

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.704 of 2015

Arising Out of PS.Case No. -134 Year- 2014 Thana -KOTWALI District- MUNGER

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RAJENDRA CHAUDHARY @ RAJU, S/O- LATE ASHARFI CHAUDHARY,
R/O CHUA BAGH, P.S.- KASIM BAZAR, DISTRICT- MUNGER.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Dinesh Kumar Gupta, Adv.

Mr. Dharendra Nath Jha, Adv.

Mr. Chandra Shekhar Sharma, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 13-11-2017

Appellant, Rajendra Chaudhary @ Raju 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 five thousand, under Section 25(1-AA) of the Arms Act and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to rupees five thousand, 26(1),(2) of the Arms Act and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to rupees five thousand, in default of payment of fine to undergo S.I. for three months (consolidated), additionally by the Additional Sessions Judge, Vth, Munger in Sessions Trial no.692/2014 vide judgment of conviction dated 29.08.2015 and order of sentence dated 31.08.2015.

2. PW.6, Manoj Kumar Sinha, the then Officer-in-charge



of Kotwali P.S. recorded his self statement on 03.05.2014 at about 07:00 AM disclosing therein that after getting confidential information with regard to transportation of illegal firearms, he constituted a raiding party and reached at the destination which happens to be Electrical Crematorium where, one person seeing the police tried to escape, chased got apprehended. As, at such wee hour people were not present on account thereof, two members of the raiding party namely, Ram Chhabila Rai (PW.3) and Anandi Mandal (PW.5) have been arrayed as seizure list witness in whose presence search was made. During course thereof, from a Jhola which the accused was carrying, six half constructed pistol as well as six barrel of the pistol were recovered and for that, accused has not placed any explanation. Furthermore, the accused had also disclosed his identity as Rajendra Chaudhary @ Raju, son of Late Asharfi Chaudhary of village-Chua Bagh, P.S.- Kasim Bazar, District- Munger.

3. After registration of Kotwali P.S. Case No.134/2014 investigation was taken up and after completing the same, charge sheet was submitted whereupon, trial commenced and concluded by way of recording the finding of guilt inconsonance with sentence, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement having been recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that neither the appellant was arrested on 03.05.2014 nor any incriminating article was recovered from his possession rather the police, out of local politics, at the instance of one Suresh Singh



apprehended him on 02.05.2014 and then thereafter, in order to justify such detention prepared a false and frivolous seizure list exposing recovery from possession of the appellant/accused whereupon, a substantial case was registered wherein appellant/accused was remanded. Furthermore, defence witnesses were also examined on that very score.

5. In order substantiate its case prosecution had examined altogether seven PWs, PW.1 Awadh Kishore Prasad who had exhibited sanction order, PW.2 Rajiv Ranjan Srivastava, S.I. a member of the raiding party, PW.3 Ram Chhabila Rai, a Home guard Constable and a seizure list witness, PW.4 Dinesh Kumar Singh, Sergeant Major who had inspected the seized article and submitted his report, PW.5 Anandi Mandal, a Home guard Constable and a seizure list witness, PW.6 Manoj Kumar Sinha , Informant and PW.7 Md. Athar Rabbani the I.O. as well as one of the member of the raiding party. Side by side had also exhibited Ext.1 Series-Signature of witnesses over respective document, Ext.2-Ballestic Expert report, Ext.3-Self statement of PW.6, side by side, material exhibit 1 to 1/5- Half constructed pistol, material exhibit 2 to 2/5- six barrel, material exhibit 3-Mobile.

6. Defence had also examined four DWs, DW.1-Ram Prasad Chaudhary, DW.2-Munna Chaudhary, DW.3-Rajendra Yadav, DW.4-Anjani Kumar Ambastha as well as had also exhibited newspaper dated 03.05.2014 as Ext.A.

7. While challenging the judgment of conviction and



sentence, the learned counsel for the appellant has submitted that the judgment impugned suffers of inherent defect on account thereof, it loses its legality, propriety, recognition in the eye of law. To buttress such plea, it has been submitted that I.O. during course of his evidence had not deposed that the incriminating materials having been collected were properly placed before the District Magistrate attracting grant of sanction, whereupon, the sanction order (Ext.1) happens to be mechanical one. That being so, is legally impermissible whereupon, the trial in the present form could not be recognized. Furthermore, it has also been submitted that though allegedly the seized materials have been an exhibit before the learned lower court but on account of inconsistency visualizing from the evidence of the witnesses, its reliability is found completely washed away and that being so, the evidence of search and seizure is found duly impaled. It has also been submitted that from the evidences of the witnesses it is apparent that they are inconsistent, contradictory over preparation of seizure list at the spot and in likewise manner, sealing of the seized article. Apart from this, it has also been submitted that when the evidence of PW.4, the Sergeant Major coupled with its report, Ext.2 is considered, it is apparent that the articles produced in court having been implanted as he had categorically stated that after examination of articles it was packed and sealed but, while being produced before the court through PW.6, informant, it is apparent that no such type of events was ever perceived by the learned lower court and that happens to be sufficient to dethrone the prosecution version. That happens to be reason behind that there happens to be inconsistency



amongst PW.3, Ram Chhabila Rai as well as Anandi Mandal the respective seizure list witness over manner of seizure. Furthermore, the version of the prosecution coming out from the mouth of PW.6 also failed to inspire confidence, reliability, worthiness, and that being so, the judgment impugned did not justify its prevalence.

8. On the other hand, refuting the submission having made on behalf of appellant, it has been submitted on behalf of learned Additional Public Prosecutor that from perusal of the judgment impugned, it is apparent that learned lower court not only considered the case of the prosecution rather also properly analyzed the evidence of the defence and then, after making parallel scrutiny thereof, recorded his finding which happens to be in accordance with law and so, is fit to be confirmed.

9. PW.6 during course of his examination-in-chief had deposed that after getting confidential information, raiding party was constituted and gone at the place through which the career was to pass one person carrying a Jhola, indulged in suspicious activity seeing the police whereupon was apprehended and on search, from a Jhola having in his possession six half constructed pistol as well as six barrel, one karbonn mobile was recovered, and for that, search cum seizure list was prepared. He recorded his self statement which happens to be the basis of instant proceeding. Also exhibited formal FIR. He had further exhibited the material exhibit. During cross-examination at para-1, he had stated that the seized articles are not sealed. In para-2 he had further stated that there happens to be no mark affixed thereupon nor bore his signature. In para-3, he had



further stated that he is unable to say whose signature is over the material exhibit. He had further stated that the mentioning of P.S. Case number over the seized article happens to be in pen of same person whose signature happens to be. In para-5, he had stated that seized articles were kept at Malkhana but at para-6 he had stated that there happens to be no entry in the Malkhana register.

10. PW.3 is the one of the seizure list witness who had stated that when they reached at the place of occurrence one person began to flee seeing the police who was chased and apprehended. He was carrying one Jhola. On search, five pistols were seized therefrom and had exhibited his signature. At para-7, he had stated that he had not put any sign over the seized article nor in his presence, Officer-in-charge had put any sign. He had further stated that all the paraphernalia were completed at the police station.

11. PW.5 is the another seizure list witness who, during examination-in-chief had reiterated the version that of PW.3 adding that the seized items were recovered from the possession of the apprehended accused for which seizure list was prepared. During cross-examination at para-1, he had stated that he had seen the article at police station. All were counted by the Officer-in-charge. When he brought the articles in court then, paper was affixed and signature was taken. He had further stated that at the time of preparation of the document, accused was under custody.

12. PW.4 is the Sergeant Major who had deposed that on 09-06-2014 materials were produced before him for examination and



was examined by him whereupon he submitted his report. Furthermore, all the materials exhibits were kept in a bag and then sealed and then thereafter it was returned back to the Officer-in-charge. As stated above PW.6 had produced those articles which were not in sealed condition.

13. PW.7 is the I.O., who during examination-in-chief had supported the case of the prosecution, detailed P.O., obtained sanction order, got the seized articles examined by ballistic expert and then submitted charge sheet, but had not disclosed that seized articles were handed over to him in sealed condition by the Officer-in-charge. In likewise manner, he had not stated that for the purpose of examination of seized articles he took permission from the learned Chief Judicial Magistrate. He had not mentioned the fact that relevant materials so collected during course of investigation was produced before the District Magistrate for grant of sanction and that happens to be reason behind that at para-8 he had mentioned that seized articles were handed over to him on 09-06-2014. Even then, he had not mentioned whether it was in sealed condition. He had mentioned nor the PW.6 that from 03.05.2014 to 09.06.2014 where the seized articles were as, from the evidence of PW.6 para-6 had stated, it is apparent that there happens to be admission at his end with regard to no entry in the Malkhana Register regarding keeping of articles in the Malkhana. Furthermore, this PW at para-9 had stated that he had not mentioned in the case diary regarding the articles being in sealed condition but it was sealed. However, he is not remembering the mark thereof. He had further stated that there was seal of Chief Judicial



Magistrate. While producing the materials exhibit by PW.6, it is evident that the learned lower court had not perceived such kind of eventuality moreover, having absence at the end of the PW.7 that he ever had taken permission from the Chief Judicial Magistrate regarding examination of the seized articles.

14. PW.2 is the another member of the raiding party who during course of examination-in-chief had reiterated the prosecution version but during course of cross-examination at para-23 had stated that the seized articles were not at all sealed in his presence nor the Officer-in-charge had put any mark over the same in his presence.

15. Now coming to Ext.2 the ballistic report submitted by PW.4, it is apparent that he had simply mentioned that during course of inspection he had found six items of half constructed pistol as well as six items of half constructed barrel. Arms has been defined under Section 2(c) of the Arms Act and for better appreciation is quoted below:

“2(c) “arms” mean's articles of arty description designed or adapted as weapons for offences or defence, and includes firearms, sharp-edged and other deadly weapons, and parts, and machinery for manufacturing arms, but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys ot of being converted into serviceable weapons.”

16. Firearm has been defined under Section 2(e) of the



Arms Act and same is quoted below:

“2(e) “firearms” means arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes,—

(i) artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of any noxious liquid, gas or other such things,

(ii) accessories for any such firearms designed or adapted to diminish the noise or flash caused by the firing thereof,

(iii) parts of, and machinery for manufacturing, firearms, and

(iv) carriages, platforms and appliances for mounting, transporting and serving artillery;”

17. From the report, it is evident that PW.4 had not mentioned that the half constructed pistol had pin presence of trigger and was effective to strike and in likewise manner regarding six pipes. That means to say the report happens to be vague, inconclusive whereupon unreliable. On the score of invest mode of action at the end of prosecution, did not justify the verdict propounded by the lower court.

18. The cumulative effect did not justify the finding recorded by the learned lower court on account thereof, the judgment of conviction and sentence is set aside. Appeal is allowed. Appellant is under custody, hence is directed to 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	17.11.2017
Transmission Date	17.11.2017

