

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.37 of 2011

against the judgment and order, dated 25.05.2010/27.05.2010, passed by
Additional Sessions Judge, Fast Track Court, I, Kaimur at Bhabhua, in S. Tr.
No. 113 of 2009/31 of 2008

NATHUNI SINGH YADAV @ NATHUNI YADAV @ NATHUNI SINGH
S/O PARSURAM SINGH YADAV RESIDENT OF VILLAGE - SISAURA ,
P.S - NANDGANJ , DISTRICT – GAZIPUR(U.P.) ... Appellant

Versus

THE STATE OF BIHAR

... Respondent

Appearance :

For the Appellant : Mr. RANA VIKRAM SINGH, Adv.

For the Respondent : Mr. PARMESHWAR MEHTA, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 27-03-2018

Heard the parties.

2. The present appeal is against the judgment and order of conviction, dated 25.05.2010 and 27.05.2010 respectively delivered by Sri Ravi Shankar Tiwari, Additional Sessions Judge, Fast Track Court, I, Kaimur at Bhabhua, in S. Tr. No. 113 of 2008/31 of 2008 thereby acquitting the appellant and others of the charges under Sections 302, 149, 120B and 379 of the Indian Penal Code has convicted him for committing offence under Section 27 of the Arms Act consequently sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 1,000/-, in case of default in making payment of fine to further undergo simple imprisonment for one month.

3. Being aggrieved and dissatisfied by the aforesaid judgment and order of conviction the appellant has preferred the appeal.

4. Learned counsel for the appellant contends that five



accused persons were put on trial by the trial Court for charge under Sections 302, 149, 379 and 120B of the Indian Penal Code and also under Section 27 of the Arms Act for killing the informant's brother, Akhilesh Singh, by gun shot injury. However, the trial Court due to lack of evidence acquitted all accused persons of charges under Sections 302, 149, 379 and 120B of the Indian Penal Code, but, strange enough convicted the appellant under Section 27 of the Arms Act merely on the evidence that the part of the licensee arms of the appellant was recovered within the territorial jurisdiction of the State of Bihar though the licence of the appellant was to carry the arms within the jurisdiction of Varanasi Divisional Area in the State of Uttar Pradesh as committed the offence under Section 27 of the Arms Act by violating provision of Section 5 of the Arms Act.

5. The learned trial Court has misinterpreted Section 5 and Section 27 of the Arms Act, it is not a case that the appellant had no licence rather admitted fact is that he had the licence of the said arms issued under Section 3 of the Arms Act.

6. Learned counsel has placed reliance on two decisions reported in **AIR 1987 SC, 2377 (Piara Singh Vrs. State of Punjab)** as well as on the case of **Deomuni Sharma Vrs. State of Jharkhand reported in (2009) 16 SCC, 80** decided by the Apex Court reported in **Deomuni Sharma (supra)**.



7. The learned counsel for the State submits that the licensee arms of the appellant was recovered within the State of Bihar so the offence under Section 27(1) of the Arms Act is attracted and proved so there is no error in the judgment.

8. Having considered the rival submissions and on appraisal of records of the case, the Court finds that the trial Court acquitted the appellant, Nathuni Singh Yadav @ Nathuni Yadav @ Nathuni Singh, along with other co-accused of charges under Sections 302, 149, 379 and 120B of the Indian Penal Code, but, surprisingly enough convicted the appellant under Section 27 of the Arms Act whereas it is not proved by the prosecution that appellant by using his licensee arm has killed the deceased, Akhilesh Singh, the brother of the informant. Section 27 of the Arms Act is a penal provision for awarding punishment in case of using arms. Section 27 sub clause (1) of the Arms Act reads as such :

“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 extent to seven years and shall also be liable to fine.”

9. The penal provision under Section 27(1) of the Arms Act is attracted only if any arm or ammunition is used by accused contravening Section 5 of the Arms Act. Section 5 of the Arms Act deals with licence of manufacture, sell etc. of arms and ammunition.



This provision of law prohibits that any person unless holds an arm licence, he should in accordance with the provision of the Arms Act cannot use, manufacture, sell, transfer, convert, repair, test or prove. Besides that he cannot also exhibits any arm or offer it for sale or transfer to any one and also cannot keep the ammunition in his possession for sell, transfer, convert, repair, test or prove. In the present case, the appellant was a licensee as licence was issued to him by the licensing authority. In the case of **Deomuni Sharma** (supra), the Supreme Court has observed as follows :

“17. For conviction under Section 27 of the Arms Act, it has to be proved that the fire arm has been used in contravention of Section 5 or Section 7 of the Arms Act. Since it was a licensed gun, there was no question of Section 7 coming in. In so far as Section 5 is concerned, we do not think that the act on the part of the accused in firing in the air to scare the aggressors would come within the mischief of Section 5(1) of the Arms Act. Therefore, the appellant is liable to be acquitted even of the offence under Section 27 of the Arms Act.”

10. In the aforesaid case, the appellant had a licensed gun so the Court held that there is no question of application of Section 7 of the Arms Act in such case as well as Section 5 of the Arms Act also has opened firing in the air so the aggressor do come within the mischief of Section 27(1) of Section 27(1) of the Act.

11. In the instant case, there is no evidence that the



appellant used the weapon in any manner. The trial Court has misinterpreted Section 27 of the Arms Act as barely finding the arms of the appellant in the territorial jurisdiction of Bihar, the offence under Section 5(1) of the Arms Act is not attracted.

12. So having considered the evidence on record, the Court comes to the conclusion that conviction under Section 27(1) of the Arms Act against the appellant is not proved.

13. The appeal stands **allowed**.

14. Since, the appellant is already on bail, so he is discharged from the liability of his bail bond.

(Arun Kumar, J)

Shamshad/-

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