

## CRIMINAL REVISIONAL

*Before H. R. Khanna, J.*

ARJAN SINGH,—*Petitioner.*

*versus*

THE STATE,—*Respondents.*

Criminal Revision No. 112 of 1964.

*Code of Criminal Procedure (Act V of 1898)—Ss. 233, 235 and 239—Joint trial of the accused for offences under S. 302 I.P.C. and S. 25, Arms Act—Whether legal.*

1965

February, 12th.

*A. S. was charged under S. 302, I.P.C., for having committed the murder of P. S., on 31st March, and under S. 25 of the Arms Act for being in possession of a gun without licence. The gun was recovered from him on 3rd April and it was alleged by the prosecution that the said gun was used in the commission of the murder. The question arose whether the accused could be tried for these two offences in one trial by the Sessions Judge.*

*Held*, that on the facts of this case the joint trial of the accused for the offences under section 302, Indian Penal Code and section 25 of the Arms Act could not be held as the two offences cannot be said to have been committed in the course of the same transaction as mentioned in section 235 and clause (d) of section 239 of the Code. The offence of murder and the recovery of the gun were dissociated in time and it cannot be said that there was any continuity of purpose and design or continuity of action in the commission of the two offences. The test as to whether the several offences are part of the same transaction is to see whether they are so related to one another in point of purpose or as cause and effect or as principal and subsidiary acts as to constitute one continuing transaction. It does not matter that the gun which was recovered had been used in the commission of the murder. The two offences are distinct and, as provided in section 233 of the Code, they should be tried separately.

*Case reported under section 438, Criminal Procedure Code, by Shri Sewa Singh, Sessions Judge, Bhatinda, with his Memo No. 361, dated 25th August, 1964, for revision of the order of Shri Mewa Singh, Magistrate 1st Class, Bhatinda, dated 4th June, 1964 committing the accused petitioner to Sessions Court for trial.*

DALJIT SINGH, ADVOCATE, for the Appellant.

M. K. MAHAJAN, ADVOCATE, for ADVOCATE-GENERAL, for the Respondent.

## ORDER OF THE HIGH COURT

Khanna, J.

KHANNA, J.—This case has been reported by the learned Sessions Judge, Bhatinda, with the recommendation that the commitment order made by the Committing Magistrate of Arjan Singh accused under section 25 of the Arms Act be quashed.

The brief facts of the case are that Arjan Singh and Shamsher Singh were committed by Magistrate First Class, Bhatinda, to the Court of Session to stand their trial under section 302 Indian Penal Code, for causing the death of Gurdial Singh deceased on 31st March, 1964. A charge under section 25 of the Arms Act was also framed against Arjan Singh. According to the prosecution allegation, on the day of occurrence when Gurdial Singh deceased was standing on a canal bank in the area of village Tungwali, Arjan Singh fired a shot with a gun on Gurdial Singh which hit Gurdial Singh on his right chest and arm whereafter he fell down. Shamsher Singh then came forward and gave a *gandasa* blow to Gurdial Singh. Gurdial Singh died as a result of the injuries received by him. It is further stated that on 3rd April, 1964, seven cartridges and a gun, which had been used by Arjan Singh in the commission of the offence of murder, were recovered from him. Arjan Singh had no license for that gun and so he committed an offence under section 25 of the Arms Act.

When the case came up for trial the counsel for the accused urged before the learned Sessions Judge that the joint trial of the accused for the offences under section 302, Indian Penal Code, and section 25 of the Arms Act, was illegal. This contention prevailed with the learned Sessions Judge who accordingly, passed an order wherein it was observed that the Committing Magistrate had acted illegally in charging Arjan Singh accused under section 25 of the Arms Act and committing him for trial along with the other accused under section 302, Indian Penal Code, in the same case. The offence under section 25 of the Arms Act, it was further observed, was not exclusively triable by the Court of Sessions and the Magistrate was wrong in having committed Arjan Singh accused to stand his trial for the offence under section 25 of the Arms Act to the Court of Sessions. Recommendation was, therefore, made

that the commitment of Arjan Singh under section 25 of the Arms Act be quashed so that the learned Sessions Judge might be able to proceed with the trial of the two accused under section 302, Indian Penal Code.

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Khanna, J.

I have heard the learned counsel and given the matter my consideration, and am of the view that there should not be joint trial of the accused for the offence under section 302, Indian Penal Code, and section 25 of the Arms Act. The two offences are distinct and as provided in section 233 of the Code of Criminal Procedure they should be tried separately unless the case is covered by sections 234, 235, 236 or 239 of the Code. It is not disputed that sections 234 and 236 do not apply and the only matter which needs consideration is whether the offence under section 302, Indian Penal Code, and that under section 25 of the Arms Act can be deemed to have been committed in the course of the same transaction as mentioned in section 235 and clause (d) of section 239 of the Code. In this respect I am of the view that though because of the prosecution allegation that the gun recovered from Arjan Singh was used in the commission of the offence of murder, the recovery of the gun from Arjan Singh would be relevant fact at the trial for murder, necessitating a finding on that point in the case under section 302, Indian Penal Code, it cannot all the same be said that the murder of Gurbux Singh deceased and the recovery of the gun were part of the same transaction. As would appear from the resume of facts, the murder was committed on 31st March, 1964, while the gun was alleged to have been recovered from Arjan Singh on 3rd April, 1964. The offence of murder and the recovery of the gun were dissociated in time and it cannot be said that there was any continuity of purpose and design or continuity of action in the commission of the two offences. In the circumstances the offence of murder under section 302, Indian Penal Code, which was complete on 31st March, 1964, and that of recovery of unlicensed gun on 3rd April, 1964, under section 25 of the Arms Act cannot be deemed to be part of the same transaction. It is well established that the test to whether the several offences are part of the same transaction is to see whether they are so related to one another in point of purpose or as cause and effect or as principal and subsidiary acts as to constitute one continuing transaction. My attention has also been invited to

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*Nur Khan and another v. Emperor* (1), where it was held that the joint trial of two accused for offences under section 307, Indian Penal Code, section 20 of the Arms Act and section 115, Indian Penal Code, was illegal as the offence under the Arms Act was not committed in the same transaction in which the alleged attempt to commit the murder took place. Indeed nothing has been urged before me at the hearing of the revision against the recommendation of the learned Sessions Judge that there should be no joint trial of the accused for the offences under section 302, Indian Penal Code, and section 25 of the Arms Act.

The learned Sessions Judge seems to have been of the view that the offence under section 25 of the Arms Act should be tried by the Magistrate. In this respect I am of the view that as the gun which is alleged to have been recovered from Arjan Singh was, according to the prosecution case, used in the commission of the offence of murder, to obviate inconsistent findings the case under section 25 of the Arms Act should also be tried by the Sessions Judge after necessary commitment for that purpose has been made. I would, accordingly, quash the commitment of Arjan Singh under section 25 of the Arms Act in the case already committed to the Court of Sessions, and direct that the two accused in that case be tried only for the offence under section 302, Indian Penal Code. I further direct that the Committing Magistrate should make a separate order of commitment of Arjan Singh accused to the Court of Sessions to stand his trial under section 25 of the Arms Act. This may be done, after recording such evidence as may be deemed necessary, at an early date so that the two Sessions cases may be heard one after the other, and thus the possibility of any conflicting finding with regard to the recovery of gun may be avoided.

B.R.T.