

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.122 of 2016

Arising Out of PS. Case No.-50 Year-2014 Thana- DHAMDAHA District- Purnia

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Pramod Yadav Son of Sri Jay Narayan Yadav resident of village -
Hathiyondha, Sindyriya Tola, P.S. - Bihariganj, District - Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Amit Kumar Anand, Adv.

For the Respondent/s : Mr.Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 07-05-2019

1. Appellant, Pramod Yadav has been found guilty for an offence punishable under Section 25(1-A) of the Arms Act and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo S.I. for six months, additionally, under Section 26(2) of the Arms Act and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo S.I. for six months, additionally, vide judgment of conviction dated 30.01.2016 order of sentence dated 02.02.2016 passed by Fifth Additional Sessions Judge, Purnea in Sessions Trial No.565 of 2014 /81 of 2015.

2. PW.2, Rakesh Kumar, Officer-in-charge Dhamdhaha P.S. recorded his own fardbeyan at village-Mokwa, P.S.- Dhamdhaha, District-Purnea on 17.03.2014 at about 01:00 PM



divulging therein, that he along with Dy.S.P. and other police personnel have come to village-Mokwa to inquire about the allegation having been at the end of Ramanand Yadav, son of Late Surya Narayan Yadav of village-Mokwa by way of written application which he filed on 16.03.2014 regarding demand of ransom by the notorious goons of the locality comprising Ghanshayam Mandal, Pramod Yadav, Ranjeet Mandal and further, at an earlier occasion also, such demand was made for which a case was instituted wherein Ghanshyam Mandal has been taken into custody and was under judicial custody. To facilitate his release, they were also threatening that if they are not going to depose in favour of Ghanshyam Mandal then in that event, they will be murdered and during course thereof, one of the spy informed that Pramod Yadav along with his group is present in the village with an illegal arms and is prevailing upon son of Ramanand Yadav whereupon, they also proceeded towards such direction and during course thereof, the Pramod and his associates after seeing the police, tried to escape and during course thereof, two person succeeded in their escape while one was apprehended who, on query disclosed his identity as Pramod Yadav, son of Jai Narayan Yadav of village-Hathiaundha Sinduria Tola, P.S.-Bihariganj, District-Madhepura. On search, one loaded carbine



and from Bidoliya the cartridges as per seizure list of different bores were recovered. Furthermore, the motorcycle bearing registration no. BR 43A/3649 was also seized and after inspection thereof, two loaded firearms along with other articles were recovered for that, seizure list was prepared. Furthermore, on query Pramod disclosed the names of his associates as Ranjeet Mandal as well as Kailash Mandal. He confessed to have actively participated during commission of the occurrence relating to other offences (so detailed).

3. After registration of Dhamdha P.S. Case No.50/2014 investigation commenced and concluded by way of submission of charge sheet followed with trial meeting with the ultimate result, subject matter of instant appeal.

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

5. In order to substantiate its case altogether seven PWs have been examined on behalf of prosecution who are PW.1- Dhananjay Kumar, PW.2 Rakesh Kumar (informant), PW.3 Binod Kumar Mishra, PW.4- Suresh Mandal, PW.5-Subodh Kumar Das, PW.6- Mohan Sharma and PW.7-Sushil Kumar Marandi as well as



has also exhibited seizure list prepared by PW.2 as Ext.1, self written statement of PW.2 as Exhibit 2, report of PW.3 as Exhibit 3, signature of Sri Manish Kumar Verma, the then District Magistrate, Purnea on his prosecution sanction order as Ext.4. Prosecution has also produced seized arms and ammunition and got Exhibit marked the seized firearms carbine as Material Exhibit M two country made pistols as Material Exhibit M/1 and M/1/a respectively, two cartridges of 8.57 bore as Material Exhibits M/II and M/II/a respectively, five cartridges found from the magazine as material exhibits M/III to M/III/d respectively, 23 cartridges found from said bindoliya as Material Exhibits M/IV to M/IV/V

6. While assailing the judgment impugned, learned counsel for the appellant has raised so many issues. The first and foremost is there happens to be non-examination of an independent witness. In its continuity it has also been submitted that both the seizure list witnesses, namely, Kamleshwari Yadav and Panchanand Yadav have not been examined and for that, there happens to be no explanation at the end of the prosecution. In the aforesaid background, the remaining witnesses who happen to be police officials, on account of their hostile attitude towards the appellant, in the background of the fact that during course of recording of the self-statement, the informant himself incorporated



the fact that during course of interrogation of apprehended accused Pramod has confessed his involvement with regard to large number of cases of different nature (detailed therein) and in the aforesaid background, none of the witness became reliable. So, it happens to be a case of no evidence.

7. It has further been submitted that the Hon'ble Apex Court recently has observed that wherever only police officials are being examined, their testimony would not be subject to acceptability, admissibility and in the aforesaid background, the evidence of all the seven witnesses became worthless. That being so, after setting aside the judgment impugned, appeal be allowed.

8. On the other hand the learned APP while refuting the submission has submitted that it is not an universal principle that wherever police officials are examined, their testimony is liable to be rejected as, being a police officials there happens to be no deformity in their testimony unless and until the defence brought ample material to suggest that out of vengeance, motivately the police officials have deposed against him. So far, present scenario is concerned, the defence has failed to suggest like so, whereupon, the judgment impugned did not attract interference.

9. PW.2 is the informant and on account thereof, first of all the evidence of PW.2 is to be seen. He has deposed that on



26.03.2014 Ramanand Yadav of village-Mokama came, filed written application alleging inter-alia that his son, who is a contractor and is engaged in construction of a road is being terrorized by the local goons who, asked for ransom. Similar kind of activity was adopted at an earlier occasion whereupon, his son had lodged a case wherein notorious criminal Ghanshayam Mandal happens to be under judicial custody. Now his henchmen Pramod Mandal and others are insisting to pay rangdari as well as they are also coercing to depose in their favour to facilitate release of Ghanshayam Mandal. After S.D. entry, he along with other police officials including Dy.S.P. proceeded on 17.03.2014. After reaching at Mokama, a spy informed regarding presence of appellant along with others duly armed having son of Ramanand under their clutch whereupon, they proceeded. Seeing the police, all the miscreants began to flee and during course of chase, one was apprehended while two others managed to escape. The apprehended accused disclosed his identity as Pramod Yadav. Furthermore, on search, loaded carbine was found in his possession having five cartridges inside it. Bindoliya was also searched out and large number of cartridges of different bore were recovered. A TVS motorcycle bearing registration No.BR 43A/3649 was also recovered. On search, two loaded pistol were



found from the same and for that, seizure list was prepared in presence of Kamleshwari Yadav as well as Panchanand. A copy thereof was handed over to the appellant Pramod Yadav who put his signature over the same in token thereof. Then the articles were sealed. On interrogation appellant disclosed names of his associates as well as also disclosed with regard to their involvement in so many cases. (so detailed). Recorded his fardbeyan at the spot itself. Returned back to the police station. Registered a case and then, handed over investigation to Sushil Kumar Marandi and also handed over the recovered arms and ammunitions in sealed cover. Identified the accused in dock. He has stated that at the time of apprehension of Pramod Yadav carbine was hanging with his body. He also exhibited all the materials which were produced in court in sealed condition. The packers were opened in the court and then, the same were made exhibits. During course of cross-examination at para-20 he has stated that on the written report of Ghanshaym Mandal S.D. entry was made in the police station diary 16.03.2014 itself and in the aforesaid background, they have proceeded along with police officials on the following day in order to inquire into. In para-22 he has stated that for the first time they have seen accused from a distance of 100 feet. In para 24 he has stated that Pramod Yadav



along with two more person were there. They all have ran towards western direction after seeing them. They charged chased and out of them, Pramod Yadav was apprehended. He along with Dy.S.P. and other police personnel conjointly apprehended. In para-25 he has stated that he had used carbine at an earlier occasion. He has also stated that no document was shown with regard to motorcycle as well as seized article. Then has denied the suggestion then no such kind of recovery was ever made.

10. PW.3 is the Binod Kumar Mishra, Sergeant Major who during examination-in-chief has stated that the case property of Dhamdhaha P.S. Case No.50/2014 was produced before him in sealed condition by the I.O. of the case in pursuance of an order passed by the learned CJM. He had examined all the materials after unwrapping. Detailed the report. The carbine, pistol, cartridges was found to be effective one. After examination, he also sealed the material exhibits and then, handed over the material exhibits as well as his report to the I.O. (exhibited). During cross-examination at para-12 he has stated that he was unable to disclose whether those firearms were used at an earlier occasion or not. He has also stated that he got training with regard to ballistic examination.



11. PW.7 is the I.O. During his examination-in-chief he has stated that on 17.03.2014 he was entrusted with the investigation of Dhamdhaha P.S. Case No.50/2014 registered under different sections of the arms act. Accordingly, he took up investigation. He had recorded further statement of the informant, statement of the witnesses, he got seizure list, took custody of the accused as well as recovered articles in sealed cover. Got the same deposited in the Malkhana, proceeded to place to occurrence and detailed the same. Had made prayer before the learned CJM to grant permission for examination of seized arms and ammunition and after getting an order, same was produced before the Surgeant Major for examination. Took statement of seizure list witness. To apprehend Ranjeet Mandal, Kamleshwari Mandal conducted raid but they were found absconding. Procured sanction order of the district magistrate (exhibited) and filed the charge sheet. During cross-examination he has stated that save and except seizure list witnesses as well as police officials, he had not recorded statement of any other witness. He has further stated that he had not found any kind of supporting evidence at the place of occurrence.

12. PW.1, PW.4, PW.5 and PW.6 are the other police officials who have corroborated the evidence of the PW.2 by stating that they were members of the police team under the



leadership of PW.2 as well as Dy.S.P. visited village Mokam where, after getting confidential information by the O/c, they proceeded towards that direction. Seeing them, three persons fled from there. One of them was apprehended on chase and on search, loaded carbine, Bindolia having large number of cartridge of different boxes, a motorcycle, two loaded pistol were recovered and for that, seizure list were prepared, a copy thereof was handed over to the Pramod Yadav, who put his signature over the same. During interrogation, also disclosed identity of his associates. During cross-examination, nothing substantial has been found from their possession.

13. From the evidence available on the record, it is crystal clear that whoever been examined are police personnel. Being a police personnel is not a deficiency to become a witness until their testimony is being soaked with malafide. True it is that being police officials, they are more inclined to support their activity but, in order to discredit their testimony, something more is required either by way of production of the sufficient materials or by way of cross-examination. When the evidence of PW.2, informant is properly scrutinized, it is evident that recovery is not at all challenged. In likewise manner, sealing of arms and ammunition at the place of recovery is also not challenged,



preparation of seizure list is also not at all challenged, presence of appellant over seizure list neither challenged nor explained. In likewise manner, when the evidence of PW.7, I.O. has been gone through, it is evident that he has corroborated the testimony of PW.2, divulging that PW.2 had handed over the accused as well as the material so seized in sealed condition, which he had deposited in the thana Malkhana and that part is also out of controversy. Furthermore, he has also stated that after getting an order from the learned CJM, he had produced the seized materials in sealed condition before the sergeant major and PW.3, sergeant major has corroborated the same. Apart from this, the evidence of PW.3 not only specifies the aforesaid event rather it also discloses that after removing the sealed wrapper he examined the seized firearm, cartridges and all were found in order. Then he stated that after sealing the same he returned back the material after examination along with report (which he exhibited) and during course of production of the material exhibit in court by PW.2, all the material exhibits having seal of the sergeant major PW.3 has been perceived by the learned lower court. That being so, there happens to be no lacuna over which, the testimony of the police official could be doubted.



14. That being so, the judgment impugned attracts no interference consequent thereupon, the appeal is found merit less and is accordingly dismissed. Appellant is under custody which he will remain till saturation of the sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
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