

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.100 of 2002

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RAJENDRA SINGH, SON OF KAILASH SINGH, RESIDENT OF VILLAGE-
MISHRIPUR, P.S.-SASARAM (M), DISTRICT-ROHTAS.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Anirudh Kumar Singh, Adv.

For the State : Mr. Sujit Kumar Singh, Adv.

For the State : Mr. Ravi Shankar Sahay, Adv.

Mr. Ajay Nandan Sahay, Adv

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 08-01-2015

Appellant, Rajendra Singh who has been found guilty for an offence punishable under Section 324 IPC and 27 of the Arms Act and further been directed to undergo R.I. for two years under each count respectively vide judgment of conviction and sentence dated 13-02-2002 delivered by Presiding Officer, Additional Court No.1, (Fast Track Court), Rohtas at Sasaram in Sessions Trial No.413 of 1985 / 52 of 2001 has challenged the same under instant appeal.

2. Shorn of unnecessary details, the prosecution case as is evident from fardbeyan of PW-3, Mudrika Ram recorded on 17-07-1984 at about 04:00 PM at Sadar Hospital, Sasaram disclosing therein that on the same day at about 09:00 A.M.



Sarju Singh was ploughing his field while his father Bansropan Singh was dressing the ridge by spade which was resisted by Naresh Ram and on account thereof, Bansropan Singh began to abuse. There was commotion attracting so many persons including he himself. Gurucharan Singh came and provoked by saying that these people be ruthlessly treated. During midst thereof, appellant Rajendra came running with a gun and fired from a distance of thirty feet on account of which he became injured. He fell down. He then was being lifted to hospital. Awadhesh Singh and Rajendra Singh having duly armed with pistol tried to prevent them during midst of way however, at the instance of Chowkidar, Jag Narayan, they allowed to proceed.

3. On the basis of the aforesaid fardbeyan, Sasaram (Muffasil) P.S. Case No.346 of 1984 was registered followed with investigation as well as submission of charge sheet whereupon the case was committed to the court of session after cognizance and ultimately, the accused persons faced trial out of whom save and except appellant, rest were acquitted.

4. The defence case, as is evident from mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C. is that of complete denial of occurrence. It has also been pleaded that in the background of strain relationship, accused persons have falsely been roped.

5. In order to substantiate its case, prosecution had



examined altogether four PWs out of whom PW-1 is Jagdish Ram, PW-2 is Ram Swaroop Ram, PW-3 is Mundrika Ram, PW-4 is Rama Shankar Tewari, the doctor. It is also evident from the lower court record that one doctor namely, Chandrashekhar Singh @ Chandrashekhar Prasad Singh has been examined as court witness C.W.1. From the record it also transpires that prosecution had exhibited Ext.-1, Fardbeyan, Ext.-2, Signature over fardbeyan, Ext.-3 Series, Injury Report, Ext.4, X-ray plate. Neither any DW nor any exhibit has been brought up on record on behalf of defence.

6. In course of challenging the finding recorded by the learned lower court, it has been submitted on behalf of appellant that PW-3, the injured might have sustained injuries in different manner at different place and as, the parties are on strain relationship and further PW-2 is a life convict on account of committing murder of brother of appellant, hence, PW-2 along with other witnesses hatched up a plan whereunder instant case has been filed. Probability of such event has been stressed in the background of the fact that, as per prosecution case it was Naresh who had protested. During course of evidence it has come to that the ridge having at the side of house of Mahesh, was being cut by Bansropan Singh (since acquitted), then in that event certainly the target would have been Naresh or Mahesh and not the PW-3. Not only this, it has also been submitted that neither Naresh nor Mahesh came forward to support case of PW-3 and so, it is difficult to accept



that actually ridge was being cut by Bansropan Singh on alleged date and time of occurrence. At the present moment, it has also been submitted that on account of non-examination of Investigating Officer, the objective finding regarding place of occurrence could not come on record therefore, caused prejudice to the appellant and that appears to be another jolt to the prosecution case.

7. Furthermore, it has been submitted that none of the witnesses including PW-3, the injured was at alleged place of occurrence. Had there been, probability of consistency in their evidence would have been visualized. When the evidence of all the three material witnesses is taken for parallel scrutiny, it is apparent that they are inconsistent with each other on every material point. It has also been submitted that evidence of injured witness has got primacy. However, when the evidence of PW-3 is read with the evidence of other PWs, it is apparent that this false case has been woven only to teach a lesson to the prosecution party. So submitted that in the background of inconsistency as well as on account of non-examination of the material witnesses coupled with non-examination of Investigating Officer make the prosecution case improbable unbelievable and on account thereof, the finding recorded by the learned trial court did not justify its prevalence.

8. On the other hand the learned Additional Public Prosecutor assisted by learned counsel for the informant submitted that the evidence of the PWs should not be taken in



casual manner. The evidence should be read in consonance with the nature of allegation, probability of their presence at the P.O. as well as quality of evidence the witness had deposed. It has further been submitted that the place of occurrence happens to be by the side of the road and on account thereof, the passers by could be accepted to be natural eyewitness. Thus, presence of PW-1, PW-2 was but natural including the fact that they are related with victim also. In likewise manner PW-3, the victim who happens to be cousin of Naresh, Mahesh was the natural witness to arrive at the place of occurrence when such kind of commotion was perceived and sustaining of guns shot injury at the hands of Rajendra the appellant, cannot be ruled out.

9. It has further been submitted that even discarding the evidence of PW-1 and PW-2 on account of some sort of flagrance of animosity with the appellant, the PW-3, the victim was not directly aggrieved as such there was no cogent reason for getting appellant falsely implicated. It has also been submitted that evidence of injured witness should not be brushed aside or disbelieved in casual manner unless and until there happens to be serious infirmity persisting there. Furthermore, it has been submitted that it is difficult to believe that instead of having his assailant, injured will falsely implicated others to be his assailant.

10. It has also been submitted that when the evidence of PW-3 is taken together with the evidence of PW-4 as well as

CW-1, it is apparent that PW-3 had sustained bullet injury which was taken out after operation and defence could not be able to discredit those part of evidence. Therefore, from the evidence of PW-3 corroborated by the medical evidence, the conviction and sentence recorded by the learned trial court is found fully substantiated.

11. In order to appreciate the rival contention, evidence have minutely been gone through. In the fardbeyan PW-3, the informant had not disclosed that both the parties were on strain relationship since before the occurrence. In para-2 of his cross-examination PW-1 had admitted that there happens to be litigation relating to land amongst Paswan as well as Kapri since before occurrence and so many cases are pending amongst them. PW-2 had stated under para-15 of his cross-examination that he happens to be a life convict for committing murder of Surendra Singh, own brother of Rajendra Singh. In para-16 he had further said that both parties happen to be on strain relationship before the occurrence. PW-3 at para-17 had admitted that both the parties are on litigating term.

12. Now coming to status of the witnesses, PW-1 in para-3 of his cross-examination has admitted that he happens to be nephew of Mudrika Ram, PW-3. PW-2 himself had not disclosed relationship with PW-3 and consequent thereupon, all the witnesses might be accepted as interested witness.

13. According to fardbeyan, PW-3 had not disclosed on which side Bansropan Singh was engaged in cutting the ridge



though he had mentioned that Naresh had objected. PW-1 in his examination-in-chief had stated that Bansropan Singh was engaged in cutting ridge adjacent to wall of Mahesh. Mahesh and Naresh both have forbidden him. He had further stated that Mahesh and Naresh both are cousin brother of Mundrika. According to PW-2 when he reached at the place of occurrence, which happens to be the field of Bansropan, he found Bansropan, his son Saryug, Gurucharan, Rajendra, Awadhesh along with others. Sarju, son of Bansropan was cutting ridge from his side which was protested by Naresh and Mahesh. PW-3 had stated that after hearing hue and cry coming from the field of Bansropan, he had gone to field of Bansropan where he found Bansropan engaged in cutting ridge while Saryu Singh was ploughing the field. Naresh forbidden. The most crucial aspect on this score is coming out from para-8, 9 of his cross-examination wherein he had clearly stated that he is unable to say whether on account of cutting of ridge by Bansropan towards their land, Naresh or Mahesh had sustained any loss or not. He had further shown his ignorance towards the fact whether family member of Mahesh had made protest or not. From para-6 of his cross-examination, it is evident that house of Mahesh and Naresh lies at two distinct places. While house of Mahesh lies west to the field belonging to Bansropan Singh, the house of Naresh lies north to that field. Apart from this, as stated above there also happens to be inconsistency amongst the witnesses on this score that means to say with regard to

cutting of ridge by Bansropan or Sarju Singh.

14. It is an admitted fact that house of none of the witnesses that means to say PW-1, PW-2 and PW-3 lies in the boundary of the land belonging to Bansropan Singh. It was the house of Mahesh and Naresh. The motive for occurrence has been shown on account of cutting of ridge by Bansropan at the side of house of Mahesh. Then in that event, Mahesh or Naresh or both of them were expected to come forward to depose on that very score because of the fact that they were the aggrieved.

15. According to fardbeyan, the informant had alleged that Rajendra Singh rushed from his house along with single barrel gun and fired on PW-3 at a distance of 30 feet. PW-3, injured during course of his examination-in-chief had stated that Rajendra Singh rushed having single barrel gun and fired from 30 feet causing injury. Further he clarified under para-18 of his cross-examination that Rajendra fired just after coming. He was not present at P.O. since before rather he came on an alarm. At the other end, PW-2 had stated that when he reached at the field of Bansropan Singh he saw Bansropan, Sarju, Gurucharan, Rajendra, Awadhesh along with others and during course thereof, Rajendra had shot at his uncle Mundrika. PW-1 had stated that at that very moment Bansropan, Sarju, Rajendra, Gurucharan, Awadhesh were duly armed with Gun, Lathi, Bhala who assembled there out of whom Rajendra had shot at. That means to say presence of Rajendra as well as

firing made by Rajendra over PW-3 in a manner as suggested in an earlier version that means to say in the fardbeyan as well as reiterated by the injured PW-3 during course of his evidence is found inconstant with the other PWs.

16. By consistent judicial pronouncement, the status of injured has been kept at higher pedestal than the normal witnesses. That means to say the evidence of injured witness unless and until, it is found soaked with falsehood, should be accepted. As per learned Additional Public Prosecutor assisted by learned counsel for the informant that presence of firearm injury over person of PW-3 is found corroborated with the evidence of PW-4 as well as CW-1 and on account thereof, the evidence of PW-3, needs no clarification and on account thereof identification of Rajendra as the author of the injury rightly been perceived by the learned lower court.

17. Non-examination of particular witness should not be considered a shortfall in the prosecution case, at the other end the prosecution has to be adjudged whatever been placed during conduction of trial. But when material witness has not been examined then in that event the impact of non-examination of material witness has to be seen. At the cost of repetition, it is apparent that PW-1, PW-2 and PW-3 are interrelated. The motive for occurrence has been on account of cutting of ridge by Bansropan which was resisted by Naresh. So, the prime target would have been Naresh or Mahesh and not PW-3. Non-appearance of Mahesn or Naresh cast a doubt

over the prosecution case regarding cutting of ridge by Bansropan and in likewise manner due to non-examination of Investigating Officer, the alleged P.O. coupled with motive for commission of an occurrence shroud and under cloud. Furthermore, presence of PW-1, PW-2, PW-3 who are interrelated out of whom PW-2 stood as life convict for commission of murder of brother of appellant as well as having inherent defect persisting in the prosecution case, due to non-examination of Naresh, Manesh as well as Investigating Officer, cast doubt over genuineness of prosecution version. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated, the 8th day of Jan, 2015
Prakash Narayan

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