

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.663 of 2019

Arising Out of PS. Case No.-13 Year-2016 Thana- MOTIPUR District- Muzaffarpur

1. Raj Kishore Ram Son Of Late Anarasi Ram Resident Of Village - Balhi Narhar, P.S.- Sahebganj, Distt - Muzaffarpur.
2. Jitendra Kumar @ Jitendra Singh Son Of Ramnath Singh Resident Of Village - Bishunpurpatti Sujaula, P.S.- Sahebganj, Distt - Muzaffarpur.
3. Rajesh Ram Son Of Ramchandra Ram Resident Of Village - Morsandi, P.S.- Motipur, Distt - Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Hari Kishore Thakur, Advocate
For the Respondent/s : Mr. A.M.P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 25-11-2024 Heard the learned counsel for the appellants, Shri Hari Kishore Thakur and the learned APP for the State, Shri A.M.P. Mehta.

2. This appeal is directed against the judgment and order of sentence dated 30.01.2019 passed by the learned 1st Additional Sessions Judge, Muzafarpur in connection with Sessions Trial No. 519 of 2016 arising out of Motihari P.S. Case No. 13 of 2016 by which the appellant no. 01 and 02 have been found guilty for the offenses punishable under Sections 25(1-b) (a) of the Arms Act and Section 148 of the Indian Penal Code and they have been sentenced to undergo R.I. for two years



under Sections 25(1-b) (a) of the Arms Act and fine of Rs. 5000/- each and in default of payment of fine, the appellants no. 01 and 02 will suffer 3 months rigorous imprisonment and appellants no. 01 and 02 have been further sentenced to undergo R.I. for two years under Section 148 of the Indian Penal Code and appellant no. 03 has been found guilty of the offences punishable under Section 147 of the Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for one year.

3. The prosecution case in brief is that one Amit Kumar posted as Additional Officer-in-Charge of Motipur Police Station recorded his self statement that he received secret information that 5–6 miscreants are assembled on N.H. 28 near the fair of *Vidhayak*, and they are planning to commit *dacoity* with arms, thereafter, the informant along with police party raided the alleged place of occurrence and after seeing the police party, miscreants started fleeing away, but the police party apprehended 3 persons who disclosed their names as Raj Kishore Ram, Jitendra Kumar and Rajesh Kumar and they also named the persons who fled away as Vijay Sahni and Santosh Sahni. On search, one loaded country made pistol and one live cartridge was recovered from Raj Kishore Ram and Jitendra



Kumar and from possession of Rajesh Kumar, Rs.400/- kept in purse was recovered.

4. It has been submitted by the learned counsel for the appellants that these appellants are innocent and have falsely been implicated in this case. After investigation, charge sheet was submitted in this case against the appellants under Sections 399, 402 and 414 of the Indian Penal Code and 25(1-b)a, 26 (ii) and 35 of the Arms Act and accordingly cognizance was taken under the aforesaid sections of Indian Penal Code and Arms Act and after commitment, the charges were framed against the accused appellants and others.

5. On behalf of the prosecution, 9 witnesses were examined in which P.W-1 is Amit Kumar the informant has supported the case of prosecution case. P.W-2 is Mahendra Prasad who was checking the vehicle where informant got confidential information. P.W-3 is Tapeswar Singh who was also in patrolling duty and has said that on search, incriminating articles were found. P.W-4 is also member of vehicle checking party who has said in cross-examination that his statement was not taken by the informant. P.W-5 is Ramakant Prasad who has said that the Arms and cartridges were effective, but one cartridge was not fired. P.W- 6 is the I.O. of the case who had



submitted the charge-sheet, and he had identified confessional statement and sanction order. P.W-7 is Surendra Rai who was unable to take name of the persons who fled away. P.W-8 is Prem Prakash Singh who has supported the case of the prosecution. P.W-9 is Sudeshwar Prasad Singh who was member of the patrolling team and has supported the prosecution case.

6. Learned counsel for the appellants has next submitted that there are several contradictions in the statement of witnesses and all the witnesses have come forward to support the prosecution case and all the witnesses examined in this case are police officials and even the seizure list witnesses have not supported the case of the prosecution and these appellants were implicated in the case at the instance of their enemies.

7. Learned APP for the State; Shri A.M.P. Mehta has supported the impugned judgment/ order and has submitted that though the witnesses are police officials, but they have supported the prosecution case and the defence has not been able to give any reason as to why the police will falsely implicate the appellants.

8. P.W-1; Amit Kumar is the informant of the case. P.W-2; Mahendra Prasad, P.W-3; Tapeswar Singh, P.W-4;



Dharmendra Kumar, P.W-7; Surendra Rai, P.W-8; Prem Prakash Singh, P.W-9 Sudeshwar Prasad Singh are the members of the police team which apprehended the appellants along with other co-accused with appellants. The recovery of country-made pistol and live cartridges from the appellant no. 01 and 02 and the fact that the appellant no. 03 was present with them, has been supported by the oral evidence of the prosecution witnesses. The defence could not elicit anything substantial from the aforesaid witnesses.

9. P.W-5 is Ramakant Prasad who has examined the seized weapons and given the report vide Ext-4 and has proved the Ext-1, 2, 3, 4, 5 and 6 which are the reports of the pistols, the fired bullets and the live cartridges. The defence has not been able to elicit anything in the cross-examination.

10. P.W-6 i.e. Vivekanand Mishra, the I.O. of the case has also been examined. He has proved the formal F.I.R. i.e. Annexure-V, the charge-sheet i.e. Annexure-VI and the Sanction Order of the District Magistrate i.e. Annexure-VII.

11. The appellant no. 01 and 02 have been found in possession of country-made pistols, live cartridges etc., have been proved and therefore the ingredients of the offences under Section 25(1-b)a are found. The appellant no. 01 and 02 have



been convicted under Sections 25(1-b)a of the Arms Act. The argument on behalf of the appellants that all the witnesses being police officials cannot be relied upon for convicting the appellants, cannot be accepted. There is a presumption under Section 114 of the Evidence Act that the officials acts have been regularly performed and therefore, the evidence of the witnesses who are police officials cannot be brushed aside on mere submission of the learned counsel for the appellants.

12. The appellant no. 01 and 02 have been caught with illegal arms i.e. country-made pistols and live cartridges and therefore, they have rightly been convicted under Sections 25(1-b)a of the Arms Act and Section 148 of the Indian Penal Code. So far as appellant no. 03 is concerned, he was not caught with any arms and the court below convicted him under Section 147 of the Indian Penal Code. The charge against the appellant no. 03 was framed under Section 402 Indian Penal Code. The Court below has punished the appellant no. 03 for rioting saying that since charge under higher offence against the appellant no.03 was framed, he can be convicted under a lesser charge and therefore has convicted him under Section 147 of the Indian Penal Code.

13. Section 146 and 147 of the Indian Penal Code



read as follows:-

146. Rioting.—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Punishment for rioting.—Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

14. From reading of the aforesaid sections, I find that the appellant no. 03 cannot be convicted of offences under Section 147 Indian Penal Code as he has not committed any act of rioting but he being the member of an unlawful assembly can be punished under Section 143 of Indian Penal Code.

15. Section 142 and 143 of the Indian Penal Code read as follows:-

142. Being member of unlawful assembly.— Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143. Punishment.— Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

16. The appellant no. 03 in my opinion was a



member of an unlawful assembly as he was aware of facts for which appellant no. 01 and 02 had assembled and had intentionally joined the unlawful assembly and therefore the conviction of appellant no. 03 is modified from that under Section 147 of the I.P.C. to under Section 143 of the I.P.C.

17. In view of the above, the present appeal is dismissed so far as appellant no. 01 and 02 are concerned. So far as appellant no. 03 is concerned, his conviction is altered from under Section 147 to Section 143 of the I.P.C and he is convicted under Section 143 of the I.P.C. and he will undergo rigorous imprisonment for six months.

18. With the aforesaid modification in the conviction and sentence of the appellant no. 03, this application is partly allowed.

(Sandeep Kumar, J)

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