

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.195 of 2015

Arising Out of PS.Case No. -66 Year- 2011 Thana -MAJHAHGARH District- GOPALGANJ

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1. Raushan Kumar @ Roshan Sharma @ Budhu Sharma, Son of Late Sharda Sharma, resident of village - Karnpura, Police Station - Manjhagarh, District - Gopalganj

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lokesh Kumar Singh

For the Respondent/s : Mr. Binod Bihari Singh(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 20-04-2017 Heard learned counsel for the appellant as well as learned Additional P.P.

Appellant has been found guilty for an offence punishable under Section 25(1-A), 25(1-B)a, 26(1) of the Arms Act, vide judgment dated 03.03.2015 and sentenced to undergo R.I. for ten years as well as fine appertaining to Rs. 10,000/-, in default thereof, to undergo imprisonment of two months, R.I. for three years, fine appertaining to Rs. 5,000/-, in default thereof, to undergo imprisonment of one month, R.I. for three years, fine appertaining to Rs. 5,000/-, in default thereof, to undergo imprisonment of one month with a further direction to run the sentences concurrently, with a further direction to set of the period



of custody during trial in terms of Section 428 Cr.P.C., vide order of sentence, dated 09.03.2015, passed by 2nd Additional Sessions Judge, Gopalganj in S.Tr. No. 262 of 2011/2550 of 2013.

PW-4, Kumar Sanjay, S.H.O. of Manjhagarh P.S. recorded his own fardbeyan alleging, *inter alia*, that after having been confidentially informed by the personnel of STF, Patna, a raid was conducted at the house of the appellant, wherefrom, one automatic pistol of .32 bore attached with magazine, one carbine attached with magazine and tools for preparing the arms were seized and for that, Manjhagarh P.S. Case No. 66/2011 was registered followed with an investigation and after concluding the same, charge-sheet was submitted, which, ultimately led to trial meeting with the result, subject-matter of instant appeal.

The defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C., is that of complete denial. However, neither any DW nor any kind of document has been exhibited.

In order to substantiate its case, the prosecution had examined altogether six PWs, out of whom PW-1 is Rangnath Singh, one of the members of the raiding party, PW-2 is Ramavatar Yadav, Chawkidar, a member of the raiding party as well as seizure list witness, PW-3, Umesh Kumar, Sergeant Major,



who had inspected the seized arms, PW-4 Kumar Sanjay, the informant, PW-5, Sanjeev Kumar Chanchal, who had proved the sanctioned order and PW-6, Pravin Kumar, I.O. Furthermore, the prosecution has also exhibited Exhibit-1, signature of PW-2 over seizure list, Exhibit-2 ballistic report, Exhibit-3, fardbeyan, Exhibit-4, formal FIR, Exhibit-5, seizure list and Exhibit-6, sanction of D.M., Gopalganj.

During course of argument, the learned counsel for the appellant has confined his submission with regard to sentences. To substantiate the same, it has been argued that from the evidences it is evident that appellant had no criminal antecedent. Furthermore, it is also evident that he was taken into custody on the alleged date of occurrence itself, that means to say, on 24.04.2011 and remained up to 25.06.2015, the date on which appellant has been granted bail after admission of the appeal.

Considering the intervening period, covering more than four years, and further, saturating the sentences, prescribed with regard to offences punishable under Section 25(1-B)a as well as 26(1) of the Arms Act, the only sentence which now survives is with regard to Section 25(1-A) of the Arms Act, whereunder, R.I. for ten years as well as fine appertaining to Rs. 10,000/- and in default thereof, imprisonment of two months have been



prescribed. It has also been submitted that since after release, no untoward incident has been reported against the appellant though there was condition on that very score, while granting bail to the appellant and that being so, a sympathetic view is to be taken in the background of the fact that appellant happens to be bread-earner of his family.

It has been submitted by the learned Addl. P.P. that appellant remained under custody for more than four years and on account thereof, quantum of fine having inflicted by the learned lower court should be enhanced with regard to finding concerning Section 25(1-A) of the Arms Act in order to properly appreciate the submission raised on behalf of appellant.

Considering the rival submission in token with the materials available on the lower court record and further disclosure having at the end of PW-6, I.O., as para 39, whereunder, he had admitted absence of criminal antecedent in consonance with the present trend of criminal jurisprudence, wherein, reformatory approach is being perceived, to have an opportunity to the convict to remorse himself, the submission having made on behalf of appellant is found appreciable. Consequently thereupon, maintaining the conviction having recorded by the learned trial court and further perceiving that the



sentences having inflicted by the learned lower court for an offence punishable under Section 25(1-B)a as well as 26(1) of the Arms Act duly satisfied, the sentence relating to an offence punishable under Section 25(1-A) of the Arms Act is reduced from R.I. for 10 years to sentence already undergone, enhancing the quantum of fine from Rs. 10,000/- to Rs. 25,000/-. However, it is made clear that aforesaid amount should be deposited within six weeks and till then, the liability of the bail bond will continue, failing which, appellant will have to suffer R.I. for two years additionally.

With the aforesaid modification in sentence, instant appeal is dismissed.

(Aditya Kumar Trivedi, J.)

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