

BRKH010011522019



Presented on : 23-03-2019
Registered on : 23-03-2019
Decided on : 27-04-2026
Duration : 7 years, 1 months, 4 days

**IN THE COURT OF SESSIONS JUDGE
At Khagaria, (Bihar)
(Presided over by Shri Rajesh Kumar Bachchan)
Criminal Appeal No. 06 of 2019**

In the matter of:

Rajesh Yadav
S/o- Late Ganeshi Yadav
R/o- Vill. Mathar, P.S.- Muffasil (Khagaria)
Distt. Khagaria

.....Appellant.

VERSUS

The State of Bihar

.....Opposite Party.

:: J U D G M E N T ::

1. The instant appeal is directed against judgment of conviction and order on sentence dated 27.02.2019 rendered by the Ld. Court of A.C.J.M., Railway, Khagaria (hereinafter referred to as 'the Ld. Trial Court') in Naugachhiya Rail P.S. case No. 1/2014, G.R.(R) No. 09/2014, C.I.S. No. 808/2014, whereby, the Ld. Trial Court has convicted the appellant (hereinafter referred as the 'accused') for having committed the offence u/S. 25(1-B)a and 26 of the Arms Act and sentenced him to undergo R.I. for three years and fine of Rs.

Rajesh Kumar Bachchan

2000/- for the offence punishable u/S. 25(1-B)a of the Arms Act and also for the offence punishable u/S. 26 of the Act R.I. of three years and fine of Rs. 2000/- were awarded. In case of default in payment of fine, accused was directed to undergo S.I. for three months for each offence. Both sentences were directed to run concurrently and the period of detention undergone by the convict shall be set off u/S. 428 of Cr.P.C.

FACTUAL MATRIX

2. For clarity a brief exposit of facts is necessary. Informant who is an S.I. made written complaint to SHO Rail P.S.Naugachhiya on 23.02.2014 stating that on the same very day at 17:30 hours he was escorting the train No. 55221 with BMP Ct. 81 Baliram Singh; BMP Ct. 337 Omprakash Dubey; BMP Ct. 492 Samsul Haq; BMP Ct. 588 Pawan Kumar Roy and as soon as the train started from Kursela Station the escort party entered into boggy No. 01445, one person tried to hide himself and when he was apprehended disclosed his name as Rajesh Yadav S/o Ganeshi Yadav R/o Vill. Mathair Diyara, P.S. Khagaria (Mufassil), Distt. Khagaria. In presence of two witnesses his personal search was conducted and a country made pistol green color with a live cartridge of 8 mm inside was recovered from the left side of his waist. Five live cartridge of 8mm were also recovered from his upper pocket of shirt wrapped in a plastic. A mobile was also recovered from right pocket of his full pant. He can not produce any documents related to the recovered materials. A seizure list was prepared and two witnesses signed

voluntarily over the same. He was formally arrested and the informant handed over the arrested person along with seized items to the SHO.

CHARGE SHEET, COGNIZANCE AND CHARGE

3. After investigation charge sheet was submitted on 11.04.2014 for the offence punishable u/S. 25(1-B)a/26 of the Arms Act. Cognizance was taken on 21.04.2014. Charge was framed on 02.06.2014 for the offence punishable u/Ss. 25(1-B)a/26(1) of the Arms Act.
4. In order to prove its case prosecution has examined altogether seven witnesses and also got exhibited following documents:

OCCULAR EVIDENCE

Sl.No.	Name	Evidence Nature
P.W. 1	Pawan Kumar Rai	Member of escort team
P.W. 2	Iliyas Badhwar	Informant
P.W. 3	Baliram Singh	Member of escort team
P.W.4	Sharat Kumar	Investigating officer
P.W.5	Sanjeev Kant	Sergeant Major
P.W.6	Om Prakash Dubey	Member of escort team
P.W.7	Pankaj Kumar	Formal witness

Sl.No.	Ext. No.	Description
1.	Ext.1	Seizure List
2.	Ext. 2	Self written Statement of Informant
3.	Ext.2/1	Endorsement of S.H.O. on self written statements.
4.	Ext.3	Charge-Sheet
5.	Ext.4	Sanction order
6.	Ext.5	Arms Inspection report
7.	Ext.6	Letter of S.H.O. sent along with material exhibits

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Material Exhibit

Sl. No.	Ext. No.	Description
1.	Material Ext. I	Mobile
2.	Material Ext. II	Country made pistol
3.	Material Ext. III to III/5	Six cartridges

5. Statement of sole accused was recorded on 20.11.2018 where he denied all evidence put to him. No evidence was led by the defence. After hearing, final arguments the Ld. Trial Court passed judgment of conviction and order on sentence as aforesaid.
6. Feeling aggrieved of the impugned judgment and order the appellant has preferred the present appeal.

ARGUMENTS

7. Ld. Counsel for appellant has submitted that the impugned judgment is bad in law and unjustified upon the facts and circumstances of the case. Ld. A.C.J.M. Railway has passed his judgment and order on surmises and conjunctures without applying his judicial mind upon the evidence on record. Ld. Trial Court should have appreciated the argument of accused on the point of law that there is no valid sanction for prosecution and the mandatory provisions of search and seizure has been violated by the informant. Investigation has not been properly conducted by the I.O. in accordance with law and on this score the Ld. Trial Court should have acquitted the appellant. The evidence on record has not been properly appreciated and on proper appreciation the Ld. Trial court should have given the benefit of doubt to the appellant. The entire



judgment of Ld. Trial Court has not given any consideration of the provision of law and the validity of sanction order.

8. Per contra, Ld. P.P. for state has submitted that Ld. Trial Court has rightly convicted the appellant and he has prayed that the impugned judgment and order on sentence may be upheld.

POINT FOR DETERMINATION

9. I have heard both sides and also gone through the record of the case and memo of appeal. The following point is formulated for determination:

“Whether the impugned judgment of conviction and order on sentence passed by the Ld. Trial Court is sustainable in law or needs any interference in this appeal?”

DISCUSSION, DECISION AND REASONS THEREOF

10. For appreciation arguments advanced by both sides, it is apposite to have glimpse of evidence available on record.

- (i) P.W. 2 is informant of this case. He has stated in his examination in-chief that incident is dated 23.02.2014 and it was 19:30 hours he was escorting Katihar Barauni passenger with BMP force. P.W. 2 has stated that when the train started moving from Kursela, he saw a person as nervous and tried to run away but he was apprehended. P.W.-2 gave to his search to the witnesses first and in presence of two witnesses the search of the apprehended person was conducted. When the train arrived at Naugachhiya station one country made loaded pistol was recovered from the left side of the waist of

the said person and from upper pocket five rounds live cartridges were also recovered. A mobile was also recovered. Seizure list was prepared in the train and all seized items were handed over to the SHO Naugachhiya. A copy of the seizure list was also handed over to the accused who had disclosed his name as Rajesh Yadav. On cross examination P.W. 2 has stated that he does not remember the train number and bogey number where incident had occurred and he also does not remember the arrival time of train at Naugachhiya station. He has stated that he does not have any proof that what items were given to the Naugachhiya police by him. P.W. 2 has stated that he had not put any special mark on the seized arms. He has denied the suggestion that nothing was recovered and no such arrest was made as stated by him.

- (ii) P.W. 1 Pawan Kumar Roy who is also a member of escort party. He has stated in his examination in-chief that incident had occurred on 23.02.2014 at 7:30p.m. and he was on escort duty in train No. 55221. He has stated that when the train started from Kursela a person tried to run away but he was apprehended. Search was conducted by Jamadar Sahab in Naugachhiya where a country made pistol was recovered having one round inside from his left side. Five rounds were also kept in a polythene in his pocket. A mobile was also recovered. P.W. 1 has stated that recovery was made in presence of SHO Naugachhiya and two public were also

there. Name of the accused was Rajesh Yadav. On cross examination P.W. 1 has stated that he did not search the apprehended person. He has stated that he had seen the papers of arrest. He has stated that there was special mark in green color on pistol and cartridges. He has stated that no paper of pistol and cartridge were made.

(iii) P.W. 3 Baliram Singh was also member of escorting party. He has stated in his examination in-chief that when the train started from Kursela one person sitting in a bogey was seen nervous and on his search, one country made loaded pistol and five cartridges were recovered. He did not show any paper regarding the same. Seizure list was prepared and arms were seized and accused was also arrested. On cross examination P.W. 3 has denied his suggestion that he was deposing falsely.

(iv) P.W. 4 Sarat Kumar is Circle Inspector Tegra. He has stated in his examination in-chief that he was posted as SHO at P.S. Rail Naugacchiya and took charge of the investigation. He had recorded the statement of the witnesses and also the accused Rajesh Yadav who had accepted his guilt. Seized fire arms and cartridges were produced before the Court and on the order of the same the seized items were sent to sergeant major Bhagalpur for examination. He also obtained sanction report and then submitted charge sheet. On his re-examination P.W. 4 has stated that the place of incident of

this case was moving train No. 55221 bogey No. 01445 from Kursela to Naugachhiya station. On cross examination P.W. 4 has stated that he did not record the statement of the passengers. He has stated that he had inspected the place of incident as described by the informant.

- (v) P.W. 5 is Dy. S.P. Police line Bhagalpur Sanjeev Kant. P.W. 5 has stated in his examination in-chief that on 19.03.2014 he had examined the seized exhibits of Khagaria Rail P.S. Case No. 1/14 and found .315 country made pistol and .315 inch five cartridges on which KF 8MM was written as functional. He also examined .315 inch mis-fired bullet. He has stated that in presence of I.O. he put his signature over all exhibits and sealed in a cloth. On cross examination P.W. 5 has stated that exhibits were produced before him in sealed condition which was bearing signature of Court and I.O.
- (vi) P.W. 6 Omprakash Debey who was also a member of escort team. He has stated in his examination in-chief that on 23.02.2014 he was escorting Katihar Barauni passenger from Katihar to Baruni. One person started running at Kursela station and he was apprehended and on search one country made pistol and some live cartridges were recovered which were handed over to the Rail P.S. Naugachhia. A mobile was also recovered. On cross examination P.W. 6 has stated that Darogaji has not recorded his statement.

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(vii) P.W. 7 is SI Rail P.S. Naugachhia Pankaj Kumar who had produced the seized exhibits before the Court. He has stated that on the direction of SHO Rail Police Naugachhiya he is producing material exhibits of Naugachhiya Rail P.S. Case No. 1/14 before the Court. The seized exhibits produced are in polythene bag and a country made pistol is inside the same. MR-1/14 is written in red ink on the seal. Exhibits are sealed in white cloth. A button mobile red in color is also in the bag. On mobile in white paint Rail P.S. Naugachhiya Case No. 1/14 dated 23.02.2014 u/S. 25(1-B)a/26 of the Arms Act was written. On opening of the seal a country made green color pistol was found on which Ext. A dated 19.03.2014 Nauchacchiya Rail P.S. Case No. 1/14 dated 23.02.2014 u/S. 25(1-B)a/26 of the Arms Act is written. Six bullets were also found in polythene bag and upon them Naugachhiya Rail P.S. Case No. 1/14 was written. On cross examination P.W. 7 has stated that on the instruction of the SHO he has produced the exhibits. He has stated that polythene bag is not sealed. He has stated that material exhibits were given to him by SHO by taking out from the malkhana.

ANALYSIS OF EVIDENCE

11. As per F.I.R. there is recovery of one country made loaded pistol and five live cartridges from the accused from a moving train. Informant deposing as P.W. 2 has stated that when the train arrived

at Naugachhiya the recovery was made from the accused. P.W. 2 has stated that the recovery was made before the witnesses but he has not stated that who were the witnesses in the F.I.R. and also in deposition. Seizure list mentions names of independent witness as Laxman Kumar and Ramdev Sharma but these witnesses have not been examined before the Ld. Trial Court and no reason of their non-examination has also come out. None of the witnesses have disclosed the name of the witnesses in their evidence. Seizure list (Ext. 1) does not mention whether these witnesses were police or public witnesses. Recovery is from the moving train but prosecution did not examine any passenger of the train.

12. P.W. 2/informant, P.W. 1, P.W. 3 and P.W. 6 are members of escort party and in their presence the fire arms were recovered. These witnesses have not stated anything about sealing of the seized firearms in their presence. P.W. 2 has stated that he had handed over the seized items to SHO Rail P.S. Naugachhiya but he has not stated that whether he had handed over the seized items in sealed condition to the SHO. Even he has not stated that he had put any special mark on the seized items. P.W. 4 is the I.O., he has also not stated that whether he had received the seized items in sealed condition from the informant.
13. Hon'ble Supreme Court in Amarjit Singh vs. State of Punjab 1995 Supp (3) SCC 2017 has held that non sealing of the seized articles at the spot is a serious infirmity because the possibility of the tampering with the same can not be ruled out. Hon'ble Patna High

Court in Ram Chandra Mahto v. State of Bihar 2019 SCC OnLine PAT 3595 has also held that law contemplates that arms and ammunition allegedly recovered/seized be sealed which is safe guard given by the statute so as to eliminate the possibility of any tampering of false implication.

14. P.W. 4 has also not stated that whether he had sealed the seized items and deposited the same in malkhana. P.W. 4 has also not stated that any entry was made in the malkhana register regarding deposit of the seized items. Malkhana register was also not produced before the Ld. Trial Court.
15. P.W. 2/Informant has stated that country made loaded pistol was recovered from the accused but he has not stated that whether it was unloaded and if unloaded who had done so. Seizure list (Ext. 1) mentions six live cartridges of 8 mm but the sergeant major who was examined as P.W. 5 has found one bullet had hitting mark means it was not functional. P.W. 5 has also stated that he had examined seized exhibits of Khagaria Rail P.S. case No 1/14 whereas the present case has arisen from Naugachhiya Rail P.S. case No. 1/14.
16. Non sealing of the seized items, non examination of the witnesses who had conducted the search of the accused, doubt about the deposit of seized items in safe custody, difference in the actual functional bullet and statement of the witnesses and the seizure list all creates doubt in the story of the prosecution and make recovery

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suspicious. The above discussion arrives at the conclusion that recovery from the accused is doubtful.

ORDER

17. Accordingly, the impugned judgment of conviction and order on sentence dated 27.02.2019 rendered by the Ld. Court of A.C.J.M., Railway, Khagaria in Naugachhiya Rail P.S. case No. 1/14, G.R. (R) No. 09/2014, C.I.S. No. 808/2014, are set aside, acquitting the appellant from charges u/Ss. 25(1-B)a and 26(1) of the Arms Act.
18. Thus, present Criminal Appeal No. 06 of 2019 is hereby allowed. A copy of judgment be sent to the Ld. Trial Court along with L.C.R. File be consigned to record room.

(Dictated and corrected by me)

RK Bachchan

(Rajesh Kumar Bachchan)
Sessions Judge,
Khagaria
Dated: 27.04.2026

(Dictated)

RK Bachchan

(Rajesh Kumar Bachchan)
Sessions Judge,
Khagaria
Dated: 27.04.2026

Date of Judgment	27-04-2026
Date of Reserving Judgment	19-03-2026
Uploading Date	30-04-2026
Uploaded by	Sushant Kumar (DEO)