

## Umesh Sah Vs The State of Bihar

**Court:** Patna High Court

**Date of Decision:** Sept. 13, 2011

**Acts Referred:** Arms Act, 1959 " Section 25(1B), 25(1B)(A), 26, 35

Evidence Act, 1872 " Section 24, 25, 26

Penal Code, 1860 (IPC) " Section 399, 402, 414

**Hon'ble Judges:** Gopal Prasad, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Gopal Prasad, J.

Heard Learned Counsel for the Appellants and Learned Counsel for the State.

2. The Appellants have been convicted u/s 399 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four years and

further convicted u/s 402 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years. The Appellant, Mithilesh

Singh has further been convicted u/s 25(1-B)(A) of the Arms Act and sentenced to undergo rigorous imprisonment for two years. However, it has

been ordered that both the sentences shall run concurrently.

3. The prosecution case as alleged in the fardbeyan is that on 10.09.1994 at about 6:30 P.M. the police party raided nearby I.T.I. building on

confidential information that the miscreants have assembled for planning to commit dacoity. The police party saw some miscreants hiding behind

the bush, taking Biri and Cigarettes. On challenge by the police party the miscreants started fleeing away. The police party chased and caught hold

of the five miscreants who disclosed their names which includes the Appellants and on search from the body of one Mithilesh Singh one loaded

country made pistol and two live cartridges were recovered. Some articles also recovered from other miscreants. The police found cigarettes,

match box and wine bottles from the place where they were planning. It is further alleged that on interrogation the accused persons disclosed that

they were assembled for preparation to commit dacoity. The First Information Report was lodged at the instance of Shashi Bhushan Sharma,

Officer-In-Charge-Cum-Inspector, Hazipur. The seizure list was prepared regarding the recovery of a country made pistol and two live cartridges

and some jewellerys of silver and gold and money. The police submitted the charge-sheet.

4. During the trial ten witnesses were examined. However, P. Ws. 1 and 3 are the two independent seizure list witnesses have been declared

hostile as have not supported the prosecution case regarding the recovery of the firearm from the possession of the Appellants. The other

witnesses who are police personnel have supported the prosecution case that the Appellants were apprehended by the police and from the site of

the place of occurrence cigarette, Biri and wine bottles were recovered. From the possession of Mithilesh Singh a firearm was recovered and from

the possession of other accused persons one Rampuri Chaku and a dagger and some jewellerys were recovered. The Informant P.W. 6 and other

member of the police party supported the prosecution case regarding recovery. He has further deposed that the accused persons admitted that

they had collected there for planning to commit dacoity. The trial court taking into consideration the evidence of the witnesses convicted the

Appellants for the offence u/s 399 and 402 of the Indian Penal Code and further convicted Mithilesh Singh for the offence u/s 25(1-B)(A) of the

Arms Act. However, acquitted the Appellants for the offence u/s 414 of the Indian Penal Code and 26 read with Section 35 of the Arms Act.

5. Learned Counsel for the Appellants, however, contended that two seizure list witnesses have turned hostile as having not supported the

prosecution case about the recovery of the firearm from Mithilesh Singh and the evidence of the other witnesses are interested in conviction as are

member of the police party hence are not reliable and further the prosecution has not been able to establish the offence u/s 399 and 402 of the

Indian Penal Code. The recovery of firearm has not been established beyond doubt neither seizure list mentioned the exact specification of the

same nor kept in sealed cover.

6. Learned Counsel for the State, however, contended that the criminal antecedents of the Appellants are apparent from Ext. 4 and the witnesses

supported the prosecution case.

7. However, taking into consideration the evidence, it is apparent that P. Ws. 1 and 3 who are the independent witnesses of the search and seizure

and they have turned hostile having not supported the prosecution case regarding recovery. However, so far the evidence regarding Section 399

and 402 of the Indian Penal Code is concerned only evidence that the accused persons were collected there and taking Biri, cigarette and bottle of

wine. However, the evidence that the Appellants disclosed that they have assembled there for committing crime is not admissible in evidence as

any admission before the police by the accused is hit by Sections 24, 25 and 26 of the Evidence Act and hence only material remained there that

the accused persons were with dagger, Chura and pistol and had collected there with Biri, cigarette and wine. However, merely presence of the

accused at about 6 P.M in the evening with Biri, cigarette does not indicate about any preparation for dacoity hence the prosecution has not been

able to prove the charge for an offence u/s 399 and 402 of the Indian Penal Code. The Biri, cigarette and bottle of wine is no indication for taking

preparation or for committing dacoity. The time of occurrence is about 6:30 P.M. also does not indicate that the accused persons are assembled

late wee hours and hence I find and hold that the evidence adduced by the prosecution is not sufficient to hold that they were assembled at the

place of occurrence for making preparation for the purpose of committing dacoity. Hence, the order of conviction and sentence recorded u/s 399

and 402 of the Indian Penal Code is hereby set aside. However, so far the search of the recovery of pistol and two cartridges as mentioned in the

seizure list, there is no specification at all about the size or making of the said pistol. The said two cartridges which have been mentioned do not

give any specification. The informant - cum - I.O.P. W. 6 also in his evidence has not stated about the specification in the cross-examination. He

has stated that he does not remember the length of the said pistol. There is no evidence that he neither ever sent the pistol to the Sergeant Major

nor even mentioned that seized articles were sealed or sent in sealed cover.

8. However, P.W. 10 is the Sergeant Major and he has stated in his evidence that with regard to Hajipur Town P.S. Case No. 258 of 1992 one

country made revolver and three cartridges were received which were proved to be effective. However, it is strange that the seizure list shows the

recovery of one pistol and two cartridges and the report of P.W. 10 Sergeant Major is with regard to a pistol and three cartridges itself create a

doubt about the recovery and specification of the same firearm which was seized. Hence, having regard to the facts and circumstances the

Appellants are entitled for benefit of doubt and hence the order of conviction and sentence recorded by the lower court for the offence u/s 25(1-B)

(A) of the Arms Act is hereby set aside. Hence, this Appeal is hereby allowed. The Appellants are discharged from the liabilities of their bail

bonds, if any.