

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.826 of 2011

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LAXMI SHARMA S/O LATE SUNDER SHARMA RESIDENT OF VILLAGE-AMARPUR, POLICE STATION- MEDINI CHOWKI, POST OFFICE-AMARPUR, DISTRICT- LAKHISARAI.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae.

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 13-08-2015

Sole appellant Laxmi Sharma who has been found guilty under Section 25(1)(A) of the Arms Act and directed to undergo R.I. for five years along with fine of Rs.20,000/- in default thereof, to suffer simple imprisonment of one year, additionally by the Additional Sessions Judge, FTC-IV, Lakhisarai vide judgment of conviction and order of sentence dated 25.05.2011 in Sessions Trial No.400 of 2007, has challenged the same by way of instant appeal.

2. Prosecution case in brief as is evident from self-statement of PW.1, Ramanand Mandal, Officer-in-charge of Medanichowki P.S. recorded on 29-11-2006 at about 07:30 PM disclosing therein that on the same day at about 05:30 PM, he along with other police officials proceeded from P.S. in patrolling and during course thereof, they have reached at Medanichowki Bazar where they found activity of three boys suspicious who, seeing the police, ran away and during course thereof, one was



apprehended who disclosed his identity as Subhash Kumar. On personal search having been made in presence of two seizures list witnesses Surendra Chaurasiya as well as Ravi Kumar. Two pistols were seized. On interrogation he stated that aforesaid firearms were handed over to Laxmi Sharma for repairing and, after getting therefrom, while was returning has been apprehended by the police. He had also been informed that Laxmi Sharma is indulged in manufacturing of illegal firearms which could be found from his shop and on account thereof, the police party along with Subhash proceeded towards house of Laxmi Sharma where, as alleged, the items were recovered in terms of seizure list in presence of two seizure list witnesses Dharamdeo Sharma as well as Julius Sharma. Accordingly, Laxmi Sharma was taken into custody. Articles were taken to P.S. along with Laxmi Sharma as well as Subhash.

3. On the basis of aforesaid fardbeyan Suryagarha (Medanichowki) P.S. Case No.311 of 2006 was registered and investigation was entrusted to PW.2, one of the member of the raiding party who recorded statement of the witnesses, got the seized articles examined by the Sergeant Major and after completing investigation, submitted charge sheet whereupon trial has been taken up ultimately meeting with the result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial of the occurrence. It has also

been submitted alternatively that so alleged recovered articles were not from a house of appellant rather it was from abandoned dilapidated building.

5. In order to substantiate its case, prosecution had examined altogether nine PWs out of whom PW.1 is informant Ramdeo Mandal, PW.2 Kamal Kant Prasad, PW.3 Ram Pyare Yadav, PW.4 Ravi Kumar, PW.5 Surendra Prasad Chourasiya, PW>6 Dharmendra Sharma, PW.7 Kamo Yadav, PW.8 Krishana Prasad and PW.9 Basant Yadav. Side by side also exhibited Ext.1 Fardbeyan, Ext.2 Seizure List, Ext.3 Charge Sheet, Ext.4 Series Signature of seizure list witnesses. The prosecution had also produced material exhibit and are material Ext.1-Baral of pistol, material Ext.1/1 Baral of pistol, material Ext.2 Blank Cartridge, material Ext.3 Butt (wooden), material Ext.4 Half constructed wooden body, material Ext.5 Bhati, material Ext.6 Nihya, material Ext.7 Sikanja, material Ext.8 Hexa Blade, material Ext.9 Sadasi, material Ext.9/1 Sadasi, material Ext.10 Reti, material Ext.10/1 Reti, material Ext.11 Rukhauni, material Ext.12 Chheni, material Ext.13 Girmit, material Ext.14 Bag.

6. The witnesses who were examined on behalf of prosecution including PW.2, one of the member of the raiding party as well as Investigating Officer had deposed that firstly Subash was apprehended and then thereafter, on the basis of inculpatory confessional statement, house of Laxmi was searched wherefrom the articles in terms of seizure list were recovered which were placed before Ballistic Expert for examination and

report which PW.2 had received but the reason best known to the prosecution, the aforesaid report was not exhibited and that being so, it has been exhibited on behalf of defence as Ext.A without objection.

7. After going through the report in consonance with the requisition made by the PW.2 for examination of the seized articles, seizure list (Ext.2/1), it is apparent that prosecution intentionally as well as malafidely did not opt to exhibit the report as well as the requisition having been made by the PW.2 in the background of the fact that it happens to be inconsistent with each other. It is also apparent that aforesaid inconsistency is found much more exposed from the evidence of PW.1, Para.12 whereunder PW.1 had exhibited material exhibit. For ready reference, it could be traced out therefrom that PW.1 had stated recovery of two pistol barrel marked as material Ext.1/1, 1/2, one cartridge material-2, butt of gun material Ext.3, Half manufactured butt of a gun Ext.4 and the other items which were produced before the Sergeant Major happens to be two pistol barrel connected with Chamber and on that very score the Sergeant Major had opined adverse to the interest of the appellant. With regard to cartridge, same has been opined ineffective. With regard to status of remaining articles, the Sergeant Major was not at all confident that it happens to be exclusively relating to manufacture of arms. Had there been production of two barrels which has been alleged to be seized by the prosecution, the prosecution was apprehending some sort of

adverse report and on account thereof, as is evident from the report itself that aforesaid two barrels were not at all sent to the Sergeant Major for examination. That being so, the whole prosecution failed like house of cards.

8. The another deficiency persisting in the prosecution case is exposed after through the evidence of PW.2 para-19 wherefrom it is evident that he was entrusted with investigation of the case but surprisingly enough he is completely silent with regard to visiting at the place of occurrence, identifying the place of occurrence and further elaborating it to be exclusive possession of appellant Laxmi Sharma. Furthermore, through he had deposed that sanction order was obtained but the same is not an exhibit of the record. For want of sanction, no prosecution is permissible.

9. In the background of aforesaid major deficiency persisting in the prosecution, examination of nine witnesses is not going to change the fate of the prosecution. That being so, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is under custody hence directed to be released forthwith, if not wanted in any other case. First and last page of the judgment should be handed over to the learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 13th day of Aug., 2015
Prakash Narayan

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