

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.28 of 2013

Arising Out of PS. Case No.-22 Year-2004 Thana- BHAWANIPUR District- Purnia

Jagdambi Mandal, S/o late Sipahi Mandal R/o Village-Birsaul, P.S.
Bhawanipur, District-Purnia.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ranbir Singh (Amicus Curiae)
For the Respondent/s : Mr. Sujit Kr. Singh (App)

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 18-09-2018

Heard learned *Amicus Curiae* for the appellant
and learned APP for the State on this Criminal Appeal.

2. This criminal appeal has been preferred
against the judgment and order of conviction dated 29.2.2012
and order of sentence dated 01.03.2012 passed by learned
Adhoc Additional Sessions Judge-VII, Purnia in Sessions Trial
no. 768 of 2004 arising out of Bhawanipur P.S. Case No. 22 of
2004 whereby the learned trial court convicted the accused
namely, Jagdambi Mandal for the offence punishable under
Sections 307, 353 and 411 of the Indian Penal Code and
Sections 25(1-B)A, 26(1) and 27(1) of the Arms Act and
sentenced him to undergo R.I. for seven years and also
slapped him with a fine of Rs. 2000/- under Section 307 of the



I.P.C., R.I. for one year under Section 353 of the Indian Penal Code, R.I. for two years under Section 411 of the Indian Penal Code and R.I. for two years and also slapped him with a fine of Rs. 1000/- under Section 25(1-B) A of the Arms Act, R.I. for three years and also slapped him with a fine of Rs. 1000/- under Section 26(1) of the Arms Act, R.I. for three years and also slapped him with a fine of Rs. 1000/- under Section 27(1) of the Arms Act. All the substantive punishment were directed to run concurrently and in default of payment of fine to further undergo R.I. for three months under Section 307 of I.P.C., R.I. for one month under Section 25(1-B)A of the Arms Act, R.I. for one month under Section 26(1) of the Arms Act and R.I. for one month under Section 27(1) of the Arms Act.

3. The factual matrix of the case is that Bhawanipur P.S. Case No. 22 of 2004 was instituted under Sections 307, 353, 411/34 of the Indian Penal Code and Sections 25(1-B)A, 26, 27 and 35 of the Arms Act against accused Jagdambi Mandal, Raju Mandal, Munna Mandal, Bauka Mandal, Lalmuni Mandal, Chhotan Mandal and Shambhu Mandal on the basis of written report of Uday Bahadur, S.I., P.S. Bhawanipur with the allegation, in succinct that on 22.05.2004 at around 3:00 PM he proceeded from the



police station along with police personnel named in the written report in investigation and raid in connection with Bhawanipur P.S. Case No. 21 of 2004 lodged under Section 392 of I.P.C. and when they arrived in the forest of bamboo clump, banana, maize and sunflower located towards north east of the village Birsail on the basis of mark of tyre of looted motorcycle, the unknown miscreants hiding in the forest started escaping seeing the police party. On asking them to halt, they started resorting firing on the police personnel. He also resorted four rounds of fire from his official pistol and surrounded the miscreants, in that course, the accused Jagdambi Mandal was apprehended along with country made pistol and four live cartridges. He happens to be a veteran criminal and wanted in several criminal cases in different Police Station lodged against him. On the basis of his confessional statement, the looted motorcycle of Bhawanipur P.S. Case No. 21 of 2004 was recovered from his banana field. Seizure list of the seized arms and ammunition and looted motorcycle was prepared before the witnesses. Jagdambi Mandal also disclosed name of his fleeing accomplices as Shambhu Mandal, Munna Mandal Bauka Mandal, Lalmuni Mandal, Chhotan Mandal and Raju Mandal. Jagdambi Mandal



along with aforesaid accused persons were seen by the local preceding and later to the occurrence. On taking the aforesaid persons in confidence, they divulged that the aforesaid accused had intruded into the said forest along with arms and ammunition and resorted firing upon the police.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet under Sections 307, 353/34 of the Indian Penal Code and Sections 25(1-B), 26, 27 and 35 of the Arms Act against the accused Jagdambi Mandal keeping the investigation pending against rest of the accused persons.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of the learned Adhoc Additional Sessions Judge VII, Purnia for trial.

6. Charge against accused Jagdambi Mandal was framed under Sections 307, 353, 411/34 of the Indian Penal Code and Sections 25(1-B)a, 26(1) and 27(1) of the Arms Act. Charge was read over and explained to the accused by the court to which he pleaded not guilty and claimed to be



tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether nine prosecution witnesses namely, Hawaldar Jugal Kishor Singh as PW-1, constable Dhananjay Paswan as PW-2, constable Narendra Sah as PW-3, Dev Kishor Sah as PW- 4, Ramchandra Thakur as PW-5, Maheshwar Mandal as PW- 6, Sanjay Paswan as PW- 7, informant-cum- I.O. Uday Bahadur as PW-8 and Manoranjan Kumar Mandal as PW-9. Out of the aforesaid witnesses, PWs- 5 and 6 turned hostile while PWs- 4 and 7 are chargesheet witnesses and PW-9 happen to be formal witness.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. The accused has neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the



aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned *Amicus Curiae* for the appellant that there is no compliance of Section 100 Cr.P.C. in search and seizure of the motorcycle, arms and ammunition from possession of the appellant as no local witness has been made the witness of seizure list and before taking search of possession of the appellant, the authority making search and seizure has not given any search before the independent witness, the copy of the seizure list has also not been furnished to the appellant. It is further submitted that search and seizure also does not stand established by the prosecution as the seizure list witnesses turned hostile and not supported the aforesaid aspect of the case. It is further submitted, that the appellant has been falsely implicated in this case merely because he is having criminal antecedent and once upon a time he had resorted firing upon the police parties leading to the grouse against the appellant. It is also submitted



that in fact, the appellant was apprehended from the village Birsail by the police personnel and then he was taken to the place of occurrence and no incriminating article has been recovered from the possession of the appellant at the time of his apprehension in the said village. It is further submitted that as per the prosecution case the looted motorcycle was recovered from the banana field of the appellant on his confessional statement, but no confessional statement has been brought on record by the prosecution and moreover none of the member of the raiding party supported the aforesaid recovery of the motorcycle on the basis of alleged confessional statement of the appellant. It is further submitted that for conviction under Section 25(1-B)A of the Arms Act, sanction of the sanctioning authority is required to be taken, but no such sanction has been brought on record by the prosecution and for want of sanction, no conviction can be made under Section 25(1-B)A of the Arms Act. It is further submitted that as per prosecution case, there was shoot out between the police party and the accused persons. In the said shoot out, the informant has resorted four rounds of fire from his official pistol and 10 rounds of fire was also made from the said accused persons, but no empty cartridge has been found



by the police on the place of occurrence, though the informant has stated that the empty cartridge of bullet fired by him is in his possession, but no seizure list of the aforesaid empty cartridge has been prepared by the police which creates serious doubt about the aforesaid occurrence of shoot out and attack by the accused persons on the police personnel. Though, as per prosecution case, several witnesses congregated at the place of occurrence at the time of occurrence, but none of the independent witness has been examined by the prosecution and all the prosecution witnesses barring alleged seizure list witnesses happen to be official witnesses and police personnel. Thus, the aforesaid case of the prosecution does not stand corroborated by any independent witness. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing trustworthy, convincing and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned trial court is liable to be set aside and the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and



order of conviction and sentence submitted that the informant and other witnesses examined by the prosecution have fully supported the prosecution case, search and seizure of the motorcycle and arms and ammunition recovered from possession of the appellant was made as per provision of law and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record, it appears that before search of the person of the appellant by the informant, he had not given his search to any of the police personnel or any independent witness present at the place of occurrence at the time of occurrence. Though, the informant Uday Bahadur PW-8 has stated in paragraph 2 of his examination-in-chief that search of the appellant was taken complying the formalities of the search and PW-1 Hawaldar Jugal Kishor Singh, who happens to be the member of raiding party in paragraph 4 of his cross-examination has failed to resurrect his memory as to whether informant Uday Bahadur had given search of his person preceding to the search of the person of the accused.



But, neither the informant nor any other witness examined by the prosecution, has deposed before the court that before making search of the person of the appellant, the informant had given his search either to the police personnel present at the place of occurrence or to the independent witness present there at the time of occurrence.

15. From perusal of seizure list marked as exhibit 1/A, it appears that it bears the signature of the independent witnesses, namely, Dev Kishor Sah and Sanjay Paswan and LTI of Ramchandra Paswan. But, the aforesaid Dev Kishor Sah happens to be resident of village Bhawanipur P.S. Bhawanipur and Sanjay Paswan of village Maini P.S. Rupauli while the place of occurrence is near village Birsail. Thus, the aforesaid two witnesses do not happen to be local witnesses. Though, third witness of the seizure, namely, Ramchandra Mandal happens to be resident of village Birsail P.S. Bhawanipur i.e. of the P.O. village, but seizure list does not bear either any signature or any LTI of the said witness rather LTI of Ramchandra Paswan, who happens to be some other person. Though, as per the statement of the informant as given by him in paragraph 17 of his cross-examination that at the time of seizure 15-20 villagers of village Birsail P.S.



Bhawanipur and adjoining village had congregated at the place of occurrence, but none of the villagers of the P.O. village i.e. village Birsail has been made seizure list witness. Moreso, the aforesaid seizure list witness, namely, Dev Kishor Sah PW-4 has denied the recovery of any article before him stating that S.I. had obtained his signature on the blank paper. In his cross-examination by the defence, he has denied to identify the appellant in the dock. While PW-7 Sanjay Paswan though has identified his signature on the seizure list marked as Ext-1 in his examination-in-chief, but in the said examination-in-chief itself he has denied the recovery of pistol, four live cartridges and a motorcycle from possession of the appellant from bamboo clump before him. In his cross-examination by the defence, he has stated that the police had obtained his signature on the blank paper at the police station and he has also vented his ignorance about any seizure and Ramchandra Thakur PW-5 has turned hostile. Thus, the aforesaid seizure list does not stand substantiated by any seizure list witness. Moreover, PW-1 Hawaldar Jugal Kishor Singh, who happens to be member of the raiding party and was present at the place of occurrence at the time of occurrence has candidly stated in paragraph 5 of his cross-



examination that seizure list was prepared on the place of occurrence, but witnesses had not put their signature on the seizure list before him.

16. From perusal of the aforesaid seizure list, it appears that the copy of the seizure list has not been furnished to the appellant as it does not bear either receiving or any signature/LTI of the appellant on it. In the aforesaid facts and circumstances, I find that the search and seizure of the motorcycle and arms and ammunition from possession of the appellant has not been made as per the provision of law and there has been utter violation of law in carrying out the aforesaid search and seizure and preparation of seizure list. Moreover, the seizure list does not stand substantiated by the seizure list witnesses.

17. As per the prosecution case, the place of occurrence is forest of bamboo clump, maize, banana and sunflower which is located towards north east of village Birsail. PW-2 constable Dhanajay Paswan has stated in paragraph 3 of his cross-examination that first of all they had arrived in the village Birsail and thereafter they had gone to place of occurrence. S.I. had nabbed Jagdambi Mandal in village Birsail. PW-3 constable Narendra Sah has also stated



in paragraph 4 of his cross-examination that first of all Jagdambi Mandal was apprehended. The aforesaid testimony of the said witnesses eloquently indicates that the appellant was apprehended by the police in village Birsail preceding to arrival at the place of occurrence. But at the time of apprehension of the appellant, no arms and ammunition is said to have been recovered from his possession by the police personnel which creates serious doubt about the recovery of the arms and ammunition from possession of the appellant.

18. As per the prosecution case and account of the witnesses the appellant was apprehended from the forest located towards the north of the village Birsail during the occurrence of shoot out. But the aforesaid prosecution case appears to be shrouded with grave suspicion and doubt in view of the aforesaid statement of the said two witnesses. As as per the account of the aforesaid two witnesses, namely, PW-2 and PW-3, the appellant was not apprehended at the place of occurrence rather in village Birsail preceding to arrival at the place of occurrence.

19. From perusal of the prosecution case and witnesses account, it appears that there was a shoot out between the police party and the accused persons during the



occurrence and the informant resorted four rounds of firing from his official pistol while accused persons resorted 10 rounds of firing, but as per the account of the informant as given by him, no empty cartridge of the bullet fired by the accused persons was recovered at the place of occurrence while four empty cartridge of bullet fired by him is with him. In paragraph 22 of his cross-examination the informant has further stated that no one was injured in the shoot out in his knowledge. But, neither any seizure list of the aforesaid empty cartridge was prepared by the informant at the place of occurrence nor the aforesaid empty cartridge has been produced before the court as a material exhibit which goes to create serious doubt about the alleged occurrence of shoot out between the police personnel and the accused and attack made by the appellant and other accused persons on the police to do away with their lives and hampering discharge of the official duty by the police personnel.

20. As per the prosecution case, the looted motorcycle of Bhawanipur P.S. Case No. 21 of 2004 was recovered from the banana field of the appellant on the basis of his confessional statement, but no such confessional statement has been brought on record and moreover PWs- 1, 2



and 3, who happen to be the member of the raiding party have not supported the factum of recovery of the aforesaid looted motorcycle on the basis of the confessional statement of the appellant. The said banana field of the appellant from where the aforesaid motorcycle is said to have been seized is located in the forest and is an open place and accessible to all and recovery of the aforesaid motorcycle from the aforesaid banana field of the appellant by the police does not decisively indicate the recovery of the said motorcycle from physical and conscious possession of the appellant. Hence, no offence under Section 411 of the Indian Penal Code is made out against the appellant. For conviction under Section 25(1-B)A of Arms Act, the necessary sanction of the sanctioning authority is required to be taken and brought on record, but no such sanction order has been brought on record and exhibited by the prosecution. Hence, for want of the aforesaid sanction order, the conviction under Section 25(1-B)A cannot be made. Division Bench of this Court in *Naimullah Mian Vs. State of Bihar (Pat)* reported in 2003(1) East Cri. C. 298 (Pat) has ruled that sanction is required for prosecution under Section 25 of the Arms Act. Conviction of the appellant under Section 25(1-B) of the Arms Act stands vitiated in law and the same



cannot be sanctioned as no sanction was accorded by the Competent Authority.

21. As per the account of the informant as given by him in paragraph 17 of his cross-examination 15-20 villagers had arrived at the place of occurrence during the course of seizure, but none of the independent witnesses have been examined by the prosecution barring Maheshwar Mandal, who has turned hostile. Thus, the aforesaid prosecution case does not stand corroborated by any independent witness of the occurrence.

22. As per the prosecution case, besides a country made pistol, four live cartridges were recovered from the possession of the appellant, but from perusal of the report of Sergeant Major marked as Ext-3, it appears that out of four cartridges sent to him for ballistic examination, only two are live while rest two are misfired.

23. From perusal of record and witnesses account, it appears that neither there is any prosecution case that the country made pistol and live cartridges were sealed by the police personnel seizing the said articles nor there is any such evidence on record and the witnesses have also not stated so. Moreso, the seized arms and ammunition were not



produced before the court. Report of the Sergeant Major marked as Ext-3 indicates that seized arms and ammunition were not sent to him sealed as it is not mentioned in the said report about receiving of the aforesaid arms and ammunition in sealed condition. Moreover, against the prosecution case and witnesses account to the effect that four live cartridges were seized, besides the country made pistol, the Sergeant Major reported about finding of two live and two empty cartridges. The aforesaid aspects of the case creates serious doubt as to whether the allegedly seized arms and ammunition were actually sent to the Sergeant Major for ballistic examination.

24. PW-2 constable Dhananjay Paswan has stated in paragraph 6 of his cross-examination that the appellant Jagdambi Mandal had resorted firing upon the police on earlier occasion as well due to which he had identified him. The aforesaid statement of PW-2 indicates that the police had some grouse and grudge against the appellant as the appellant had on earlier occasion resorted firing upon the police personnel and in view of want of prove of search and seizure, non corroboration of occurrence by independent witness, violation of law of search and seizure, non-receiving of empty



cartridges of the bullet fired by accused persons at the place of occurrence, not seizure and production of cartridges fired by the informant at P.O. before the court, not sealing of the seized arms and ammunition, apprehension of appellant not at P.O. rather in village Birsail preceding to arrival at P.O., non recovery of any incriminating article from his possession at the time of his apprehension, not recovery of looted motorcycle from conscious physical possession of the appellant false implication of the appellant due to aforesaid grouse and grudge cannot be ruled out.

25. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is set aside and the appellant is acquitted of all the charges levelled against him. As the appellant is on bail, he is discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

26. Let a copy of the first and last page of this



judgment be handed over to the learned *amicus curiae*, Mr.
Ranbir Singh and learned *amicus curiae* be paid prescribed fee
by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
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