

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.159 of 2016

Arising Out of PS. Case No.-139 Year-2007 Thana- BARHARA KOTHI District- Purnia

Buchchan Yadav @ Braj Kishore Yadav Son of Shree Beni Prasad Yadav,
Resident of Village- Maujam Patti, P.S.- Barhara, District- Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Praveen Kumar Agrawal, Advocate Ms. Kumari Sudha Sinha, Advocate Mr. Santosh Kumar Singh, Advocate Ms. Neelam Kumari, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 30-08-2019

Appellant Buchchan Yadav @ Braj Kikshore Yadav

has been found guilty and sentenced to undergo R.I. for 8 years 6 months as well as to pay fine of Rs. 5000/-, in default thereof to undergo simple imprisonment of one year under Section 26(ii) of the Arms Act and for an offence u/s 25(1-B)A of the Arms Act, has also been sentenced to undergo R.I. for 3 years as well as to pay fine of Rs. 3000/- in default thereof to undergo one year imprisonment additionally, with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 04.03.2016 passed by learned Additional Sessions Judge-IV, Purnea in Session Trial No. 1130 of 2007/Tr. No. 267 of 2015.

Informant Nagendra Singh Officer In-charge Raghubans

Nagar O.P. has not been examined recorded his self statement



addressed to O/c Barhara (Raghubans Nagar) P.S. on 23.10.2007 disclosing therein that after getting confidential information with regard to presence of notorious criminal Buchachan Yadav, near about canal at village Gouripur Mantola whereupon informant informed Officer In-charge, Bihariganj P.S. and then thereafter, constituting a raiding party with the assistance of Bihariganj Police Official, conducted raid and during course thereof, they have seen one person at the western southern portion of the embankment of the canal lying at village Jankitola, who was apprehended and on interrogation, he disclosed himself to be Buchchan Yadav.

Furthermore, in presence of two seizure list witnesses, namely, Pradeep and Shyam Kishore he was search out and during course thereof there was recovery of loaded carbine bearing no. F540079 along with 39 live cartridges from his possession. After opening the chamber of carbine it was found loaded with 11 live cartridges and for that he failed to explain whereupon, the seizure list was prepared.

After registration of Barhara (Raghubans Nagar) P.S. Case No. 139 of 2007, investigation commenced and after concluding the same charge-sheet, has been submitted, facilitating the trial, subject matter of the instant appeal.



Defence case as it evident from cross-examination as well as statement under Section 313 of Cr.P.C is that of complete denial. However, nothing has been adduced in defence.

In order to substantiate its case, the prosecution has examined altogether five witnesses who are PW-1 Pradeep Sharma, P.W-2 Shyam Kishore Yadav, P.W.-3 Havaladar Pawan Kumar Singh, P.W.-4 Amit Prasad Singh, P.W.-5 Nand Kishore Yadav side by side also admitted Ex.1 signature of the seizure list witness, Ex. 2 Ballistic report, Ex. 3 Sanction orders. There also appears to be material exhibits (I) carbine (II) 2/38 cartridges.

Heard learned counsel for the petitioner as well as learned APP. Also gone through the record.

From the record it is evident that neither I.O. nor informant has been examined. It is further evident that ballistic expert has also not been examined. It is evident that case of the appellant was closed on 04.08.2015, statement of accused was recorded under Section 313 of Cr.P.C and then, as the defence declined to avail, hence the case was fixed for arguments.

Subsequently thereof, a petition was filed on behalf of prosecution on 05.08.2015 under Section 311 Cr.P.C. to allow for getting the relevant documents legally brought up on record whereupon, the matter was fixed for hearing. On 12.08.2015 the



petition was allowed and, thereafter on 23.09.2015 PW-5 a formal witness has been examined who produced the alleged seized carbine and cartridges. Then thereafter, on 10.10.2015 as evident from the petition that prosecution had prayed for issuance of summons against three witnesses and in the aforesaid petition itself it has been prayed that relevant document be exhibited in accordance with under Section 294 of Cr.P.C. Whereupon defence has made endorsement “no objection” and in the aforesaid background, the relevant reports, sanction order has been made as exhibit and then thereafter, case has been closed.

Statement of the accused has been recorded followed with argument and then the judgment impugned.

From the aforesaid eventuality, it is evident that irrespective of the fact that documents have been exhibited in accordance with Section 294 of Cr.P.C but, the petition did not specifically contain the prayer rather it was carrying conjoint prayer one for asking for issuance of summons against the witnesses and then, having documents exhibited in accordance with Section 294 of Cr.P.C and so, there was every possibility of having the same intermingled with each other posing confusion.

Furthermore, from plain reading of the Section 311 of Cr.P.C, it is evident that it did not command over prayer relating to



exhibit of document, nor it commands the implication of Section 294 Cr.P.C.. Thereafter said event could be perceived in a manner that application of Section 311 Cr.P.C. is always made in the interest of justice for just decision of case, and applicability of Section 294 Cr.P.C. is for acceptance of document, in case it is not opposed by the adversary. Document has got no reference under Section 311 Cr.P.C. Hence the reference of document under Section 294 will not be entertainable under Section 311 Cr.P.C. That being so admission of document at all legally recognizable.

In the aforesaid background, now the position became clear that irrespective of having the material exhibit on record, on account of non-examination of ballistic expert, no one could have claimed identification of the material exhibit to be prohibited fire arms and ammunition in likewise manner, the cartridges to be live one and so, it could not be in accordance with the definition as provided under Section 2 of the Arms Act. Furthermore the sanction order non est in the eye of law whereupon, would not permit the validity of the trial, being in contravention of Section 39 of the Act.

Consequent thereupon, the judgment impugned is set aside. The appeal is allowed.



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

(Aditya Kumar Trivedi, J)

S.Katyayan/
Anjula/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.09.2019
Transmission Date	NA

