

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 992-993 OF 2016

SAMIR AHMED RAFIQAHMED ANSARI

...APPELLANT(S)

VERSUS

THE STATE OF GUJARAT

...RESPONDENT(S)

J U D G M E N T

R. BANUMATHI, J.

1. These appeals arise out of the conviction of the appellant-accused under Section 25(1AA) of the Arms Act, 1959 and the High Court enhancing the sentence of imprisonment from two years to seven years.

2. The case of the prosecution is that on 18.10.2002 at about 8.00 p.m. when the police personnel were on patrolling duty the appellant-accused and others were found to be travelling in scooter carrying country made pistol loaded with live cartridges and were in possession of two other live cartridges. After completion of the investigation, charge sheet was filed against the accused and two others under Section 399 read with 120B IPC and under Section 25(1AA) of Arms Act.

3. The Trial Court acquitted the appellant-accused of the offences under Indian Penal Code; but convicted him under

Section 25(1AA) of the Arms Act and sentenced him to undergo R.I. for two years. The Trial Court acquitted the accused nos. 2 and 3 from all the charges.

4. Being aggrieved, the appellant-accused preferred the appeal before the High Court and the State has also preferred the appeal for enhancement of the sentence. The High Court dismissed the appeal preferred by the appellant-accused and allowed the appeal preferred by the State thereby enhancing the sentence of imprisonment from two years to seven years as aforesaid.

5. We have heard Ms. Kamini Jaiswal, learned counsel appearing for the appellant as well as Ms. Jesal Wahi, learned counsel appearing for the respondent-State.

6. Ms. Kamini Jaiswal, learned counsel appearing for the appellant, *inter alia*, submitted that the conviction of the appellant is not maintainable in view of want of sanction under Section 39 of the Arms Act. Since we are mainly concerned with the correctness of the conviction under Section 25(1AA), we do not propose to go into the question on want of sanction.

7. Section 25(1AA) of the Arms Act deals with manufacture, sale, transfer etc. of the prohibited arms. In this case, the prosecution has not adduced any evidence to show that the appellant-accused had indulged in manufacturing of arms or prohibited ammunition in contravention of section 7. Since the prosecution has not adduced any evidence to substantiate the allegation of manufacture, in our view, the conviction of the appellant-accused under Section 25(1AA) cannot be sustained.

8. The question falling for consideration is that what is the offence for which the appellant is to be convicted for the possession of the country made pistol loaded with live cartridges and for possession of two other live cartridges. Section 3 deals with licence for acquisition and possession of firearms and ammunition. As per Section 3(1) no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds a licence issued in accordance with the provisions of the Arms Act and the Rules made thereunder. Contravention of Section 3 is punishable under Section 25(1B) (a) with imprisonment for a term which shall not be less than one year but which may extend to three years and also be liable to fine. Both the Courts recorded concurrent findings that the appellant was found in possession of country made pistol loaded with live cartridges and in possession of two other live cartridges which act is clearly in violation of Section 3 of the Act. It is not the case of the appellant that he has a licence for possession of country made pistol. The possession of the country made pistol without licence is punishable under Section 25(1B)(a) of the Arms Act. The appellant is said to have undergone the sentence of imprisonment for 1 ½ years (vide this Court order dated 17.10.2016).

9. In the result, the conviction of the appellant under Section 25(1AA) of the Arms Act is modified to Section 25(1B) (a) and the sentence of imprisonment is modified to the period already undergone. The appellant is on bail. His bail bonds

shall stand discharged.

10. The appeals are partly allowed.

.....J.  
[R. BANUMATHI]

.....J.  
[INDIRA BANERJEE]

NEW DELHI  
4TH OCTOBER, 2018