

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.51 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- EASTCHAMPARAN (MOTIHARI)

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Sharda Devi, wife of Bhola Kunwar, r/v- Dilawarpur Tola, Bhagwanpur, P.S.-
Kesaria, District- East Champaran (Motihari).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Din BAndhu Singh

For the Respondent/s : Mr. Bal Mukund Pd. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 26-07-2018

Heard the learned counsel for the appellant as well as the
State.

2. The appellant Sharda Devi has been convicted under
Section 25(1-B) of the Arms Act by the judgment and order dated
17.01.2009 passed by the learned Additional Sessions Judge, Fast Track
Court IV, Motihari in S. Tr. No. 371 of 1994/256 of 2006, arising out of
Keshariya P.S. Case No. 30/1991 and has been sentenced to undergo R.I.
for one year.

3. Learned counsel for the appellant has submitted that in
the written report it is alleged that firearm was handed over by the
villagers to the police. There was no recovery of any firearm from the
physical possession of the appellant by any police officer. The seizure-
list had been prepared in which it had been mentioned that the firearm



was produced before the police in the orchard situated towards South of the house of Siyasaran Bhagat.

4. Learned counsel for the State has submitted that there is no illegality in the impugned judgment.

5. The prosecution case, as per Fardbeyan of the informant Permanand Bhagat, is that on 23.05.1991 at the orchard of Faudar Bhagat, one marriage party had come on the occasion of marriage of daughter of Sheonath Sah. The marriage party was taking shelter near the house of Jagarnath Bhagat. Jagarnath Bhagat asked the marriage party to move somewhere else from there but co-villagers Sitaram Bhagat, Prabhu Bhagat and others made protest. Thereafter, wife of Bhola Kunwar, namely, Sharda Devi (appellant) and other family members of Bhola Kunwar arrived and told the marriage party to go somewhere else. The marriage party started to leave the place after seeing Bhola Kunwar and his son armed with deadly weapons like Bhala, Nalkatua etc. It is alleged that the appellant, who was armed with Nalkatua, fired on the informant. The informant however succeeded to save himself from injury. The informant recovered the Nalkatua and misfired cartridge and produced the same before the police.

6. During trial, the prosecution has examined altogether five witnesses.

7. P.W. 5 is formal witness, who has proved formal F.I.R., which has been marked as Ext. 3.



8. Permanand Bhagat is the informant of this case. He has been examined as P.W. 4. This witness has stated during investigation in the examination-in-chief in Para 2 that he could not see the firing made by Sharda Devi (appellant). In para 7 he has stated that the villagers had caught Sharda Devi. They had recovered Nalkatua and one live cartridge from her possession. In para 8 he has stated that the appellant Sharda Devi along with Nalkatua and live cartridge was handed over to the police.

9. Shyam Narayan Bhagat, who has been examined as P.W. 2, has also stated in his evidence in para 4 that the villagers had caught Sharda Devi and had snatched Nalkatua and handed over the same along with live cartridge to the police.

10. P.W. 3, Chandrika Kunwar, has also stated in his evidence that the villagers had caught Sharda Devi from his house. He has stated in para 7 of his evidence that the police had not recovered any Arms before him.

11. P.W. 1, Raghunath Bhagat, has stated in his evidence that he could not see the firing made by Sharda Devi. He has also stated in para 3 of his evidence that the villagers had caught Sharda Devi. Nalkatua and cartridge were also recovered. Sharda Devi was handed over along with Nalkatua and cartridge to the police.

12. In this manner, there is consistent evidence of all the prosecution witnesses and that none of them had seen the appellant had



made firing. It is also evident that Nalkatuwa and cartridge were handed over to the police by the villagers. The police has mentioned in the seizure-list that the alleged firearm was produced before him in the orchard situated towards South of the house of Siyasaran Bhagat. P.W. 3, Chandrika Kunwar has specifically stated in para 7 of his evidence that the police did not recover the firearm before him. Therefore, the conviction of the appellant for the offence under Section 25(1-B) of the Arms Act is not made in accordance with law. The prosecution has not been able to substantiate the charge for the aforesaid offence beyond all reasonable doubt against the appellant on the basis of evidence mentioned above.

13. Accordingly, the judgment of conviction and order of sentence dated 17.01.2009 is set aside.

14. This Criminal Appeal is allowed.

15. The appellant is on bail. She is discharged from liability of her bail bond.

(Sanjay Priya, J.)

Rakhi

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