

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.401 of 2016

Arising Out of PS.Case No. -262 Year- 2013 Thana -PIRO District- BHOJPUR

=====

Shashi Bhushan Singh, Son of Sri Ram Singh, resident of Village: Chaturbhuj
Baraon, P.S: Piro, District- Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ravindra Kumar, Advocate

For the State : Mr. Ajay Mishra, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 05-03-2018

Shashi Bhushan Singh, the appellant stands convicted under Sections 25(1-AA), 25 (1-B) a, 26, 28 and 29 of the Arms Act vide judgment dated 12.04.2016 passed by the learned 1st Additional District & Sessions Judge, Bhojpur at Ara in Sessions Trial No. 243 of 2015, arising out of Piro P.S. Case No. 262 of 2013 and by order dated 18.04.2016, he has been sentenced to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 10,000/- for the offence under Section 25(1-AA) of the Arms Act; rigorous imprisonment for one year, to pay a fine of Rs. 2000/- for the offence under Section 25 (1-B) a of the Arms Act ; rigorous imprisonment for



three years, to pay a fine of Rs. 5000/- for the offence under Section 28 of the Arms Act and rigorous imprisonment for one year for the offence under Section 29 of the Arms Act with the stipulation that in default of payment of fine, the appellant shall undergo simple imprisonment for a period of two months, ten days and one month respectively. The sentences have however been ordered to run concurrently.

2. The appellant was found in personal possession of one country made pistol, one magazine containing four live cartridges of 7.05 bore and from his house, one country made carbine, one country made pistol along with number of live cartridges of different bores were also found. From his house, firearm licenses in the name of Manoj Pandey, the appellant, Raushan Singh and Deepak Kumar Verma were also found. The aforesaid licenses were found to be kept in a polythene bag.

3. The case of the prosecution rests on the self statement of Arun Kumar, the informant, who has been examined as P.W. 9 in the present case.

4. Arun Kumar (P.W. 9), at the relevant time was the Officer-in-charge of Piro Police Station. He has alleged in his self statement that when he along with the other members of the police party were on patrolling duty, he received a secret information at



about 11:30 P.M on 06.10.2013 that some persons were arriving at village Chaturbhuji Barao with illegal weapons. This information was communicated to the Senior Police officials and P.W. 9, along with the police party, kept a watch on the road leading to village Chaturbhuji Barao. It was further alleged in the aforesaid self statement that in the late night, S.T.F team from Patna also came for his assistance. Thereafter, P.W. 9 was additionally informed that the appellant had gone to his house in village Chaturbhuji Barao with a number of weapons and is also expecting some of his associates, who are likely to come with another assignment of firearm weapons. On this information, the police party reached village Chaturbhuji Barao and surrounded and laid a seize of the house of the appellant. At about 6 O' clock in the morning on the next day, one person opened the door and started looking hither and thither surreptitiously, when he was caught hold of by the police party. He disclosed his name as that of the appellant. In front of two villagers viz. Kameshwar Paswan (P.W.5) and Ram Naresh Singh (P.W.7), the search of the appellant was made and from his possession, a country made pistol and a magazine were recovered. The magazine contained four live cartridges of 7.65 bore. Further search of the house of the appellant led to the recoveries of one country made carbine of black colour, one country made pistol, both of which were found hidden beneath the cot



of the bedroom of the appellant. A number of live cartridges of different bores were also found kept concealed in the house of the appellant. Apart from this, firearm licenses of Manoj Pandey, the appellant and two others were also found kept in the house. The appellant could not produce any relevant paper, authorizing him to keep such firearms.

5. It has then been stated by P.W. 9 that on further query, the appellant informed that his two friends from Munger are likely to arrive at the village with semi finished firearms and live cartridges. He also named one of the accused who too was put on trial, who, according to the appellant, ran a factory of mini-weapons at Vikram. The police party, thereafter, went to the place from where there is a way to village Chaturbhuji Barao and at about 10:15 A.M., two of the accused persons viz. Md. Tausif and Ali Raja were found going in the same direction but in a suspicious manner. Both the persons were arrested and were searched in presence of independent witnesses. From their possession, one semi furnished country made pistol, magazine and live cartridges, each were recovered. They also could not produce any relevant document, authorizing them to keep such articles with them.

6. A seizure list, thereafter, was prepared and a copy of the same was handed over to the arrested accused persons.



7. On the basis of the aforesaid self statement of P.W. 9, Piro P.S. Case No. 262 of 2013 dated 07.10.2013 was registered for investigation for the offences under Sections 420, 467, 468, 471, 472 of the Indian Penal Code and Sections 25(1-AA), 26, 28, 29 and 35 of the Arms Act.

8. The police, after investigation, submitted charge-sheet, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

9. The Trial Court, after examining eleven witnesses on behalf of the prosecution and one on behalf of the defence, convicted and sentenced the appellant as aforesaid.

10. Be it noted that three other persons were put on trial along with the appellant but they have been acquitted of all the charges and only the appellant has been convicted and sentenced.

11. The learned advocate appearing on behalf of the appellant, while assailing the impugned judgment and order of conviction, has submitted that the search of the house of the appellant was conducted in breach of the mandatory provisions contained in Section 100 of the Code of Criminal Procedure; that there are several discrepancies in the self statement of P.W. 9, the recoveries at the house of the appellant and his arrest. It has further been submitted that from the evidence of Kameshwar Paswan (P.W.5), it would become



very evident that the seizure list was prepared at the Police Station and not at the house of the appellant. It has also been submitted that Ram Naresh Singh (P.W.7), who is the *Chaukidar* has also not stated that anything was recovered from the personal possession of the appellant. That apart, it has seriously been contended that the prosecution has not been able to show that the house in question was in exclusive possession of the appellant and therefore, legally speaking, the recoveries made from the house cannot be thrust exclusively upon him. There is no evidence on record to suggest that appellant was the only occupant of the house or the room from where recoveries were made. Lastly, it has been argued that the conviction under Section 25(1-AA) of the Arms Act is not justified as the report of the Sergeant Major is not specific regarding any prohibited arms.

12. In order to test the correctness of the judgment impugned and the arguments advanced on behalf of the appellant, it would be relevant to go through the deposition of the witnesses at the trial.

13. Kumar Alok Nath, Raju Kumar Singh and Rajiv Kumar, who are constables and, at the relevant time, were posted in Piro Police Station, have been examined as P.Ws. 1, 2 and 6 respectively. The aforesaid witnesses have testified to the fact that they had accompanied the police party to the house of the appellant,



from where recoveries of firearms were made. They have supported the prosecution version in its entirety.

14. Janardan Rai (P.W.3) has deposed before the Trial Court that on 07.10.2013 at about 8:30 A.M. when he had gone to Piro Police Station, he saw that the police party had arrested two miscreants and on their search, firearm weapons were recovered. He identified his signature over the seizure list (Ext-1).

15. The evidence of this witness is not relevant for the purposes of analyzing the case against the appellant. He is not a witness to the search and seizure at the appellant's house; rather he is a witness to the arrest of other accused persons, who have since been acquitted.

16. Similar is the position with the deposition of Santosh kumar Singh (P.W. 4), who too is only a witness on the point of arrest of the other two accused persons viz. Md. Tausif and Ali Raja, from whom also there were recoveries of firearm weapons.

17. What is of relevance here is the evidence of Kameshwar Paswan (P.W. 5). He has categorically stated before the Trial Court that about two years ago while he was at his house, he was called by the police party. He went to the house of the appellant at about 12 O' clock in the night. The police party had entered the house of the appellant and had recovered firearms and cartridges. He,



thereafter claims to have come back to his house. The aforesaid P.W. 5, thereafter went to the Police Station in the next morning where he was shown the weapons recovered from the house of the appellant and he put his signature on the seizure list which was prepared (Ext-1/2). In his cross examination, he has admitted that the appellant is his co-villager and that his house is situated only about half a kilometer away from the house of the appellant. It has also been admitted by the aforesaid witness that during the search proceedings, the appellant was standing in the eastern side of his house while the police party searched the house for about 10-20 minutes.

18. Though from the deposition of the aforesaid witness, it appears that he had signed the seizure list on the next morning but that fact alone cannot discredit his credentials as a person who has witnessed the search and seizure.

19. The seizure list ought to have been prepared at the place and time of raid. It may also have been prepared at the place and time of raid but P.W. 5 may not have seen it as he claims to have returned to his home after the recovery. The fact that he signed the seizure list next morning may not be a conclusive evidence of the fact that seizure list was prepared later. It is a matter of common knowledge that the independent witnesses, specially the co-villagers are most reluctant to become the witnesses of search and seizure. But



what stands established and proved from his deposition is that raid was conducted by the police party in the house of the appellant and recoveries of firearm weapons were made in the night itself.

20. The requirement of an independent witness to the seizure is only to ensure that no search and seizure is to be believed which is on paper only and not witnessed by independent persons. To that extent, the prosecution, through the mouth of P.W. 5 has been able to prove that search was made in the house of the appellant in the night of 07.10.2013.

21. Ram Naresh Singh, the Chaukidar, who has been examined as P.W. 7 has also supported the prosecution case and has testified to the fact that he had also accompanied the police party to the house of the appellant from where firearm weapons were recovered. He has proved the seizure list (Ext-1/3). However, the aforesaid witness has not stated about the personal search of the appellant.

22. A brief discussion of the evidence of Arun Kumar (P.W. 9), who is informant of this case and Ashgar Ali (P.W. 10), who is the Investigating Officer of this case, would be important.

23. P.W. 9 has supported in its entirety the prosecution version and has spoken about the recoveries made from the personal possession of the appellant as well as from his house.



24. P.W. 10 has deposed that he saw the house of the appellant. It had three rooms and a courtyard. He had handed over the weapons so seized to the Sergeant Major, Ara and had also received the report. He had received the sanction order from the office of District Magistrate, Ara. He has denied the suggestion that the appellant has wrongly been implicated in the present case.

25. Vinay Kumar Singh, Sergeant Major has been examined as P.W. 11. At the relevant time i.e. on 09.10.2013, he was posted in M.M.P, Ara as Sergeant Major. P.W. 10 had handed him over the seized articles and weapons which were recovered in connection with Piro P.S. Case No. 262 of 2013. On examination of those weapons, he found the pistol and automatic weapon in order. The third weapon was found to be a country made sten-gun which also was usable. There were altogether 48 cartridges which were live and active. With respect to only unfinished pistol, no opinion was given as to whether it was worthy of use. After the examination of the aforesaid weapons, he had submitted his report (Ext-6) and thereafter had returned the weapons to P.W. 10.

26. Thus, from the deposition of the aforesaid witnesses, it stands established that weapons and cartridges were recovered from the personal possession as well as from the house of the appellant and some of the weapons were prohibited weapons as



well: thus, bringing home charges under Section 25(1-AA), 25(1-B) a, 26, 28 and 29 of the Arms Act.

27. The deposition of the sole witness on behalf of the defence viz. Hare Ram Singh is of no avail to the appellant. He has deposed that on 07.10.2013, he was at his *Darwaja* and that the police party had raided the house of the appellant in which he was residing with other members of his family including the parents. He learnt about the arrest of the appellant only through newspapers. This statement of D.W. 1 is not worthy of any credence in view of categorical deposition of the prosecution witnesses and especially witnesses to the search and seizure.

28. While summing up the arguments, learned counsel appearing for the appellant has submitted that a Bench of the Patna High Court, way back in the year 1948, in the case of ***Ambika Prasad Singh and Another versus Laxmi Ahir reported in A.I.R (35) 1948 Patna, 223***, has held that the prosecution need to fully establish that an accused, who is guilty of possessing and controlling any incriminating substance, was in exclusive possession of the place from where such incriminating articles were recovered. The onus to prove the same cannot be thrust upon the accused under Section 106 of the Evidence Act or under any other provision of law that he was not in a position and control of the incriminating article. It was further



submitted that in the case of *Sahib Singh versus State of Punjab reported in AIR 1997 (SC) 2417*, it was held that in the absence of proof of exclusive possession of the place of recovery and the incriminating firearms not having been sealed and packeted at the time of raid, the conviction and sentence would not be proper.

29. Looking at the materials available in the case, it has been fully established that the appellant lived in the house where recovery had been made. There was no other person available in the house at the time of raid. No suggestion also has been put to anyone of the witnesses that when raid was conducted in the night, whether such witnesses who were members of the raiding team, had seen any other person in the house. In the absence of any such material, it was only safe for the Trial Court to have come to the conclusion that the appellant had the possession of the house. Since the appellant was found at the time of raid in the house and there being no evidence to the contrary that other independent persons are also residing in the house, the conviction of the appellant cannot be set aside on that score.

30. Since, according to the deposition of the witnesses, huge number of weapons and cartridges were recovered, it was not possible to seal and packed the same at the place of search and recovery. Nonetheless, there is nothing on record to suggest that



between the time, the weapons were seized and were produced before the Sergeant Major for its examination and before the Court, it was handled or tampered with by any person.

31. This Court, therefore finds that the conviction of the appellant in the aforesaid Sections of the Arms Act is justified. However, with respect to sentence, I am of the view that interest of justice would be sufficiently met if the sentences imposed upon the appellant for the offence under Section 25(1-AA) of the Arms Act is reduced from rigorous imprisonment of ten years to rigorous imprisonment for seven years. The sentences imposed for other offences do not appear to be excessive or harsh. I say so for the reason that the appellant has diligently participated in the trial for a long time.

32. Thus, the sentence imposed upon the appellant is modified accordingly and the appellant is sentenced to undergo rigorous imprisonment for seven years, to pay a fine of Rs. 10,000/- for the offence under Section 25(1-AA) of the Arms Act. With respect to the other offences, the sentences imposed under the Arms Act are upheld and affirmed. No modification is required with the quantum of fine imposed.

33. The appeal is dismissed with the modification in the sentence as indicated above.



34. Let a copy of the judgment be sent to the Superintendent of Jail for compliance and needful action.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13/03/2018
Transmission Date	13/03/2018

