

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.746 of 2015

Arising Out of PS.Case No. -81 Year- 2011 Thana -JAHANABAD District- JEHANABAD

1. Chandan Kumar Son of Sri Kaulesh Sharma resident of Village- Mokar Post Mokar ,P.s Karauna O.P. District Jehanabad.

.... Appellant/s

Versus

1. The State of Bihar
2. Puni Sharma@Gopal Sharma Son of late Radhe Mohan Singh
3. Mohan kumar Son of Sri sidhnath Sharma.
4. Dipu@Dipak kumar Son of Sri Shambhu Sharma All three are resident of village Mokar ,Post Mokar,P.s karauna, OP District Jehanabad.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 16-12-2015

The appellant, in the present appeal, under the proviso to Section 372 of the Code of Criminal Procedure, 1973, is the informant of Jehanabad Karauna P.S. Case No. 81 of 2011, which gave rise to Sessions Trial No. 457 of 12/203 of 14. He is aggrieved by the judgment and order, dated 22.06.2015, passed by the learned IVth Additional Sessions Judge, Jehanabad, whereby he has recorded acquittal of respondents No. 2 to 4, who were put on trial on the charge of

commission of the offences punishable under Section 307 read with Section 34 of the Indian Penal Code and Section 25 of the Arms Act, 1959.

2. The *fardbeyan* of the appellant, recorded by the police, on 14.02.2011, at 5 P.M., at west side of the boundary of Amas Middle School, Mokar, is the basis of registration of the First Information Report, wherein he alleged that at 4 P.M., on the same day, 14.02.2011, he, along with his relative, Rahull Kumar, and cousin, Satish Sharma (P.W.1) was going towards Jehanabad Bazar in a car from the Village Mokar. The appellant/informant (P.W.3), according to the *fardbeyan*, was driving the car, whereas his relative, Rahul Kumar, was sitting by his side and his cousin, Satish Sharma (P.W.1) at the back seat. The moment they had crossed the house of one Arjun Sharma, respondents No. 2, 3 and 4 emerged from the bushes near Middle School, Mokar, and all of them started firing on them from a distance of nearly 50 to 60 feet. The appellant/informant, as per the *fardbeyan*, jumped out of the car and started fleeing back towards his house. According to the appellant, two bullets fired at him passed just above his head and, thus, he had a narrow escape from the attempt on his life. The motive behind the commission of the offence, as per the

prosecution's case was that the respondents No. 2, 3 and 4 used to suspect that the appellant was an informer of the police.

3. The police, upon completion of investigation, submitted *charge-sheet* against the respondents No. 2, 3 and 4, whereafter the Chief Judicial Magistrate took cognizance of the offences by an order, dated 05.01.2012 and committed the case to the Court of Sessions on 18.07.2012. Upon framing of charge for commission of offences punishable under Section 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, and since the respondents pleaded not guilty thereto, the trial against them commenced.

4. At the trial, altogether 5 witnesses, namely, Satish Sharma (P.W.1), Akhilesh Sharma (P.W.2), the appellant/informant, (P.W.3) and Ram Kishore Mishra, the Investigating Officer (P.W.4) deposed in support of the prosecution's case. In addition, certain documents were exhibited at the trial, which are formal in nature.

5. Learned trial Court, on evaluating and appreciating the evidence on record, came to a conclusion that the prosecution had miserably failed to prove, beyond all reasonable doubts, the charges against the persons put on trial.

On having come to this conclusion, learned trial Court recorded acquittal of respondents No. 2, 3 and 4 by the impugned judgment and order under appeal.

6. We have heard Mr. Sanjeev Kumar, learned counsel, appearing on behalf of the appellant and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

7. Learned counsel, appearing on behalf of the appellant, has submitted that the learned trial Court drew incorrect inference of inconsistencies in the deposition of P.W. 3, the appellant. He has contended that P.W.3 (appellant) was categorical and consistent, at the trial, while deposing that he identified the accused persons, who had resorted to firing, when he was sitting on the front seat and driving the vehicle. He had identified all the accused persons then and there and, thereafter, he, along with co-passengers, jumped out of the car and fled away towards the village.

8. We have perused the materials on record and we have given our anxious consideration to the submissions advanced on behalf of the appellant and the learned Additional Public Prosecutor.

9. It is evident from the materials on record that none



of the bullets, allegedly fired, hit the appellant/informant, the co-passengers or the car itself. None of the persons received any injuries. No independent witness was examined, at the trial, in which, P.W.1 is, admittedly a cousin of the informant, who was said to be sitting in the vehicle at the time of the occurrence. P.W.2 (Akhilesh Sharma) is also cousin of the appellant. The occurrence is said to have taken place, as per the *fardbeyan* and the deposition of the informant/P.W.3, at the trial, barely 25-35 feet away from the house of Arjun Sharma. Neither Arjun Sharma nor any of his family members were examined as a witness at the trial nor is any there explanation as to why they were not examined. We also notice from the impugned judgment that P.W.1 (Satish Kumar) has deposed, at the trial, that the bullet passed above the head of the informant, when he was driving the vehicle. Learned trial Court rightly disbelieved the statement as it was highly improbable that in such circumstances, the bullet would neither hit the car nor the co-passengers. On this point, material contradiction in the deposition of a witness is apparent inasmuch as P.W. 3 has deposed, at the trial, that after having come out of the car, when he was trying to flee away using the car as a shield, the bullets were fired on them. P.W.2 has deposed, at the trial, that

he had seen the accused persons fleeing away. However, he said, in his cross-examination, that the information, as regards firing, was given to him by P.W.3, the informant.

10. We have also noticed that nine used cartridges were said to have been recovered and seized by the police from a field on the northern side of the Road. Neither any site map was prepared by the police of the place of occurrence nor the used cartridges were sent for forensic test. The Investigating Officer has deposed, at the trial, that the bullets were fired from east. Learned trial Court doubted the prosecution's case, on the basis that if bullets were fired from the east, on the informant and others, who were coming in the car from west, it was improbable that all the used cartridges could be recovered from the northern field of the road.

11. In the circumstances as explained above, we do not find any substance, in the submissions made on behalf of the appellant, that the view, taken by the learned trial Court that the prosecution had failed to establish the charge against respondents No.2 to 4 beyond any reasonable doubt, could not be a reasonably possible view. Apart from the fact that all the witnesses are highly interested witnesses, inconsistency in their evidence is apparent. Further, prosecution version appears to

be highly improbable in the backdrop of the allegation that indiscriminate firing was made by three persons from a distance of 50-60 feet; but no bullet hit either the car or its occupants even when they came out of the car and were fleeing away towards their house. Failure on the part of the prosecution to send the used cartridges for forensic examination was a major flaw in the investigation and learned trial Court has rightly taken note of this aspect, while recording acquittal of respondents No.2, 3 and 4, giving them benefit of doubt.

12. We, therefore, do not find any merit in this appeal.

13. The appeal does not merit admission and is dismissed at this stage itself.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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