

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.842 of 2018

Arising Out of PS. Case No.-221 Year-2013 Thana- TRIVENIGANJ District- Supaul *

Devan Yadav Son of Tilay Yadav @ Til Yadav, Resident of Village- Bariyahi,
P.S.- Triveniganj, District- Supaul.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Madhav Jha
For the Respondent/s : Mr. Sanjay Kumar

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 18-02-2019

Heard parties.

2. This Criminal Revision Application is directed against the judgment and order dated 23.04.2018 passed by learned Session Judge, Supaul in Cr. Appeal No. 29 of 2016 by which he has dismissed the appeal of petitioner and affirmed the order dated 28.10.2016 passed by learned Additional Chief Judicial Magistrate-II, Supaul in Trial No. 1005 of 2016 (G.R. Case No. 2213 of 2013) arising out of Triveniganj P.S. Case No. 221 of 2013 by which petitioner has been convicted under Section 25(1-b) (a) of Arms Act and sentenced to undergo rigorous imprisonment for two years and six months and to pay



fine of Rs. 1000/- and in default to undergo rigorous imprisonment of one month and has been further convicted under Section 26 (I) of Arms Act and sentenced to undergo rigorous imprisonment for one year and fine of Rs. 1000/- and in default to undergo rigorous imprisonment of one month. All sentences shall run concurrently.

3. Informant is S.I. Amit Kumar, Officer In-charge, Triveniganj Police Station and present case has been instituted on his written report that on 30.12.2013 at 5:00 PM while he was on patrolling duty alongwith other police personnel and when he reached village Bariyah he saw a person fleeing and after chase he was apprehended and on his search in presence of witnesses a loaded country made revolver and four cartridges were recovered from his possession. He disclosed his name as Devan Yadav (petitioner). The arms and ammunition recovered from his possession were seized and a seizure list was prepared of the recovered articles in presence of witnesses. After institution of FIR the case was investigated by the I.O. and after completion of investigation he submitted charge sheet against petitioner and the trial court took cognizance of the offence and subsequently framed charges under Section 25(1-b)a, 26 of Arms Act to which petitioner pleaded not guilty and claimed to



be tried. The Investigating Officer obtained sanction for prosecution of District Magistrate, Supaul under Section 39 of the Arms act and same was accorded by the District Magistrate, Supaul.

4. In support of charges six witnesses have been examined on behalf of prosecution. P.W. 1 is Rama Kant Prasad, P.W. 2 is Kritya Nand Paswan, P.W. 3 is Dileshwar Manda, P.W. 4 is Umesh Prasad, P.W. 5 is Shivaji Pandey and P.W. 6 is Amit Kumar(informant).

5. Prosecution has also adduced documentary evidence in support of the case Ext.1 is the forensic report of the sergeant major, Ext. 2 is the seizure list, Ext.3 is the sanction order of D.M., Supaul, Ext. 4 is the charge sheet, Ext. 4/A is the endorsement on the written report, Ext. 5 is endorsement and signature of S.I. Sadanand Yadav, Ext. 6 is formal FIR.

6. Prosecution has also produced material exhibit and material exhibit -1 is country made revolver, Ext. 2 is fired cartridge and Ext. 2/1 to 2/4 are four live cartridges. Defence has not examined any witness nor has adduced any documentary evidence in his defence.

7. P.W. -1 Amit Kumar, Sub Inspector and Officer-in-charge of police station who is the informant of the case has



stated in his deposition that on 30.12.2013 he was posted as Officer-in-charge of Triveniganj police station and on same day at 5:00 PM he was on patrolling alongwith S.I. Kritya nand Paswan and Constables Sufal Suren, Arjun Kumar, Raj Kumar Sharma, Chaukidar Baleshwar Paswan and Jeep driver Raj Kumar Malakar and as he reached near the Mirjaba one person tried to flee, however, he was surrounded and apprehended and from his possession one loaded revolver and four live cartridges were recovered and he disclosed his name as Devan Yadav and in presence of two witnesses Surendra Yadav and Chaukidar Nageshwar arms and ammunition were seized and seizure list was prepared and witnesses put their signature on the seizure list. He identified the accused and in his cross examination he has given detail discription of place of occurrence where accused/petitioner was arrested.

8. P.W.-2 Krityanand Paswan has stated in his deposition and has supported the case of prosecution and he has proved the seizure list which has been marked as Ext. 2.

9. P.W. 3 is Daleshwar Mandal who in his deposition has stated that he was Chaukidar of Triveniganj Police Station and has fully supported the prosecution version.

10. P.W.4 is Umesh Prasad Sub Inspector of Police



who is the I.O. of the case and in his deposition has fully supported the case of prosecution and has also proved the place of occurrence. He has recorded the statement of informant and other witnesses and seizure list witnesses. He has further stated that he got examined the seized arms and ammunition from the Sergeant Major and submitted the report. He was transferred during investigation and thereafter he handed over the charge of Investigation to the S.I. Md. Naimuddin. He has proved material Ext. 1 , material Ext. 2 and material Ext. 2/1 to 2/4. He has identified the accused. In his cross examination he has stated that seized articles were deposited in Malkhana of the police station.

11. P.W.-5- is Sheoji Pandey who was the subsequent I.O. in the case and has stated in his deposition that he found the case to be true and has also proved the prosecution sanction report which has been marked as Ext. 3. He submitted the charge sheet and has also proved the charge sheet which has been marked as Ext. 4.

12. P.W. 1 is the Sergeant Major who has proved the forensic report which has been marked as Ext. 1. He has stated in his deposition that he found country made pistol and five live cartridges were in working condition.



13. After hearing the parties, the trial court has found that prosecution has proved the place of occurrence, time and date of occurrence as well as nature and manner of occurrence. The trial court on consideration of evidences has held that prosecution witnesses have fully supported the prosecution case that from the conscious possession of accused arms and ammunition were recovered and witnesses have consistently and without any discrepancy have deposed on the point of recovery of fire arms and ammunition and they have clearly stated that alleged arms and ammunition were recovered from the conscious possession of accused petitioner Devan Yadav. As per report of Sergeant Major the seized articles fire arms and ammunition have been found to be in working condition. Sanctioned order of District Magistrate was also placed on record. It has been held by the trial court that all prosecution witnesses were subjected to lengthy cross examination by the defence but no material contradiction could be drawn from their cross examination which may cast any doubt on the prosecution case. The trial court has held that prosecution has been able to prove the charges under Section 25(1-b)a and 26 (I) of the Arms Act beyond all shadow of reasonable doubt and has held accused/petitioner Devan Yadav guilty of the charges and passed



judgment of conviction and order of sentence against accused/petitioner.

14. Petitioner thereafter filed an appeal in the court of learned Session Judge, Supaul giving rise to Cr. Appeal No. 29 of 2016 which was heard by Session Judge, Supaul and same was dismissed by order dated 23rd April, 2018.

15. After re- considering and re-appreciating the evidences on record, the appellate court has not found any error in judgment of conviction passed by the trial court and has affirmed the order of trial court and has held that prosecution has been able to prove the charges levelled against accused/appellant beyond shadow of all reasonable doubt and has affirmed the judgment and order of conviction and sentence and dismissed the appeal preferred by the accused petitioner.

16. Aggrieved by said order petitioner has preferred this Cr. Revision before this Court. After going through the orders passed by both the courts, this Court does not find any error, illegality or irregularity in the judgment of conviction passed by the trial court as well as the appellate court which has been passed after due consideration and appreciation of evidences led before the trial court and requires no interference by this Court under its revisional jurisdiction, however order of



sentence is modified as rigorous imprisonment of two years under Section 25(1-b)a of Arms Act remaining part of order of sentence will remain intact.

17. The Criminal Revision Petition is dismissed subject to modification in order of sentence as indicated above.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

