

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.109 of 2004

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

- =====
1. Lilanand Sharma
 2. Vinod Sharma, both sons of late Shital Sharma, r/v Sarahi, P.S.-Saharsa, District-Saharsa.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Anil Kumar Mukund
Mr. Purnendu Keshav

For the State : Mr. Binod Bihari Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 17-03-2018

Heard the learned counsel for the appellants.

2. Both the appellants, above named, stood convicted under Sections 25 (1)(A) and 26(2) of the Arms Act by judgment dated 13.02.2004 passed by the learned Additional Sessions Judge, F.T.C. IV, Saharsa in S.Tr. No. 4/88, arising out of Saharsa P.S. Case No. 0071/87 and were sentenced to undergo R.I. for three years and R.I. for five years respectively. Both the sentences were directed to run concurrently.

3. The prosecution case is based on the self-statement of K.N. Mishra, the then Officer In-charge of Saharsa Police Station, who has been examined as P.W. 7. He stated in his self-statement that on 23.02.1987 at 9:30 A.M., he received an information that the appellants were making pistols and they used to sell pistols after making the same. Thereafter, a team was constituted under the direction of the informant



along with A.S.I. R.P. Mallik, Sub-Inspector T.N. Pandey, A.S.I. Udit Paswan, A.S.I. J. K. Singh and Constable Ramotar Yadav, Rishikesh Pandey, Ashrat Jahan Khan, Arjun Singh and two independent witnesses, namely, Ram Prasad Yadav and Dashrath Rajak and they proceeded from the Police Station and at 10:00 A.M. reached the house of accused appellant Vinod Sharma and saw the accused persons making pistols in the middle room of eastern house and thereafter, a search of the said room was made and three barrels of semi-finished country made pistols along with trigger guard, chamber and one half country made pistol and other articles used in manufacturing of country made pistols were recovered and accordingly a seizure-list was prepared and accused persons were arrested and they confessed their guilt and disclosed that about one and half years ago, cousin brother of the accused, namely, Shivrinarain Mistri came and got them skilled for making pistols and since then they used to sell the same at the rate of Rs. 700/- to 800/-. They further confessed that they used to keep the same in the house of Kirandeo Sah and at present 5 country made pistols and seven round of rifle cartridges were also kept there and they also sold the arms to Bikash Roy, Anil Sah, Md. Jasim and Laxman Sah of Naya Bazar, Saharsa and Subodh Sah of Village Sarahi.

4. On the basis of the aforesaid self-statement of the informant (P.W. 7), Saharsa P.S. Case No. 0071/87 was registered under Sections 25A, 26 and 35 of the Arms Act.



5. After investigation, charge-sheet was submitted and cognizance of the offence was taken and ultimately the case was committed to the court of Sessions for trial and disposal.

6. During the trial, the appellants were charged under Sections 25(1)(A), 25(1)(B) and 26(i), 26(ii) and 26(iii) of the Arms Act.

7. The defence of the accused persons is that they are innocent and nothing has been recovered from their houses and further defence is that Appellant No. 1, Lilanand Sharma is blind from last 20 years.

8. The learned trial court on conclusion of trial have convicted the appellants under Sections 25(1)(A) and 26(2) of the Arms Act and sentenced them as stated above.

9. The learned counsel for the appellants has assailed the judgment on the ground that in this case both the appellants are aged about 70 years and appellant no. 1 is blind from before and further it is said that Sergeant Major had made examination of the pistols and other articles seized and submitted a report that those articles were used for manufacturing the pistols and arms but Sergeant Major had not been examined in court by prosecution. Further submission of the learned counsel for the appellants is that there is absolutely nothing available on the record to show as to whether the seized articles were sealed and packeted after the seizure and as to whether the same were sent to the same Sergeant Major for examination as it was seized on 23.02.1987,



but the same was sent for examination on 27.03.1987, i.e. after more than a month and in such a situation, possibility of tampering with the articles can not be ruled out.

10. In support of contention, learned counsel for the appellants has placed reliance on a decision of Hon'ble Supreme Court in case of *Sahib Singh Vrs. State of Punjab* reported in (1996) 11 SCC685 and submitted that the Hon'ble Apex Court in the said decision and in several other decisions held that the arms and ammunitions allegedly recovered and seized were not packeted and sealed, in absence of that possibility of their tampering cannot be ruled out. Further there is delay in sending the articles to the Sergeant Major and the same also vitiate the report of the Sergeant Major and on that ground itself the conviction of the appellants is vitiated and cannot be maintained.

11. Heard the learned counsel for the State also who defended the judgment saying that there are recovery of the materials which are used for manufacturing of pistols and the same will also appear from the report of the Sergeant Major (marked as Ext. 3/1), which has been submitted on the basis of an application of the Officer In-charge, which is Ext.3, and in such a situation, the conviction of the appellants under Sections 25(1)(A) and 26(2) of the Arms Act does not suffer from any infirmities and appears to be sustainable in the eyes of law.

12. In the background of submission of the learned



counsel for the appellants and on scrutiny of the evidence, it appears that P.W. 7 is the informant in the case and he has supported his version in his evidence and has stated that on 23.02.1987, he raided the house of Vinod Sharma and from there seized several articles as mentioned in the F.I.R. which were used for manufacturing the pistols and it further appears that he has also stated that he had sent the seized articles for examination to the Sergeant Major. It further appears from Ext. 3 and Ext. 3/1, which is the report submitted by the Sergeant Major, that those articles were used for manufacturing the pistol and other arms.

13. The other witnesses, namely, P.Ws. 3, 4, 5 and 6 have also supported the prosecution case and so far as the recovery of the articles is concerned, the same were proved and also marked as material Ext. I to VIII. As such evidences are consistent on the point of recovery. However, in spite of close scrutiny of the whole evidence, this Court does not find any *iota* of the evidence available on record to show as to where those seized articles were kept and as to whether they have sealed and packeted prior to keeping in Malkhana and further, there is delay of more than one month in sending the seized articles to the Sergeant Major for the examination. The Hon'ble Apex Court has dealt with all these points in case of Sahib Singh Vrs. State of Punjab (supra) and held as follows:-

“We next find from the record that the arms and ammunitions allegedly recovered from the appellant and seized were



not packeted and sealed. In Amarjit Singh Vs. State of Punjab this Court has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. From the record we further find that there is no evidence to indicate with whom the revolver was after its seizure by P.W. 3 till it was sent to the Arms Expert for testing through Head Constable Baita Singh. This missing link also weakens the prosecution case. For all these infirmities we are of the view that the appellant is entitled to the benefit of reasonable doubt.”

15. Apart from that, there is delay in sending the articles for examination and there is no explanation for delay and in such a situation, possibility of tampering with the seized articles cannot be ruled out. Besides that, seizure-list witnesses have also been declared hostile in this case and they have not supported that the articles were seized in front of them. Further, it appears that in this case P.W. 7 is the informant and he is the I.O. of the case also. Such practice has been deprecated by the Hon’ble Apex Court in the case of *Megha Singh Vrs. State of Haryana* reported in *(1996)11 SCC 709*, wherein Hon’ble Apex Court has held that *Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.*

16. The learned trial court has not considered the above



infirmities and inconsistencies in the prosecution evidence and convicted the appellants under Sections 25(1-A) and 26(2) of the Arms Act.

17. In such view of the matter, the conviction of the appellants under Sections 25(1-A) and 26(2) of the Arms Act does not appear to be sustainable in the eyes of law.

18. For the reasons aforesaid, the judgment and order of conviction of the appellants dated 13.02.2004 is set aside and the appeal is allowed.

19. As the appellants are on bail, they are discharged from liability of bail bonds.

(Vinod Kumar Sinha, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	27.03.2018
Transmission Date	27.03.2018

