

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4682 of 2018

Arising Out of PS. Case No.-10 Year-2014 Thana- DHARHARA District- Munger

Rattu Kora S/o Murmu Kora, R/o Vill.- Paisra, P.S.- Dharhara, District-
Munger.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ajit Kumar Singh, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

25-07-2019

Appellant, Rattu Kora has been found guilty for an offence punishable under Section 148 IPC and sentenced to undergo RI for three years as well as to pay fine of Rs. 5000/- in default thereof, to undergo SI for three months additionally, under Section 353/149 IPC and sentenced to undergo RI for two years as well as to pay fine of Rs. 2000/- in default thereof, to undergo SI for one month, additionally, under Section 307/149 IPC and sentenced to undergo RI for ten years as well as to pay fine of Rs. 10,000/- in default thereof, to undergo SI for six months, under Section 27 of the Arms Act and sentenced to undergo RI for three years as well as to pay fine of Rs. 5,000/- in default thereof, to undergo SI for three months, additionally, with a further direction to run the sentences concurrently with a further direction to set off the period already undergone during



trial as provided under Section 428 of the CrPC, by Additional Sessions Judge-1st, Munger in Sessions Trial No.643/2014 vide judgment of conviction dated 06.10.2018 and order of sentence dated 08.10.2018.

2. Sanjiv Kumar (PW 3) recorded his self statement on 21.01.2014 at about 12:30 PM divulging therein that on the same day about about 1:00 AM, the Superior Police Officials including Superintendent of Police, Munger along with other Officials of CRPF came at the police station and informant that there happens to be confidential information with regard to presence of Naxalites at Paisra Village where they have convened a meeting to plan to commit an occurrence whereupon, the raiding parties were divided in so many groups, raid was conducted and during course thereof, there was firing at the end of Naxalites which was properly reiterated. Naxalites, seeing the situation to be hostile to their interest, slipped towards densed forest. The police party during course of search found a hut where a man was sitting upon six bags kept one over another. On query, he disclosed his identity as Rattu Kora, appellant and also disclosed that all the bags are full of grains. However, on opening the bags, detonators, hand-granades, parts thereof, were seized and for that, seizure list was prepared. He



further disclosed that Maowadis had convened a meeting at his place where, they left literature relating to his organization and the same was also seized. He had also disclosed the names of some of them as, Dukho Kora, Takiman Kora, Narain Kora and accordingly, they have also been named in the FIR.

3. After registration of Dharhara PS Case No. 10/2014, investigation commenced and concluded by way of submission of charge-sheet only against the appellant, on account of being under judicial custody keeping the investigation pending against others, happens to be the basis of trial which ended by way of recording finding of guilt and sentence against the appellant, subject matter of the instant appeal.

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

5. In order to substantiate its case, prosecution has examined altogether six PWs, who are PW-1 Arvind Sahani, PW-2, Mukesh Kumar, PW-3, Sanjiv Kumar, PW-4 Sanjay Kumar Singh, PW-5 Dharmendra Rai and PW-6, Uma Shankar Rajak, as well as also exhibited Ext-1, Ext-1/1, Ext-1/2,



signature of seizure list witnesses, Ext-2, self statement, Ext-3, Formal FIR, Ext-4, FSL report. As stated above, nothing has been adduced on behalf of the defence.

6. Heard learned counsel for the appellant as well as learned APP. Gone through the record. After going through the evidence of all the six PWs, it is evident that none had identified the appellant to be one of the members of Naxalites, an outfit organization and was engaged in encounter with the prosecution party. The simple allegation having been levelled substantiated against the appellant is that after completion of the encounter, when the police began to search, during course thereof, appellant was found sitting over the bags kept one upon another in a hut and on query, he disclosed the bags to be full of grains, however, detonators, hand-granades, parts thereof, were found in the bags after opening and for that, seizure list was prepared. It has also been disclosed at the end of the prosecution that on interrogation, he disclosed the names of three Naxals apart from disclosing numbers who have had participated during meeting at that very place and, after having encounter with the police, they left the place leaving behind literature.

7. At the present juncture, two things are relevant. The first one is with regard to admissibility of the extra-judicial



confessional statement of the appellant and is found in contravention of Section 26 of the Evidence Act, as the prosecution party themselves suggest that after arrest, he confessed. Furthermore, no recovery is on the basis of so alleged extra-judicial confession, hence, the prosecution could not avail benefit of Section 27 of the Evidence Act.

8. Second theme is that the items which have been recovered come within the definition of explosive so prescribed under Section 4(D) of the Explosive Act and on account thereof, there should have been proper framing of charge under the aforesaid provision of law, more particularly, under Section 9(B) thereof.

9. From the evidence it is evident that although, PW-3, the informant had substantiated the recovery but, the same has not been produced before the Court. However, the manner in which cross-examination has been done in consonance with the finding of the FSL identifying the same to be explosive one (Ext-4), irrespective of the fact that there happens to be no charge under Section 9(B) of the Explosive Act but considering the provision as provided under Section 221 (2) of the CrPC paving the way, while realizing the situation like the present one allowing conviction for an offence whereunder, though,



evidence is found duly substantiated but no charge has been framed, the appellant is found and held guilty for an offence punishable under Section 9(B) of the Explosive Act and is accordingly, sentenced to undergo RI for three years.

10. However, being under custody since the day of his arrest, that means to say, under judicial custody since 22.01.2014, his period of sentence is found duly saturated, whereupon, is directed to be released forthwith, if not wanted in any other case.

11. Appeal is dismissed with the aforesaid modification.

(Aditya Kumar Trivedi, J)

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