

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.234 of 2003

1. Nand Kishore Das, son of late Deo Sharan Das,
2. Ram Baran Das, son of Sakaldeo Das, both resident of village-
Babhanbigaha Sabnahua, Police Station – Harnaut in the district of Nalanda

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Akhileshwar Prasad Singh, Sr. Advocates Ms. Anita Kumari Singh, Advocates Mr. G.P.Roy, Advocate
For the State	:	Mr. S.N.Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 20-01-2018

The two appellants have preferred this appeal against the judgment and order dated 4th April, 2003 passed by the Additional Court No. 1, Nalanda in Sessions Trial No. 108 of 1991/73 of 2002 whereby the appellants have been convicted under Section 25(1-B) and 26(1) of the Arms Act and sentenced them to undergo rigorous imprisonment for three years under Section 25(1-B) and further three years for offence under Section 26(1) of the arms Act. However, both the sentences have been ordered to run concurrently.

2. The prosecution case in brief, as disclosed in the written report of the informant, Ram Beyas Singh (PW-2) dated 16.9.1990 addressed to the Chief Judicial Magistrate, Biharsharif, Nalanda, is that on 16.9.1990 he got confidential information



about stolen Aluminum wire of Harnaut P.S. Case No. 82/90 was kept concealed in the house of appellant Nand Kishore Das in village-Babhan Bigha Sabnahua. It is said that on receipt of alleged information, the informant along with Police personnel proceeded to the village of the appellants and searched the house of the appellant Nand Kishore Das on 16.09.1990 at about 6 a.m. in presence of two independent witnesses, namely, Ramautar Tanti (P.W.1) and Ram Ji Pandit (not examined). Two persons were found sitting on a Chowki kept in the Verandah. The informant Ram Beyas Singh (P.W.2) is said to have asked them to stand up and when they are alleged to have stood up, it was found that some articles were kept conceal beneath the bedding. According to the informant (P.W.2), one country-made pistol, one country-made Pipe-Gun and two cartridges of 12 bore were found kept beneath the said bedding, which were seized by the informant in presence of the said two seizure witnesses. No license were produced by the appellants in regard to the possession of the same and upon which both of them were taken in custody. Seizure list is said to have been prepared with respect to alleged seizure and over which seizure witnesses, namely Ramautar Tanti (P.W.1) and Ram Ji Pandit (not examined) are said to have put their signatures in token of being witnesses of alleged seizure witness.



3. On the basis of written report Harnaut P.S. Case No. 145 of 1990 was registered and after investigation charge sheet was submitted. After cognizance the case was committed to the court of sessions and on the appellants pleaded not guilty, they were put on trial.

4. The prosecution examined altogether three witnesses in support of its case , out of whom P.W. 1, Ramautar Tanti, who is seizure list witness, has been declared hostile. P.W. 2 Ram Beyas Singh is the informant and the P.W. 3 Ram Narayan Pandit is the Sub-Inspector of Police of Harnaut Police Station who had accompanied the informant in the alleged raid.

5. Mr. Akhileshwar Prasad Singh, Senior Counsel appearing on behalf of the appellants submitted that the entire case of the prosecution is based on alleged seizure of one country made pistol and one country made pipe-gun and two cartridges of 12 bore in presence of two seizure list witnesses beneath the bed of the appellants . But in the present case the seizure itself is under serious doubt. Mr. Singh submitted that in the present case firstly out of two seizure list witnesses, P.W. 1 Ramautar Tanti has not supported the case of the prosecution in the court and as such he was declared hostile. The other seizure list witnesss, Ramji Pandit was not examined by the prosecution and there is no explanation



for non-examination of Ramji Pandit, the second seizure list witness and as such the prosecution has measurably failed to establish the case of seizure of illicit arms. Mr. Singh next submitted that there is absolutely no evidence to establish that the alleged seized articles were illicit arms and it was seized from the conscious possession of the appellants.

6. Mr. Singh submitted that in the absence of ballistic or scientific report to establish that seized articles were illicit arms, the conviction of the appellants is unsustainable.

7. Mr. Singh submitted that in the present case only highly interested witnesses were examined and no independent witnesses were examined which renders the prosecution case untrustworthy. He submitted that where the witnesses are highly interested, the court is required to examine the case with utmost care and caution. In the present case in the absence of seizure list and ballistic report and scientific report the finding of the trial court that appellants were guilty for offence under Sections 25(1-B) and 26(1) of the Arms Act, is unsustainable.

8. Mr. S.N.Prasad, learned Additional Public Prosecutor, appearing on behalf of the State has not been able to dispute the fact that the seizure is the foundation of the fact but the seizure of the illicit arms has not been proved. He has also not been able to



dispute the fact that the prosecution has not adduced evidence to establish the alleged seizure of arms from the conscious possession. In addition thereto he has not also been able to establish with reference to any scientific examination with the seized articles were illicit arms.

9. On consideration of the entire facts and circumstances discussed hereinabove, I am of the considered view that the foundation of the fact is seizure of illicit arms but neither the seizure has been proved in this case as the P.W. 1 has not supported the prosecution case, whereas the other seizure list witness was not examined by the prosecution. Thus the seizure list itself is not proved in the present case. In addition thereto the prosecution has not examined any witness to support the case of prosecution as to recovery of the arms from the conscious possession of the appellants. On scrutiny of the evidence on record, it is seen that only highly interested witnesses were examined and no independent witnesses have supported the case of the prosecution.

10. In the totality of the fact and circumstances discussed hereinabove, the court is of the considered view that conviction of the appellants is unsustainable. It is seen from the record that the P.W. 1, who was declared hostile during the cross-examination,



has admitted that informant has obtained his signature on plain paper and as such the prosecution has not been able to establish the seizure of arms muchless from the conscious possession of the appellants. The cumulative effect of non-examination of the seizure list witnesses, namely, Ramji Pandit, the deposition of P.W. 1 which indicates that seizure was not made in accordance with the mandatory requirement of law and the lack of evidence to prove the seized articles by scientific test that the seized articles were illicit arms, the conviction of the appellants by the trial court suffer from manifold infirmities and as such, the case cannot be taken as proved beyond all reasonable doubt.

11. Accordingly, the appeal is allowed. The judgment of the trial court is set aside. Since the appellants are on bail, they are discharged from the liability of the bail bonds.

(Anil Kumar Upadhyay, J)

spandey/-

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