

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.840 OF 2009

Between:

Feroz Hussain

... Appellant

And

The State of Andhra Pradesh,
through High Court Public Prosecutor.

... Respondent

Criminal Appeal No.861 OF 2009

Between:

Mohd.Bin-Mazi and another

... Appellants

And

The State of Andhra Pradesh,
through High Court Public Prosecutor

... Respondent

DATE OF JUDGMENT PRONOUNCED: 06.09.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.840 of 2008

% Dated 06.09.2022

Feroz Hussain ... Appellant

And

\$ The State of Andhra Pradesh,
through High Court Public Prosecutor. ..Respondent.

+ CRL.A. No.861 of 2009

Mohd.Bin-Mazi and another ... Appellant

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! Counsel for the Appellant: Sri M.Govind Reddy in
Crl.A.No.840 of 2009
Sri K.Suresh Reddy in
Crl.A.No.861 of 2009

^ Counsel for the Respondent: Public Prosecutor

> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos.840 and 861 OF 2009****COMMON JUDGMENT:**

1. Since both these appeals arise out of Common Judgment passed in three cases i.e, S.C.No.348 of 2007, S.C263 of 2008 and S.C 10 of 2009, they are being heard and disposed off by way of this Common Judgment.

2. The appellant/A1 i.e., Feroz Hussain, S/o.Ahmed Husain was convicted and sentenced to undergo simple imprisonment for a period of four years for the offence under Section 25(1)(a) of the Arms Act, 1959 and found not guilty for the offence under Sections 399 and 402 IPC in Criminal Appeal No.840 of 2007.

3. The Appellants/A4 and A5 in CrI.A.No.861 of 2009 were convicted for the offence under Section 25(1)(a) of the Arms Act and sentenced to undergo simple imprisonment for a period of four years vide judgment in SC No.263 of 2008 and found not guilty for the offences under Section 399 and 402 of IPC. However the accused who is arrayed as A3 in SC No.10 of 2009 is not before this Court.

4. The appellants in both the SC Nos.348 of 2007 and 263 of 2008 were convicted for the offence under Section 25(1)(a) of the Arms Act.

5. According to the case of the prosecution, P.W.1 was working as SI of Task Force, who received information on 28.03.2006 at 9.15 p.m stating that some persons were preparing to commit dacoit of petrol pump situated in Vidyanagar and were waiting in a Indica Car. Immediately, P.W.1 informed his superiors and along with the staff went to the said place and found four persons in the car. The said four persons are A1, Feroz Hussain/appellant in CrI.A.No.840 of 2009, A3, who is not before this court and two other accused i.e., A4 and A5, appellants in CrI.A.No.861 of 2009.

6. P.W.1 in the presence of P.W.2 and another independent witness seized the Tata Indica car and also knives. MO1 was seized from A1, MOs.5 and 6 were seized from A4 and A5. The said seizure of MOs was under panchanama under Ex.P1. According to P.W.1, the appellants and two others were planning to commit dacoit of owner of IBP Petrol pump at

Vidyanagar at knife point. However, even prior to the said attempt of dacoit, the appellants/Accused were caught. The police, after investigation filed charge sheet for the offence under Sections 399 and 402 of IPC and also under Sections 25(1)(a) of the Arms Act.

7. The learned Magistrate found that these appellants not guilty for the offence under Sections 399 and 402 of IPC i.e, making preparation to commit dacoit and assembling for the purpose of dacoit. However, for being in possession of knives, which fall within the definition of arms under the Arms Act, conviction was recorded.

8. As seen from the record, P.W.1 has seized the said knives in the presence of P.W.2. P.W.2 was declared as hostile to the prosecution case as he stated that the police asked for signatures on a blank white paper and he does not know any of the contents of Ex.P1, confession and seizure panchanama. Ex.P1 was drafted and seizures were affected. Even according to the police, the knives and swords were on the person of these appellants. In the said circumstances, when the police

already knew about the MOs, which were in possession of the appellants, the seizure becomes doubtful as the same does not fall within the ambit of Section 27 of the Indian Evidence Act. Under Section 27 of the Act, any discovery of fact is made admissible, which fact is not known to the police. When P.W.1 and other police personnel already knew about the knives which are MOs.1, 4 and 5 being with the appellants herein, the question of discovering any new fact does not arise.

9. Further, the police have failed to give the description of the knives seized from these appellants. As seen from Ex.P3, which is document pertaining to the case property at column NO.9, the description of the knives are not mentioned and stated as “nil”. Further, P.W.1 admitted that he has not noted the descriptive particulars of M.Os which were seized from these appellants.

10. Merely describing as knives, which were seized from the appellants would not be in conformity with definition of Section 2(c) of the Arms Act, 1959, which is extracted hereunder:

“(c) “arms” means articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharpened and other deadly weapons, and parts of, and machinery for manufacturing, arms, but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons;”

11. Unless the articles whose description is given and such articles are designed or adopted as weapons for offence or defence, such articles cannot be called as arms. Though P.W.1 has described the articles seized from these appellants as knives, there is no description given as to why the articles seized were called knives and also the property register mentioned as “nil” at column No.9. The prosecution ought to have described the handle length, blade length and also state that they can be used as weapons. Unless such evidence is adduced, Court cannot assume that the articles mentioned as knives can be determined as ‘arms’. In the said circumstances, when the prosecution has failed to prove that the articles which are mentioned as knives from the appellants herein are in conformity with the definition of Arms as stated under Section 2(c), there cannot be any conviction under Section 25(1)(a) of the Arms Act. Under Section 25(1)(a) of the Arms

Act, the minimum punishment was four years and after amendment by Act 48 of 2019, the minimum punishment is seven years. In the said circumstances, the prosecution is duty bound to establish that the articles that were seized described as knives which are seized from these appellants fall within the definition of Arms.

12. For the reason of failure of the prosecution to prove that the articles MOs.1, 4 and 5, which were seized from these appellants are arms, the conviction recorded by the trial Court vide Common Judgment dated 30.07.2009 under Section 25(1)(a) of the Arms Act is liable to be set aside and accordingly set aside.

13. In the result, both the Criminal Appeals are allowed. Since the appellants/A1, A4 and A5 are on bail, their bail bonds shall stand cancelled.

K.SURENDER, J

Date: 06.09.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos.840 and 861 OF 2009

Date: 06.09.2022.

kvs

