

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.817 of 2015

Arising Out of PS.Case No. -238 Year- 1992 Thana -GHOSI District-
JEHANABAD

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Himanshu Shekhar, Son of Sri Surendra Singh, resident of Village-
Rukunpura, Police Station-Ghoshi, District-Jehanabad.

.... Informant/Appellant

Versus

1. Amerika Singh, Son of late Kedar Singh.
2. Birendra Kumar Singh, Son of late Kedar Singh.
3. Rakesh Singh, Son of Amerika Singh.
4. Shailendra Singh, Son of late Kedar Singh.

All residents of Village-Rukunpura, Police Station-Ghoshi, District-
Jehanabad.

.... Ist Set Accused/Opposite Parties

5. The State of Bihar.

.... IInd Set Opposite Party

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Appearance :

For the Appellant : Mr. Anil Kumar, Advocate

For the Opposite Parties : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

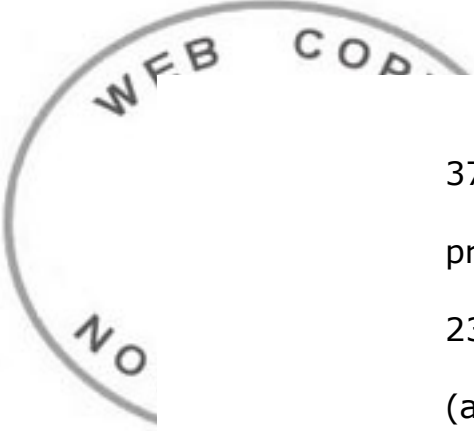
**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**



Date: 22-12-2015



This appeal, under the proviso to Section 372 of the Code of Criminal Procedure, 1973, has been preferred against the Judgment and Order, dated 23.05.2015, passed in Ghoshi P.S. Case No.238 of 1992 (arising out of Sessions Trial Nos.78 of 2004/38 of 2015) by learned *Ad-hoc* Additional District and Sessions Judge-I, Jehanabad, whereby he has recorded acquittal of the opposite party Nos.1 to 4, who were charged for the offences punishable under Section 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

2. Ghoshi P.S. Case No.238 of 1992, which had been registered on the basis of the *fardbeyan* of the informant, namely, Himanshu Shekhar (P.W.5), gave rise to Sessions Trial Nos.78 of 2004/38 of 2015. His *fardbeyan* was recorded by the Police Officer in the clinic of one Dr. Bhupendra Prasad, on 01.11.1992, at about 11.40 A.M. According to the *fardbeyan*, on the date of occurrence, i.e., 01.11.1992, when he (informant) was feeding his cattle, respondent Nos.1 to 4, the co-villagers, came armed with country made gun. Upon being instigated by respondent No.1, respondent No.2 is said to

have opened fire, causing injuries on the informant/appellant on his throat, arm, mouth and ribs, whereafter the respondents fled away. It was also asserted in the *fardbeyan* that respondent Nos.3 and 4 also opened fire upon the informant, but no injury was caused to him, because he had entered into his house.

3. Upon completion of investigation and *charge-sheet* having been submitted by the police, cognizance of the offences was taken under Section 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959. The case, in course of time, was committed for trial.

4. At the trial, altogether seven witnesses were examined. The informant/appellant was examined as P.W.5. P.W.1, Jai Ram Sharma, and P.W.2, Navbindra Sharma, were declared hostile to the prosecution. P.W.7, Awadhesh Prasad, was a formal witness; but P.W.3, Sanjiv Kumar, P.W.4, Vijay Sharma, and P.W.5, Himanshu Shekhar (informant/appellant), have supported the prosecution case as eye-witnesses.

5. Learned trial Court, upon considering the evidence on record, came to a finding that the evidence adduced, at the trial, was not sufficient to prove the charges, framed against the respondents, beyond all

reasonable doubt. He, accordingly, recorded acquittal of the respondents by the Judgment and Order, under appeal.

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

7. Mr. Anil Kumar, learned counsel, appearing on behalf of the appellant, has submitted that the appellant himself was the victim, who had, admittedly, sustained fire-arm injuries, which he proved at the trial. He has also submitted that other eye-witnesses have also supported the prosecution's case. In such circumstances, he submits that recording of acquittal of the respondents by learned trial Court is wholly unjustified and not sustainable. According to him, there was no reason for the learned trial Court for not believing the evidence of the appellant/informant and other eye-witnesses.

8. Before we proceed to discuss the legality of the impugned Judgment and Order of learned trial Court, we have kept in mind the well accepted principle that an appellate Court, while considering an appeal against an order of acquittal, is required to interfere only



when it is shown to the Court that on the basis of the evidence, adduced at the trial, conviction of an accused was the only possible view and no other view could possibly be taken by a court. The presumption of innocence of an accused stands reaffirmed, once a trial Court records his acquittal after trial, for a trial court, holding a trial, has the advantage of seeing the demeanor of the witnesses and, therefore, a trial Court, if after having considered the evidence, records acquittal, the appellate Court would normally be loath to interfere with the order of acquittal. Interference with the Judgment and Order of acquittal would be warranted only when the findings, arrived at by the trial Court, are found to be perverse, contrary to evidence, and a view, which could not have been taken on the basis of the evidence available on the record, was taken by the trial court.

9. In the present case, we find that the injuries have been found to be simple in nature. Though, in the injury report, injuries have been shown to have been caused by fire-arm, the Doctor, who was examined as P.W.6, in his cross-examination, at the trial, accepted that such simple injuries can be created also. This opinion of the doctor has remained, and still remain, unchallenged.

10. The appellant/informant, in his *fardbeyan*, had said that P.W.3, Sanjiv Kumar, P.W.2, Naubind Sharma, and P.W.4, Bijay Sharma, had also seen the occurrence. P.W.1 and P.W.2 have, at the trial, denied to have seen the occurrence. P.W.3 and P.W.4, however, deposed that they had seen the occurrence. P.W.4, in his evidence, had deposed that marks of the pellets were present on the wall of the informant's house. There is no such evidence adduced by the informant nor had he stated so in his *fardbeyan*. The Investigating Officer was not examined, who could have proved the place of occurrence. The learned trial Court doubted the veracity of the evidence of P.W.3 inasmuch as he attempted to prove the manner of occurrence by referring to the marks of pellets on the wall, which was not proved nor was so asserted by the informant himself. Further, we notice that P.W.3, Sanjiv Kumar, has been described as the elder brother of the appellant/informant, whereas P.W.4, Bijay Sharma, as his uncle. Land dispute between the informant and the respondents, over partition, is an admitted fact. All of them are agnates. The appellant/informant deposed that P.W. 3 and P.W.4 had seen the occurrence, when they were taking tea with P.W.1 and P.W.2; whereas P.W.1 and P.W.2, both of



them, have denied of having seen any such occurrence. This apart, P.W.3 and P.W.4 did not say in their evidence that they were having tea near the place of occurrence, when the occurrence took place. On the other hand, P.W.3 has deposed that he was sitting in his house and when he came out of the house, he saw the accused persons. He did not say that he was having tea with P.W.1, P.W.2 and/or P.W.4.

11. What is noticed from the above that no independent witness has supported the prosecution's case. There are apparent material contradictions in the evidence of prosecution, which are sufficient to create reasonable doubt over the manner of occurrence and implication of the respondents. Further, P.W.3 and P.W.4 are closely related to the informant/appellant, who are interested witnesses, and who only have supported the prosecution case, though with apparent contradictions. Non-examination of the Investigating Officer is, in the facts and circumstances of the present case, fatal to the prosecution case.

12. It is true that evidence of witnesses cannot be brushed aside altogether, on the ground of their being interested witnesses, but at the same time, their evidence will have to be weighed and appreciated

with much greater care and caution than what is, ordinarily, done. We are not convinced, on the basis of the evidence adduced by the prosecution, that the prosecution was able to prove its case beyond all reasonable doubt and the view, taken by the learned trial Court, acquitting the respondents of the charges could not be a reasonably possible view.

13. We do not find any reason to interfere with the impugned Judgment and Order, dated 23.05.2015, passed by learned trial Court.

14. There is no merit in this appeal which, is accordingly dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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