could not be determined as to under which clause of section 27 the appellant has been held guilty so far as it relates to the arm used by the appellant in causing injury to the victim was in contravention of section 5 or in contravention of section 7 of the Arms Act to fasten guilt of appellant either under section 27(1) or 27(2) of the

Arms Act. Therefore, we set-aside the conviction and sentence of the appellant dated 03.04.2006 passed by the learned Additional Sessions Judge, Fast Track Court No. V, Deoghar in Sessions Case No. 277 of 2004 for the offence under section 27 of the Arms Act and the appellant is acquitted from the charge levelled against him for the offence punishable under section 27 of the Arms Act.

11. In regard to the conviction and sentence of the appellant for the offence under sections 307 IPC, the learned counsel for the appellant has confined his argument only to the aspect of sentence and not on the point of conviction under section 307 of IPC and submitted that he does not want to argue this case on the merits of the case on conviction under section 307 of IPC. The learned counsel for the appellant has further submitted that the appellant has already spent one year and ten months in custody which on the basis of compromise may be considered as period of sentence sufficiently served by the appellant. He has further submitted that the appellant is ready to pay a reasonable amount of compensation to the victim/informant whatever awarded by this Court.

12. Accordingly, in the light of the submissions made by the learned counsels for the parties, we uphold the conviction dated 03.04.2006 of the appellant for the offence under section 307 IPC, however, in view of the compromise between the parties, further custodial sentence of the appellant is not required at this stage as no useful purpose would be served to send the appellant again in jail because a good relationship has been restored between both the parties on the basis of compromise.

13. Therefore, custodial sentence of the appellant is restricted to the period already undergone by him. However, the appellant is further sentenced to pay a fine of Rs. 25,000/-(Rupees Twenty Five Thousand) by way of compensation to the victim/informant within four months from the date of receipt/production of the copy of this order before the concerned jurisdictional trial court on proper identification of the victim/informant or his/her successor(s) and in default of payment of fine, he is directed to undergo simple imprisonment for a period of six months. If the appellant fails to pay the compensation amount within stipulated period of time of four months from the date of receipt/production of the copy of this order, the learned jurisdictional trial court shall take steps for his arrest. The appellant is directed to deposit the said fine amount in the *Nazarat* of the concerned Civil Court and, thereafter, he shall be released forthwith and/or discharged from the liabilities of bail-bonds furnished by him.

14. Accordingly, this criminal appeal is partly allowed, in the aforesaid terms.

15. Pending Interlocutory Application(s), if any, stands disposed of.

16. Let the trial court records (TCR) be sent to court of the learned Additional Sessions Judge, FTC No. V., Deoghar.

(Ratnaker Bhengra, J.)

(Navneet Kumar, J.)

KNR/-