

RESERVED JUDGMENT

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**CRIMINAL APPEAL NO.1755 OF 2001
(Old No.16 / 1994)**

Jai Bharat Singh

..... Appellant

Versus

The State

..... Respondent

Dated: October 30, 2009

Sri A.M. Saklani, learned amicus curiae for the appellant
Sri M.A. Khan, learned brief holder for the State

HON. DHARAM VEER, J.

This criminal appeal, preferred under section 374(2) of The Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 17.12.1993 passed by Sessions Judge, Almora in Sessions Trial No. 17/1990, State Vs. Jai Bharat Singh and S.T No.17-A/1990, State Vs. Jai Bharat Singh, whereby the learned Sessions Judge has convicted the appellant/accused u/s 25(1)(a) of The Arms Act, 1859 (*hereinafter to be referred as "the Act"*) and sentenced him to three years' rigorous imprisonment.

2. I have heard learned counsel for the parties and perused the entire material available on record.

3. In brief, the prosecution case is that on 16.2.1990, P.W.1 K.N. Joshi, SHO along with S.I. Arvind Dangwal (P.W.2), Head Constable Dev Singh and Constable Ram Kumar proceeded to village Khatyari and

reached the house of appellant-accused Jai Bharat Singh at about 1:30 A.M. and knocked at the door of house of appellant-accused. The SHO disclosed his identity and on disclosing the purpose of his arrival, he asked the appellant-accused to surrender. After hearing the warning, the appellant-accused abused him from inside his house and threatened him to go back otherwise he will shoot him. The S.H.O. persuaded him to surrender, however the appellant-accused became excited. Then the appellant-accused opened the door and fired a shot from his pistol at SHO K.N. Joshi, however he could narrowly escaped. The appellant-accused again closed his door threatening the police party with dire consequences. Considering the gravity of matter, the complainant sent his driver along with Jeep for Police Lines to get additional force. At about 2:15 A.M., some more police force reached on the spot, however even then the appellant-accused did not open the door in spite of warning given by the police force. At about 6:00 A.M., the appellant-accused all of a sudden tried to run in order to escape, but K.N. Joshi, S.H.O. with the help of other police force managed to catch hold of the appellant-accused near the door of his house. On taking search of the appellant-accused, a country-made pistol of 9 m.m. Bore in working condition and two live cartridges and one empty cartridge of 9 M.M. were recovered from the possession of the appellant-accused. Thereafter, the recovery memo Ex.Ka-1 was prepared on the spot which bears the signatures of members of the police force. On the basis of the recovery memo Ex.Ka-1, Chik FIR was prepared by P.W.3 Constable Clerk Jagat Ram (P.W.3)

prepared the Chik FIR on 16.2.1990 at 8:00 A.M., i.e. Ex.Ka-2. Entry was also made in the G.D. in the same process, carbon copy of G.D. is Ex.Ka-3. Investigation of this case was entrusted to R.P. Singh SHO, P.S. Bageshwar as per the orders of S.P. Almora dated 16.2.1990, that order is Ex.Ka-4. The I.O. during investigation inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-5. Ex.Ka-6 is the sanction for prosecuting the appellant-accused Jai Bharat Singh accorded by D.M., Almora. Ex.Ka-7 is the report given by Ballistic Expert, Scientific Laboratory, U.P. Mahanagar Lucknow. During investigation, the I.O. recorded the statements of witnesses and on completion of investigation, filed the charge sheet against the appellant-accused i.e. Ex.Ka-8 and Ex.Ka-9 under Section 307 IPC and u/s 25/27 of the Act respectively.

4. After receiving the charge sheet, learned CJM, Almora committed the case to the court of Sessions on 12.04.1990 after giving necessary copies to the appellant/accused as provided under Section 207 Cr.P.C.

5. Learned Sessions Judge, Almora on 28.5.1990 framed the charge against the appellant/accused u/s 307 IPC. The charge was read over and explained to appellant/ accused, who pleaded not guilty and claimed to be tried. Charges under Sections 25 and 28 of the Act were also framed against the appellant-accused. The charge was also read over and explained to the appellant-accused who also pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined P.W.1 SHO K.N. Joshi, P.W.2 S.I. Arvind

Dangwal, P.W.3 Constable Jagat Ram, P.W.4 Driver Ramesh Chandra Khanduri, P.W.5 S.I. Brijpal Singh and P.W.6 Head Constable Laxmi Dutt.

7. After that the statement of the appellant/accused was recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to him in question form, who denied the allegations made against him. However, he did not produce any oral or documentary evidence in defence.

8. After hearing learned counsel for the parties and appreciating the entire material available on record, the learned Sessions Judge, Almora vide judgment and order dated 17.12.1993 convicted and sentenced the appellant/accused as discussed above. Feeling aggrieved by the aforesaid judgment and order, the accused/appellant has preferred the present appeal.

9. To prove its case, the prosecution has examined P.W.1 SHO K.N. Joshi who stated that in February 1990 he was posted as Inspector P.S. Kotwali Almora and appellant-accused Jai Bharat Singh was posted as Constable in Police Line Almora. A case under Sections 336/504/506 IPC and one u/s 3/4 of Terrorists & Disruptive Activities (Prevention) Act, 1987 was registered against the appellant-accused as Case Crime No.71/1990 and he was entrusted the investigation of that case. On 16.2.1990 he along with S.I. Arvind Dangwal (P.W.2), Head Constable Dev Singh and Constable Ram Kumar proceeded from police station in a police jeep driven by Constable Driver Ramesh Chandra (P.W.4) and reached the house of appellant-accused at

about 1:30 A.M. After reaching there, he called out the name of appellant-accused at the door of his house which was closed and also directed him to surrender as he was wanted in aforesaid case. Thereupon, the appellant-accused hurled abuses and threatened to kill him. He tried to persuade the appellant-accused but he did not agree. Meanwhile, the appellant-accused suddenly opened the door of his house and fired a shot from his illegal weapon with intention to kill him; but he saved himself by taking shelter behind a wall and appellant-accused again closed his door from inside. He sent his driver Ramesh Chandra Khanduri to Police Line Almora along with jeep to bring additional police force from where S.I. Brijpal Singh (P.W.5) along with police force arrived at the spot. The house of the appellant-accused was surrounded and at about 6:00 A.M. on the same day, the appellant-accused opened door of his house and tried to escape; but he was apprehended by him with the help of police personnel. On the search of the appellant-accused, a country made pistol of 9 mm Bore, two live cartridges and one empty cartridge were recovered from the right side pocket of his pant. He further stated that he got the Fard of this recovery prepared from S.I. Arvind Dangwal on which he and other police personnel present signed, that Fard is Ex.Ka-1. The recovered country made pistol was marked as Ex.1 and two live cartridges were marked as Ex.3 & 4 while the empty cartridge was marked as Ex.2. All the recovered articles were sealed on the spot. Thereafter, the appellant-accused along with recovered articles was brought to police station where the FIR Ex.Ka-2 was prepared by Constable Clerk

Jagat Ram (P.W.3) on the basis of recovery memo Ex.Ka-1.

10. P.W.2 S.I. Arvind Dangwal, who is also the eyewitness of the case, has fully corroborated the evidence of P.W.1 SHO K.N. Joshi.

11. P.W.3 Constable Jagat Ram has stated that on 16.2.1990 he prepared the Chik FIR of this case as Case Crime No.72/90 u/s 307IPC and also u/s 25 of the Act in Case Crime No.73/1990. He also made entry in the G.D., carbon copy of which is Ex.Ka-3. He further stated that he written the FIR on the basis of dictation of SHO K.N. Joshi who also signed on the FIR.

12. P.W.4 is Driver Ramesh Chadnra Khanduri who has not supported the prosecution case and was declared hostile.

13. P.W.5 is S.I. Brijpal Singh, who is also the eyewitness of the case, corroborated the evidence of P.W.1 SHO K.N. Joshi.

14. P.W.6 is H.C. Laxmi Dutt who stated that investigation of this case was entrusted to SHO R.P. Singh Yadav on the basis of order of S.P. Almora, that order is Ex.Ka-4. Site plan of the place of occurrence was prepared by SHO R.P. Yadav, i.e. Ex.Ka-5. He also proved the sanction accorded by D.M. Almora for prosecuting the appellant-accused, i.e. Ex.Ka-6. He also proved the report given by Scientific Laboratory, i.e. Ex.Ka-7. After the investigation, R.P. Singh Yadav filed the separate charge sheets under Section 307 IPC and

another u/s 25 of the Act, which are Ex.Ka-8 and Ka-9 respectively.

15. After that the statement of the appellant/accused was recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to him in question form, who denied the allegations made against him. However, he did not produce any oral or documentary evidence in defence.

16. Sri A.M. Saklani, learned amicus curiae for the appellant-accused argued that as per the evidence discussed above, the case has not been proved by the prosecution against the appellant-accused beyond reasonable doubt. I do not find any force in this argument as P.W.1 SHO K.N. Joshi has stated that in February 1990 he was posted as Inspector P.S. Kotwali Almora and appellant-accused Jai Bharat Singh was posted as Constable in Police Line Almora. A case under Sections 336/504/506 IPC and one u/s 3/4 of TA/DA was registered against the appellant-accused as Case Crime No.71/1990 and he was entrusted the investigation of that case. ON 16.2.1990 he along with S.I. Arvind Dangwal (P.W.2), Head Constable Dev Singh and Constable Ram Kumar proceeded from police station in a police jeep driven by Constable Driver Ramesh Chandra (P.W.4) and reached the house of appellant-accused at about 1:30 A.M. After reaching there, he called out the name of appellant-accused at the door of his house which was closed and also directed him to surrender as he was wanted in aforesaid case. Thereupon, the appellant-accused hurled abuses and threatened to kill them. He

tried to persuade the appellant-accused but he did not agree. Meanwhile, the appellant-accused suddenly opened the door of his house and fired a shot from his illegal weapon with intention to kill him; but he saved himself by taking shelter behind a wall and appellant-accused again closed his door from inside. He sent his driver Ramesh Chandra Khanduri to Police Line Almora along with jeep to bring additional police force from where S.I. Brijpal Singh (P.W.5) along with police force arrived at the spot. The house of the appellant-accused was surrounded and at about 6:00 A.M. on the same day, the appellant-accused opened door of his house and tried to escape; but he was apprehended by him with the help of police personnel. On the search of the appellant-accused, a country made pistol of 9 mm Bore, two live cartridges and one empty cartridge were recovered from the right side pocket of his pant. He further stated that he got the Fard of this recovery prepared from S.I. Arvind Dangwal on which he and other police personnel present signed, that Fard is Ex.Ka-1. The recovered country made pistol was marked as Ex.1 and two live cartridges were marked as Ex.3 & 4 while the empty cartridge was marked as Ex.2. All the recovered articles were sealed on the spot. Thereafter, the appellant-accused along with recovered articles was brought to police station where the FIR Ex.Ka-2 was prepared by Constable Clerk Jagat Ram (P.W.3) on the basis of recovery memo Ex.Ka-1. The statement of this witness is reliable, believable and natural and inspires confidence. The same also gets proved from the evidence of P.W.2 S.I. Arvind Dangwal, and P.W.5 S.I.

Brijpal Singh, who are also the eyewitnesses of the incident. Besides this, report given by Ballistic Expert, Scientific Laboratory, U.P. (Ex.Ka-7) also shows that the empty cartridge (marked as Ex.2) was fired from the country made pistol (marked as Ex.1). Further the sanction accorded by D.M. Almora (Ex.Ka-6) was also valid as per law. In view of the above discussion, offence punishable under Section 25(1)(a) of the Act is clearly proved against the appellant-accused beyond reasonable doubt and the prosecution has fully proved its case against the appellant-accused.

17. In view of the above, I am of the considered view that the trial court was correct and justified in convicting and sentencing the appellant-accused as discussed above.

18. For the reasons as aforesaid, the appeal preferred by the appellant-accused Jai Bharat Singh is devoid of merits and the same is hereby dismissed. Judgment and order dated 17.12.1993 passed by Sessions Judge, Almora in S.T.No.17/1990 and S.T. No.17-A/1990, State Vs. Jai Bharat Singh, convicting and sentencing the appellant-accused as discussed above, is affirmed.

19. A copy of this order be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)
October 30, 2009