

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.415 of 2015

Arising Out of PS. Case No.792 Year- 2009 Thana -BHAGALPUR KOTWALI District- BHAGALPUR

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MUNNA SAH @ MUNNILAL SAH @ TIGAR, SON OF LATE PRABHU SAH,
R/O VILLAGE- ALIGANJ, P.S.- MOZAHIDPUR, DISTRICT- BHAGALPUR

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Davendra Kumar Pandey, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 17-11-2017

Sole appellant, Munna Sah @ Munnilal Sah @ Tigar has been found guilty for an offence punishable under Section 25(1-B)a of the Arms Act and sentenced to undergo R.I. for three years as well as to pay fine appertaining to rupees three thousand in default thereof to undergo S.I. for three months, additionally, under Section 4 of the Explosive Substance Act sentenced to undergo R.I. for ten years as well as to pay fine appertaining to rupees ten thousand and in default thereof to undergo S.I. for two years, additionally, vide judgment of conviction dated 24.03.2015 and order of sentence dated 27.03.2015 passed by Additional Sessions Judge,IIIrd, Bhagalpur in Sessions Trial no.516/2010.

2. PW.5, Manoranjan Bharti, S.I. while was on day patrolling found a person sitting adjacent to Bijali Sah Majar. Seeing his activity to be suspicious they tried to interrogate whereupon he began to flee. As such, was chased, apprehended and searched out during course of which, from a Jhola being carried by him five live bombs were recovered while from his physical search, a countrymade loaded pistol was recovered. On



query, he disclosed his identity as the appellant. It has also been stated that bombs were put in water for getting it diffused while arms and ammunition were sealed. Furthermore, it has also been disclosed that the Officer-in-charge, Babargan has disclosed the apprehended accused to be a notorious criminal. After restoration of Kotwali (Tatarpur) P.S. Case No.792 of 2009 on the basis of self-statement investigation, proceeded followed with submission of charge sheet facilitating the trial, the subject matter of challenge under present appeal.

3. Defense 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. In order to substantiate the same, defense witnesses have also been examined.

4. In order to substantiate its case prosecution had examined altogether eight PWs, PW.1-Ravindra Kumar Singh, PW.2-Md. Ansar Alam both seizure list witnesses, PW.3-Ramchandra Yadav, PW.4-Arun Kumar Singh who produced material exhibit in the court, PW.5-Manoranjan Bharti, PW.6-Sideshwar Singh, PW.7-Abhay Kumar Pandit, PW.8-Balmiki Prasad Singh. Side by side had also exhibited Ext.1, 1/a-Signature of seizure list witnesses, Ext.1/2-Seizure list, Ext.2-Fardbeyan, Ext.2/1-Ballestic Report, Ext.3-Sanction order relating to recovery of arms, Ext.3/1-Sanction order relating to explosive substance act, Ext.4-FSL Report. Side by side had also exhibited material ext.I-Countrymade pistol and material Ext.II Seized cartridge. Defence had also examined three DWs. DW.1-Mahesh Prasad Sah, DW.2-Vikash Sah, DW.3-Munna Sharma himself



however, no documentary evidence has been adduced.

5. It has been submitted on behalf of appellant that though before the learned lower court, there happens to be some sort of slackness at the end of the appellant while cross-examining the witnesses which, if properly cared with would have demolished the prosecution case, in its entirety even then, the improbability persisting in the prosecution case completely nullify the finding recorded by the learned lower court. To expose the infirmities on that very score, it has been submitted that ballistic expert has not been examined and his non-presence happens to be intentional one. To substantiate the same, it has been submitted that when the informant PW.5 inconsonance with the evidence of PW.8, the Investigating Officer is taken together, it is apparent that the story of recovery from the possession of the appellant happens to be afterthought. From the evidence of PW.5, inconsonance with the seizure list, it is evident that he sealed the seized arms and ammunition at the place of occurrence itself without disclosing that signature of seizure list witnesses as well as accused was taken thereupon, but when the materials exhibits were produced in court, he had disclosed with regard thereto that it bore signature of accused as well as witnesses over the cloth wherein arms and ammunition were sealed. PW.8 had not deposed that aforesaid arms and ammunition were handed over to him after entrustment of investigation and in likewise manner it was sealed since before carrying signature of seizure list witnesses as well as accused. In likewise manner, there happens to be evidence on seized bomb. In the aforesaid facts and circumstances of the case,



it has been submitted that prosecution could not substantiate its case and so, the judgment of conviction and sentence recorded by the learned lower court happens to be bad. In an alternative, it has also been submitted that appellant happens to be under custody since the day of his apprehension and so, he should be released as sentenced already been undergone in case, the prosecution case is found duly substantiated.

6. The learned Additional Public Prosecutor refuted the submission and submitted that from the ballistic report as well as FSL report recovered articles is found effective one and for that rightly been sentenced. However, it has been submitted that appellant remained under custody since the day of arrest, consuming the period of sentence then he be released though, happens to be in custody in connection with other cases.

7. PW.1 had simply stated that seizure list was prepared in his presence whereupon, he had signed voluntarily. During cross-examination he had stated that Munna was not apprehended in his presence. He has further stated that wherefrom the articles were seized, he does not know. The same happens to be the evidence of another seizure list witness PW.2.

8. PW.3 is the one of the member of the raiding party who had stated that on the alleged date and time of occurrence while he along with other police officials were patrolling under the informant and reached near tempo stand, Bijlichak found Munna Sah near *Majar* who, seeing the police tried to escape and was apprehended. On search, one countrymade loaded pistol was recovered from his physical possession as well as five bombs were



also recovered from a Jhola carried by him and seized. Bombs were defused at the spot by way of putting under water. During cross-examination at para-2, he had stated that accused was searched by the informant in presence of Rabindra, Md. Ansar (PW.1 and PW.2 respectively). Then had stated that seized articles were recovered from the place of occurrence. Jhola was not seized. In para-3, he had stated that he is unable to disclose boundary of the P.O. At para-4 had stated that there happens to be shop at the crossing of the road, but he is unable to say the name of its proprietor. He is also unable to say the names of persons whose house stand in the surrounding.

9. PW.4 is a formal witness who had produced pistol and cartridge in sealed condition before the court. During cross-examination he had stated that he is unable to say its connectivity with regard to instant case.

10. PW.5 is the informant, he had deposed that on the alleged date and time of occurrence while they were in day patrolling, and reached near Majar of Hajarat Bijili Sah at about 10:30 AM where they found one person sitting in suspicious circumstance whereupon, in presence of Rabindra, Md. Ansar he was searched after being apprehended. During course thereof, he disclosed his identity as Munna Sah @ Munnilal Sah @ Tigar. During course of search, a countrymade loaded pistol of .303 bore was seized from his possession. He was also carrying a Jhola in his right hand wherefrom five live bombs were recovered. As, paper has not been shown with regard to justify possession of those items, on account thereof, he was taken into custody. Bomb



was kept in water in order to defuse while the seized arms and ammunitions were sealed. Seizure list was prepared and a copy thereof, was handed over to the Munna who also put his signature. Then thereafter he recorded his self-statement. After registration of the case, investigation was entrusted (exhibited those things). Then had exhibited the sealed countrymade pistol cartridge. He had further shown the number having signature of witnesses as well as the witnesses over seizure list. (exhibited) During cross-examination at para-3 he had stated that he had apprehended the accused from a gali lying east to Dargah. He is unable to disclose the name of the Gali. No residential building exists near about. Then had given topography of the P.O. He had further stated that bomb was recovered from a plastic bag. In para-4, he had stated that he had not sent the seized article for examination to any place.

11. PW.6 is also one of the member of the raiding party who had reiterated the prosecution version during his examination-in-chief relating to apprehension of appellant as well as recovery of loaded firearm, five bombs from his possession from the accused on his search. During cross-examination, he had stated that even after their arrival, the accused remained sitting having a bag. At that very time 1-2 persons were passing through. In para-4, he had stated that seizure list was scribed by him. He had further stated that bomb was carried to police station having been kept under water. In para-5, he had stated that at the time of apprehension of accused large number of persons assembled there.



12. PW.7 is a formal witness who had exhibited the sanction order. PW.8 is the Investigating Officer who had stated that after having been entrusted with the investigation by the Officer-in-charge, he proceeded with the investigation. Inspected the place of occurrence and detailed the same. Recorded further statement of the informant. Bomb was defused while seized pistol and cartridge were sent to ballistic examination. Received report (exhibited). The defused bomb was sent to FSL, Patna for examination. Submitted report for obtaining sanction. Obtained sanction order. Received FSL report and then submitted charge sheet. During cross-examination at para-7, he had stated that informed had claimed that accused was apprehended by him. In para-8, he had further stated that he had not recorded statement of the independent witnesses. In para-10, he had stated that after bomb was defused then thereafter by the order of the court, same was sent for examination to FSL. He had further stated that he had not mentioned the fact in whose possession the defused bomb remained from 23.12.2009 to 23.01.2010.

13. DW.1 to DW.3 have denied such kind of recovery from the possession of the appellant.

14. Seizure list witnesses, as has been disclosed above have not supported the case of the prosecution so far recovery from the possession of appellant is concerned. Though there happens to be some sort of slackness on the part of the appellant while cross-examining the material witnesses more particularly, the informant as well as Investigating Officer but the ballistic report which the Investigating Officer PW.8 had exhibited on



account of non-examination of the authority concerned, it is evident that material exhibit was produced before the Sergeant Major on 26.12.2009. From the report, it is evident that he had not mentioned the fact that the material exhibits were produced before him in sealed condition. In likewise manner, Investigating Officer PW.8 had not deposed that on which date entrustment of seized material, was effected nor stated that it was in sealed condition having signature of seizure list witnesses as well as accused which he kept in Malkhana in sealed condition and then, after withdrawing the same from Malkhana as per order of the learned Chief Judicial Magistrate, the material exhibit was produced the Sergeant Major in a sealed condition. Contrary to it, the endorsement having made by the Ballistic Expert over the aforesaid exhibit happens to be that after examination of the material exhibit by him it was sealed and then handed over to the Investigating Officer. In the aforesaid facts and circumstances, the evidence of the informant who had exhibited the material exhibits, and further having been produced in sealed condition bearing signature of witnesses as well as accused is a circumstance which suggest something otherwise. Apart from this, from the deposition of the informant it is not at all apparent that a sealed cover was opened in the court during course of his evidence and then material exhibit was seen by the court having case number affixed thereupon and in likewise manner with regard to cartridge. That means to say, when the sealed packet was not opened then it was mere a guess that within the sealed cover the so alleged arm and ammunition were which, as per prosecution was recovered from



the possession of the appellant.

15. Now coming to status of the bomb, it is evident that from exhibit-4 FSL report that order of the Chief Judicial Magistrate was passed on 21.01.2010 and in pursuance thereof, the same was transmitted but the material was received at the office of the FSL on 01.02.2010 and the intervening period, as per evidence of PW.8 is found unexplained. From perusal of the report, it is evident that samples were collected after deactivation of five countrymade *Dibba* bombs which was found mixture of aluminum, sulphur, potassium nitrate whereupon, were detected as ingredients of countrymade bomb. The report of the FSL happens to be dated 23.02.2010 and as per supplementary case diary it was received on 25.02.2010.

16. Charge sheet was submitted at an earlier occasion whereupon cognizance was taken on 04.03.2010. The sanction order was issued vide memo no.789/legal, Bhagalpur dated 02.03.2010. Though, it contents the signature of the Deputy Collector, Incharge, legal Cell dated 28.02.2010. That means to say the order of the District Magistrate must have been passed before the same. Furthermore, from the evidence of PW.8, it is apparent that he kept mum with regard to placement of FSL report before the District Magistrate. In the aforesaid facts and circumstances of the case, sanction having been accorded by the District Magistrate relating to Explosive Substance Act which happens to be independent to the sanction having been granted by the District Magistrate relating to arm and ammunition, appears to be mechanical one as, the crucial evidence i.e. FSL report as



well as other material was not at all before the District Magistrate at the time of according sanction because of the fact that Investigating Officer, PW.8 had not deposed that he had applied twice for grant of sanction under Arms Act as well as Explosive Substance Act. The cumulative effect of the infirmity persisting on the record did not justify the finding recorded by the learned lower court.

17. Consequent thereupon, same is set aside. Appeal is allowed. Appellant is under custody so he be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	20.11.2017
Transmission Date	20.11.2017

