SAFI MOHD. A

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1954 of 2009)

APRIL 17, 2013 B

[CHANDRAMAULI KR. PRASAD AND V. GOPALA GOWDA, JJ.]

Official Secrets Act, 1923 - s.3(1)(c) - Supply of secret information pertaining to Indian Armed Forces to Pakistani C *Intelligence - One blue colored diary and a trace map seized on search of house of accused-appellant - Documents seized could affect the integrity and security of India - Conviction of appellant alongwith RI of seven years - Justification - Held:* D *Justified - Matters under the Official Secrets Act are very sensitive which require immediate action - On facts, neither the search conducted in the presence of the independent witnesses nor the investigation made by the investigating officer became defective for want of search warrant to conduct search in the house of appellant - Merely because* E *independent witnesses turned hostile, the other police witnesses' evidence cannot be disbelieved - Trial judge came to the right conclusion by accepting the evidence of police witnesses - Prosecution evidence made it clear that documents of strategic importance to the Nation were* F *recovered from the possession of appellant and other accused and they failed to give satisfactory explanation about the documents being in their possession.*

The prosecution case was that the appellant used to supply secret information pertaining to the Indian Armed G **Forces to the Pakistani Intelligence. On his house being searched, a blue colored diary of the year 1982 and a trace map Ex.D-3 were alleged to have been recovered. There were in all 5 accused persons. The documents**

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A recovered from the accused were sent to the Air Force Officers for their opinion, who informed that the said documents were useful to enemy country and affect the security of India. The appellant was convicted by the Sessions Judge under Section 3(1)(c) of the Official B Secrets Act, 1923 and sentenced to undergo seven years rigorous imprisonment. The conviction was confirmed by the High Court, and therefore the present appeal.

Dismissing the appeal, the Court

C HELD: 1.1. After referring to the evidence of the PW-22 and PW-24 the search of the house of the appellant and seizure of certain documents along with diary particularly Ex D-3, handwritten map prepared with certain markings, it has proved the prosecution case. No D doubt the independent witnesses have turned hostile, but the sessions judge has rightly accepted the testimony of the police witnesses after proper appreciation of their evidence to prove the seizure of the documents from the house of the appellant. [Para 20] [355-H; 356-A-C]

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1.2. The matters under the Official Secrets Act are very sensitive which required immediate action. The search and seizure of Army documents from the house of the appellant for the offences alleged against the F appellant under the provisions of the Act are very sensitive and pertains to the integrity and security of the country. In view of the above fact, neither the search conducted in the presence of the independent witnesses nor the investigation made by the investigating officer G becomes defective for want of search warrant to conduct the search in the house of the appellant. [Para 21] [356-D, E-G]

1.3. The finding recorded by both the courts below regarding search and seizure of the documents which H affect the integrity and security of the country is the

concurrent finding of fact rightly recorded by the High Court after proper appreciation and appraisal of the evidence on record. The same cannot be interfered with by this Court in exercise of its jurisdiction. Even if the search is made by the Investigating Officer in illegal manner, the same does not affect the legality of the search and investigation made by the Investigating Officer with regard to the seizure of the documents from the house of the appellant. From the evidence produced by the prosecution in the case in hand, it is clear that the documents of strategic importance to the Nation have been recovered from the possession of the appellant and other accused and they have failed to give satisfactory explanation about the documents being in their possession. [Para 22] [357-C-F]

1.4. Recovery of Ex. D-3 from the house of appellant is proved by the prosecution is the finding of fact which is accepted by the High Court based on recovery memo Ex.P-28. The independent witness to prove the memo is PW-2, besides, the evidence of the said witness, PW-5 who has stated in his evidence that Ex. D-3 was recovered from the quarter of the appellant. PW-7 ASM of Parihari Railway Station stated that the appellant was allotted a railway quarter and he had moved to this house with his family in 1989. In the said quarter the search was conducted by the Investigating Officer and certain documents were seized including Ex.D-3 from possession of the appellant is the finding of fact recorded by the trial judge which is rightly concurred with by the High Court after re-appreciation of evidence on record in the appeal filed by the appellant. [Paras 23, 24] [357-H; 358-E-F]

1.5. The sessions judge being the trial judge is competent to appreciate the evidence and had the opportunity to observe demeanour of the witnesses who have deposed before him to prove the prosecution case.

A **Merely because the independent witnesses have turned hostile, the other police witnesses' evidence cannot be disbelieved. The trial judge has come to the right conclusion by accepting the evidence of police witnesses PW-21, PW-22 with regard to the conduct of the search**
B **and seizure of documents from the house of the appellant and recorded the finding to this effect by assigning valid and cogent reasons in his judgment. He has rightly come to the conclusion on the fact while recording the finding on the charge on the basis of evidence of PW-27 and PW-**
C **32 who have opined that if the said document and information contained therein is made available to the Pakistani officials it will be dangerous to the integrity and security of the Nation. [Para 26] [359-B-E]**

1.6. The contentions urged by the appellant that PW-
D **27 and PW-32 are not expert witnesses in terms of Section 45 of the Evidence Act are mis-placed. The finding and reasons recorded by the sessions judge on the charge framed against the appellant has been re-examined by the High Court by applying its mind consciously and concurred**
E **with the said finding of fact by assigning valid reasons. Therefore, the same cannot be termed erroneous in law. [Para 27] [359-F, G-H; 360-A]**

Sama Alana Abdulla Vs. State of Gujarat **AIR 1996 SC 569: 1995 (5) Suppl. SCR 279 - relied on.**

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Pratap Singh Vs. State of M.P. **2005 (13) SCC 624: 2005 (5) Suppl. SCR 439;** *Mukhtiar Ahmed Vs. State (NCT of Delhi)* **2005 (5) SCC 258: 2005 (3) SCR 797;** *Raja Ram Vs. State of Rajasthan* **(2005) 5 SCC 272;** *State of Himachal Pradesh Vs. Jai Lal and Ors.* **(1999) 7 SCC 280: 1999 (2)**
G **Suppl. SCR 318;** *Ramesh Chandra Agarwal Vs. Regency Hospital Limited* **(2009) 9 SCC 709: 2009 (14) SCR 424;** *Padam Vs. State of U.P.* **2000 (1) SCC 621: 1999 (5) Suppl. SCR 59 and** *Prasad @ Hari Prasad Acharya Vs. State of Karnataka* **2009 (3) SCC 174: 2009 (1) SCR 1089 - referred**
H **to.**

Case Law Reference:

2005 (5) Suppl. SCR 439	**referred to**	**Para 4**
2005 (3) SCR 797	**referred to**	**Para 6**
(2005) 5 SCC 272	**referred to**	**Para 6**
1999 (2) Suppl. SCR 318	**referred to**	**Para 13**
2009 (14) SCR 424	**referred to**	**Para 13**
1999 (5) Suppl. SCR 59	**referred to**	**Para 14**
2009 (1) SCR 1089	**referred to**	**Para 14**
1995 (5) Suppl. SCR 279	**relied on**	**Para 22**

CRIMINAL APPELLATE JURISDICTION : Criminal Apeal No. 1954 of 2009.

From the Judgment and Order dated 29.05.2009 of the High Court of Rajasthan at Jaipur in S.B. Criminal Appeal No. 314 of 2004.

Sushil Kumar Jain, H.D. Thanvi, Rishi Matoliya, Sarad Kumar Singhania for the Appellant.

Shovan Mishra, Milind Kumar for the Respondent.

The Judgment of the Court was delivered by

V. GOPALA GOWDA, J. 1. This appeal is filed by the appellant questioning the correctness of the judgment dated 29th May, 2009 passed by the High Court of Rajasthan at Jaipur in S.B. Criminal Appeal No. 314 of 2004 in confirming the judgment dated 9th March, 2004 of the sessions judge, Jaipur City, Jaipur in Sessions Case No. 196 of 1992 wherein this appellant along with the others were convicted under Section 3(1)(c)of the Official Secrets Act, 1923 (hereinafter referred to as 'the Act') and was sentenced to undergo seven years rigorous imprisonment.

A 2. For the purpose of considering the rival legal contentions urged in this appeal and with a view to find out whether this Court is required to interfere with the impugned judgment of the High Court, the necessary facts are briefly stated hereunder:

B On 6th March, 1990, Bhoormal Jain, Superintendent of Police CID Zone, Jodhpur lodged an FIR for the offences punishable under Sections 3, 3/9 of the Act read with Section 120-B IPC with the Special Police Station Rajasthan, Jaipur numbered as FIR No.1/1990 against the accused Mohd. Ishfaq who was found roaming in suspicious circumstances in the Air C Force Area and was arrested on 07.03.1990. On interrogation, he stated that the appellant Safi Mohd. used to supply secret information to the Pakistani Intelligence and had handed over Rs.6500/- to him for working for Pak Intelligence Agency. On 08.03.1990, the appellant was arrested from his Railway D Quarters by the CID Police and on his house being searched, a blue colored diary of the year 1982 and a trace map Ex.D-3 were alleged to have been recovered. Later on, on further disclosure by the accused No.1, accused No. 3 - Chotu Khan and accused No. 4 - Chand Khan were arrested. On E 12.04.1990, the other accused Mohd. Safi, Accused No.5, was also arrested. The documents recovered from the accused were sent to the Air Force Officers for their opinion, who informed that the said documents were useful to enemy country and affect the security of India. After completion of investigation of the F case the charge-sheet was filed before the committal court by the Investigating Officer.

3. On 26.07.1994, charges were framed against the 5 accused persons but all of them pleaded not guilty. The appellant was charged under Section 3 read with Section 9 G and 5 of the Act. The learned Sessions Judge after trial convicted the appellant u/s 3 (1) (c) of the Act by order dated 09.03.2004.

4. Learned counsel for the appellant Mr. Sushil Kumar Jain H submits that the conviction of the appellant based on the

recovery of Ex.D-3 from the house of appellant is doubtful. Further, he submits that the conviction based on the experts opinion of Col S.K. Sareen (PW-27) and Wing Commander Alok Kumar (PW-32) on documents Ex. P-33 and P-34 respectively is not in favour of the prosecution. Therefore, the conviction of the appellant based on their evidence rendered the concurrent finding erroneous in law. Hence, the same is liable to be set aside. Further, he contends that the conviction of the appellant based on the recovery or possession of a trace Map Ex.D-3, which is a rough sketch map under Section 3 (1) (c) of the Act is not tenable in law. In so far as the recovery of the document Ex.D-3 from the quarters of appellant is concerned, it is contended by the learned counsel for the appellant that the said document as per recovery memo. Ex.P-22 said to have been recovered by Suresh Kumar (PW-22) is attested by two witnesses Bhoop Singh and Umed Singh. Bhoop Singh has been declared hostile and Umed Singh, the other attesting witness has not been examined in the case. Ex.P-22 was not put to the witness Bhoop Singh in his cross-examination by the prosecution. The prosecution has relied upon the said document solely on the statement of evidence of the investigating officer Yad Ram Tiwari PW-24 and Suresh Kumar PW-22. He submits that on account of non-examination of Umed Singh in the case, the attesting witness to the memo for recovery of the documents from the house of the appellant, both the learned sessions judge as well as the High Court should have drawn adverse inference against the prosecution stating that search and seizure of Ex.D-3 as per recovery memo was not from the house of the appellant. The learned counsel in support of the above said submission has placed reliance upon the decision of this Court in *Pratap Singh Vs. State of M.P.*[1]. In the said case it is observed by this Court that non examination of witnesses by the Investigating Officer who are material for the purpose of proving the prosecution case, who are independent witnesses and whose statements have not been recorded though it is the duty of the investigating

A B C D E F G H

1. 2005 (13) SCC 624.

officer to produce such statements along with the charge sheet in the Court, if, the same has not been done by the prosecution, the benefit of doubt must be given to the defence and not to the prosecution.

5. Further, he submits that in the above referred case this Court held that the High Court committed serious error in not drawing adverse inference for non examination of the seizure witnesses in the peculiar facts and circumstances of the case.

6. Further learned counsel for the appellant submitted that the prosecution case with regard to the recovery of Ex.D-3 from the house of the appellant is falsified by the evidence of Om Prakash Rathi (PW-2) the only attesting witness examined with regard to the search of Rathi Guest House wherefrom Mohd. Safi was arrested with documents. This fact is established from the cross-examination of PW-2 who is the owner of the Rathi Guest House, who has admitted in his statement that "Map Ex.D-3 was recovered from the said accused along with other papers." The learned counsel for the appellant has further placed reliance upon the judgment of this Court in *Mukhtiar Ahmed Vs. State (NCT of Delhi)*[2] that if the prosecution has examined its witness and declared him hostile as he did not support the prosecution case but on the other hand he had supported the defence then it can rely on such evidence. Further, the learned counsel placed reliance on another judgment of this Court in the case of *Raja Ram Vs. State of Rajasthan*[3] in support of the case of the appellant that the sole testimony of the prosecution witness making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the public prosecutor in the trial court to seek permission from the court to declare PW-8 as a hostile witness, for the reasons known to him. Now, as it is, the evidence of PW-8 is binding on the prosecution.

2. 2005 (5) SCC 258 at paras 29-30.

3. (2005) 5 SCC 272 at para 9.

7. The learned counsel also submits that the observations made by this Court in the above cases are also applicable to the fact situation of the case in hand wherein evidence of PW-2 who is attesting witness to Ex. P-22 recovery Memo, it is mentioned that Ex. D-3 was recovered from the Rathi Guest House. Therefore, he contends that the same is not recovered from the house of the appellant as alleged. Further, learned counsel submits that it is a well settled principle of law that the defence is not required to establish its case but is only required to establish preponderance of probabilities of the case for consideration of the Court. The defence of the appellant in this case was that Ex.D-3 was recovered from Rathi Guest House is probable. Further the statements of PW-22 and PW-24, the police witnesses are interested witnesses who are interested in showing success of the raid and to support the prosecution case and therefore the courts below should not have placed reliance upon their testimony to convict the appellant.

8. PW-22 is not the witness of recovery of Ex.D-3 the trace Map as per recovery memo Ex.P-22. This fact is admitted by him in his cross examination and also, he is not the signatory to Ex.P-22. The conscious possession or knowledge of the document Ex. D-3 by this appellant is found in the diary of the appellant, this fact as alleged by the prosecution is not established and the prosecution has also not established that the diary belonged to the appellant. The document could have come to the house of the appellant by any unknown reason and unless specific knowledge of the appellant regarding possession of the document Ex. D-3 is proved, its recovery from the house of the appellant should not have been treated sufficient by the courts below for holding that the appellant consciously possessed the same.

9. Another ground of submission made by the learned counsel for the appellant is the experts' opinion of the witnesses PW-27 and PW-32, who have rendered their opinion as per Ex.P-34 and Ex.P-35, stating that document Ex. D-3 is just a

A sketch which could not be of any help to the enemy country as it does not denote anything. The learned counsel for the appellant has further submitted that the prosecution has failed to establish that any site or road denoted in the sketch Map is in existence.

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10. The learned counsel for the appellant has placed strong reliance on the experts' opinion Ex.P-34 and Ex.P-35, relevant portion of which reads thus:

Ex.P-34:

C

"Rough sketch of area showing the location of Blind: This area is not part of the Air Force range. It is part of the Army range and falls under the jurisdiction of Stn. HQ Pokharan."

Ex.P-35:

D

"It has no significance from counter intelligence point of view."

The opinion expressed by PW-27 in Ex.P-35 establishes E the fact that Ex.D-3 has no importance from the point of view of Army.

11. Further, his opinion on Ex. P-4 and Ex.P-5 reads thus:

"For example Ex.P-4 and Ex.P-5 parking place for F airplanes, Hangar, Air Traffic control, inform the Radars etc. on this basis if Pakistan wishes to finish them by Air attack, then it will be easier for it, it will get straight win in ground attack. In this way, the Chart of mountain division referred in Ex.P-32, from this the enemy will get clear G information of numbers of Brigade, numbers of vehicle and Arms and quality of Arms and their numbers. On this basis they will get help of defence in case India attacks and if they want to attack, then they will get great help in preparation."

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12. It is further contended by the learned counsel that since neither of the witnesses PW-27 and PW-32 are expert witnesses within the meaning of Section 45 of the Evidence Act to give their expert opinion on Ex.D-3 sketch Map, reliance cannot be placed upon their opinion or evidence to convict the appellant. Therefore, the learned counsel for the appellant submits that their opinion being outside the sphere of the alleged expertise, the same is of no significance. Hence, the same could not have been relied upon by the court to convict the appellant. PW-27 cannot be held to be a competent person to give expert opinion on the seized document Ex-D3.

Further, it is urged that both the witnesses were never posted and worked in that area. Therefore, they neither had the knowledge of the area nor did they visit the area as is evident from their statement of evidence on record.

In this regard, he has placed reliance upon the evidence elicited in the cross-examination of PW-27 who has categorically admitted the same. So also PW-32 with reference to Ex.P-4 and Ex.P-5 has stated as above. Therefore the statement of evidence given by said witnesses in the case could not have been placed reliance upon by both the trial court and the High Court to record a finding that the appellant is guilty of the offence punishable under Section 3 (1) (c) of the Act and to convict and sentence him.

13. The learned counsel has placed reliance upon the judgment of this court in the case of *State of Himachal Pradesh Vs. Jai Lal and Ors.*[4] and also another judgment of this court in *Ramesh Chandra Agarwal Vs. Regency Hospital Limited*[5] in support of the legal contention that the above said witnesses viz. PW-27 and PW-32 are not expert witnesses to render their expert opinion on Ex.-D3. The relevant paragraphs of the judgment of *State of Himachal Pradesh Vs. Jai Lal and Ors.*

4. (1999) 7 SCC 280.

5. (2009) 9 SCC 709.

A case (supra) are extracted hereunder:

"13. An expert witness is one who has made the subject upon which he speaks a matter of particular study, practice, or observation; and he must have a special knowledge of the subject. Shri P.C. Panwar in his evidence has stated that he passed B.Sc. (Agriculture) Honours from the University of Delhi in 1959; thereafter he did his M.Sc. (Horticulture) in 1967 from Punjab University. He joined the Agricultural Department in the year 1969 as a Research Assistant; he was promoted as Horticulture Development Officer in the year 1973 and at the time of the assessment he was working as District Horticulture Officer, Shimla. He has also stated that in the year 1986 he attended a 3 months' training course on apple technology in the University of Tasmania, Australia. The assessment in the orchards in question were made on different dates in November 1984. He has fairly accepted the suggestion that he had not received any training with respect to assessment of apple crop but that has been a part of his job. The witness could not state the number of scab cases in which he had been called upon to make assessment. He has specifically stated in the case against Jai Lal and others that that was his first and last assignment till date as a commission for assessing productivity of an apple orchard.

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17. Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be

shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. A

18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criterion to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions." B C D

Further, on the subject, this Court, in *Ramesh Chandra Agrawal's* case (supra) held as under:

"19. It is not the province of the expert to act as Judge or Jury. It is stated in Titli v. Alfred Robert Jones that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials." E F

In view of the decision in *State of Himachal Pradesh Vs. Jai Lal and Ors.* (supra) both the witnesses PW-27 and PW-32 do not fulfil three criteria held to be necessary for considering a person expert. G

14. Learned counsel further contends that the conviction of the appellant and the concurrent finding of fact recorded by the High Court is ex-facie bad in law as none of the above legal H

A aspects have been carefully examined by it and answered while concurring with the finding of the trial court on the charge against the appellant. Further he submits that after careful examination and analyzing the evidence of prosecution witnesses namely, PW-2, PW-27, PW-32 and also placing
B reliance upon the evidence of witnesses namely PW-22 and PW-24 who are the police witnesses and the conviction of the appellant for the offence under Section 3(1) (c) of the Act and sentencing him to undergo seven years imprisonment is an erroneous finding and therefore the same cannot be allowed
C to sustain. The same is contrary to the judgment of this Court in the case of *Padam Vs. State of U.P.*[6] The learned counsel also placed reliance upon another judgment of this court in the case of *Prasad @ Hari Prasad Acharya Vs. State of Karnataka*[7].

D The learned counsel with reference to the legal position laid down by this Court in the above cases submits that the concurrent finding of fact recorded by the High Court on the charge without proper appreciation of evidence on record has rendered the findings erroneous in law. Further, the High Court
E has erred in law in affirming the conviction and sentence of the appellant. The same is wholly unsustainable in law and is therefore, liable to be set aside by allowing this appeal and acquit the appellant from the charge levelled against him under Section 3(1)(c) of the Act.

F 15. On the other hand, learned counsel for the respondent State has sought to justify that the concurrent findings of fact has been recorded by the High Court by consciously applying its mind to the prosecution case and the legal evidence on
G record by the court particularly the evidence of PW-1, PW-11, PW-16, PW-19, PW-20, PW-22, PW-24, PW-27 and PW-32. He contends that after examining the correctness of the findings recorded by the learned sessions judge on the charge levelled

6. 2000 (1) SCC 621.

H 7. 2009 (3) SCC 174.

against the appellant, the High Court has rightly concurred with the findings of fact which are recorded in the impugned judgment and it was of the opinion that the conviction of the appellant under Section 3 read with Section 9 of the Act is 14 years maximum sentence. The learned sessions judge after considering the fact that the alleged offence is of the year 1990 sentenced the appellant for seven years rigorous imprisonment along with other accused persons. Correctness of the same is examined by the High Court and it has opined that in such type of heinous offences, imposition of sentence for seven years rigorous imprisonment upon the accused is held to be legal, valid, just and proper and therefore, it did not interfere with the same. The High Court has rightly concurred with the findings of fact of the trial court by assigning its reasons and therefore no remission should be given to them, particularly when they were caught spying and putting the country as a whole in danger. Therefore, the dismissal of the appeal of the appellant along with other appellants by the High Court is perfectly justified in law. The same does not call for interference by this Court in exercise of this Court's jurisdiction. Hence, he has prayed for dismissal of the same.

16. With reference to the above referred rival legal contentions urged on behalf of the parties we have carefully examined the correctness of the findings recorded in the impugned judgment passed by the learned sessions judge in Case No. 196 of 1992 and the concurrent findings recorded by the High Court in confirming the conviction and sentence of the appellant. With a view to find out as to whether the said concurrent findings are erroneous or error in law, we have carefully perused the evidence of PW-12, PW-13, PW-14, PW-15 and PW-17 who have deposed against the appellant to answer the above point which arose for our consideration.

17. The learned sessions judge has rightly placed reliance upon the evidence of Sher Singh, PW-18 who is a search witness who has witnessed the search of the house of the

A appellant and who has also turned hostile. PW-21, Dr. T.S. Kapur has stated that he has received the documents relating to this case from the CID Security and the original copy is Ex. P-36. The disputed documents along with letter are marked as Exbts. Q-1 to Q-9. Sample writings have been marked as A-1 B to A-52 which have been exhibited as Ex.P-44 to P-82 which have been scientifically examined and thereafter a report Ex. P-83 was prepared stating that the disputed writings marked as Q-1 to Q-4 and Q-9 show very significant similarities with the specimen writings marked as A-1 to A-52.

C Along with this, a written slip, article 2 - a map traced by hand was recovered from the house of Safi Mohd. in which railway tracks and roads are depicted, the signs of directions shown on a paper having lines, an advertisement of Air Force, Hindi Sainik Newspaper and Army Weekly, Prohibited Chart D of Mountain organization division were recovered from Chotu Khan and were sent for opinion as to whether the said documents and the information contained therein are threat to the security of the country or not. He has further stated that a letter in English Ex P-33 relating to the above stated documents E were sent to the headquarters of IAF Commandant Jodhpur. Ex.P-33 bears the signature, the reply of which is Ex.P-34.

18. PW-24 Yad Ram Tiwari, who was posted as SHO, Special Police Station, Rajasthan, Jaipur, has spoken about F the receipt of the report from SP CID Zone Jodhpur through Constable Navneet Kumar and on the basis of which he has recorded FIR No.1/90 under Sections 3,5 and 9 of the Act and Section 120-B of IPC. Along with the report, Ex.P-1 some other secret documents were recovered vide recovery memo. He has stated in his evidence that he took the search of the house of G Safi Mohd. at Jetha Chanana Railway Quarter where one blue coloured diary was recovered from the almirah of the appellant marked as article 3. One traced map was also recovered from the diary in which Pokhran, Jaisalmer, Devra Village, roads and railway track details were given. The map is marked as Ex. D-H 3. He has identified the appellant Safi Mohd. The search

recovery memo is marked as Ex.P-28. He has also spoken about the addresses of Pakistani officials mentioned in the diary at pages 11, 13, and 21. The said witness has also spoken about the search of the house of the appellant, which was made in the presence of Khurshid and Sher Singh and the articles were seized such as (a) passport of Safi Mohd. as article 4, (b) Passport of Nazima Bano as article 5, (c) marriage card of Safi Mohd. as article 6, (d) passbook of Safi Mohd. as article 7, and (e) Card Shadi Mubarak article 8, vide search memo marked as Ex. P-28.

19. In the deposition Colonel S.K. Saren PW-27 has stated that along with Ex.P-3 original map, the letter referred in Ex.P-35 and the photocopies of Ex.P-4, Ex.P-5, Ex.D-3, Ex. P-32, P-31, P-27 were obtained and his opinion with reference to the above said documents was sought as to whether the information mentioned in the said documents if reaches the Pakistani officials, would be useful to them and would adversely affect the security of India. He has stated in his deposition in the affirmative that if the above mentioned documents reach the Pakistani officials the same may be useful to them as they can work out the strategy to attack India. He further opined that on the basis of information available in the said documents if Pakistan wants to destroy the country by air attack it would become easier. The witness PW-32 Wing commander Alok Kumar has also stated in his evidence before the trial court that he was posted as Intelligence Officer Headquarters South Western Air Command, Indian Air Force, Jodhpur. He gave his opinion that Ex.D-3 six digits sketch shows the accuracy to pinpoint a target which is very important and accurate on the basis of which the country's security can be destroyed. He has spoken about the red arrow in Ex D-3 which is a grid reference to the special point. According to him the said document is a very important document from the point of view of Army.

20. After referring to the evidence of the PW-22 and PW-24 the search of the house of the appellant and seizure of certain

A documents along with diary particularly Ex D-3, handwritten map prepared with certain markings, it has proved the prosecution case. No doubt the independent witnesses have turned hostile, but the learned sessions judge has rightly accepted the testimony of the police witnesses after proper
B appreciation of their evidence and he has rightly placed reliance upon the police witnesses to prove the seizure of the documents from the house of the appellant and therefore the same cannot be held to be bad in law as contended by the learned counsel for the appellant.

C 21. Further, the learned sessions judge has rightly accepted the testimony of the witnesses to prove the recovery of documents by assigning reasons and therefore the same cannot be rejected merely on the ground that they are police officials who are members of raiding party and that the matters
D under the Official Secrets Act are very sensitive which required immediate action. In these circumstances, the investigation does not become defective as contended by the learned counsel for the defence for the reason that the search warrant was not obtained and the recovery of documents and articles
E from the appellant's house could not be rejected. The search and seizure of Army documents from the house of the appellant for the offences alleged against the appellant under the provisions of the Act are very sensitive and pertains to the integrity and security of the country. In view of the above fact,
F neither the search conducted in the presence of the independent witnesses nor the investigation made by the investigating officer becomes defective for want of search warrant to conduct the search in the house of the appellant as urged by the appellant's counsel.

G 22. The learned public prosecutor has rightly placed reliance on the decision of this Court in *Sama Alana Abdulla Vs. State of Gujarat*[8]. In the said decision this court lays down the legal principle that merely because the police witnesses

H 8. AIR 1996 SC 569.

have spoken about the search and the seizure of documents from the custody of the appellant, their version cannot be disbelieved as the independent witnesses have not supported the search and the seizure of the documents. The observations made by this Court in the above referred case are applied to the facts of the case in hand to accept the proof of search and seizure of the documents from the house of the appellant which are very important and sensitive for the integrity and security of the Nation. The said conclusions arrived at by the learned sessions judge and concurrence of the same by the High Court cannot be termed as erroneous in law as contended by learned counsel on behalf of the appellant. Therefore, the finding recorded by both the courts below regarding search and seizure of the documents which affect the integrity and security of the country is the concurrent finding of fact rightly recorded by the High Court after proper appreciation and appraisal of the evidence on record. The same cannot be interfered with by this Court in exercise of its jurisdiction. Even if the search is made by the Investigating Officer in illegal manner, the same does not affect the legality of the search and investigation made by the Investigating Officer with regard to the seizure of the documents from the house of the appellant in view of the law laid down by this Court in the above case. From the evidence produced by the prosecution in the case in hand, it is clear that the documents of strategic importance to the Nation have been recovered from the possession of the appellant and other accused and they have failed to give satisfactory explanation about the documents being in their possession.

23. The learned sessions judge has rightly disbelieved the contentions urged on behalf of the appellant that Ex. D-3 was recovered from the possession of the accused Mohd. Ishfaq as stated by the prosecution witness Om Prakash PW-2 the owner of the Guest House. Recovery of the said document from the house of Safi Mohd. is proved by the prosecution is the finding of fact which is accepted by the High Court based on recovery memo Ex.P-28. The independent witness to prove the

A memo is one Om Prakash Rathi PW-2, besides, the evidence of the said witness, Ram Dass Rathi PW-5 who has stated in his evidence that Ex. D-3 was recovered from the Railway quarter of Safi Mohd. the appellant herein.

B 24. Om Prakash Rathi PW-2 has clearly stated in his statement that he had read the memo Ex.P-22 before putting his signature from A to B. Non-mentioning of Ex. D-3 belies his evidence that D-3 was recovered from Mohd Ishfaq from the guest house. PW-5 and PW-6 the other recovery witnesses have not stated in their evidence with certainty that Ex D-3 was C recovered from the possession of the Mohd. Ishfaq from his bag. Further, he has spoken about recovery of the document mentioning Ex.D-3 recovery memo which was prepared in his presence and the police sealed the recovery documents. In view of the aforesaid statement of evidence of the above witnesses D the evidence of PW-2, the contention that Ex.D-3 map was recovered from the possession of Mohd. Ishfaq was rightly rejected by the learned sessions judge and the High Court. Apart from the said findings, the prosecution witness PW-7 ASM of Parihari Railway Station has stated that the house of E ASM Safi Mohd. is not at Jetha Chanana. He was allotted a railway quarter and ASM Safi Mohd. had moved to this house with his family in 1989. In the said quarter the search was conducted by the Investigating Officer and certain documents were seized including Ex.D-3 from possession of the appellant F is the finding of fact recorded by the trial judge which is rightly concurred with by the High Court after re-appreciation of evidence on record in the Appeal filed by the appellant.

25. In the impugned judgment learned sessions judge has G referred to the evidence of PW-27 and PW-32 and opined that the documents particularly Ex. D-3 seized from the possession of the appellant be sent for their opinion as to whether the said document if reaches the Pakistani officials would be dangerous to the security and integrity of the Nation. After careful consideration of the document they have opined that on basis H

of information available in the said document that, if Pakistan officials want to destroy the country by air attack it would become easier. A

26. The learned sessions judge being the trial judge is competent to appreciate the evidence and had the opportunity to observe demeanour of the witnesses who have deposed before him to prove the prosecution case. Merely because the independent witnesses have turned hostile, the other police witnesses' evidence cannot be disbelieved by the courts below to record a finding on the charge as has been done by the trial court by rightly placing reliance upon the judgment of this court referred to supra, he has come to the right conclusion by accepting the evidence of police witnesses PW-21, PW-22 with regard to the conduct of the search and seizure of documents from the house of the appellant and recorded the finding to this effect by assigning valid and cogent reasons in his judgment. He had rightly come to the conclusion on the fact while recording the finding on the charge on the basis of evidence of PW-27 and PW-32 who have opined that if the said document and information contained therein is made available to the Pakistani officials it will be dangerous to the integrity and security of the Nation. B C D E

27. The contentions urged by the learned counsel on behalf of the appellant that PW-27 and PW-32 are not expert witnesses in terms of Section 45 of the Evidence Act by placing reliance upon the decisions of this Court referred to supra are mis-placed and they do not support the case of defence for the reason that the learned sessions judge after careful scrutiny of the ocular evidence and the written submission has rightly come to the correct conclusion about the said document seized from the appellant. The said finding and reasons recorded by the learned sessions judge in his judgment on the charge framed against the appellant has been re-examined by the High Court by applying its mind consciously and concurred with the said finding of fact by assigning valid reasons. Therefore, the same F G H

A cannot be termed erroneous in law on the grounds urged by the learned counsel for the appellant and interfered with by this Court in exercise of its jurisdiction by placing reliance upon the decision of this Court referred to supra as they are mis-placed and do not support the case of the appellant.

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28. In our considered view both the learned sessions judge and the High Court, on proper appreciation and re-appreciation of evidence on record, after considering the arguments advanced on behalf of the defence have arrived at the correct conclusion. The High Court has carefully considered the C arguments advanced on behalf of the appellant and recorded its findings on the charge with reasons.

29. For the foregoing reasons, we are of the view that this is not a fit case for our interference with the impugned judgment D having regard to the nature of charges made against the appellant under Sections 3, 9 and 5 of the Act as he is found to be guilty along with other accused persons and rightly convicted and sentenced them for seven years rigorous imprisonment. The appeal is devoid of merit and is liable to E be dismissed and is accordingly dismissed.

B.B.B. Appeal dismissed.