Nawal Kishore Yadav Vs State of Bihar

Court: Patna High Court

Date of Decision: Nov. 16, 2011

Acts Referred: Arms Act, 1959 â€" Section 25, 25(1B), 26, 35
Penal Code, 1860 (IPC) â€" Section 353, 399, 402, 414

Hon'ble Judges: Dharnidhar Jha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Dharnidhar Jha, J.
The seven appellants of the five appeals were charged together with commission of different offences so as to be tried

together in Sessions Trial No. 167 of 2006 by the learned Presiding Officer of Fast Track Court-IV, Purnea and by judgment dated 21.03.2007

they were found guilty of committing offences under Sections 399, 402, 414 and 353 IPC as also offences under Sections 25(1-B)(a) 26 and 35

of the Arms Act they were heard on the quantum of sentence on the same day and each of them was directed to suffer rigorous imprisonment for

ten years, seven years, three years and two years for having been found guilty of committing offences under Sections 399, 402, 414 and 353 IPC

and also to suffer rigorous imprisonment for one year, six months and six months for their respective convictions under Sections 25(1-B)(a) 26 and

35 of the Arms Act. They challenge the judgment of conviction and the order of sentence passed by the learned trial Judge by preferring the

present batch of five appeals as may appear from the cause title of the present judgment.

2. The prosecution story runs in seven hand written pages which is full of all rhetoric rather than the substantial allegations which was coming from

the pen of P.W.7 Viveka Nand who on 13.03.2005 was posted as the Deputy Superintendent of Police, Dhamdaha(Purnea), the gist of which

was that after having secretly received an information about the assemblage of certain criminals belonging to particular gang of notorious criminal

Buchan Yadav, the informant consulted his superior, Superintendent of Police, Purnea and as per his direction asked different officer-in-charges

who appear having been examined as witnesses, like, P.W.1, P.W.3, P.W.4, P.W.5 so as to forming a raiding party. It is stated that the police

force assembled in between 9.30 P.M. and 11 P.M. and thereafter they proceeded towards Shekhpura Chawk under the leadership of the

informant. P.W.7. The informant further claimed that he divided the policemen in two parties one being led by him and another by another officer

and thereafter started towards the double storied house of dreaded criminal Buchan Yadav so as to laying a seize around the house for nabbing the

criminals who had reported assembling there for committing a mayhem of scheduled castes persons so as to grabbing about 150 bighas of land.

The mayhem by way of retribution on account of being scheduled castes voters having not voted in favour of a particular candidate during the last

general election.

3. The informant claimed that when his two groups of policemen proceeded towards the target place some criminals were found atop the building

for keeping watch around the place. One of the criminals flashed the torch light but he was captured by S.I. Gautam Kumar(P.W.4)and

commando 197 Pasupati Bharti(not examined). In the process of being captured the criminal having fired a shot and that caused a commotion

among criminals and they started firing at the police party but the police force under the leadership of S.I. Basuki Nath Jha(not examined) and

others reached the targeted Baithaka and from there arrested the appellants.

4. It is further alleged that different weapons were recovered from the possession of different appellants. It was specifically stated that appellant

Badri Yadav was found in possession of a semi automatic rifle whose chamber was bearing six cartridges and the cartridge case which was

clinging from his shoulders was containing 50 other cartridges. Appellant Chalitra Sharma was also having a similar weapon which had eight

cartridges in its chamber and another 15 number of the same ammunition in the cartridge case. As was the case also with appellant Bibhishan

Yadav whose weapon found in his possession had one cartridge in its chamber, six in the magazine and 50 in the cartridge case. Appellant Sunil

Kumar Mandal was found carrying a regular rifle with four cartridges in its magazine, one in its chamber and 20 secured in the cartridge case

clinging from his shoulder.

5. The house was also searched but appears containing nothing except a bed over which a pillow had been kept. On removal of the pillow the

police found 32 cartridges of semi automatic rifle and four cartridges to be used in S.L.R. The recovered articles and ammunitions along with

cartridge cases were seized and seizure memos Ext-3 was prepared.

6. It was stated that some persons were injured also which included the informant P.W.7 and they were forwarded to Dr. Vinod

Bishnoi(P.W.6)for their examination and accordingly he issued injury certificates Exts-4 to 4/2.

7. The informant wrote down his statement, which I have already pointed out ran into seven hand written pages and which form the story of the self

praise of the police than of substantial allegations which may further appear fallacious when I consider the evidence which was adduced in the court

below. Before that it may be pointed out that the police finding the material sufficient sent up the appellants for trial and that ultimately ended in the

impugned judgment.

8. In support of the prosecution charges eight witnesses were examined which included the Sergeant Major (P.W.2) Om Prakash Choudhary who

had tested the arms and ammunitions for their effectiveness and had submitted the report Ext-2. Out of the remaining witnesses P.W.6, as pointed

out earlier, was the doctor who had examined the informant and two other injured and issued the injury certificates Ext-4 to 4/2. P.W.8 S.I. Raghu

Nath Choudhary was the Circle Inspector of Dhamdaha Police Inspector and he was handed over the charge of investigating the case. The

remaining witnesses were members of the police party which had captured the place and also arrested the appellants.

9. The evidence of witnesses is consistent that they were called to form a group of policemen at the direction of the informant Dy.S.P. who had

received such direction further from Superintendent of Police so that the house of Buchan Yadav where the criminals had assembled for some

particular purpose which was of committing a mayhem with the scheduled castes persons as also to capture 150 bighas of land. Accordingly, the

witnesses along with other police personnel who had not been examined assembled together and proceed for some distance by their vehicles and

thereafter for seven kilometers on foot to reach the place and capture the appellants. They have also testified to the recovery of weapons but

curiously they do not name the persons from whom the weapons were recovered. What they further say equivocally was that the appellants were

sleeping in the Baithaka of the temple and they were arrested in that particular position from that particular place. P.W.5 S.I. Suresh Kumar Ram

was the officer-in-charge of Jalalgarh police station and who appears preparing the seizure memo Ext-3 stated that he prepared the seizure memo

but when it came to elicit from him as to from whom he recovered which of the weapons or ammunitions the witness was going amiss, he was

stating that he did not really recover any weapons himself nor did he find any particular officer recovering the weapons from any particular

appellant rather people having been assembled there or the police officers were telling him that a particular appellant had been found in possession

of a particular weapon and accordingly he was entering in that act in the seizure memo. If this was the probability approved by law then this court

had approved as a valid mode of conducting search and seizing the weapon. This court could have granted sufficient allowance had someone to

hold the trial Judge that he had recovered after having searched a particular appellant the particular weapon with ammunitions and accordingly he

dictated to P.W.5 to make recoveries from a particular appellant. That not being the evidence also and the situation being further compounded by

the non-examination of Mukti Lal and Dilip Yadav, the two independent persons who were associated with the search and seizure proceedings.

This Court has simply to reject the whole story of the prosecution that any search, firstly from any of the appellants was conducted by any police

officer and, secondly, any weapon or ammunitions were recovered from him. Courts do not act on suppositions. They also do not have any way of

as to the police officers have to suspect some one of committing the offence and on that very basis to arrest someone to remand him to custody or

for further investigation of his participation in any offence. When a court of law is called upon to judge a fact or is further called upon in an appeal

of the present class to judge the judgment and findings recorded by the trial court then the only option before the court is to read the evidence and

to scrutinize the probability which could have found appearing out of that by the trial Judge on the balance of reasonableness and then test the

findings. I regret to note that the learned trial Judge who was the first court of fact was simply going equally amiss as they the witnesses on

recording his findings and that was the central reason as to why a faulty judgment was rendered. Thus, on scrutiny of the evidence of witnesses

who were responsible police officers and who probably were not ready to allow the general persons of the neighborhood whose number was in

plenty as may appear from the very FIR or the evidence of witnesses to come forward to depose in court, this court has to reject the findings of

the learned trial Judge that the charges under Sections 25, 26 and 35 of the Arms Act were established to the hilt. There was no evidence showing

that any of the appellant was indeed found in possession of any weapon or ammunition or anything which could be covered under the definition of

arms and further in spite of accepting the fact that the seven appellants were found sleeping in the Baithaka of the temple, there was complete

absence of evidence on record indicating that at least they had the knowledge or at least they were conscious of the fact that anyone of them or

even the place which under their occupation severally or jointly was containing any arms or ammunitions and which could be acceptable to the

reasonable man.

10. So far as the conviction of the appellants under different Sections of the IPC is concerned, if one could consider the provisions of Sections 399

and 402 IPC one could find the prosecution has to establish that the appellants had assembled firstly for commission of dacoity as is required u/s

402 IPC and before they had assembled they had made preparation in that behalf, i.e., for committing dacoity. The very FIR read that the

assembly was for committing the mayhem with persons of the scheduled casts and committing mayhem murders or capturing land could not be said

to be covered by definition of the offence of dacoity. Murdering the accused is an offence of murder and that is never said to be dacoity. I have

already rejected the prosecution story and evidence as regards the recovery of serious weapons as could be an automatic rifle but still for the sake

of considering the charge u/s 399 IPC I could assume that there was some arms in presence of some of the accused persons but then the question

was as to what is the evidence to indicate that they had armed themselves for committing dacoity. The prosecution was obliged to prove by

acceptable evidence that the appellants had properly made preparation only for the purpose of committing dacoity and no other offence. I have

first referred to the statement of P.W.7 in his very FIR. In his deposition P.W.7 has stated in paragraph-2 that the criminals had assembled for

committing Narsanghar, if that was the purpose for which the appellants had assembled then the charges under Sections 399 and 402 IPC could

not be said to be established.

11. The FIR read that the recovered articles were arms looted from the police force. It was necessary for the prosecution in order to bringing

home the charges u/s 414 IPC firstly that it could have been established by proper production of documentary and oral evidence that for the

plundering the police force or any police station or any arms from where the weapons had been taken away. There was a case registered and the

recovered arms were the subject matters of any particular offence of theft or loot of arms. That was not specific. Then again there was no case

basically of the prosecution that the appellants had the arms in their possession with a only motto of either destroying them or concealing them. This

is another ingredient of the offence of Section 414 IPC that the purpose should be to conceal the arms. The arms were completely not established.

Viewing the evidence of that angle I do not have any hesitation in noting that the learned trial Judge was simply not consulting the draft of the

provision of Section 414 IPC so as to reading the ingredients out of it and thereafter to considering the evidence in order to finding out whether the

ingredients had been established or not.

12. I have already noted somewhere and that is admitted that the appellants were found sleeping in the Baithaka and they were arrested there.

When it comes to causing interference in discharge of some duties of a public servant then the sleeping could not be said inviting with such duties.

Such was the state of evidence and the worst was the view of the learned trial Judge when he was also finding the charge u/s 353 established.

13. On discussion of the evidence adduced before the learned trial Judge what I find is that the prosecution had measurably failed in establishing

any of the offences. The accused had been charged with and the learned trial Judge was simply obliging the police officer or the police force by

rendering a judgment of conviction. I have pointed out on many occasions the Judges are supposed to go through the evidence placed on record

and render justice and not travel outside it. It may be pointed out that the State of Bihar in any litigations if the Judges accept the version which

appear through a written report or even an earlier first information report by a police officer for its adjudication and thereby is called upon to

render a judgment the Judges must be very very careful in scrutinizing the evidence as the judgment has a far reaching effect on the liberties of the

citizens of India. Here was the case where a baseless prosecution was slapped on these seven unfortunate Indians and they are in custody

throughout. This is the saddest part of the trial proceedings and the present appellants also. If the appellants are so advised they may ventilate their

grievances at the appropriate forum in the State of Bihar. In my considered view it was a case in which the compensation must be awarded to each

of the appellants.

14. With the above observations, the five appeals are meritorious and each of them are hereby allowed. All the seven appellants are acquitted of

the charges for which they have been found guilty and sentenced. Each of the seven appellants of the five appeals are in custody. They shall be

released forthwith, if not wanted in any other case.