

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.554 of 2017

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1. Mutur Yadav @ Siyaram Yadav, S/o Paras Yadav,
 2. Sri Kaval Yadav @ Sri Kaval Singh, S/o Paras Yadav,
 3. Paras Yadav, S/o Late Mahangu Yadav, All are resident of Village-
Basgitiya Kachainiya Dera, P.S.- Koransarai, District- Buxar.

.... Petitioners

Versus

The State of Bihar.

.... Respondent

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Appearance :

For the Petitioners : Mr. Arun Kumar Gupta

For the Respondent/s : Mr. Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

4 01-12-2017 Heard learned Counsel for the petitioners as well as the
learned Counsel for the State.

The petitioners have preferred this revision application against the judgment and order dated 10.4.2017 passed in Cr.Appeal No. 51 of 2016 by learned Sessions Judge, Buxar, whereby he has upheld the judgment and order of conviction and sentence dated 21.9.2016 passed in Trial No. 1172 of 2016 arising out of G.R. Case No. 688 of 2004, Koransarai PS Case No. 17 of 2004 by 2nd Additional Chief Judicial Magistrate, Buxar, whereby he has convicted the accused persons under Sections 25(1-B)a, 26 and 35 of the Arms Act and directed to undergo sentence of two years rigorous imprisonment for committing the offence under Section 25(1-B)a and two years of rigorous imprisonment for committing the offence under Sections 26/35 of the Arms Act and a fine of Rs. 1000/- each and in



case of default in making payment of fine further to undergo simple imprisonment for one month. However, the sentences were directed to run concurrently.

Learned Counsel for the petitioners submits that in this case there are vital contradictions in the evidence of the prosecution witnesses on the point of apprehending Mutur Yadav, one of the accused, as PW 3 Rajnath Singh has stated in his examination in chief that Mutur Yadav was sleeping outside his house whereas in the cross-examination he has stated that he was sleeping outside the house in a hut. One of the witness, PW 6 Ram Awatar Yadav deposed that only two cartridges were recovered from Kaval Yadav though the prosecution case is that country made gun from his possession was recovered. Further submission is that the I.O. of the case has not been examined so it has prejudiced the case of the defence.

The prosecution case is that on getting secret information regarding assembly of some criminals at the house of Paras Yadav in Village Basgitiya the informant, a Police Officer, forming a raiding party raided the house of the accused persons in wee hours and one person sitting outside the house in the Dera seeing the police party started fleeing away but apprehended who disclosed his name as Mutur Yadav and on search of his body he was found in possession of a loaded country made pistol. Another person also came out of the house with arms but seeing the police and Mutur Yadav being apprehended surrendered and that person disclosed his name as Kaval



Yadav, another person also came out of the house and apprehended by the police who disclosed his name as Paras Yadav. Mutur Yadav and Kamal Yadav both are sons of Paras Yadav and the police prepared seizure list marked as Ext. ½.

The apprehended persons could not produce any licence of the arms recovered from their possession. After investigation the police submitted charge sheet under Sections 25(1-B)a, 26 and 35 of the Arms Act.

Now the only question for consideration is whether miscarriage of justice has been done to the petitioners by the courts below finding them guilty of the charges.

Having considered the rival submission and on perusal of the record the court finds that the prosecution examined seven witnesses in this case including the informant PW 8 Uma Shankar Singh and other police personnel, members of the police raiding party who apprehended the accused persons and recovered the illegal arms from their possession. The prosecution case is specific, as revealed from the FIR itself, that Mutur Yadav @ Siyaram Yadav was sitting in the 'Dera', a placed outside of the house so the in the cross-examination PW 3 has stated that he was sitting outside of the house in a hut is not major contradiction in itself. On this score the case of the prosecution cannot be disbelieved. The other contradiction pointed out is that one of the witnesses said that only PW 6, a police constable, has stated that only two cartridges were recovered from the possession



of Kaval Yadav, that may be due to the passage of time because memory of everybody is not of same capacity. However other members of the raiding party viz. PW 3, PW 4 and PW 8 have deposed in their testimony regarding recovery of country made gun from the possession of Kaval Yadav. The witnesses to the seizure list have not supported the case of the prosecution in their cross examination, but the statement that they signed on the plain blank paper cannot be believed because had it been so they must have made complaint to any higher police officer in this regard. The seized arms and cartridges have been brought before the court and marked as material Ext. 2. PW 5, the Sergeant Major has found the seized weapons lethal weapon moreover it is not disclosed that non-examination of the I.O. in what manner has prejudiced the case of the accused persons. So the recovery of illegal arms has been proved by the prosecution against Mutur Yadav, Keval Yadav and Paras Yadav was also in the house where illegal arms was kept by his sons. So against Paras Yadav the conviction has been made under Section 35 of the Arms Act as there is no recovery directly from his possession.

Hence, since this is a case of the year 2004 the conviction of the petitioners is upheld but the sentence is modified to the extent that petitioners 1 and 2 are sentenced to undergo rigorous imprisonment of one and half years for committing the offence under Section 25(1-B)a and 26 of the Arms Act with fine of Rs. 1000/- and in default simple imprisonment for one month. As far as the conviction



of Paras Yadav is concerned, since he has only been found guilty for offence under Section 35 of the Arms Act his sentence is modified to nine months simple imprisonment as he is old man of approximately 72 years.

The application accordingly stands disposed with the modification in the sentence.

(Arun Kumar, J.)

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