

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.860 of 2016

Arising Out of PS.Case No. -306 Year- 2006 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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1. Pappu Pandit @ Pappu Kumar Pandit @ Pappu Kumar, son of Shri Raghuveer Pandit, resident of Railway Colony, Police Station- Mojahidpur, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mr. Sri Krishna Pd. Singh, Sr. Advocate
Ms. Neelam Kumari, Adv.

For the Respondent/s : Mr. Abhay Kumar, APP-70

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 21-12-2017

Heard the learned counsels for the appellant and the
State.

2. The appellant, Pappu Pandit @ Pappu Kumar Pandit @ Pappu Kumar, has been convicted under Sections 399 and 402 of the Indian Penal Code as well as Section 25(1-B)(a) of the Arms Act and has been sentenced to undergo R.I. for five years, to pay a fine of Rs. 1,000/- and in default of payment of fine, to further undergo simple imprisonment for two months for each of the counts, viz. Section 399 and 402 of the Indian Penal Code. For the offence under Section 25(1-B)(a) of the Arms Act, the appellant has been directed to undergo R.I. for three years, to pay a fine of Rs. 1,000/- and in default



of payment of fine, to further suffer simple imprisonment for two months. The sentences have been directed to run concurrently.

3. Anil Nath Chopra (PW 1) lodged a self-statement alleging that on 15.05.2006, at about 9:30 am, Sri Kant Mandal (PW4), S.H.O of Barari Police Station had received an information that 5 to 6 miscreants have assembled in the Zila School ground and are planning to commit dacoity. On such communication by PW4 to PW1, a team was constituted and the Zila School ground was raided. Around 8 to 10 people were found to be sitting beneath a tamarind tree. At the instance of PW 4, one person was caught hold of, from whose possession, one pistol was recovered. The other miscreants began to run away, but on chase, two of them were caught. One of the fleeing accused persons shot at the police party and PW 4 is also stated to have fired from his service weapon in defence. The shot fired by PW 4 hit one of the miscreants in his leg and he too was arrested thereafter. The other accused persons managed to flee away.

4. From the possession of the appellant, who was apprehended by PW 1, one loaded country made pistol was recovered. Apart from this, a live bomb was also found from his possession. Another co-accused, Shatrughan Paswan, was caught hold of by PW 4 and from his possession also one loaded country made pistol was recovered. The two other miscreants, viz. Bilash Yadav and Sonal



Kumar were apprehended by Ganesh Prasad Thakur (PW2) and from their possession also firearms were recovered.

5. The appellant along with four others were charge-sheeted and cognizance was taken against them. Against the appellant and two others, viz. Shatrughan Paswan and Ram Bilash Yadav, charges were framed under Sections 399, 402 of the Indian Penal Code and Section 25(1-B)(a) and 26 of the Arms Act, whereas additionally, charge against co-accused Shatrughan Paswan was also framed under Sections 353 and 307 of the Indian Penal Code and Section 27 of the Arms Act. The case record of co-accused Sonal Kumar was separated and was sent to Juvenile Justice Board. Thus, only three persons including the appellant were put on trial. During the trial, the two other accused persons absented themselves leading to cancellation of their bail bonds and the case of the appellant being separated.

6. The trial court, after examining six witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellant as aforesaid.

7. PWs 1, 2, 4 and 5 have supported the prosecution version and have stated in detail as to how the appellant was apprehended and was found in possession of the firearms.

8. Sanjay Kumar Ghosh, who has been examined as



PW3, is a seizure list witness. He is a clerk in the Zila School and had been present in the school on 15.05.2006 at 10.30 am and had also participated in the book fair, which was organized in the school campus. However, he has stated before the trial court that he had no personal information of the case and had only put his signature on a piece of paper, which was offered to him by the police. Nonetheless, his signature on the seizure list clearly establishes that he was there at the time of raid and arrest of the appellant.

9. Brahmeshwar Singh (PW5), who is the investigating officer of the case, has deposed that he had recorded the re-statement of PW 1 and the statements of other witnesses and had inspected the place of occurrence. He had obtained prosecution sanction from the District Magistrate, Bhagalpur. Constable Vinay Kumar Yadav, PW6, is a formal witness, who has produced the seized articles of this case before the trial court.

10. Thus, from the testimonies of PWs 1, 2, 4, 5 and 6, it stands established that the appellant was caught at the spot along with others and was in possession of firearms and bomb which could not have been without his intention of making preparations of committing dacoity.

11. The learned counsel appearing for the appellant, however, has argued that there are material inconsistencies in the



depositions of PWs 1, 2, 4 and 5. It has further been submitted that PW3, the seizure list witness, cannot be relied upon as he has no information about the occurrence and has only signed the seizure list on the asking of the police. The other ground of attack by the appellant is that the arms examination expert, who gave his report (Ext.6/1), has not been examined and therefore, Ext. 6/1 (test report) is inadmissible in evidence. Lastly, it has been urged that no independent person has been examined in this case and it would rather be unsafe to rely upon the police witnesses only.

12. Times without number, it has been held that merely because the evidence in a case is of a police officer or police officers, that cannot be the basis for rejecting the prosecution version. ***In Baldev Singh Vs. State of Haryana 2016(1) PLJR SC173***, it has been held that evidence of police witnesses cannot be discarded merely on the ground that the members of police force would be interested in the success of the prosecution which has been investigated by them. So far as non-examination of any independent person in the case is concerned, it is hardly now a matter of debate that normally persons are reluctant to be witnesses in cases; one, for the fear of reprisal at the hands of the accused persons and the other, the long winding process of a criminal trial.

13. Thus, non-examination of independent witnesses in



the present case has not weakened the prosecution case.

14. There are overwhelming evidence for the conviction of the appellant in the present case. As such, in the absence of any cogent and good ground for interfering with the judgment of the trial court, the conviction of the appellant is hereby upheld.

15. However, taking into account the fact that the appellant does not have any criminal antecedent, which fact has been supported by PW 6 and that no effort was made by the appellant to use the firearm of which he was in possession, coupled with the additional fact that the appellant has participated in the trial, this Court is of the view that the ends of justice would be sufficiently met if the sentences imposed upon the appellant are modified and reduced to the period which the appellant has already undergone in custody.

16. This Court has been informed that the appellant has remained in jail for two years and four months by now.

17. The sentences imposed upon the appellant are therefore modified and reduced to the extent of the period already undergone by him in custody.

18. The appeal stands partially allowed. The appellant shall be released from jail, if not wanted in any other case.

19. The records of the case shall be sent back to the trial court. A copy of the judgment be dispatched to the Superintendent of



the concerned jail for record, information and compliance.

(Ashutosh Kumar, J.)

Rakhi

AFR/NAFR	NAFR
CAV DATE	N.A.
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