Present:
Ms. Justice Naima Haider
and
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.1024 of 1996

Md. Selim
...Appellant
-Versus-
The State
...Respondent

Ms. Nahida Yasmin, Advocate
... for the appellant

Ms. Salma Rahman, A.A.G.
... for the respondent

Judgment on 10.4.2011

Md. Ruhul Quddus, J:

This appeal under section 30 of the Special Powers Act, 1974 is directed against judgment and order dated 15.6.1996 passed by the Special Tribunal No.9, Comilla in Special Tribunal Case No.129 of 1995 convicting the appellant under sections 19 (a) of the Arms Act, 1878 and sentencing him thereunder to suffer rigorous imprisonment for seven years with a fine of Taka 1,000/= in default to suffer rigorous imprisonment for another three months.

Facts leading to this appeal, in short, are that the informant Kazi Mahbubur Rahman, a Sub-Inspector of police produced the arrested appellant with some lethal weapons to Kotwali police station,

Comilla on 15.2.1995 and lodged an *ejahar* alleging *inter alia,* that on the basis of a secret information, he along with his forces had raided the appellant's house at 2.30 a.m on 15.2.1995, arrested him instantly and recovered some lethal weapons namely, one *Ramda*, one *Seni*, four *Kiris*, one Chinese Axe, two iron made *Panja*, one chain for keeping bullets, and one *Chapati* from his possession. The said *ejahar* gave rise to Comilla Kotwali Police Station Case No.22 dated 15.2.1995. The police, after investigation submitted a charge sheet on 14.5.1995 against the sole appellant under section 19 (a) of the Arms Act.

The case after being ready for trial, was sent to the Special Tribunal No.1, Comilla, wherein it was numbered as Special Tribunal Case No.129 of 1995. The learned Judge of the Tribunal took cognizance of offence against the appellant and subsequently framed charge against him and transferred the case to the Special Tribunal No.9, Comilla for disposal.

In course of trial, the prosecution examined four witnesses. Out of them P.W.1 Abdur Rahman, a seizure list witness and neighbour to the appellant, stated that on the date and time of occurrence, the police had recovered the weapons from the appellant's house. The weapons were produced before the Tribunal and were identified by him and he proved the same as material exhibit-I series. He also proved the seizure list as exhibit-1 and his signature thereon as

exhibit-1/A. In cross-examination he stated that he did not see recovery of any arms and that the police took his signature on a blank paper sitting in the police station. P.Ws.2-3, two other seizure list witnesses did not support the prosecution case, but in cross-examination admitted their signatures on the seizure list. P.W.4, the informant and investigating officer stated that he along with his forces had raided the house of occurrence, arrested the appellant and recovered the aforesaid weapons from his control and possession. He further stated that after being assigned for investigation, he visited the place of occurrence, examined the witnesses under section 161 of the Code of Criminal Procedure and prepared the sketch map with index. He also identified the weapons produced before the Tribunal. In cross-examination, he denied the suggestion that in the house of occurrence the appellant had no room of his own, or that he was arrested from elsewhere.

After closing the prosecution, the learned Judge of the Tribunal examined the appellant under section 342 of the Code of Criminal Procedure, to which he pleaded not guilty and declined to adduce any evidence in defense. The learned Judge of the Tribunal after conclusion of trial found the appellant guilty of charges framed against him and accordingly convicted and sentenced him, as aforesaid, by her judgment and order dated 15.6.1996. The appellant

moved in this Court challenging the said judgment and order of conviction and sentence.

Ms. Nahida Yasmin, learned Advocate for the appellant submits that P.W.1 admitted in cross-examination that he did not see recovery of any arms or weapons, and that he signed on a blank paper sitting in police station, while P.Ws.2-3 did not support the prosecution case, but the learned Judge of the Tribunal without considering those evidence most illegally convicted the appellant on the basis of only one police witness i.e. P.W.4, who was not corroborated by any other local seizure list witness. Ms. Nahid apprises us that during pendency of the appeal, the appellant has not been granted bail by this Court at any point of time, and meanwhile he has served out the sentence.

On the other hand, Ms. Salma Rahman, learned Assistant Attorney General appearing for the State submits that the case having been proved against the appellant beyond reasonable doubt, the learned Judge of the Tribunal rightly passed the judgment and order of conviction. All the local witnesses have proved their signatures on the seizure list. Out of them P.W.1 fully supported the prosecution case and the evidence of P.W.1 and 4 corroborates each other. In cross-examination P.W.1 stated otherwise and P.Ws.2-3 in their examination-in-chief did not support the prosecution case. In our

social context there are reasons to disbelieve the evidence of P.Ws.1-3 in part.

We have gone through the evidence on records, the impugned judgment and some decisions on the points involved. It appears that the evidence of P.W.4 is complete and self-contained. More so, his evidence has been corroborated by P.W.1 in his examination-in-chief. The seizure list, which has been corroborated by P.Ws.2-3 to the extent of their signatures on it, also corroborates the evidence of P.W.4. There is nothing on records that the police had falsely implicated the appellant, or that there was any sort of enmity between the appellant and P.W.4. The defense also did not make out any such case, except the appellant's claim to be innocent. Therefore, it has been clearly proved that the arms and weapons were recovered from the control and possession of the appellant on the date and time as mentioned in the *ejahar*.

Law does not require any particular number of witnesses for proof of a fact. Conviction can be well founded even on a single witness, if he is found disinterested and his evidence is fully reliable and not shaken. This view lends support from the cases of Yousuf Sk. alias Sk Abu Yousuf v Appellate Tribunal and another reported in 29 DLR (SC), 211 and Abdul Hai Sikder and another v The State reported in 43 DLR (AD) 95. Similarly a Judge may convict an accused on the basis of unimpeachable and unshaken evidence of a

police officer, who arrested the accused, recovered the arms and weapons, lodged the *ejahar* and investigated the case. The testimony of a police man can not be discarded simply because he belongs to police force or, was a member of the raiding party.

Our common experience is that in most of the arms cases, the seizure list witnesses say that they signed on blank papers and did not see recovery of any arms. In these days people do not dare to stand against illegal arms-holders and terrorists because of fear of life and honour. We must consider this social reality in interpreting the criminal law and rules of evidence.

The learned Judge of the Special Tribunal has considered the evidence and gave her reasoning as to why she disbelieved the evidence of P.Ws.2-3 and that of P.W.1 in part. We do not find any illegality in the impugned judgment and order of conviction.

For the reasons stated above, we do not find any merit in the appeal. Accordingly, the appeal is dismissed.

Send down the lower Court records.

Naima Haider, J:

I agree.