

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 945 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

CHANDRAMAN RAMBHUVAN TIWARI

Versus

STATE OF GUJARAT

Appearance:

MR NM AMIN for DHARMESH D NANAVATY for appellant

MR IM PANDYA, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 29/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit. Mr.I.M.Pandya, learned APP waives service of notice on behalf of respondent.

Chandraman Rambhuvan Tiwari - appellant original complainant of I.CR.No. 76 of 1996 of Navrangpura Police Station, has filed this appeal, for a limited purpose of challenging the judgment and order dated 25th October 2001 passed by the learned Addl.City Sessions Judge, in Sessions

Cases Nos.62 and 63 of 1999 qua the order regarding the muddamal, i.e. Rifle. The learned Judge while convicting the original accused under Section 304-A of IPC also ordered the muddamal to be appropriately disposed of after the expiry of the appeal period.

According to the appellant, he is providing security services in the name and style of "Indian Security & Private Investigation". The office of the appellant is at Fairdeal House, Opp. St.Xavier Ladies Hostel, Navrangpura, Ahmedabad. The appellant is having a licence for N.P.315 Bore Rifle No.AB 933782 I.O.F. issued as per the provisions of the Arms Act, by the Commissioner of Police, Ahmedabad City.

The appellant is the owner of one Jeep Car and the name of his driver is Ganpatbhai Malubhai Bharwad. For the business purpose, the appellant is having the said Jeep Car and said Ganpatbhai Malubhai Bharwad is the driver since last several years.

On 2nd February 1996, the appellant was in his office at about 12 noon at Fairdeal House. The driver of the appellant, namely, Ganpatbhai was sitting in the office of Maha Chemicals which is also in the Fairdeal House. Since the appellant had to go in the round, he was having his above mentioned weapon with him and his driver Ganpatbhai was also with him. As the appellant had to go to answer the call of nature, above mentioned rifle was given to his driver Ganpatbhai for a while. At that time, one person namely, Subhanshu was also sitting with Ganpatbhai, driver of the appellant. Said Subhanshu was serving as an Accountant in the office of Maha Chemicals in Fairdeal House. When the appellant was coming out from the toilet, he heard a sound of fire from rifle and immediately he rushed to the office of Maha Chemicals where he saw said Subhanshu lying there. He had received injuries on his neck portion. Immediately, thereafter, the injured was removed to V.S.Hospital by the driver of the appellant, namely, Ganpatbhai. The appellant had also gone to V.S.Hospital where the injured was declared dead. The appellant, thereafter immediately went to Navrangpura Police Station and lodged the aforesaid FIR.

After completion of the investigation, a charge-sheet was submitted against the driver of the appellant for the offences punishable under Sections 304-A and 302 of IPC. Ganpatbhai Bharwad, driver of the appellant was tried in Sessions Cases Nos.62 and 63 of 1999 by the learned Addl.City Sessions Judge, Ahmedabad for the offence punishable under Section 302 of IPC.

After recording the evidence and on conclusion of the trial, the learned Addl.City Sessions Judge, Ahmedabad, by

judgment and order dated 25.10.2001, convicted the driver of the appellant for the offence punishable under Section 304-A of IPC and sentenced him to suffer RI for two years. However, the learned Judge has ordered to appropriately dispose of the muddamal article after the expiry of appeal period. The licenced rifle of the appellant is also a muddamal in the above said Sessions Cases and the same is also ordered to be disposed of by the learned Judge. The appellant has, therefore, filed this appeal against the said order of disposal of the muddamal licenced rifle of the appellant.

Learned Counsel Mr.Amin for the appellant submits that the judgment and order for disposal of the muddamal rifle passed by the trial Court is illegal, unjust and improper, inasmuch as, no cogent and convincing reasons for disposal of the muddamal are given. He further submits that the rifle belongs to the appellant and he is having the valid licence for the same issued and renewed from time to time by the concerned authority and that the muddamal rifle was never used by the appellant. In his submission, even as per the prosecution case, the incident was purely an accident and it occurred only when the appellant had gone to answer the call of nature.

Having considered the prosecution case, it is clear that the appellant is the owner of the rifle in question and is having a valid licence of the same. The complainant had handed over the rifle to the accused who is admittedly the driver of the complainant, as the complainant had gone to answer the call of nature. The incident had taken place in absence of the complainant and it is the complainant who had gone to the V.S.Hospital and the complainant had immediately informed the police by filing the complainant. Normally, for disposal of the muddamal, an enquiry under Section 456 of the Criminal Procedure Code is necessary. The learned trial Judge instead of holding such inquiry for the disposal of muddamal article, straightway passed orders and that too, without hearing the complainant. Since the complainant is admittedly the owner of the muddamal rifle and is holding the valid licence for the same, we see no difficulty in ordering that the muddamal rifle to be handed over to the appellant - original complainant on certain conditions.

In the result, this appeal is allowed. The judgment and order dated 25th October 2001, passed by the learned Addl.City Sessions Judge, Ahmedabad, qua the disposal of the muddamal rifle is set aside. It is directed that the appellant be handed over the muddamal rifle bearing No. AB 933782 I.O.F. on the following conditions:

The appellant shall not dispose of the above muddamal rifle and shall produce the same before the Court and/or the concerned authority as and when required till the final disposal of Criminal Appeals Nos. 913 of 2001 and 70 of 2002. If the period of licence has expired, the appellant shall immediately apply for the renewal of the licence. Needless to say that the licencing authority will pass appropriate order in accordance with law in that behalf.

The appeal is allowed to the aforesaid extent only.

(Kshitij R. Vyas, J.)

(K.M. Mehta, J.)
Sreeram.