

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.335 of 2015

Arising Out of PS.Case No. -34 Year- 2014 Thana -MOHANIA District- BHABHUA (KAIMUR)

=====

Kabindra Kohar son of late Parikhan Kohar R/o Village Bhabua, Ward No. 1
Mauza Semariya, P.S. Bhabua, District Kaimur at Bhabua.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

=====

Appearance:

For the Appellant/s : Mr. Baban Roy, Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 21-03-2018

As, on repeated call there happens to be absence of learned counsel for the appellant on account thereof, Mr. Baban Roy has been requested to assist the court as an Amicus Curiae which he concedes.

2. Appellant, Kabindra Kohar has been found guilty for an offence punishable under Section 25(1-B)A of the Arms Act and sentenced to undergo R.I. for two years as well as to pay fine appertaining to rupees one thousand and in default thereof, to undergo S.I. for one month additionally, under Section 26 of the Arms Act to undergo R.I. for a year as to pay fine appertaining to Rs.500/- and in default thereof, to undergo S.I. for 15 days with a further direction to run the sentences concurrently, with a further direction that the period having undergone during course of trial be set off as provided under Section 428 of the Cr.P.C. vide judgment of conviction and sentence dated 12.05.2015 passed by Addl. District & Sessions Judge, IVth, Kaimur at Bhabhua in Sessions Trial No.158/2014.



3. PW.1, Deo Kant Sinha, Officer-in-charge of Mohania P.S. recorded his self-statement of 17.02.2014 at about 06:00 PM disclosing therein that on the same day at about 05:50 SDPO has received confidential information with regard to assemblage of anti-social elements in Scorpio vehicle having duly armed in order to commit an offence whereupon, raiding party was constituted (so named) and then they proceeded towards the destination. Seeing police jeep, the driver of the Scorpio vehicle tried to speed away the vehicle but was intercepted. All the occupants got down and ran therefrom, managed to escape save and except one, who on interrogation disclosed his identity as Kabindra Kohar. In presence of two seizure list witnesses, namely, Radhey Shayam Prasad and Deepak Kumar he was searched out and during course thereof, one loaded pistol three live cartridges one mobile was seized from his possession. Then thereafter, vehicle was seized and therefrom, one mobile was recovered. After preparing search-cum-seizure list, recording of fardbeyan they returned back to the Police Station along with the accused.

4. On the basis of the aforesaid self statement Mohania P.S. Case No.34/2014 was registered followed with an investigation as well as submission of charge sheet meeting with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well statement recorded under Section 313 of the Cr.P.C. is of complete denial. Furthermore, it has been pleaded that police officials happens to be hostile since before and on account thereof, accused was apprehended from a railway station where he was to go to Varanasi for his treatment. However, neither ocular nor



documentary evidence has been adduced on behalf of defence.

6. In order to substantiate its case, prosecution had examined altogether eight PWs who are, PW.1 Deo Kant Sinha, PW.2 Vijay Kumar Singh, PW.3 Anup Kumar thakur, PW.4 Amrendra Kumar Thakur, PW.5 Saroj Kumar, PW.6 Radheshyam Prasad, PW.7 Subodh Kumar, PW.8 Manoj Kumar. Side by side had also exhibited Ext.1-Self statement, Ext.2-Seizure list, Ext.2/1-Signature of witness over seizure list, Ext.3-requisition for getting the seized article examined by the Sergeant Major, Ext.4-Sanction order, Ext.5-Ballestic Report. Also produced the seized article and those are Material Ext.1-Countrymade Pistol, Material Ext.-2,2/A, 2/B, 2/C-Four cartridges, Material Ext.-3 Nokia Mobile, Ext.4-the seized number plates recovered from Scorpio vehicle, Ext.5-Mobile recovered from the vehicle. As stated above, accused had not entered into defence.

7. From the evidence of the respective witnesses that means to say PW.1, PW.2, PW.3, PW.4 and PW.5, it is crystal clear that they have consistently stated that Scorpio was occupied by the anti-social elements with regard thereto, SDPO had confidential information and as directed, raiding party was constituted comprising them along with others, raid was conducted during course thereof, all the occupants succeeded in fleeing therefrom while appellant Kabindra Kohar was apprehended and subsequent thereto, he was searched out and during course thereof, one loaded pistol three live cartridges and a mobile was recovered from his possession and for that seizure list was prepared. It has also been consistently asserted that on search from the vehicle one mobile has been recovered. However, it has also been stated that the



Investigating Officer PW.7 that vehicle was released by the order of the court. The aforesaid consistent version of the prosecution corroborated by PW.7 and 8 Investigating Officer as well as Sergeant Major appears to be sufficient to justify the finding recorded by the learned lower court. Before that, one has to keep in mind that from the evidence of PW.7, Investigating Officer paragraph-4, it is evident that appellant happens to be an accused in twelve cases that means to say has got criminal antecedent. PW.5 Saroj Kumar in para-15 had stated that he was not knowing the accused since before but from the evidence of PW.1 para-3 as well as PW.2 para-3, PW.3 para-9, it is evident that appellant was known to them since before.

8. Now coming over the question of recovery, it is evident that Deepak Kumar one of the seizure list witness has not been examined while Radhey Shyam another seizure list witness as per evidence of PW.5 para-10 happens to be driver of the police jeep. During course of examination PW.6, it is evident that he had not deposed over recovery, preparation of seizure list rather had simply identified his signature over the seizure list, even then was not declared hostile by the prosecution.

9. Now coming to recovery, it is evident from the evidence of PW.5 para-3 that pistol four life cartridges, mobile were produced before the court in sealed packet and accordingly been marked but, from perusal of the evidence of PW.5, it is apparent that there happens no disclosure at his end that the packets bore P.S. Case number bearing Mohania P.S. Case No.34/2014 and in likewise manner any slip was affixed over the respective seized articles to disclose its connectivity. When his examination has been gone through, it is evident from para-7 thereof, that he had categorically



stated that after seizure it was sealed. Whether it was really sealed, PW.1 had disclosed. Under para-5 of his cross-examination that seized articles were brought to police station where it was handed over to the Investigating Officer. PW.2 at para-6 had stated that seizure list was prepared at the place of occurrence. Seized articles were not sealed. He was unable to say in whose possession the same was handed over. PW.3 at para-7 had stated that seized articles were not sealed. The seized articles were carried by Saroj Kumar to Police Station and then it was handed over to the Investigating Officer.

10. PW.4 at para-10 had stated that they took the seized articles to police station and then handed it over to the Officer-in-charge. He is not remembering whether seized articles were sealed at the place of occurrence. As stated above, PW.5 had stated in para-7 that it was sealed at the place of occurrence itself.

11. PW.7 had stated that they took the firearm to the sergeant major from the Chief Judicial Magistrate Kaimur in sealed condition. At the present moment the evidence of PW.1, the Officer-in-charge is also to be seen who during his examination-in-chief had not disclosed that it was sealed at the spot however, during cross-examination at para-5 had stated that seizure list was prepared at the place of occurrence. Seized articles were taken to police station where, it was handed over to the Investigating Officer.

12. The another circumstance visualizing from the record is from the evidence of the Investigating Officer PW.7 para-13, it is evident that he took firearm ammunition to the Sergeant Major in polythene who, after examination returned the same in similar manner. He had further stated that sealed was opened in his presence while PW.8, Sergeant Major had stated that seized articles



were sealed in a cloth packet which was handed over by the Investigating Officer for examination. After examination of the same, he had also sealed the articles in same cloth packet and sealed it and then handed over to the Investigating Officer.

13. From the evidence of PW.5 who had produced the materials (para-3), it is evident that he had not shown the seal of PW.8, Sergeant Major over the packet nor, it was cloth made packet wherein PW.8 kept the seized articles and sealed. Further from the evidence of PW.8 it is apparent that none of them had stated that any identification mark was put over the seized arm and ammunition. That means to say prosecution had miserably failed to impress up that the packet containing arms and ammunition happens to be with regard to present case having been recovered from the possession of the appellant. In ***Jasbir Singh Vs. State of Punjab*** reported in ***AIR 1998 SC 1660***, it has been held:

“3. What is contended by the learned counsel for the- appellant is that the prosecution evidence itself shows that the pistol and the cartridges alleged to have been recovered from the appellant did not have any number or some distinctive mark on them and after their seizure by the police they were not sealed. Thus the identity of the weapon and the cartridges seized and the weapon and cartridges produced before the court was not established by the prosecution. Having gone through the evidence, we find that the contention raised on behalf of the appellant is correct and, therefore, deserves to be accepted. The pistol and the cartridges did not have any mark or any number on them and after seizing the same police had not thought it fit to wrap them and apply a seal over them. No explanation in that behalf was given by the prosecution witnesses. This aspect was not considered by the trial court. As the identity of the incriminating articles has not been established by the prosecution, we allow this appeal, set aside the conviction of the appellant both under Section 5 of the TADA Act and 25 of the Arms Act and acquit him of all the charges leveled against him.”



14. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability. First and last page of judgment be handed over to amicus curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	23.03.2018
Transmission Date	23.03.2018

