

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.393 of 2015

Arising Out of PS.Case No. -412 Year- 2011 Thana -FORBESGANJ District- ARRARIA

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1. Md. Azib Alam S/o Md. Yakub Resident of Village Ramy, P.S. Forbesganj, District Araria.

2. Pramod Chhatri S/o Purn Bahadur Chhatri Resident of Village Lakhpathar, P.S. Digboi, District Tinsukia, Asam.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 22-06-2017

Because of the fact learned counsel for the appellants failed to turn up on call, on account thereof, Sri Ranbir Singh, has been requested to assist the Court as an Amicus Curiae.

2. Heard learned Amicus Curiae as well as learned APP.

3. Appellants, Md. Azib Alam and Pramod Chhatri have been found guilty for an offence punishable under Sections 353, 307, 414 IPC, 25(1-b) 26(i)/35 and 27 of the Arms Act and each one has been directed to undergo RI for 2 years as well as to pay fine of Rs.2000/- in default thereof, to undergo imprisonment of 2 months for an offence punishable under Sections 353 IPC and 414 IPC, RI for 7 years as well as fine of Rs. 5,000/- and in default thereof, to undergo imprisonment of 1 year under Section 307 IPC, RI for 3 years as well as to pay fine of Rs. 2,000/- and in default thereof, to undergo imprisonment of 6 months under Section 25(1-b), 26(i)/35 and 27 of the Arms Act, respectively vide judgment of conviction dated



15.05.2016 and order of sentence dated 16.05.2016 passed by Adhoc Additional Sessions Judge-IVth, Araria in Sessions Trial No. 271/2012, /Tr. No. 36/2012(CIS No. 2106/2013).

4. The prosecution case as is evident from self statement (Ext-2/1) of O/C, Forbesganj, namely, Subodh Kumar Thakur (PW 8) having recorded on 30.08.2011 at about 1630 hours at Bishanpur Nahar disclosing therein that on the same day at about 3:25 PM, while he along with Dy. S.P. Forbesganj were discussing over the law and order situation on the eve of Eid, one of the constable of Tiger Mobile (DAP-162), Manoj Kumar Singh received call on his mobile to the effect that two miscreants, after looting Nahid Fuel Centre, Line Chowk, NH-57 are fleeing over a motorcycle having no registration number towards Forbesganj over which, Sanha was entered and then, under the leadership of Dy. S.P., Vikash Kumar, Tiger Mobile, Manoj Kumar Singh, Pankaj Kumar Singh, Bodyguard of Dy. S.P., Driver, Sachit Kumar, Braj Bihari Narayan Singh, Shankar Prasad Yadav proceeded from P.S. After parking the vehicle near Dholbajja, they began to wait. During course thereof, they found one motorcycle having been occupied by two persons coming from Simraha side. Just after seeing the police, the miscreants diverted their direction and went over Kasba Bandh who were chased and to facilitate apprehension raised siren. Thereafter, the aforesaid two miscreants left the motorcycle and ran towards Bhurkatta Jungle. Anyhow, the miscreants were cordoned. Dy. S.P. disclosed regarding their status



and further, warned that they should surrender who instead of obeying the order of the Dy. S.P. started firing having miraculous escape of constable Manoj Kumar Singh. The miscreants repeatedly fired over Pankaj Kumar also. As the situation became alarming on account of illegal activity being taken up by the miscreants, the Dy. S.P. ordered to fire five rounds in order defend/protect their life as well as arms and accordingly, firing was made. On account thereof, miscreants tried to escape therefrom who were apprehended with the active assistance of the local inhabitants. In presence of two independent witnesses, namely, PW-2, Bishundeo Mandal and PW-1, Arbind Mandal, both the accused were searched. From the possession of one accused who disclosed his name as Md. Azib Alam, one country made loaded pistol, cash appertaining to Rs. 25,105/-, two mobile sets, one belonging to G-5 make and another Nokia, I-Card, ATM cards, belonging to one Badrul Haque while from the possession of Pramod Chhatri, cash appertaining to Rs. 15,112/-, Debit Card of Axis Bank, knife were recovered. The informant also seized motor-cycle bearing Engine No. OF1BB 1050645.

5. On the basis of aforesaid self statement, Forbesganj PS Case No. 412/2011 was registered under Section 353, 307, 414 IPC as well as under section 25(1-b) 26(i)/35 and 27 of the Arms Act, whereupon investigation commenced and concluded by way of submission of charge-sheet whereupon trial commenced and concluded in a manner, subject matter of the instant appeal.



6. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. However, neither any DW nor any kind of document has been adduced on behalf of prosecution.

7. In order to substantiate its case, the prosecution had examined altogether 9 PWs out of whom PW-1, Arvind Mandal, PW-2, Bishundeo Mandal, PW-3, Kalilal Manda, PW-4, Raghunath Mandal, PW-5, Ram Pd. Mandal, PW-6, Jagilal Mandal, PW-7, Rajan Kumar, PW-8 Subodh Kumar Thakur and PW-9, Kirshana Kumar. Side by side, also exhibited Ext-1, Charge-sheet, Ext-2 Formal FIR Ext-2/1, Self statement and Ext-3, Sanction.

8. Now coming to the evidence of respective witnesses, it is evident that both the seizure list witnesses who have been examined as PW-1 as well as PW-2 have not supported the case of the prosecution. In likewise manner, all the independent witnesses examined as PWs-3, 4, 5, 6, became volte face and were declared hostile and even during course thereof, prosecution could not be able to collect any material in its support.

9. So far PW-9 is concerned, his status happens to be that of formal on account of having sanction order exhibited at his end.

10. Now, remains two witnesses, PWs-7, Rajan Kumar and 8, Subodh Kumar Thakur. The status of PW-7 happens to be also that of formal in nature as he had simply submitted the charge-sheet. Now remains the evidence of PW-8, the informant. Before appreciating of



his evidence, one has to appreciate that in terms of Section 134 of the Evidence Act, the number of witnesses are not at all relevant to substantiate the facts in issue. That means to say, it is quality not the quantity that matters. In other words, if the evidence of a single witness inspires confidence, then in that event, the conviction could be recorded against an accused.

11. In the background of legal status, the evidence of PW-8, informant has to be seen. He in his examination-in-chief had stated that on the alleged date and time of occurrence while Dy.S.P. has come up at the police station and was discussing with regard to law and order situation on the eve of Eid, Manoj Kumar Singh, a Constable of Tiger Mobile received a call with regard to commission of robbery at Nahid Fuel Centre by two miscreants who fled towards Forbesganj over a motorcycle without number. After receiving the information under the leadership of Dy.S.P. he along with other police personnel proceeded and after reaching at Bishanpur parked the vehicle. Then thereafter, they began to check the vehicle and during course thereof, they had seen two persons coming over TVS motorcycle, who seeing the police, changed the direction and proceeded towards Kasba Bandh who were accordingly, chased. They had also blown siren to attract the local inhabitants. After covering some distance, the miscreants after leaving their motorcycle ran away and hid themselves in a bush. During course of search, they fired and on account thereof, on an order of Dy. Superintendent of Police, they



had also fired as a result of which, the miscreants came out from their hideout and began to flee who were apprehended. On interrogation, they disclosed their names as Md. Azib Alam as well as Promod Chhatri. From the possession of Md. Azib Alam, one country made loaded pistol, cash appertaining to Rs. 25,000/-, two mobile sets, one voter identity card, 2 ATMs, I-card were seized while from the possession of Pramod Chhatri, Rs. 15,000/-, Debit Card of Axis Bank, one knife were seized. They had also seized motorcycle. Because of the fact that no document was furnished at their end, on account thereof, they have been booked. It has further been deposed that the seizure list is tagged with Forbesganj PS Case No. 411/2011, identified the accused in the dock. During cross-examination, it is evident that nothing substantial has been extricated from his save and except that no empty cartridges were seized from the place of occurrence. Furthermore questioned mere mode of preparation of search and seizure. This witness had further stated that all the belongings were sealed at the place of occurrence itself.

12. On account of failure having at the end of the prosecution, it is apparent that no seizure list has been brought up on record. Consequent thereupon, seizure list is not an exhibit of the record. In likewise manner, the seized article also not been produced in the court. That has got relevance on account of seizure list witnesses becoming hostile. So, the oral evidence of PW-8, informant has got no additional support by way of oral as well as documentary



evidence. That being so, there happens to be severe dent in the prosecution case on that very score which is found sufficient to discredit the evidence of PW-8 coupled with the fact that non examination of remaining witnesses more particularly the police officials as independent witness did not opt to support the case of the prosecution without any cogent, plausible ground have been at the end of the prosecution.

14. That being so, the prosecution case suffers from severe infirmity whereupon, could not be accepted and appreciated. Accordingly, the judgment of conviction and sentence recorded by the learned trial court is set aside. Appeal is allowed.

15. Since both the appellants are on bail, they are discharged from its liability.

16. The first and the last pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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