

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.185 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

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Bijay Kumar Pandey son of Rajendra Pandey, Resident of village Ghosrama, P.S. Giriyak, District Nalanda at Biharsharif.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Pankaj Kumar, Advocate.
Mr. Shailesh Kumar Sharma, Advocate
Mr. Babban Roy, Amicus Curiae

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 07-02-2018

The sole appellant stands convicted under Section 353 of the Indian Penal Code and 27 of the Arms Act and sentenced to undergo RI for two years under Section 353 of the Indian Penal Code and R.I. for four years under Section 27 of the Arms Act.

2. The prosecution case as per the written report of Girja Prasad Sharma, Officer I/C of Giriyak Nalanda Police Station (not examined) in short is that he received information that accused Ranjit Singh and Bijay Kumar Pandey had come near the Jain Temple to collect ransom amount and it is also stated that Ranjit Singh was absconder in Giriyak P.S.Case No.105 of 1985 and Murarpur P.S.Case No.332 of 1985 and was arrested earlier in other several cases also and Bijay Kumar Pandey is also accused in Giriyak P.S.Case No.67 of 1986 under Section 395 of the Indian Penal Code



(hereinafter to be referred as 'the IPC'). Further prosecution case is that on the information he along with the other police personnel reached at the place of occurrence at 04:15 P.M. and saw that abducted Sushil Kumar Rastogi (P.W.4) and Prakash Chandra Rastogi (P.W.3) were talking with two miscreants and when they reached near them, they started firing and hid themselves in the house of Basant Singh and the police party surrounded that house, one of the miscreants Ranjit Singh started fleeing and he was arrested and one country-made Pistol, five live cartridges and seven empty cartridges were recovered from his possession and Sushil Kumar Rastogi and Prakash Chandra Rastogi have identified them as the person who had abducted and later on police searched inside the house and other co-accused persons have also been arrested from the house, however nothing has been recovered from their possession.

3. On the basis of the aforesaid written report, Giriyak P.S.Case no.120 of 1986 was instituted under Section 307 of the IPC and 25A and 26B of the Arms Act, on investigation, police submitted charge-sheet, cognizance of the case was taken and the case was committed to the court of sessions, which ultimately traveled to the file of Sri Awadhesh Kishor Prasad Singh, Presiding Officer of Additonal Court No.1, Nalanda.

4. In course of the trial, five witnesses have been examined and they are : P.W.1 Krishnadeo Prasad & P.W.2 Bachu Prasad



(both formal witnesses) P.W.3 Prakash Chandra Rastogi (hotel owner) , P.W.4 Sushil Kumar Rastogi (claims to be eye witness) and P.W.5 Devan Singh(declared hostile by the prosecution).

5. On behalf of the defence, neither oral nor documentary evidence has been adduced and their defence as per the statement under Section 313 of the Cr.P.C. and trends of cross examination of the witnesses appears to be of false implication and of innocence.

6. Learned trial court after considering the entire materials available on the record, convicted the appellant under Section 353 of the IPC and also convicted the appellant under Section 27 of the Arms Act and however acquitted the appellant from the charges under Sections 307/342 of the IPC.

7. Contention of the appellant is that it is admitted that nothing has been recovered from the possession of the appellant and in such a situation, informant (officer) who has conducted raid has neither been examined nor any police official has been examined in this case and the charge-sheet also shows recovery only from the possession of Ranjit Singh, hence, conviction of the appellant does not appear to be appropriate in the facts and circumstances of the case.

8. In this case for consideration on the law point, Sri Baban Roy, Advocate has been appointed as the Amicus Curiae to assist the Court. It has been submitted by the learned Amicus Curiae that no



case is made out under Section 27 of the Arms Act in the present case and furthermore even the owner of the house (Basant Singh), from where the appellant was arrested has not been examined in this case. It has also been submitted that there is contradiction between the first information report and the evidence of the witnesses as evidence of the witnesses discloses that house of Sakaldeo Singh was raided and the appellant was arrested whereas the earliest version shows that house of Basant Singh has been raided and they were arrested. Further, it has also been submitted that no specific allegation is there that it is the appellant who has fired on the informant and others, in such a situation, at least conviction under Section 353 of the IPC and 27 of the Arms Act does not inspire confidence. Further submission of the learned counsel for the appellant and the learned Amicus Curiae is that no independent witness has been examined to show that such occurrence has taken place and P.Ws. 3 and 4 are the interested witness in this case as such only relying on the interested witness, appellant ought not to have been convicted under Section 353 of the IPC or Section 27 of the Arms Act.

9. On the other hand, learned counsel for the State has submitted that there is enough cogent material available on the record to show that the appellant and other co-accused persons fired on the police party, no doubt they have not received any injury but for that the learned trial court has not found the appellant guilty under



Section 307 of the IPC but the evidence of the witnesses clearly shows that criminal force was used to deter the police party from discharging from their public duty and further the evidence shows that the appellant and other co-accused persons have fired on the police party by using unlicensed arm, in such a situation, conviction under Section 353 of the IPC as well as Section 27 of the Arms Act appears to be quite sustainable in the eye of law and does not require any interference.

10. From consideration of evidence of the witnesses produced by the prosecution it appears that the case is based only on the basis of evidence of P.Ws. 3 and 4. P.W.3 is Prakash Chandra Rastogi and P.W.4 is Sushil Kumar Raastogi. Sushil Kumar Rastogi is the father of Prakash Chandra Rastogi and has stated that Prakash Chandra Rastogi was abducted by the accused and appellant. P.W. 4 Sushil Kumar Rastogi has named the appellant and Ranjit Singh also apart from one Nabab Mian. His evidence also discloses that when he had come to give ransom amount, the police party reached there and thereafter the appellant and other co-accused persons fired on the police party and hid themselves in the house of one Sakaldeo Singh from there, they were arrested and there is recovery of Pistol, live cartridges and empty cartridges from possession of Ranjit Singh, whereas nothing has been recovered from possession of appellant. No doubt in the evidence before the court, they have stated that witnesses



have stated that appellant and other co-accused hid in the house of Sakaldeo Singh whereas in the FIR it is stated that they hid in the house of Basant Singh, however, since the witnesses have been examined after long time in the court as such, such type of discrepancies are quite natural. There is nothing available on the record to show that the appellant had inimical term with P.W.3 and 4, who appear to be independent witness and aggrieved party also in the case and their evidence in spite of their cross examination remains unrebutted and intact. No doubt the informant and I.O. have not been examined in this case, but the evidence of P.Ws.3 and 4 are quite consistent, so far arrest of the appellant from the place of occurrence is concerned and also so far genesis of the occurrence and manner of occurrence is concerned and that clearly discloses and supports the prosecution version, as such even though the informant and the I.O. has not been examined in this case, that will not wash out their consistent evidence.

11. Appellant was convicted under Section 353 of the IPC and in view of the evidence available on the record showing that the appellant has used fire arm and made firing on the police party, as such he has used criminal force to deter the police party from their discharge of the public duty, as such conviction of the appellant under Section 353 of the IPC appears to be just and proper and so far conviction of the appellant under Section 27 of the Arms Act is



concerned, submission of the learned counsel for the appellant is that there is nothing available on the record to show that the appellant has used fire arm on the police party and there is no recovery also, however, recovery is not essential in view of the fact that there is consistent evidence that he along with other co-accused persons fired on the police party and there is nothing to rebut the aforesaid evidence of P.Ws. 3 and 4.

12. Considering the aforesaid facts, conviction of the appellant under Section 353 of the IPC as well as Section 27 of the Arms Act appears to be just and proper, as such it does not require any interference by this Court.

13. It has been submitted that petitioner has remained in custody for about five months and occurrence is of the year, 1986, considering the above submission and the age of the appellant, his sentence is reduced to the period already undergone under Section 353 of the IPC as well as under Section 27 of the Arms Act.

14. With the aforesaid modification in the sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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