

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.170 of 2016**

Arising Out of PS. Case No.-217 Year-2012 Thana- KASIMBAZAR District- Munger

1. Kranti Sharma S/o Late Mahabir Prasad Sharma
2. Ravi Sharma, S/o Badal Sharma Both are resident of Village- Bicha Gaon,
P.S.- Kasim Bazar, Distt- Munger.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Kumar Kamal Nayan, Advocate
For the State	:	Mr. Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT**

Date : 05-05-2026

Heard learned counsel appearing for the appellants
and learned Additional Public Prosecutors appearing for the
State.

2. This appeal has been filed challenging the
judgment of conviction dated 22.02.2016 and order of sentence
25.02.2016 passed by the learned Additional Sessions Judge-5th,
Munger in connection with Sessions Trial No. 138 of 2013
arising out of Kasim Bazar P.S. Case No. 217 of 2012 whereby
and whereunder these three appellants have been convicted for
committing offence under Sections 25(1-AA), 26(i), 26(ii) and
35 of the Arms Act and have been sentenced to undergo rigorous
imprisonment for ten years with a fine of Rs. 5,000/- each under



Section 25(1-AA) of the Arms Act, to undergo rigorous imprisonment for seven years with a fine of Rs. 5,000/- each under Section 26(i) of the Arms Act and to undergo rigorous imprisonment for ten years with a fine of Rs. 5,000/- each under Section 26(ii) of the Arms Act. All sentences have been directed to run concurrently and in case of default of payment of fine, appellants are directed to further undergo simple imprisonment for 45 days.

3. The prosecution story, in brief, is that on 30.11.2012, on the basis of secret information that Appellant No. 2, namely Ravi Sharma, is engaged in supplying illegal arms and ammunition to *Naxalites*, a raid was conducted and these two appellants were apprehended while they were trying to flee away and from their house, 35 detonators and live cartridges of AK-47, country made pistol, semi-made revolver and parts of fire arms were recovered.

4. In this case, in order to bring home guilt of these accused-appellants, the prosecution has examined altogether nine witnesses. P.W. 1, namely Arun Kumar; P.W. 2, namely Safdar Ali; P.W. 3, namely Shankar Prasad Tuddu; P.W. 4, namely Ganesh Kumar; P.W. 6, namely Sudarshan Prasad and P.W. 8, namely Shiv Murat Singh are members of the raiding



team. P.W. 5, namely Mukesh Kumar, is the informant of the present case. P.W. 7, namely Rambalak Paswan, is Investigating Officer of the case. P.W. 9, namely Awadh Kishore Prasad, who is a formal witness and has proved the sanction report. The prosecution has also adduced documentary evidences, which are marked as:-

Exhibit 1/1	Signature upon seizure list
Exhibit 2	Seizure list
Exhibit 3	Written report
Exhibit 3/1	Endorsement
Exhibit 4	Formal F.I.R.
Exhibit 5	Memo of Arrest
Exhibit 6	Sanction Report

5. On the other hand, the defence has not produced any oral or documentary evidence.

6. After hearing the parties, the learned trial court convicted these appellants and sentenced them, as indicated in the opening paragraph of this order.

7. Learned counsel appearing for the appellants assails the order of conviction and sentence on multiple grounds. He contends that in this case, conviction is solely based on interested police witnesses. All the prosecution witnesses are police officials. P.W. 1, 2, 3, 4, 6 and 8 are members of the raiding party. P.W. 5 is informant of the present case and is a police official. P.W. 9 is also a police official and has proved



sanction report. Seizure list witnesses are also police constables. One of the seizure list witnesses, namely Madan Singh, has not been examined by the prosecution. Perusal of testimony of the witnesses would suggest that a large number of independent witnesses were present at the place of seizure, however, they have all been withheld by the prosecution and no independent witnesses have been examined on behalf of the prosecution to prove the case. In absence of testimony of independent witness, the testimony of related and highly interested witnesses cannot be relied upon. It is further contended that deposition of the prosecution witnesses suffers from serious infirmity and, therefore, they are unreliable and not trustworthy. The witnesses are not consistent about the place of occurrence and the manner in which the seizure was effected and the recovery was made. Even the seizure was not carried down in accordance with the law and procedure laid down. He further contends that even the Sargent Major has not been examined on behalf of the prosecution. He further contends that as a matter of fact, only semi-prepared parts of the revolver were recovered from the room of the house. No manufacturing equipment was found or seized by the police. Prosecution has failed to produce report of Sargent Major or the F.S.L. report and even the seized articles



have not been produced before the learned Trial Court which goes to the root of the prosecution case. He further submits that in this case, investigation of the case has already commenced much prior to institution of the F.I.R.. Thus, without producing the report of the Sargent Major or the F.S.L. and even without producing the seized articles before the learned Trial Court and in absence of any independent witness, the conviction of the appellants is unsustainable. The prosecution has failed to prove the case beyond reasonable doubts and the trial court has wrongfully convicted these appellants ignoring material contradictions and hence, the appellants are fit to be acquitted.

8. *Per contra*, learned Additional Public Prosecutor for the State submits that the evidence on record unmistakably points to the guilt of the appellants. The prosecution could prove that it was these appellants who were involved in supplying illegal arms and ammunition. Charges against the appellants was proved by the prosecution witnesses beyond all reasonable doubt and, therefore, the learned Trial Court was fully justified in convicting the appellants under Sections 25(1-AA), 26(i), 26(ii) and 35 of the Arms Act and imposing the sentence, as indicated above.

9. On going through the rival submissions, evidences



and upon perusal of the records, this Court finds that in this case, all the prosecution witnesses are police officials and are highly interested witnesses. Prosecution has failed to examine any independent witness. Moreover, the prosecution has not produced the seized articles before the learned Trial Court and has also failed to bring on record report of the Sargent Major or the F.S.L. report.

10. It is settled law that in criminal cases, since life and liberty of the accused are involved, a strict standard of proof is required as to prove the guilt of the accused. It is not the preponderance of the probabilities that establishes the guilt of the accused. It is necessary that the evidence on record must prove it beyond reasonable doubt. A conviction cannot be based on the consideration that the prosecution story may be true. The accused can only be convicted if the court reaches the conclusion that the prosecution story must be proved. The burden of proving the guilt of the accused is upon the prosecution. In this case, the prosecution has failed to prove the guilt of these appellants beyond reasonable doubt and thus, the appellants are entitled to be given the benefit of doubt.

11. Accordingly, the impugned judgment of conviction dated 22.02.2016 and order of sentence 25.02.2016



passed by the learned 5th Additional Sessions Judge, Munger in connection with Sessions Trial No. 138 of 2013 arising out of Kasim Bazar P.S. Case No. 217 of 2012 are hereby set aside with respect to these appellants only.

12. In that view of the matter, appellants, above named, are discharged from the liability of their bail bonds in connection with this case.

13. Accordingly, this appeal stands allowed.

14. Interlocutory application/s, if any, also stands disposed off.

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	NAFR
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