

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.172 of 2009

Deolagan Rajak, son of Mahabir Rajak, resident of village-Tarowa, P.S.-
Gurua, District-Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae

For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 06-12-2018

1. As the learned counsel for the appellant failed to appear on account thereof, Mr. Ranbir Singh, learned advocate has been requested to assist the court as an Amicus Curiae.

2. Appellant, Deolagan Rajak has been found guilty for an offence punishable under Section 25(1-B)a of the Arms Act and sentenced to undergo RI for three years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo S.I. for three months, additionally, under section 26(1) of the Arms Act and sentenced to undergo RI for six years as well as to pay fine appertaining to Rs.5000/- in default thereof to undergo SI for three months, additionally with a further direction to run the sentences concurrently vide judgment of conviction dated 21.02.2009 order of sentence dated 24.02.2009 passed by Additional District & Sessions Judge, FTC, IV, Gaya in Sessions Trial No.143 of 2007/901 of 2007.

3. Rakesh Raman, PW.15 recorded his self statement on 21.07.2006 at 06:45 hours at village-Tarowa at the house of appellant



Deolgan Rajak disclosing therein that he happens to be Officer-in-charge of Gurua P.S. After getting confidential information that accused Deolagan Rajak has stored illegal arms and ammunition in huge quantity to facilitate the crime, a raiding party has been constituted (so named) and house of Deolagan Rajak has been raided in presence of seizure list witnesses namely Ramswaroop Singh (PW.12) and Baldeo Mahto (PW.11) and during course of search from a steel box, as well as from a Kothi lying nearby arms and ammunition, explosive substance (as detailed under seizure list) recovered and seized. On query accused, who was present, failed to disclose that he was a licensee for retaining the aforesaid items and that being so, accused was presented. A copy of seizure list was handed over to the accused.

4. After registration of Guruva P.S. Case No.40/2006, investigation was entrusted to one of the members of the raiding party namely Mahesh (PW.2) who, conducted investigation and during course thereof, got the seized article properly examined by the ballistic expert (PW.13), procured sanction order (Ext.2) and then, after completing investigation, submitted charge sheet facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. It has further been submitted that nothing has been recovered from the possession of the accused rather



Mahesh Paswan (PW.2) was on visiting terms with Vinod Paswan whose wife had contested unsuccessfully during course of last mukhiya election against the wife of the accused and on account thereof, accused has been implicated in order to take revenge. Furthermore, one DW has also been examined on that very score.

6. Altogether fifteen Pws have been examined on behalf of prosecution who are PW.1-Sarju Singh, PW.2-Mahesh Paswan, PW.3-Sureshwar Singh, PW.4-Sanjay Singh, PW.5-Ashok Kumar, PW.6-Raj Ballabh Singh, PW.7-Udai Narain Singh, PW.8-Prayag Yadav, PW.9-Mahendra Ram, PW.10-Lal Mohan Singh, PW.11-Baldeo Singh, PW.12-Ram Swaroop Singh, PW.13-Mithilesh Prasad, PW.14-Uma Shankar Prasad and PW.15-Rakesh Raman. Side by side has also exhibited, Ext.1-Strile report relating to defusing of the explosive substance, Ext.2-Sanction order, Ext.3 Series-Signature of seizure list witnesses, Ext.4-Ballestic examination report, Ext.5-Self statement of the informant, Material exhibit has also been produced and stood as material Ext.I to VI. As stated above no documentary evidence has been adduced on behalf of defence. However, one DW.1-Sheo Kumar Singh has been examined.

7. Learned Amicus Curiae assailed the judgment on two points, primarily. The first is from the evidence of PW.2, it is evident that house of appellant was in dilapidated condition, on southern side and further, on account of presence of jungle, one could have free access and that being so, even if admitting the recovery for amount



could not be said to be within his full conscious. In likewise manner, it has also been submitted that during course of cross-examination of the informant, it has specifically been suggested that house in question was being occupied not only by the appellant exclusively rather in joint possession along with his two other brothers and for that, on account of non arraying the other brothers as an accused, did not justify the judgment of conviction and sentence against the appellant, solely.

8. Furthermore, it has also been submitted that from the evidence of the informant as well as the I.O., it is apparent that so alleged recovered articles were not at all sealed at the place of occurrence, during course of production before the sergeant major (ballistic expert), even after examination of the seized material it was not sealed by the ballistic expert and so, the aforesaid lapses having at the end of the prosecution gives a passage of false implication whereupon did not justify the finding and that being so, the judgment is fit to be set aside.

9. On the other hand, the learned Additional Public Prosecutor while supporting the finding has submitted that recovery of illegal firearms, ammunition as well as explosive substance from the possession of appellant is found duly proved whereupon, the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed. Furthermore, it has also been pleaded that plea of jointness has been raised at the end of appellant, hence it was upon him to substantiate. As, appellant failed to prove, hence the presumption



will be adverse to him. Thus, in any view of the matter, the plea of the appellant is gadded with imagination, hence without any fusion.

10. Before coming to the evidence, the status of the witnesses should be seen. PW.1, PW.2, PW.3, PW.5, PW.6, PW.7, PW.8, PW.10 and PW.15 are witnesses over conduction of raid, recovery of arms and ammunition, explosive substance from the house of appellant. PW.11 and PW.12 are the seizure list witness, PW.14 is a formal witness, So far quality of witnesses are concerned, PW.11 and PW.12, both of them seizure list witnesses did not support the case of the prosecution though, admitted their presence over the seizure list.

11. In **Sahib Singh vs. State of Punjab** reported in **AIR 1997 SC 2417**, it has been held by the Hon'ble Apex Court as follows:

“Having gone through the record we find much substance in each of the above contentions. Before conducting a search the concerned police officer is required to call upon some independent and respectable people of the locality to witness the search. In a given case it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but if it is found - as in the present case - that no attempt was even made by the concerned police officer to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of evidence of the Police Officer, though not its admissibility. 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* 1995 Supp. (3) SCC 217 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 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.”

12. Thus, while scrutinizing the evidence having adduced on behalf of prosecution, the first task, in light of aforesaid principle is to see whether alleged recovery seized arms and ammunition, was sealed or not, and secondly with regard to for keeping during intervening period. PW.1 at para-3 had stated that seized articles were not sealed at the place of occurrence in his presence. PW.2 who was one of the member of the raiding party as well as I.O. of the case has at para-5 of his cross-examination has stated that seized articles were not sealed at the place of occurrence. He has further stated that whenever seized articles are being kept at Malkhana, Malkhana registration number is affixed over the same. During course of investigation he had not mentioned the M.R. number in the case diary. PW.4 in para-3 has stated that he is unable to say whether seized articles were sealed or not. PW.5 at para-2 has stated that seized articles were not sealed while PW.6 at para-2 has stated that seized articles were not sealed in his presence. PW.13, the sergeant major did not depose that material exhibits were produced before him in sealed condition and in likewise



manner, he after examination thereof, had sealed. PW.15, informant kept mum on that very score.

13. Material exhibit has been produced in court by PW.9 a formal witness, who has stated that these material exhibits relate with Guruwa P.S. Case No.40/2006. This PW during cross-examination has stated that he has produced the material exhibit as directed.

14. At the present moment, the evidence of PW.13, sergeant major should be taken note of who has stated that both the firearms, during course of examination, were marked as M.P. 131A/2006, MP 131B/2006, the same is not at all been perceived by the witnesses as well as even by the presiding officer. The presiding officer, as is evident from the record more particularly, from the evidence of PW.9 failed to endorse whether the produced articles bore any kind of specific mark, mention of Guruwa P.S. Case no.40/2006, was produced in open condition or in sealed condition, whether there was mention of M.R. number, whether those articles were produced from the P.S. Malkhana, who had handed over those articles, all remained mysterious event because of the fact that neither the prosecutor was sensitized on that very score nor the presiding officer took sincere effort. The learned P.O. remained idle during trial on account thereof, the deficiencies which remained, having adverse impact over prosecution version, could not be cared of.

15. Irrespective of the fact that prosecution has taken care of in getting presence of such large number of witnesses including



material exhibit but, on account of deficiency persisting on the record as stated herein-above, it looks in appropriate to concur with the finding recorded by the learned lower court and that being so, the same is set aside. Appeal is allowed. Appellant is on bail, hence discharged from its liability. First and last page of judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	NA
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