

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.780 of 2016

Arising Out of PS.Case No. -238 Year- 1998 Thana -BANKA
District- BANKA

=====

Subhash Kumar Mandal Son of Ramanand Mandal Resident of
Village- Lashkari, Police Station- Banka, District Banka.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Brij Nandan Prasad, Adv
For the Respondent/s : Mrs. Abha Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 15-03-2018

Subhash Kumar Mandal/appellant has
been convicted under Sections 394/411 of the Indian Penal
Code and Section 35 of the Arms Act vide judgment dated
02.08.2016 passed in Sessions Trial No. 772 of 1998/Trial No.
87 of 2016 and by order dated 06.08.2016, he has been
sentenced to undergo rigorous imprisonment for seven years,
to pay a fine of Rs. 1000/- for the offence under Section 394
I.P.C; RI for three years each for the offences under Sections
411 I.P.C and Section 35 of the Arms Act. For the offence
under Section 35 of the Arms Act, the appellant has been



fined for an amount of Rs. 1000/-. In the event of non-payment of total fine of Rs. 2000/-, the appellant has been directed to undergo further simple imprisonment for two months.

The appellant was caught by the villagers and the police party who had reached at the time of occurrence while he, along with two others, was fleeing away after robbing the informant viz. Ram Lal Yadav, who has been examined as P.W. 2 at the trial. From the possession of the appellant, Rs. 7500/- and two fired cartridges were recovered. With respect to the occurrence of the informant and his son having been waylaid and robbed of their possession, two cases were lodged; one being Banka P.S. Case No. 237 of 1998 instituted for the offences under Sections 394/411 I.P.C and the other viz. Banka P.S. Case No. 238 of 1998 instituted for the offences under Section 307 I.P.C read with Sections 25(1-B) a, 26, 35 and 27 of the Arms Act. Both the cases proceeded separately but later the trial was amalgamated and the appellant has been convicted in Sessions Trial No. 772 of 1998.

The Trial Court, after examining six witnesses on behalf of the prosecution which includes the informant as P.W. 2 and his son Surendra Yadav as P.W. 1, convicted and sentenced the appellant as aforesaid.



Be it noted that two other persons also were arrested along with the appellant but they have absconded and only the appellant has faced the trial.

The deposition of the witnesses have been gone through by this Court and it is found that they are consistent regarding the occurrence.

P.W.s 1 and 2 both have deposed that after selling their ox, which fetched them Rs. 7500/-, they were coming back home. On the way, three miscreants surrounded them and on point of weapon, took away proceeds of the sale of the ox. While doing so, one of the miscreants also hit P.W. 2 on his head, leading to injuries on his person. Since it was day time, *hulla* was raised by P.Ws. 1 and 2. On the aforesaid cry for help by the aforesaid P.Ws, many villagers arrived and started chasing the miscreants. The police van was also nearby and the police party also chased the miscreants. The appellant along with two others were caught and they disclosed their respective names. Both the prosecution witnesses viz. P.W.s 1 and 2 have identified the appellant.

From the possession of the appellant, two fired cartridges were recovered. However, an amount of Rs. 7500/- which was looted away, was also found from the possession of the appellant.



There is nothing in the deposition of the witnesses which could discredit them so far as the manner of the occurrence is concerned. However, considering the fact that the appellant had not used the weapon nor was found to be in possession of the weapon, he was only convicted and sentenced under Section 35 of the Arms Act. For his participation in the robbery and he having been found in possession of the looted money, he has been convicted and sentenced for the offence under Sections 394 and 411 I.P.C.

Learned counsel appearing for the appellant has submitted that assuming that the appellant had in his possession two fired cartridges, that by itself would not make him liable for conviction under Section 35 of the Arms Act. Section 35 of the Arms Act reads as follows:-

"35. Criminal responsibility of persons in occupation of premises in certain cases.-Where any arms or ammunition in respect of which any offence under this Act has been or is being committed are or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone."

Regard being had to the materials



available on record, this Court is of the view that the conviction of the appellant under Section 35 of the Arms Act is not based on any cogent material. Hence, the conviction and sentence under Section 35 of the Arms Act is set aside.

There is no reason for this Court to interfere with the judgment of conviction under Sections 394 and 411 I.P.C. However, regard being had to the fact that the appellant, at the time of rendering of judgment was 35 years of age and has today many mouths to feed and that he has participated in the trial, this Court is of the view that the interest of justice would be met, if the sentence of the appellant under Sections 394 and 411 I.P.C is reduced to the period of custody which he has already undergone.

Learned counsel appearing for the appellant has informed this Court that he has remained in custody for about five years by now.

Thus, the appeal is partially allowed. The conviction and sentence under Section 35 of the Arms Act is set aside. The conviction of the appellant under Sections 394 and 411 I.P.C is sustained but with the modification in the sentence imposed upon him to the extent of the period for which he has already remained in custody.

The appellant is in custody. He is directed to be released forthwith, if not wanted in any other case.



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

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20/03/2018
Transmission Date	20/03/2018

