

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.188 of 2003

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

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Mangal Singh @ Mukhiya, son of Sri Nageshwar Singh, resident of village Naula,
P.S. Bhagwanpur, District Begusarai

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Hare Krishna Prasad, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 07-02-2018

The sole appellant stands convicted under Section 27 of the Arms Act and acquitted from the charges under Sections 307/34 of the Indian Penal Code vide judgment dated 15.2.2003 and order dated 17.2.2003 passed by Sri S.M.I.I.F. Alam, the then Presiding Officer, Additional Court, F.T.C., Begusarai in Sessions Trial No. 171 of 1991.

2. Prosecution case, as per narration given by P.W.7, Jayant Kumar, in short, is that while he was returning from Thakurbari of Choudhary Chandra Mauli Prasad after seeing Jhula with his father, in front of his house he was intercepted by appellant Mangal Singh @ Mukhiya along with one Balram Singh @ Bholtha and it is stated that appellant was armed with pistol and Balram Singh was fired on his father causing injury to him and the appellant after hurling abuses fled



away.

3. On the basis of aforesaid fardbeyan Bhagwanpur P.S. Case No. 62 of 1990 was registered. Post investigation charge sheet has been submitted against the appellant and other accused person. Later on it appears that case of accused Balram Singh was separated and the case of appellant is committed to the court of sessions, which ultimately came to file of Sri S.M.I.I.F. Alam, the then Presiding Officer, Additional Court, F.T.C., Begusarai for trial and disposal.

4. In order to prove its case prosecution has examined altogether seven witnesses, they are P.W.1 Suryashanker Jha, Advocate Clerk and formal witness, who has proved Ext.1, writing and signature of S.I. on FIR, P.W.2 Umakant Mishra, Advocate Clerk and formal witness, who has proved Ext.2, writing and signature of A.S.I. on fardbeyan, P.W.3 Gauri Shanker Singh, FIR named witness, P.W.4 Ramchariter Singh @ Birbal Singh, P.W.5 Hare Ram Singh, father of informant, who claims to be eye-witness, P.W.6 Arjun Singh, FIR named witness and P.W.7 Jayant Kumar, the informant and injured.

5. Besides that the following documents have been brought on record as exhibits in this case, they are Ext.1, writing and signature of S.I. on F.I.R., Ext.2, writing and signature of A.S.I. on fardbeyan, Exts. 3, 3/1 & 3/2, signature of informant and others on fardbeyan.



6. Defence of the accused as per trend of cross examination and from the statement under Section 313 Cr.P.C. appears to be of innocence and of false implication in the present case.

7. Learned trial court after considering the evidence has acquitted the appellant from the charge under Sections 307/34 IPC and convicted him under Section 27 of the Arms Act stating that he was carrying pistol at that time and he tried to drag father of informant on the point of pistol.

8. Contention of learned counsel for the appellant is that there is contradiction in the evidence of witnesses with regard to use of fire arm and carry the fire arm by the appellant and there is no evidence that he used fire arm in the present case.

It has also been submitted by learned counsel for the appellant that Doctor and I.O. have not been examined in this case and in such view of the matter, the conviction of appellant is not sustainable in the eye of law.

9. However, contention of learned counsel for the State is that F.I.R. shows that appellant was carrying fire arm and evidence of witnesses shows that he has dragged father of informant on the point of pistol, as such, conviction of appellant under Section 27 of the Arms Act is sustainable and requires no interference by this Court.

10. On a consideration of evidence on the background of



submissions of both sides it appears that P.Ws. 1 and 2 are formal witnesses and P.W.7 is the informant in this case. P.W.7 has stated in his evidence in court that at the time of occurrence when he reached near his house appellant Mangal Singh and Balram Singh were creating nuisance in drunken condition and when his father protested accused Balram Singh fired on him near his house causing injury to him and appellant Mangal Singh tried to drag him. He has been cross examined also. However, one fact which appears in his evidence is that nowhere it is mentioned that either appellant was armed with pistol or he used the same at the time of occurrence, though in F.I.R. it is stated that appellant was armed with pistol. So far other witnesses are concerned, P.W.3 is Gauri Shanker Singh, who has not stated in his evidence that appellant was carrying or using fire arm, rather he has stated that appellant tried to drag father of appellant. Evidence of P.W.4 Ramchariter Singh is also similar to the evidence of P.W.3. P.W.5 Hare Ram Singh is father of informant and injured in this case, who has stated in his evidence that Mangal Singh has also threatened him on the point of pistol. However, as stated above, neither it is the prosecution story nor informant nor other witnesses has stated so, at best evidence against the appellant is that he tried to drag father of informant. For the sake of convenience Section 27 of the Arms Act is quoted below:



“27. Punishment for using arms, etc.- (1) Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death.”

On a plain reading of Section 27 of the Arms Act it appears that it relates to offence for using arms or ammunition in contravention of Section 5 or 7 of the Arms Act but in the present case, as discussed above, there is no allegation against the appellant for using fire arm, rather informant and other witnesses except P.W.5 has stated that appellant used fire arm on father of informant (P.W.5) and though P.W.5 has stated so but there is intra contradiction in the evidence that appellant, use of fire arm does not appear to be believable. However, learned trial court has failed to consider this aspect of the matter and only on the basis of evidence of P.W.5 he has convicted the appellant under Section 27 of the Arms Act and learned trial court has not considered the evidence of P.W.5 is contrary to the



evidence of informant and other witnesses and even contrary to the earliest version of the prosecution.

11. Considering the discussions made above, the conviction of appellant under Section 27 of the Arms Act does not appear to be sustainable. Accordingly, this appeal is allowed. The judgment of conviction and order of sentence are set aside.

12. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bond.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
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