

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.90 of 2001

Arising Out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

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1. Md. Alauddin son of Md. Khalid
 2. Md. Haroon son of Md. Kamaluddin
 3. Md. Ansu son of Md. Ibrar
 4. Md. Munne son of Md. Mosim
 5. Md. Salam son of Md. Doman
 6. Md. Quasim son of Md. Rayas
 7. Md. Muzaffar Hassan son of Md. Safi Hasan
 8. Md. Sonu son of Nazim Hasan
 9. Md. Ramju son of Md. Sammo
 10. Md. Islam son of Md. Muslim
 11. Md. Riyaz son of Md. Habib
 12. Md. Ghoghan son of Md. Abdul
 13. Md. Ghyas son of Md. Akbar
 14. Md. Islam son of Md. Siraj
 15. Md. Aslam son of Noor Mohammad
 16. Md. Sikandar son of Md. Shahid
 17. Md. Ashfaq son of Md. Siraj
 18. Md. Anwar son of Md. Alauddin
 19. Md. Riyaz son of Md. Salam

Nos. 1 to 3,5,17,19 and 20 are residents of village Mohiuddinpur, Police Station Habibpur, 4 and 6 to 8 are resident of village Asanaudpur, Police Station Tatarpur, 9 to 12 and 14 to 16 are residents of village Habibpur, Police Station Jagdishpur, no. 13 are resident of village Nayatola Warsaliganj and 18 is resident of village Sajour Police Station Hall Sajour all are in the District of Bhagalpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 02-12-2016

The appellants herein are aggrieved by judgment and order, dated 02.02.2001, passed by learned 3rd Additional Sessions Judge, Bhagalpur in Sessions Trial No. 162 of 1990, whereby all of them have been convicted of the offence



punishable under Sections 147 and 188 of the Indian Penal Code. The appellant No. 5 Md. Salam has been convicted of the offence punishable under Section 25(a) of the Arms Act also. Whereas the appellants have been sentenced to undergo simple imprisonment for three months for the offence punishable under Section 147 of the Indian Penal Code, they have been directed to undergo simple imprisonment for 15 days for the offence punishable under Section 188 of the Indian Penal Code. In addition, appellant No. 5, upon his conviction under Section 25(a) of the Arms Act, has been sentenced to undergo six months imprisonment for the offence punishable under Section 188 of the Indian Penal Code and 15 days for the offence under Section 188 of the Indian Penal Code and two years for the offence punishable under Section 25(a) of the Arms Act.

2. Briefly narrated, the case of the prosecution, based on the self statement of the Officer in Charge of the Police Station is that responding to a tip off, the informant along with the Police force and two independent witnesses had raided the *Paschim Tola of Habibpur village* and when they were moving towards *Pan Khatoli*, they heard a sound of blast and some noise from the western side. When they reached there, they found 50-60 persons including these appellants, who were making noise and when they saw the Police party, they attacked the Police party with bombs. Thereafter, 21 persons were apprehended by



the Police and on search one country made pistol was seized from the possession of appellant No. 5. Two bombs are said to have been seized from the possession of appellant Nos. 15 and 16 each. Seizure list was thereafter prepared. On the basis of said fardbeyan, a case was registered and upon investigation charge-sheet was submitted against the appellants. After taking of cognizance and framing of charge, the appellants were put on trial for the offences punishable under Sections 307 read with 149 of the Indian Penal Code. In addition, the appellant No. 5 was charged of commission of offence under Sections 25(a) and 26 of the Arms Act. Appellant No. 16 (Md. Sikandar) and appellant No. 15 (Md. Alam) were charged of commission of offence punishable under Section 148 of the Indian Penal Code.

3. At the trial, altogether 12 witnesses were examined including P.W. 3, informant himself. P.Ws. 1, 2, 3, 6 and 8 were members of the raiding party, whereas P.Ws. 4 and 5 were the seizure list witnesses. It is evident from the record that seizure list witnesses were declared hostile at the instance of the prosecution. Prosecution witnesses No. 11 and 12 were the formal witnesses whereas P.W. 10, Forensic Science Expert had proved that the fire arm was effective. After conclusion of the evidence of the prosecution witnesses, response of the persons put on trial was taken under Section 313 of the Code of Criminal Procedure, 1973 upon which they denied the allegation.



4. As has been noticed, upon analysis of the evidence adduced at the trial, learned trial Court recorded acquittal of the appellants of the charge under Sections 307 read with 149 of the Indian Penal Code. However, on the basis of the evidence, the appellants have been held guilty of the offence punishable under Sections 147 and 188 of the Indian Penal Code since they were found to have violated prohibitory orders.

5. I will first consider conviction of the appellant No. 5 under Section 25(i) (a) of the Arms Act as recorded by the trial Court. It is evident from the lower court records that the seizure list witnesses turned hostile at the trial. They deposed at the trial that the Police Officer had obtained their signatures on plain papers. On examining the materials on record, I am of the view that the conviction of appellant No. 5 for the offence punishable under Section 25 (i)(a) of the Arms Act is not sustainable since the seizure list could not be proved.

6. However, so far as conviction of the appellants under Sections 147, 188 is concerned, I am of the view that such finding does not require interference in view of the evidence on record.

7. Accordingly, the impugned judgment and order of conviction requires interference only to the extent that appellant No. 5 has held guilty of the offence punishable under Section 25(i) (a) of the Arms Act since in my view, the prosecution failed



to establish the charge at the trial beyond all reasonable doubts.

8. However, so far as conviction under other Sections of the Indian Penal Code is concerned, same requires no interference.

9. Further, considering the genesis of the occurrence and other mitigating circumstances available on record, I consider it to be a fit case where the sentence of imprisonment need to be modified by reducing it. The sentence in all the cases reduced to the period of custody already undergone by the appellants during the investigation, trial or during the pendency of the appeal.

10. The appeal stands partly allowed. The appellants stand discharged from their liabilities of their bail bonds and sureties.

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
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